

UKTPO

UK TRADE POLICY
OBSERVATORY

Would WTO rules allow the UK
and EU to sign a 'sectoral' trade
deal?

Dr Emily Lydgate

UK options for trade relationship with EU

As of February 2017 White Paper

- ~~Member of the Single Market~~
- ~~Member of the Customs Union~~
- Free Trade Area (FTA)
- ‘No deal’ – trade on a WTO Most Favoured Nation (MFN) basis

WTO Rules: FTAs

- GATT Article XXIV – covers Regional Trade Agreements on goods (separated into free-trade areas and customs unions)
- GATS Article V – covers Regional Trade Agreements in services

WTO Rules: FTAs

- GATT Article XXIV and GATS Article V:
- Designed to apply to countries liberalising trade
- Creates problems in meeting requirements (including the Article XXIV:8(b) definition of free-trade area as ‘...two or more customs territories...’)
- Use MFN tariff levels as a comparative baseline

WTO Rules: FTAs

- GATT Article XXIV:8(b)
 - in free trade areas ‘duties...eliminated on **substantially all the trade** between constituent territories’
 - Tariffs eliminated in ≥ 90 % of trade
- GATS Article V:1(a)
 - ‘**...substantial sectoral coverage**’
 - Constituted by number of sectors, volume of trade affected and modes of supply

UK-EU FTA

- So, can there be a sectoral FTA? I.e. tariff-free trade in one or a few sectors, or for some companies
- NO!
- Contravenes MFN principle
- Not covered under GATT Article XXIV/GATS Art V
- Potentially violates WTO rules on subsidies (SCM Agreement Articles 3.1, 6.1 a and b)
- *Canada – Autos* (2000)

WTO Rules: FTAs

- GATS Article V:1(b):

Eliminate ‘substantially all discrimination...’ as defined under GATS Article XVII.

UK-EU FTA

- With respect to WTO rules, can a FTA re-create Customs Union and/or Single Market conditions in key sectors?

Trade benefits of CU and SM vis-à-vis FTA

- Customs Union: **Common external tariff**
- Same external tariffs means no need for Rules of Origin (RoOs) certification/border checks

- Single Market: **‘Regulatory union’**
- Virtually no regulatory barriers; regulatory compliance certified at point of origin

- **Both:** cut down on paperwork and eliminate border checks

Sectoral Customs Union?

- ‘Customs Union-like’ access:
 - Coordinate external tariffs in some sectors
 - FTA with no or light RoO procedures
 - But: need to coordinate tariffs in existing and new third country FTAs?

Single Market

- Many product standards and regulations established at the EU level
- Diverging standards considered equivalent unless importing EU Member State can prove they are not

Sectoral Single Market?

- ‘Single-Market-like’ conditions:
 - Currently: harmonisation of regulation and automatic mutual recognition linked to acceptance of EU *acquis communautaire*
 - Second-best option: Negotiated, sectoral Mutual Recognition Agreements (MRAs)
 - Certify regulatory compliance at the point of origin

Mutual Recognition Agreements

- Would need to be made available to WTO Members on an MFN basis (see GATT Article I:1, TBT Articles 2.1, 2.7, 6.1; SPS Article 4.1; GATS Article VII:2)
- MFN requirement also applies to current SM mutual recognition;
- MFN requirement is procedural; no requirement to conclude MRAs

UK-EU 'Sectoral' FTA vis-à-vis WTO rules

- Can a FTA give tariff-free trade to only one or a few sectors or companies? **NO**
- Can a FTA re-create CU and/or SM conditions in key sectors? **VERY QUALIFIED YES**

Thank you

<http://www.sussex.ac.uk/bmec/research/uktpo>