

ANNEX A: SECTORAL IMPACTS OF UK DEPARTURE FROM THE EU, ACCOMPANYING NOTE ON WORLD TRADE ORGANISATION

Basic Introduction to World Trade Organization

This note aims to provide a basic introduction to the World Trade Organization. It is a high level guide to the type of things that the WTO does. It flags the areas the UK government will become increasingly involved with as the UK transitions from being a WTO member as part of the European Union to a WTO member responsible for its own affairs. It is intended that this note will be followed by further notes on specific topics such as negotiating at the WTO (e.g. on modifications to the UK's offer in its tariff and service schedules etc), dispute resolution and trade remedies.

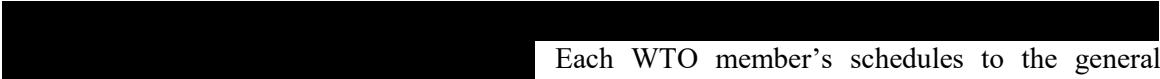
Introduction

1. The World Trade Organization (WTO) is a negotiating forum with a membership of 163 trading nations to establish and develop trade relationships. The WTO was created in January 1995 as a successor to the unofficial international organisation that had developed around the General Agreement on Tariffs and Trade (GATT). The GATT still exists for trade in goods under the WTO's umbrella treaty, together with new agreements on trade in services, and intellectual property. Within the WTO, members are able to negotiate trade arrangements and settle trade disputes within a system of agreed rules. The WTO Agreements, negotiated and signed by member countries, provide the legal ground-rules for international commerce. The aim is to help producers of goods and services, exporters and importers to conduct their business in a stable and transparent business environment.

WTO Agreements

2. A general understanding of the structure of the WTO agreements is the first step towards understanding how the WTO operates. There are universal¹ agreements signed by all members and more focused voluntary agreements called "plurilaterals". The principal WTO Agreements consist of:
 - a. the umbrella agreement establishing the WTO (the Marrakesh Agreement);
 - b. general agreements for each of the three broad areas of trade that the WTO covers i.e. goods (GATT), services (GATS) and intellectual property (TRIPs);
 - c. the dispute settlement understanding (DSU); and
 - d. the Trade Policy Review Mechanism (TPRM) which allows for regular reviews of members' trade policies.
3. The agreements typically prescribe special and preferential treatment for developing countries, and require governments to make their trade policies transparent by notifying the WTO about laws in force and measures adopted.

¹ In addition to the umbrella agreement, GATT, GATS and TRIPS etc all members have signed other agreements such as the Agriculture Agreement, Sanitary and Phytosanitary Measures Agreement and the Technical Barriers to Trade Agreement etc.

4. GATT², GATS³ and TRIPS⁴ include annexes dealing with the special requirements of specific sectors or issues and detailed and lengthy **schedules of concessions (GATT) and commitments (GATS)**. For GATT, these schedules take the form of binding commitments on tariffs for goods in general, and combinations of tariffs and quotas for some agricultural goods. For GATS, the commitments state how much access foreign service providers are allowed for specific sectors, and they include lists of types of services where individual countries say they are not applying the “most-favoured-nation” principle of non-discrimination.
5.  Each WTO member’s schedules to the general agreements are made as a result of a negotiation with other WTO members and, in principle, can only be changed by agreement. If a member changes their schedules without the agreement of the other members and which impacts negatively on another member, they may be required to make further and compensatory adjustments to their schedules which will then have to be applied to all members.

Core Principles of the Global Trading System

6. There are certain principles that are fundamental to the operation of the WTO and are reflected in most of the agreements:

a. Trade without discrimination

Most-favoured-nation (MFN): treating other people equally - under the WTO agreements, countries cannot normally discriminate between their trading partners. If country A extends to country B a special favour (such as a lower customs duty rate for one of their products) this must be extended to all other WTO members.

National treatment: treating foreigners and locals equally - imported and locally produced goods should be treated equally once the foreign goods have entered the market. The same should apply to foreign and domestic services, and to foreign and local trademarks, copyrights and patents.

The WTO is a system of rules aimed at open, fair and undistorted competition. The rules on non-discrimination — MFN and national treatment — are designed to secure fair conditions of trade. So too are those on dumping (exporting at below cost to gain market share) and subsidies.

b. Predictability: through binding commitments and transparency

² This agreement and annexes for goods deal with the following specific sectors or issues: For **goods** (under GATT) agriculture, health regulations for farm products (SPS), textiles and clothing, product standards (TBT), investment measures, anti-dumping measures, customs valuation methods, pre-shipment inspection, rules of origin, import licensing, subsidies and counter-measures and safeguards.

³ This deals with: movement of natural persons, air transport, financial services, shipping and telecommunications.

⁴ The areas covered by the TRIPS Agreement: copyright and related rights, trademarks, including service marks, geographical indications, industrial designs, patents, layout-designs (topographies), integrated circuits and undisclosed information, including trade secrets.

A promise by a WTO member not to raise a trade barrier, such as imposing unexpected tariffs (taxes) or quotas on the import of goods, can help create a stable and predictable business environment for business when making investment decisions.

WTO members also commit to provide detailed information on the rules involved in their trade policies. This information includes, for example, the publication of tariff schedules for goods⁵ and the publication of domestic laws and regulations⁶. The result is that traders know the basic cost of importing and exporting goods and can understand the relevant regulatory regime.

Agreements and provisions covering specific policy areas

7. In the area of **procurement** it is important to be familiar with the two “plurilateral” agreements (voluntary) signed by only some members: civil aircraft and government procurement. **The Agreement on Civil Aircraft** essentially removes tariffs on components used in the manufacture of civil aircraft. **The Agreement on Government Procurement** extends competition rules to purchases by thousands of government entities in many countries.
8. In the area of agriculture it is necessary to have an understanding of the **Agriculture Agreement** which deals with reform of trade in the sector and making policies more market-oriented with the view of improving predictability and security for both importing and exporting countries. This agreement contains rules and commitments on market access, domestic support, and export subsidies.
9. In the areas of **health, environment, rural issues and food safety** it is important to be aware of Article 20 of the GATT (and SPS and TBT discussed in the next paragraphs) which allows governments to act on trade in order to protect human, animal or plant life or health, provided they do not discriminate or use this as disguised protectionism. In order to strike this balance there are two specific WTO agreements that deal with food safety and animal and plant health and safety, and with product standards in general.
10. The agreement on food safety and animal and plant health standards (the **Sanitary and Phytosanitary Measures Agreement** or SPS) sets out the basic rules. It allows countries to set their own standards but requires regulations to be based on science. They should be applied only to the extent necessary to protect human, animal or plant life or health and they should not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail. Where countries have used international standards, guidelines and recommendations, where they exist, they are unlikely to be challenged legally in a WTO dispute. However, members may use measures which result in higher standards if there is scientific justification.
11. The agreement on **Technical Barriers to Trade Agreement (TBT)** seeks to ensure that regulations, standards, testing and certification procedures do not create unnecessary obstacles to trade. Regulations and standards are recognised as being necessary and important for reasons of

⁵ GATT Art II

⁶ GATT Art X, GATS Art III:1, TRIPs Art 63

environmental protection, safety, national security to consumer information and so may help trade. However, these regulations and standards vary from country to country which creates difficulties for producers and exporters and can become obstacles to trade. TBT provides a framework which Government will need to apply to ensure that standards are genuinely useful and not arbitrary or an excuse for protectionism.

Trade Remedies

12. The area of trade remedies – anti-dumping, subsidies and countervailing measures – is possibly the most complicated set of WTO rules. This work requires collaboration between lawyers and other specialists like economists and accountants.

Anti-dumping

13. If a company exports a good at a price lower than the price it normally charges on its own home market, it is said to be “dumping” the product. If this occurs members may take action against the dumping in order to protect their domestic industries against injury. The WTO agreement which sets out how members can or cannot react to dumping is often called the “**Anti-Dumping Agreement**”⁷.
14. Broadly speaking the Anti-Dumping Agreement allows members to act against dumping where there is genuine (“material”) injury to the competing domestic industry. To do so the member has to be able to show that dumping is taking place, calculate the extent of dumping (how much lower the export price is compared to the exporter’s home market price), and show that the dumping is causing injury or threatening to do so. If it can do so, the member is allowed to act in a way that would normally break the GATT principles of respecting a tariff and not discriminating between trading partners. Typically this might involve charging extra import duty on the particular good from the exporting country in order to bring its price closer to the “normal value” or to remove the injury to domestic industry in the importing country.

Subsidies and countervailing measures

15. WTO rules discipline the use of subsidies and regulate the actions members can take to counter the effects of subsidies. A member can launch its own investigation and ultimately charge extra duty (known as “countervailing duty”) on subsidised imports that are found to be hurting domestic producers. Alternatively, the member can use the WTO’s dispute settlement procedure to seek the withdrawal of the subsidy or the removal of its adverse effects.
16. The rules on subsidies only apply to the concept of a “specific” subsidy i.e. a subsidy available only to an enterprise, industry, group of enterprises, or group of industries in the country that gives the subsidy. They can be domestic or export subsidies. There are two categories of subsidies: **prohibited** and **actionable**.

⁷ The Agreement on Implementation of Article VI of GATT

Prohibited subsidies are subsidies that require recipients to meet certain export targets, or to use domestic goods instead of imported goods. They are **prohibited** because they are specifically designed to distort international trade, and are therefore likely to hurt other countries' trade. They can be challenged in the WTO dispute settlement procedure, where they are handled under an accelerated timetable. If the dispute settlement procedure confirms that the subsidy is prohibited, it must be withdrawn immediately. Otherwise, the complaining member can take counter measures. If domestic producers are hurt by imports of subsidized products, countervailing duty can be imposed.

Actionable subsidies: in this category the complaining country has to show that the subsidy has an adverse effect on its interests. Otherwise the subsidy is permitted. The agreement defines three types of damage they can cause. One country's subsidies can hurt a domestic industry in an importing country. They can hurt rival exporters from another country when the two compete in third markets. And domestic subsidies in one country can hurt exporters trying to compete in the subsidizing country's domestic market. If the Dispute Settlement Body rules that the subsidy does have an adverse effect, the subsidy must be withdrawn or its adverse effect must be removed. Again, if domestic producers are hurt by imports of subsidized products, countervailing duty can be imposed.

Safeguards

17. A WTO member may restrict imports of a product temporarily (take "safeguard" actions) if its domestic industry is seriously injured or threatened with serious injury caused by a surge in imports. The WTO agreement sets out requirements for safeguard investigations by national authorities. The emphasis is on transparency and on following established rules and practices, avoiding arbitrary methods.
18. The agreement sets out criteria for assessing whether "serious injury" is being caused or threatened, and the factors which must be considered in determining the impact of imports on the domestic industry. When imposed, a safeguard measure should be applied only to the extent necessary to prevent or remedy serious injury and to help the industry concerned to adjust. Where quantitative restrictions (quotas) are imposed, they normally should not reduce the quantities of imports below the annual average for the last three representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury.

Dispute Resolution

19. The WTO Dispute Settlement Understanding provides a mechanism for settling disputes concerning compliance with the WTO Agreements. Government lawyers should not expect WTO dispute handling to run like other type of litigation, whether domestic, the Court of Justice of the European Union or European Court of Human Rights. Although much of the procedure does resemble a court or tribunal, the preferred solution is for the countries concerned to discuss their problems and settle the dispute by themselves. The first stage is therefore consultations between the governments concerned, and even when the case has progressed to other stages, consultation and mediation are still always possible.

20. In WTO dispute resolution essentially involves negotiation about broken promises. WTO members have agreed that if they believe fellow-members are violating trade rules, they will use the multilateral system of settling disputes instead of taking action unilaterally. That means abiding by the agreed procedures, and respecting judgements.
21. A dispute arises when one country adopts a trade policy measure or takes some action that one or more fellow-WTO members considers to be breaking the WTO agreements, or to be a failure to live up to obligations. Disputes cases may only be initiated by WTO Members. They cannot be initiated by individuals or by NGOs. A third country WTO Member can declare that they have an interest in the case and enjoy some rights.
22. A procedure for settling disputes existed under the old GATT, but it had no fixed timetables, rulings were easier to block, and many cases dragged on for a long time inconclusively. The Uruguay Round agreement introduced a more structured process with more clearly defined stages in the procedure. It introduced greater discipline for the length of time a case should take to be settled, with flexible deadlines set in various stages of the procedure. The agreement emphasizes that prompt settlement is essential if the WTO is to function effectively.
23. A decision of the WTO panel or Appellate Body is binding on the WTO Members who are party to the dispute. If a WTO Member is found to have contravened the WTO Agreements, it must promptly bring itself into compliance. If it fails to do so within a reasonable time, it must offer mutually acceptable compensation or face having the complaining WTO Member be authorised to suspend trade concessions (e.g. raise the tariff on goods from the WTO Member in breach).

Trade Review Mechanism

24. Individuals and companies involved in trade need information about the conditions of trade. It is therefore of fundamental importance that regulations and policies are transparent. In the WTO, this is achieved in two ways: governments have to inform the WTO and fellow-members of specific measures, policies or laws through regular “notifications”; and the WTO conducts regular reviews of individual countries’ trade policies — the trade policy reviews. Government lawyers may be called on to ensure domestic policies are compliant with WTO obligations and the area of goods, services and intellectual property.

The UK’s Position

25. Finally, this note briefly looks at the UK outside the European Union (EU).
26. The UK was a founding member of the General Agreement on Tariffs and Trade in 1948 and was an active member in its own right in this organisation until the creation of the WTO in 1994. The UK is a signatory to the Marrakesh Agreement (1994) which created the WTO and is a member of the WTO in its own right. The EU is also a member of the WTO having joined alongside the UK in 1994. Trade falls within the EU’s Common Commercial Policy which is an exclusive competence. Consequently, since the WTO’s creation the UK has participated in the WTO as a member of the EU.

27. The European Commission represents the Member States in the work of the WTO, including negotiations in all areas of WTO activity. The EU's offers on tariffs and services, including the specific issues relevant to the UK, are reflected in common EU Schedules.

28. As the UK is already a WTO Member in its own right, it will continue to be a WTO Member once it leaves the EU.

Key points to bear in mind

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