

# Another nail in the coffin of the Single Market?

Last month, an event occurred which got little fanfare, but which is likely to have a significant effect on the future of the UK, especially after Brexit. The WTO Trade Facilitation Agreement has now entered into force.

Lord Lamont, the former UK Chancellor of the Exchequer, wrote in *The Telegraph*:

*'The single market is open to all advanced economies, in exchange for paying a relatively modest tariff of 3 to 4 per cent, something that evidently does not stop non-EU countries from selling within it.'*

*'Every developed country has access to the single market. The EU has a relatively low external tariff with the exception of certain goods such as agriculture.'*[i]

When taken *prima facie*, Lord Lamont's comments are seemingly correct. Only those countries who are essentially rogue states or have violated international agreements don't have the ability to conduct trade with the EU, and the EU's external tariffs are fairly low.

But tariffs are only half of the story.

The problem of tariffs could be easily addressed by the UK signing a goods Free Trade Agreement (FTA) with the EU. Given the high volume of UK- EU27 trade, this is seemingly a given.

A *basic* FTA need not take long to complete. The EU's earlier iteration, the European Economic Community (EEC), concluded basic FTAs in the early 70s that took 6-7 months to agree,

sign and come into force.

But the other half of the story relates to non-tariff barriers (NTBs), sometimes called “Non-Tariff Measures (NTMs)”. These comprise everything else that can slow down trade or make it more expensive or complex.

The European Commission describes the Single Market as:

*‘...one territory without any internal borders or other regulatory obstacles to the free movement of goods and services. The Commission works to remove or reduce barriers to intra-EU trade and prevent the creation of new ones so enterprises can trade freely in the EU and beyond. It applies Treaty rules prohibiting quantitative restrictions on imports and exports (Articles 34 to 36 TFEU ) and manages the notification procedures on technical regulations (2015/1535) and technical barriers to trade.’[ii]*

So the Single Market goes beyond tariff reduction, and encompasses far more than just a free trade agreement. This is why the ‘remain’ side in the EU referendum campaign were so concerned about the UK leaving the European Union’s Single Market.

Remainers believe that after Brexit, even if the UK does get a free trade agreement, our importers and exporters will be deluged with red tape, endless forms, checks and other barriers to entry as we will be operating outside the Single Market.

These are valid concerns, but we believe they are largely exaggerated – and here are the reasons why:

### **The EU has signed up to the WCO**

In July 2007[iii], the EU signed up to the World Customs Organization (WCO), which works to enhance customs co-operation between signatory countries and works to simplify

issues such as Rules of Origin (R00).

From the European Commission's own press release:

*'On 30 June 2007, the Council of the World Customs Organization (WCO) decided to accept the request of the European Union to join the WCO as of 1<sup>st</sup> July 2007. This decision grants to the European Union rights and obligations on an interim basis akin to those enjoyed by WCO Members.*

*'The WCO plays an important role in promoting international customs co-operation and addressing new challenges for customs and trade. It is deeply involved in designing and implementing policies worldwide that integrate measures, which help ensure supply chain security, combat counterfeiting, promote trade and development, as well as guarantee efficient collection of customs revenues. Membership of the WCO highlights and confirms the central role and competence of the EU in international discussions on customs issues including customs reform. EU involvement in the WCO will focus on the full spectrum of customs issues, in particular the following broad areas:*

- Nomenclature and classification in the framework of the Harmonised system;*
- Origin of goods;*
- Customs value;*
- Simplification and harmonisation of customs procedures and trade facilitation;*
- Development of supply chain security standards;*
- Development of IPR enforcement standards;*
- Capacity building for customs modernisation and reforms, including in the context of development cooperation;*
- Mutual Administrative Assistance for the prevention, investigation and repression of customs offences.*

*'The EU is a contracting party to several WCO Conventions, and contributes to the work of this organisation, including*

*by ensuring presence and coordination with the Member States in defining and representing EU positions in the relevant bodies managing these conventions.'*

The UK signed up to the WCO in the 1950s and is a signatory in its own right, so will be able to address customs issues with the EU via this body after Brexit.

## **Harmonisation with EU rules**

The UK's rules and regulations are already synchronised with EU/EEA (European Economic Area) regulations and standards after decades of membership. This will also be true on the day after Brexit due to the Great Repeal Bill. Hence a strong (if not overwhelming) argument for 'rules equivalence' can be made.

## **The WTO Agreement on Rules of Origin (ROO)**

This agreement encourages WTO countries (including all EU countries) to have fair and transparent rules pertaining to Rules of Origin:

These rules state that:

*'Rules of origin shall not themselves create restrictive, distorting, or disruptive effects on international trade. They shall not pose unduly strict requirements or require the fulfilment of a certain condition not related to manufacturing or processing, as a prerequisite for the determination of the country of origin....rules of origin are administered in a consistent, uniform, impartial and reasonable manner'.[iv]*

## **Guidelines in the EU treaties**

Article 8 of the Lisbon Treaty states that:

*'The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of*

*prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation.'*[v]

As the UK will become a new 'neighbouring country' after Brexit, the EU is compelled to deal with us according to the Article 8 terms.

## **WTO Technical Barriers to Trade Agreement**

The TBT agreement is key – it means that signatories (again, including the EU) agree to abide by rules about international product and technical standards. From the European Commission's website:

*'The TBT notification procedure helps prevent the creation of international technical barriers to trade. It was introduced by the Agreement on Technical Barriers to Trade (the TBT Agreement), a multilateral agreement administered by the World Trade Organisation (WTO). It gives participants advanced knowledge of new technical regulations or conformity assessment procedures envisioned by other countries. The EU's participation in the TBT Agreement helps businesses in EU countries access markets outside the EU.'*

### **Aim of the TBT notification procedure**

To avoid any potential technical barriers to trade, WTO Members submit national legislation at draft stage to other members of the TBT Agreement. They can then assess the impact on their exports and identify any provisions breaching the Agreement.

While allowing all WTO Members to maintain their right to adopt regulations, the TBT Agreement aims to:

- prevent the creation of unnecessary and unjustified technical barriers to international trade;
- prevent the adoption of protectionist measures;

- encourage global harmonisation and mutual recognition of technical standards;
- Enhance transparency.[vi]

The Commission somewhat downplays the TBT agreement, however. What it actually states is that:

*'Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country.'*

*'Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade.'*

*'Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations. Members shall give positive consideration to accepting as equivalent technical regulations of other Members, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfil the objectives of their own regulations.'*[vii]

Since UK regulations and standards will be equivalent to their EU counterparts from day one, and will continue to meet international standards going forward, it will be extremely difficult for the EU to reject UK products sold into the EU market.

## **WTO Trade Facilitation Agreement**

The most recent agreement, the WTO Trade Facilitation Agreement (TFA) will further increase trade co-operation.

As the WTO website states:

*'The TFA contains provisions for expediting the movement, release and clearance of goods, including goods in transit. It also sets out measures for effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues. It further contains provisions for technical assistance and capacity building in this area.'*[viii]

Perhaps especially important for Northern Ireland post-Brexit, the TFA also states that:

*'Each Member shall ensure that its authorities and agencies responsible for border controls and procedures dealing with the importation, exportation, and transit of goods cooperate with one another and coordinate their activities in order to facilitate trade.'*

*'Each Member shall, to the extent possible and practicable, cooperate on mutually agreed terms with other Members with whom it shares a common border with a view to coordinating procedures at border crossings to facilitate cross-border trade.'*

The WCO welcomed the ratification of the TFA agreement in their press release of 22 February 2017, in which they wrote:

*'The World Customs Organization (WCO) congratulates the World Trade Organization (WTO) on the entry into force today of the WTO Trade Facilitation Agreement; an agreement that will expedite the movement, release and clearance of goods, including goods in transit, and which sets out measures for effective cooperation between Customs and other authorities, as well as provisions for technical assistance and capacity building in this area.'*

*'The WCO takes this opportunity to highlight that it will continue to seek improvements throughout the global supply'*

*chain to obtain the highest levels of safety, security and integrity, which will enhance trade facilitation for compliant actors. This will ultimately have a positive effect on the relationship between all border agencies and the Private Sector.*

*'The entry into force of the Trade Facilitation Agreement (TFA) is an important milestone for the international trade and Customs community, coming about as a result of the fact that it has been ratified by 110 WTO Members, which pushes it above the threshold needed to take effect, namely ratification by two-thirds of the WTO's 164 Members.'*[ix]

### **In conclusion:**

- The volume and UK and EU will likely at least sign a basic goods FTA; meaning tariff-free goods trade will continue.
- The UK's rules and regulations are already synchronised with EU regulations and standards. This will also be true on the day after Brexit.
- The UK and EU are signed up to the WCO, which exists to help simplify and resolve customs issues.
- The WTO TBT agreement prohibits the EU from banning UK goods that meet international standards.
- The WTO agreement on Rules of Origin means that the EU will have to ensure rules of origin are administered "in a consistent, uniform, impartial and reasonable manner" when dealing with exports from the UK.
- The WTO Trade Facilitation agreement means the EU must co-operate with the UK on issues around the "movement, release and clearance of goods".

When we combine these factors together we see that after Brexit, UK trade with the EU will be very similar *after* Brexit as before Brexit.

The EU has signed up to many agreements and treaties which in



effect reduce the uniqueness of the single market.

Britain can therefore essentially have almost duplicate trade relationship by falling back on these international agreements (if necessary) which would mean that the UK could have the majority of the benefits of Single Market membership, but be free to choose which rules to obey when not exporting to the EU 27 countries or for domestic sale.

The TFA might not then be the final nail in the Single Market coffin (it is still useful to EEA members), but it is one substantial step towards reducing the importance of the Single Market to a post-Brexit UK.

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[i]

<http://www.telegraph.co.uk/news/2016/06/13/not-only-can-britain-can-leave-the-eu-and-have-access-to-the-sin/>

[ii] [https://ec.europa.eu/growth/single-market\\_en](https://ec.europa.eu/growth/single-market_en)

[iii]

[https://ec.europa.eu/taxation\\_customs/business/international-affairs/international-customs-cooperation-mutual-administrative-assistance-agreements/world-customs-organization\\_en](https://ec.europa.eu/taxation_customs/business/international-affairs/international-customs-cooperation-mutual-administrative-assistance-agreements/world-customs-organization_en)

[iv] [https://www.wto.org/english/docs\\_e/legal\\_e/22-roo\\_e.htm](https://www.wto.org/english/docs_e/legal_e/22-roo_e.htm)

[v]

<http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-european-union-and-comments/title-1-common-provisions/6-article-8.html>

[vi]

[https://ec.europa.eu/growth/single-market/barriers-to-trade/tbt\\_en](https://ec.europa.eu/growth/single-market/barriers-to-trade/tbt_en)

[vii] [https://www.wto.org/english/docs\\_e/legal\\_e/17-tbt.pdf](https://www.wto.org/english/docs_e/legal_e/17-tbt.pdf)

[viii]

[https://www.wto.org/english/tratop\\_e/tradfa\\_e/tradfa\\_introduction\\_e.htm](https://www.wto.org/english/tratop_e/tradfa_e/tradfa_introduction_e.htm)

[ix]

<http://www.wcoomd.org/en/media/newsroom/2017/february/wco-welcomes-entry-into-force-of-the-wto-trade-facilitation-agreement.aspx>

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