UK TRADE NEGOTIATIONS AND AGREEMENTS POST-BREXIT

Michael Johnson, former UK Government trade negotiator and Advisor on International Trade Policy

Tariffs on trade in goods

Protective tariffs (or “customs duties”) and other equivalent charges which are applied by national governments to imported goods are generally based on the so-called Harmonised System of Customs Nomenclature (HS) which is coordinated by the World Customs Organisation. The HS classifies every known category of goods ranging from the most basic agricultural products to the most sophisticated electronics. It is divided into 21 sections covering 99 chapters. These comprise around 5,000 product headings and subheadings, or perhaps more according to how far national governments choose to subdivide individual subheadings into more detailed product descriptions. The HS is regularly reviewed to keep it up to date with advances in technology.

Some 180 countries worldwide, including all significant trading countries and the 28 member states of the European Union acting jointly, base their tariff schedules on the HS. The EU’s schedule is known generally as the Common Customs Tariff (CCT). The tariff rates set in the CCT are applied to imports by the customs authorities of all the member states in cooperation with the European Commission.

After decades of worldwide negotiations to reduce tariffs and other trade barriers, the average level of tariffs on industrial goods applied by developed countries is low at around 3% of value. But many countries including the EU apply much higher “peak” tariff rates or other barriers to imports of so-called sensitive goods like agricultural and food products, textiles, vehicles and electronic equipment.

UK tariffs after Brexit

Unless and until the UK might be able to negotiate new trade arrangements with the EU, following Brexit UK goods of all types exported to the 27 remaining member states, currently totalling more than 45% of total UK exports, will be subject to the CCT. This might not make much practical difference to trade in products on which tariff rates were low, but it could hit very hard UK exports to EU countries of items which are subject to “peak” tariffs.

Of course other countries, including the EU member states, will want to go on selling their exports to the UK. How far and on what terms they will be able to do so will be a decision entirely for the UK government, depending upon what new structure of tariffs the UK decides to adopt:-

- Some economists argue that the right course for the UK would be to abolish all tariffs and other obstacles to imports and have a totally open market in which competition would force down prices to consumers and achieve maximum efficiency. This is unrealistic because some producers particularly in agriculture and sensitive industrial sectors will demand protection. Also, doing away with all protection would leave the UK with no bargaining power when negotiating for access to other people’s markets.

- So on leaving the EU the UK will need to put in place a new national tariff structure. How should this be done? Determining new UK tariff rates item by item over the 5,000+ headings and subheadings listed in the HS would be a vastly complex and contentious undertaking and need exhaustive consultation across the whole of UK industry, taking years. The only viable option would be for the UK to continue to apply the tariff rates which it currently implements under the CCT.

- The UK, like all the EU member states, is a member of the World Trade Organisation (WTO) in its own right and will retain that membership. However the tariff rates which the UK has undertaken in the WTO to "bind" (i.e. not to increase without offering compensatory reductions in other tariffs) are those in the CCT, negotiated by the EU as a whole during the UK's membership.

- If the UK decides to continue applying the existing CCT rates post-Brexit, it will be able to reduce any of them "autonomously" if that were judged to be in the national interest. If however the UK wanted to *increase* tariff rates on specific goods, WTO rules give other WTO members whose exports to the UK would be affected by such higher tariffs the right to demand "compensation", that is reductions in UK tariff protection which would be of equivalent value to them in other sectors. This could mean long and complex negotiations under WTO auspices.

Preferential tariff and market access agreements

- The EU has in force more than 50 preferential trade agreements (providing for reduced tariffs and ease of market access) with other countries. Over 80 more are awaiting ratification or in negotiation, including the important Transatlantic Trade and Investment Partnership (TTIP) with the USA.

- International Treaty Law, specifically the *Vienna Convention on Succession of States in respect of Treaties* of 1978, provides that when a territory secedes from a state it continues to be bound by treaty obligations entered into by the former state. However the EU is not a state. It is an arrangement based on a complex of interlocking treaties among sovereign states. On Brexit the UK will withdraw from a set of treaties, not from a state.

- This means that after Brexit the UK will have no right to continue to benefit from the EU's market access treaties with other countries. With each of the relevant partner countries or regional associations the UK will need to negotiate on its own account for a new agreement. Whether or not this is possible in practice will depend on whether the partners concerned were willing to devote the considerable resources and effort needed to negotiating to provide the UK with benefits which it already enjoys under the relevant international agreements of the EU.

- Renegotiating more than 50, and potentially many more, agreements with partner countries and regional associations worldwide will require massive negotiating resources on the part of the UK and take many years to accomplish.

Trade in services

It is a mistake to consider this question purely in terms of trade in goods, vitally important though that is. 80% of the UK economy now consists of supply of services, across the more than 150 categories of service activities defined by the United Nations. Services account for 33% of total UK trade. In 2014 the UK had a surplus on trade in services of £85 billion. Post-Brexit, UK service suppliers of all categories will continue to have to comply with EU regulatory standards in order to operate in EU countries, but without any say in the formulation and content of those regulations.

In negotiating on its own for access to the services markets of other countries the UK will lack the clout which it enjoys from negotiating as part of a major trading entity. Further, many of the EU's existing preferential trade agreements do not include services, or do so only partially. In these cases the UK as an individual country would be faced with seeking greater or entirely new market access agreements for services.