



Library Note

Leaving the European Union: World Trade Organisation

A number of commentators have considered the possibility that the UK might leave the EU without a deal. In this situation, the UK would trade with the EU under World Trade Organisation (WTO) terms. The World Trade Organisation is an international organisation which regulates international trade. It started operation in 1995 following the signing of the Marrakesh Agreement in 1994. The WTO's overriding purpose is to help trade flow as freely as possible. Successive rounds of international negotiations since 1947 have sought to liberalise world trade. At the time of writing, the WTO has 164 members, and although the UK is an individual member, it is currently represented by the European Commission at the WTO.

The international trading system is underpinned by a number of WTO agreements. The General Agreement on Tariffs and Trade and the General Agreement on Trade in Services regulate trade in goods and services respectively. Under these agreements, countries negotiate lists of market access commitments, known as 'schedules'. These can take the form of tariff levels on goods and how much market access foreign providers of services are allowed. In addition, the Trade-Related Aspects of Intellectual Property Rights sets minimum regulatory standards with regard to intellectual property.

Trade under WTO rules operates under the most favoured nation principle. This means that countries cannot normally discriminate between their trading partners. For example, if a country chose to lower a tariff on a good for a particular trading partner, it would have to do the same for all other WTO members. In addition, under WTO rules, a country must also treat imported and locally-produced goods, services and intellectual property equally. For example, a country could not impose a tax on an imported product after it had entered the market if it did not do the same for a locally-produced product.

The WTO also provides a dispute settlement mechanism to resolve trade disputes between WTO members. It has been described as the "jewel in the WTO's crown" and since 1995, over 400 disputes have been brought to the WTO. An independent panel makes a ruling on a trade dispute based on the WTO agreements that is binding on the WTO members.

Commentators have considered how the UK would trade with the EU under WTO rules, if it left the EU without a trade deal. The UK would need to negotiate a new set of schedules and the Government has indicated that it will seek to replicate existing schedules where possible. Some commentators have argued that trade with the EU under WTO terms would prove costly for businesses as they would face higher tariffs on certain goods. However, others have argued that WTO rules would not be an impediment to trade.

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1. Introduction

In recent months, a number of commentators have considered the possibility that the UK might leave the EU with no trade deal in place.¹ In this scenario, it is likely that the UK would trade with the EU under World Trade Organisation (WTO) rules.² Earlier this year, the Prime Minister, Theresa May, warned European leaders not to inflict a punitive deal on the UK during its exit negotiations and stated that “no deal for Britain is better than a bad deal for Britain”.³ In March 2017, the Secretary of State for Exiting the European Union, David Davis, stated that the default position for Britain, if it left the EU without a trade agreement, would be to trade with the EU on “most favoured nation status under World Trade Organisation arrangements”.⁴

2. History of the World Trade Organisation

The WTO was created in 1995. Although it is a relatively young international organisation, the origins of the WTO date back to efforts to rebuild the global economy following the Second World War. In July 1944, representatives from the Allied nations met at Bretton Woods, New Hampshire in the United States to establish a new system of international economic governance.⁵ The Bretton Woods Conference (formally known as the United Nations Monetary and Financial Conference) created the International Monetary Fund (IMF) and the World Bank (then known as the International Bank for Reconstruction and Development). During the conference, the representatives also recognised the importance of creating an international organisation to manage global trade.⁶

Over the following years, the United States (along with the UK) led efforts to develop a treaty to govern international trade. The General Agreement on Tariffs and Trade (GATT) was signed by 23 states in 1947 and came into operation in 1948.⁷ The GATT was originally meant to operate under the proposed International Trade Organisation (ITO) which would manage the post-war international trading system.⁸ The United Nations Conference on Trade and Employment, held in Havana, Cuba from November 1947 to March 1948, adopted the Havana Charter for the ITO. However, opposition from the United States Congress meant the proposal was abandoned and the GATT became the basis of the international trading system.⁹ According to the WTO, the GATT evolved over the following years:

It did not take long for the General Agreement to give birth to an unofficial, de facto international organisation, also known informally as GATT. Over the years GATT evolved through several rounds of negotiations.¹⁰

¹ House of Commons Foreign Affairs Committee, [Article 50 Negotiations: Implications of ‘No Deal’](#), 12 March 2017, HC 1077 of session 2016–17, pp 19–20; House of Lords European Union Committee, [Brexit: The Options for Trade](#), 13 December 2016, HL Paper 72 of session 2016–17, pp 51–62; and *Financial Times* (£), [‘Davis Admits UK has Not Assessed Impact of Brexit Without Brussels Deal’](#), 15 March 2017; and *Times* (£), [‘Trade Rules that Would Mean No Tariffs for Decade’](#), 21 March 2017.

² House of Commons Foreign Affairs Committee, [Article 50 Negotiations: Implications of ‘No Deal’](#), 12 March 2017, HC 1077 of session 2016–17, p 19.

³ Prime Minister’s Office, [‘The Government’s Negotiating Objectives for Exiting the EU: PM Speech’](#), 17 January 2017.

⁴ *Financial Times* (£), [‘Davis Admits UK Has Not Assessed Impact of Brexit Without Brussels Deal’](#), 15 March 2017.

⁵ Tamar Gutner, *International Organisations*, 2017, p 174.

⁶ *ibid.*

⁷ *ibid.*, p 175; and World Trade Organisation, [‘What is the World Trade Organisation’](#), accessed 17 March 2017.

⁸ World Trade Organisation, [‘Pre-WTO Legal Texts’](#), accessed 21 March 2017; and Professor Robert O’Brien and Professor Marc Williams, *Global Political Economy*, 2016, 5th ed, p 112.

⁹ Tamar Gutner, *International Organisations*, 2017, pp 174–5.

¹⁰ World Trade Organisation, [‘What is the World Trade Organisation’](#), accessed 17 March 2017.

Robert O'Brien, Professor of Political Science at McMaster University in Canada, and Marc Williams, Professor of International Relations at the University of New South Wales in Australia, have explained how the GATT worked:

The GATT provided a code of rules, a dispute settlement mechanism and a forum for trade negotiations. Its main importance lay in its role as a forum for trade negotiations. In eight rounds of multilateral trade negotiations between 1947 and 1994, it presided over a period of unprecedented growth in world trade.¹¹

Professors O'Brien and Williams note that the GATT was successful in achieving tariff reductions on manufactured goods, but was less successful in reducing agricultural protectionism.¹² As a result of successive negotiating rounds under the GATT, tariffs on manufactured goods fell significantly. For example, between 1947 and 1979, tariffs on industrial products in the UK fell from around 40 percent to around 4 percent.¹³ Later negotiating rounds saw efforts to reduce non-tariff barriers (NTBs) and the inclusion of agreements on trade in services and intellectual property rights.¹⁴ The Uruguay Round of negotiations (1986–93) resulted in the creation of the WTO, and new agreements covering international trade in services—the General Agreement on Trade in Services (GATS)—and rules on intellectual property—the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).¹⁵ Professors O'Brien and Williams explain that the WTO is the “successor to the GATT and owes its existence to perceived deficiencies of the GATT”.¹⁶ Trade liberalisation had been uneven and the GATT was criticised for having poor dispute resolution mechanisms and for failing to reverse the growth in protectionism.¹⁷

In 2001, the WTO launched the Doha Round of negotiations. Known as the Doha Development Agenda, this round of negotiations sought to improve the trading prospects of developing countries.¹⁸ In November 2001, a ministerial declaration was adopted that recognised that:

International trade can play a major role in the promotion of economic development and the alleviation of poverty. We recognise the need for all our peoples to benefit from the increased opportunities and welfare gains that the multilateral trading system generates.¹⁹

A key area of interest for developing countries was agricultural trade liberalisation. Currently, developed countries have not fully liberalised agricultural trade which Professors O'Brien and Williams argue can have a negative impact on the economies of developing countries.²⁰ Although agricultural liberalisation was a key issue during the Doha Round the talks faced a number of disagreements, and the negotiations have still not concluded. Tamar Gutner, Associate Professor of International Relations at the American University, has observed that the Doha Round is “widely acknowledged to be stalled or dead”.²¹

¹¹ Professor Robert O'Brien and Professor Marc Williams, *Global Political Economy*, 2016, 5th ed, p 113.

¹² *ibid.*

¹³ *ibid.*

¹⁴ *ibid.*

¹⁵ *ibid.*, p 114.

¹⁶ *ibid.*

¹⁷ *ibid.*

¹⁸ World Trade Organisation, '[The Doha Round](#)', accessed 21 March 2017.

¹⁹ World Trade Organisation, '[Doha Ministerial Declaration](#)', November 2001.

²⁰ Professor Robert O'Brien and Professor Marc Williams, *Global Political Economy*, 2016, 5th ed, p 114.

²¹ *ibid.*, p 117.

3. Overview of the World Trade Organisation

The WTO is an international organisation based in Geneva which deals with the rules concerning international trade.²² It was founded in 1995 and currently has over 160 members who account for around 95 percent of world trade.²³ In 2015, merchandise exports of WTO members totalled US\$16.2 trillion, while exports of commercial services by WTO members totalled US\$4.68 trillion.²⁴

David Collins, the Professor of International Economic Law at City University London, has stated that the “essential objective of the WTO is to minimise obstacles to global trade”.²⁵ The WTO seeks to do this by lowering tariffs and eliminating barriers to trade, as well as creating a stable and predictable multilateral trading system.²⁶ It creates a set of rules that provide the legal basis for international commerce and provides a negotiating forum for its members to discuss trade issues. The WTO also helps settle trade disputes between members through its dispute settlement procedures.²⁷

Professor Collins has argued that the WTO is “one of the most important and controversial organisations in the world”.²⁸ However, he suggests that while the WTO has helped improve the prosperity of people across the world, the organisation has attracted criticism:

While it has helped bring millions of people out of poverty and raised standards of living worldwide, it strikes at the heart of what it means for a country to be independent and control its own destiny. As a lynchpin of globalisation, the WTO allows us to enjoy products and services from around the world, but it lays bare the frailty of many industries, in some cases causing unemployment and even threatening social cohesion. Whether it should be seen as an agent of good or evil may depend on where you live and what you do, much as it does on what you buy and where it comes from.²⁹

3.1 Principles of the International Trade System

The WTO has outlined a number of broad principles that underpin the international trading system. While the WTO agreements are “lengthy and complex”, a “number of simple, fundamental principles run throughout all of these documents”.³⁰

Trade without Discrimination

The WTO has stated that “under the WTO agreements, countries cannot normally discriminate between their trading partners”.³¹ This is known as the ‘most favoured nation’ (MFN) principle and forms of this are expressed in article 1 of the GATT, article 2 of the GATS and article 4 of the TRIPS.³² Professors O’Brien and Williams observe that the MFN principle is

²² World Trade Organisation, ‘[What is the WTO](#)’, accessed 17 March 2017.

²³ World Trade Organisation, ‘[The Organisation](#)’, accessed 17 March 2017.

²⁴ World Trade Organisation, [World Trade Statistical Review](#), 2016, p 15.

²⁵ David Collins, *The World Trade Organisation*, 2015, p 9.

²⁶ House of Lords European Union Committee, [Brexit: The Options for Trade](#), 13 December 2016, HL Paper 72 of session 2016–17, p 51.

²⁷ *ibid.*

²⁸ David Collins, *The World Trade Organisation*, 2015, p vii.

²⁹ *ibid.*

³⁰ World Trade Organisation, ‘[Principles of the Trading System](#)’, accessed 20 March 2017.

³¹ *ibid.*

³² *ibid.*

at the “centre of the multilateral trading system”.³³ According to the WTO, in general, the MFN principle means that:

[E]very time a country lowers a trade barrier or opens up a market, it has to do so for the same goods or services from all its trading partners—whether rich or poor, weak or strong.³⁴

There are a number of exceptions to the MFN principle. Article 24 of the GATT exempts free trade areas and customs unions from the MFN rules.³⁵ A group of nations could set up a regional free trade agreement and discriminate in favour of goods traded within the group. For example, the EU allows the free movement of goods and services between members while imposing a common external tariff.³⁶ Similarly, the North American Free Trade Agreement (NAFTA) eliminated most tariffs on goods traded between the United States, Canada and Mexico.³⁷

In addition, the WTO agreements contain provisions to treat foreign and locally produced goods, services and intellectual property equally. This is known as ‘national treatment’ and is provided for in article 3 of the GATT, article 17 of the GATS and article 3 of the TRIPS. This means that imported goods, services and intellectual property should be treated the same as locally produced goods when they enter the market. The WTO has outlined how this works in practice:

National treatment only applies once a product, service or item of intellectual property has entered the market. Therefore, charging customs duty on an import is not a violation of national treatment even if locally-produced products are not charged an equivalent tax.³⁸

Freer Trade

The WTO seeks to lower trade barriers in order to encourage trade. Trade barriers could include tariffs, import bans and quotas. Trade barriers could also take the form of regulations or exchange rate policies.³⁹ Successive rounds of negotiations saw developed countries’ tariffs on industrial goods fall to less than 4 percent between 1947 and the mid-1990s.⁴⁰ When opening markets, countries are given a period of time to adjust. The WTO describes this as ‘progressive liberalisation’ and developing countries are usually given longer to adjust.⁴¹

Predictability

Another principle of the international trading system is ensuring stability and predictability. The WTO has explained that:

Sometimes, promising not to raise a trade barrier can be as important as lowering one, because the promise gives businesses a clearer view of their future opportunities. With

³³ Professor Robert O’Brien and Professor Marc Williams, *Global Political Economy*, 2016, 5th ed, p 112.

³⁴ World Trade Organisation, ‘[Principles of the Trading System](#)’, accessed 20 March 2017.

³⁵ Tamar Gutner, *International Organisations*, 2017, p 186.

³⁶ David Collins, *The World Trade Organisation*, 2015, p 30.

³⁷ Council on Foreign Relations, ‘[NAFTA’s Economic Impact](#)’, updated 24 January 2017.

³⁸ World Trade Organisation, ‘[Principles of the Trading System](#)’, accessed 20 March 2017.

³⁹ *ibid.*

⁴⁰ *ibid.*

⁴¹ *ibid.*

stability and predictability, investment is encouraged, jobs are created and consumers can fully enjoy the benefits of competition—choice and lower prices. The multilateral trading system is an attempt by governments to make the business environment stable and predictable.⁴²

Through negotiations, countries that want to trade in goods and services ‘bind’ their commitments. In the case of goods, this creates a maximum custom tariff rate a country can charge on a particular product. However, if a country wished to change these bindings, it would have to negotiate with the other members of the WTO. An implication of this is that the country may have to compensate others for a loss of trade.⁴³ The WTO has also tried to encourage transparency in the system by discouraging the use of quotas and by making countries’ trade rules and policies as transparent as possible. The WTO conducts regular surveillance of the trade policies of countries through its Trade Policy Review Mechanism and this is a “further means of encouraging transparency both domestically and at the multilateral level”.⁴⁴

Promoting Fair Competition

The WTO also states that it promotes fair competition by creating a rules-based system dedicated to “open, fair and undistorted competition”.⁴⁵ The WTO has explained that:

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. The issues are complex, and the rules try to establish what is fair or unfair, and how governments can respond, in particular by charging additional import duties calculated to compensate for damage caused by unfair trade.⁴⁶

Encouraging Development and Economic Reform

The WTO has argued that its system contributes to development. The agreements provide special assistance and trade concessions for developing countries, as well as giving them the time they need to implement the system’s agreements.⁴⁷

3.2 World Trade Organisation Agreements

The WTO agreements underpin the operation of the multilateral trading system, providing rules covering goods, services and intellectual property. According to Professors O’Brien and Williams:

The WTO is the legal and institutional foundation of the world trading system. It is a legal agreement specifying the rights and obligations of its members. The WTO consists of a series of interlocking legal agreements and membership requires acceptance of these agreements as a single undertaking.⁴⁸

⁴² World Trade Organisation, ‘[Principles of the Trading System](#)’, accessed 20 March 2017.

⁴³ *ibid.*

⁴⁴ *ibid.*

⁴⁵ *ibid.*

⁴⁶ *ibid.*

⁴⁷ *ibid.*

⁴⁸ Professor Robert O’Brien and Professor Marc Williams, *Global Political Economy*, 2016, 5th ed, p 114.

The current system is based on the results of the Uruguay Round of negotiations that took place between 1986 and 1994. Although this system is governed by around 60 agreements, annexes, decisions, and understandings, broadly speaking these fall under six main agreements:

- Marrakesh Agreement Establishing the World Trade Organisation.
- General Agreement on Tariffs and Trade (GATT).
- General Agreement on Trade in Services (GATS).
- Trade Related Aspects of Intellectual Property (TRIPS).
- Understanding on Rules and Procedures Governing the Settlement of Disputes.
- Trade Policy Review Mechanism.⁴⁹

The Agreement Establishing the World Trade Organisation is an ‘umbrella agreement’ which called for a “single institutional framework encompassing the GATT, as modified by the Uruguay Round, all agreements and arrangements concluded under its auspices and the complete results of the Uruguay Round”.⁵⁰

GATT, GATS and TRIPS

The GATT and the GATS regulate the international trade in goods and services respectively. Both agreements contain extra agreements and annexes which address the special requirements of specific sectors or issues.⁵¹ In addition, the GATT and the GATS contain lists of commitments made by individual countries, known as schedules, which determine market access for imports. The WTO has provided an overview of how these work:

For GATT, these 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.⁵²

Under the GATT, tariff levels are ‘bound’. This means that countries commit themselves to not raising tariffs on particular goods beyond a certain level.⁵³ The commitments are contained in each member’s schedules of concessions. Another type of tariff allowed by the WTO are tariff rate quotas (TRQs). These allow “a customs territory to impose a lower tariff rate up to a quantitative limit, and then a higher tariff for imports after that limit has been reached”.⁵⁴

The GATS agreement contains a four part definition of the international services trade, known as the ‘modes of supply’:

- From the territory of one member into the territory of any other member (Mode 1: Cross-border trade).
- In the territory of one member to the service consumer of any other member (Mode 2: Consumption abroad).

⁴⁹ World Trade Organisation, ‘[Understanding the WTO: The Agreements](#)’, accessed 17 March 2017.

⁵⁰ World Trade Organisation, ‘[Legal Texts: The WTO Agreements](#)’, accessed 21 March 2017.

⁵¹ World Trade Organisation, ‘[Understanding the WTO: The Agreements](#)’, accessed 17 March 2017.

⁵² *ibid.*

⁵³ House of Lords European Union Committee, [Brexit: Trade in Goods](#), HL Paper 129 of session 2016–17, p 29.

⁵⁴ *ibid.*, p 30.

- By a service supplier of one member, through commercial presence, in the territory of any other member (Mode 3: Commercial presence).
- By a service supplier of one member, through the presence of natural persons of a member in the territory of any other member (Mode 4: Presence of natural persons).⁵⁵

Similarly, WTO members also make specific commitments under the GATS which are contained in their schedules of commitments. These outline the level of market access across services sectors and restrictions on particular modes of supply. The House of Lords European Union Committee has observed that these restrictions fall into two categories:

1. Those limiting 'market access' for a foreign firm or individual service provider entering a domestic services market.
2. Those that affect the 'national treatment' of a foreign firm or individual compared to domestic competitors.⁵⁶

The TRIPS agreement seeks to regulate the international trade in intellectual property. The WTO has explained that the agreement:

[E]stablishes minimum levels of protection that each government has to give to the intellectual property of fellow WTO members. In doing so, it strikes a balance between the long-term benefits and possible short-term costs to society. Society benefits in the long-term when intellectual property protection encourages creation and invention, especially when the period of protection expires and the creations and inventions enter the public domain. Governments are allowed to reduce any short-term costs through various exceptions, for example to tackle public health problems. And, when there are trade disputes over intellectual property rights, the WTO's dispute settlement system is now available.⁵⁷

Dispute Resolution and the Trade Policy Review Mechanism

The Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) established the WTO's dispute settlement procedure (see the next section for further information) and the Trade Policy Review Mechanism sets the procedure for reviewing WTO members' compliance with the WTO agreements.⁵⁸ Figure 1 shows the basic structure of the WTO agreements.

⁵⁵ World Trade Organisation, '[GATS: Basic Purpose and Concepts](#)', accessed 17 March 2017.

⁵⁶ House of Lords European Union Committee, '[Brexit: Trade in Non-Financial Services](#)', 22 March 2017, HL Paper 135 of session 2016–17, p 26.

⁵⁷ World Trade Organisation, '[Intellectual Property: Protection and Enforcement](#)', accessed 22 March 2017.

⁵⁸ World Trade Organisation, '[Trade Policy Review Mechanism \(TPRM\)](#)', accessed 17 March 2017.

Figure 1: Basic Structure of the WTO Agreements

Umbrella	AGREEMENT ESTABLISHING WTO		
	Goods	Services	Intellectual Property
Basic Principles	GATT	GATS	TRIPS
Additional Details	Other goods agreements and annexes	Services annexes	
Market Access Commitments	Countries' schedules of commitments	Countries' schedules of commitments (and MFN exemptions)	
Dispute Settlement	DISPUTE SETTLEMENT		
Transparency	TRADE POLICY REVIEWS		

(Source: World Trade Organisation, '[Understanding the WTO: The Agreements](#)', accessed 17 March 2017)

In addition, there are two plurilateral agreements that only have a certain number of signatories. The Agreement on Trade in Civil Aircraft eliminates airport duties on civilian aircraft and other products. It entered into force on 1 January 1980 and the UK is a signatory as an EU member state.⁵⁹ In addition, the Agreement on Government Procurement came into force on 1 January 1981. Its "purpose is to open up as much of this business as possible to international competition".⁶⁰ The UK is a signatory as an EU member state.⁶¹

3.3 Dispute Resolution

An important function of the WTO is resolving trade disputes, Joel P Trachtman, Professor of International Law at Tufts University, has argued that the dispute settlement system "represents a central institutional feature of the WTO, and one of the most important judicial forums in international law generally".⁶² At the time of writing, there are 524 dispute cases listed on the WTO website.⁶³ The dispute settlement system seeks to prevent WTO members from acting unilaterally against a country they have a dispute with.⁶⁴

Professor Trachtman has argued that there are three functions of the WTO dispute settlement mechanism. The first is to interpret the WTO agreements. He suggests that the second function is "dependent on the first" and seeks to promote compliance with the WTO agreements:

[...] by declaring the correct understanding of the obligations contained in the WTO treaty, and providing the basis for successful complainants to suspend their own

⁵⁹ World Trade Organisation, '[Plurilaterals: of Minority Interest](#)', accessed 17 March 2017.

⁶⁰ *ibid.*

⁶¹ *ibid.*

⁶² Professor Joel P Trachtman, 'Trade', in Jacob Katz Coogan et al (eds), *The Oxford Handbook of International Organisations*, 2016, pp 358–9.

⁶³ World Trade Organisation, '[Chronological List of Disputes Cases](#)', accessed 27 March 2017.

⁶⁴ David Collins, *The World Trade Organisation*, 2015, p 37.

concessions or other obligations in retaliation, or perhaps more correctly, in “re-balancing”, for non-compliance.⁶⁵

Finally, Professor Trachtman observes the third function is the settlement of disputes. However, he has argued that this may be inconsistent with the second function, as solving a dispute through consultation and negotiation (which is encouraged) may involve the acceptance of non-compliance with the WTO agreements.⁶⁶

The Dispute Settlement Body is responsible for settling disputes. Its decisions are binding on members unless the entire membership of the WTO decides not to accept them.⁶⁷ An independent panel of experts examines the evidence in a dispute and makes a ruling, which usually takes around a year.⁶⁸ Dispute settlement at the WTO follows a set procedure. During the first stage, countries attempt to resolve their dispute by themselves. If this fails, the complainant country can request for a panel to be appointed to consider the dispute. This usually comprises three to five trade experts.⁶⁹ Both sides submit legal arguments to the panel and the panel meets each side to ask questions. Sometimes, third parties can be included if the dispute raises scientific or technical matters.⁷⁰ The panel will produce a final report detailing its conclusions and recommendations. If one side is found to have breached the WTO agreements, it will recommend how this can be remedied.⁷¹

A country is able to appeal the ruling. The appeal is considered by the Appellate Body which can uphold, modify or reverse the panel’s legal findings. Professor Collins has explained that the appeals hearing does not “rehear the case; they settle disagreements surrounding the legal interpretation of provisions of the WTO agreements”.⁷² As before, a decision of the Appellate Body can only be rejected by consensus.

A country that loses a dispute must change its policies to reflect the rulings of the Dispute Settlement Body and it is given time to do this.⁷³ If the country does not comply with a ruling within the allocated time, it must negotiate with the complainant country to determine acceptable compensation. If an agreement on compensation cannot be reached within 20 days, permission can be granted by the Dispute Settlement Body to retaliate. This could take the form of blocking imports or raising tariffs on the other country for example.⁷⁴

3.4 Membership and Accession

There are currently 164 members of the WTO.⁷⁵ The membership includes states, the European Union, and separate customs territories such as Hong Kong.⁷⁶ The UK is a separate member of the WTO, but its goods and services schedules are determined by the European

⁶⁵ Professor Joel P Trachtman, ‘Trade’, in Jacob Katz Coogan et al (eds), *The Oxford Handbook of International Organisations*, 2016, p 359.

⁶⁶ *ibid*, p 358.

⁶⁷ David Collins, *The World Trade Organisation*, 2015, p 37.

⁶⁸ World Trade Organisation, ‘[Settling Disputes: A Unique Contribution](#)’, accessed 20 March 2017.

⁶⁹ Tamar Gutner, *International Organisations*, 2017, p 182.

⁷⁰ World Trade Organisation, ‘[Settling Disputes: A Unique Contribution](#)’, accessed 20 March 2017.

⁷¹ Tamar Gutner, *International Organisations*, 2017, p 184.

⁷² David Collins, *The World Trade Organisation*, 2015, p 40.

⁷³ World Trade Organisation, ‘[Settling Disputes: A Unique Contribution](#)’, accessed 20 March 2017.

⁷⁴ *ibid*.

⁷⁵ World Trade Organisation, ‘[Members and Observers](#)’, accessed 20 March 2017.

⁷⁶ Professor Joel P Trachtman, ‘Trade’, in Jacob Katz Coogan et al (eds), *The Oxford Handbook of International Organisations*, 2016, p 354.

Union. Professor Trachtman has observed that the “WTO is a multilateral organisation, but not a universal organisation”.⁷⁷ He added that since the creation of the WTO in 1995, “there have been a number of important accessions, including those of China and Russia”.⁷⁸ In addition, there are a number of states that have observer status at the WTO, such as Iraq and the Holy See (Vatican). A WTO observer state must start accession negotiations within five years of becoming an observer, with the exception of the Holy See.⁷⁹ A number of international and intergovernmental organisations, such as the International Monetary Fund (IMF) and the World Bank, have been granted observer status to WTO bodies.⁸⁰

Accession

Accession to the WTO is different to joining other international organisations. Craig VanGrasstek, a trade consultant, observed that “joining the WTO is a lengthy process of examination and negotiation in which the acceding country is obliged to make extensive concessions”.⁸¹ He added that the “bargaining is an entirely one sided affair, with all requests and demand coming from the existing members and the full burden of adjustment falling on the acceding country”.⁸² An applicant will negotiate a bespoke agreement known as an Accession Protocol.⁸³

A state or customs territory wishing to join the WTO submits a formal written request for accession and a Working Party is established.⁸⁴ A series of bilateral, plurilateral and multilateral negotiations then take place in parallel to create an accession package.⁸⁵ The multilateral negotiations consider an applicant’s foreign trade regime. At the end of this stage a Draft Report of the Working Party is circulated which sets out the commitments an acceding member would undertake as a WTO member.⁸⁶ The bilateral negotiations determine an applicant’s market access commitments, such as the tariff rates on particular goods.⁸⁷ In addition, an acceding territory may also engage in plurilateral negotiations on specific issues that concern specific WTO members.

Following these negotiations, the Working Party adopts a Draft Accession Package which sets out the terms under which the applicant will join the WTO.⁸⁸ The package is then submitted to the General Council or the Ministerial Conference for adoption and once approved the applicant is then free to sign the Protocol of Accession.⁸⁹ Although the WTO Agreement states that a two-thirds majority of members is required to approve accession, in practice, consensus is required.⁹⁰

⁷⁷ Professor Joel P Trachtman, ‘Trade’, in Jacob Katz Coogan et al (eds), *The Oxford Handbook of International Organisations*, 2016, p 354.

⁷⁸ *ibid.*

⁷⁹ World Trade Organisation, ‘[Members and Observers](#)’, accessed 20 March 2017.

⁸⁰ World Trade Organisation, ‘[International Intergovernmental Organisations Granted Observer Status to WTO Bodies](#)’, accessed 20 March 2017

⁸¹ Craig VanGrasstek, *The History and Future of the World Trade Organisation*, 2013, p 122.

⁸² *ibid.*

⁸³ David Collins, *The World Trade Organisation*, 2015, p 2.

⁸⁴ World Trade Organisation, ‘[How to Become a Member of the WTO](#)’, accessed 27 March 2017.

⁸⁵ *ibid.*

⁸⁶ *ibid.*

⁸⁷ Craig VanGrasstek, *The History and Future of the World Trade Organisation*, 2013, p 126.

⁸⁸ World Trade Organisation, ‘[Current Status of WTO Accessions](#)’, accessed 20 March 2017.

⁸⁹ *ibid.*

⁹⁰ Professor Joel P Trachtman, ‘Trade’, in Jacob Katz Coogan, et al (eds), *The Oxford Handbook of International Organisations*, 2016, p 354.

Craig VanGrasstek observes that the frequency of accessions has declined over time while the time taken in the accession process has increased.⁹¹ Russia joined the WTO in August 2012 following 19 years and 2 months of negotiations (which began before the WTO was established and was initially conducted under the GATT).⁹² Similarly, China made an application under the GATT in 1986 and became a member of the WTO in December 2001.⁹³ Mr VanGrasstek has outlined some of the reasons why accession can take a long time, including:

The extent of the accommodations that a country may need to make in order to meet WTO standards, the severity of the demands that are made on it by the incumbent members, and the vigour with which it bargains over these matters with the WTO membership.⁹⁴

3.5 Governance of the World Trade Organisation

Each member of the WTO has equal standing. Decisions are mostly made by consensus, which at the WTO means that no member opposes it. Voting can take place if a consensus cannot be found on a one country, one vote basis.⁹⁵ However, a number of commentators have observed that in practice, small countries do not have the same influence as larger countries or groups, such as the United States and EU.⁹⁶ For example, Professor Gutner has argued that the United States and EU wield considerable influence because they have “the most important trading markets in the world”.⁹⁷ She further argued that this can be a “problem given that there is more competition between the EU and the US, which may not work well in an organisation relying on consensus in making decisions”.⁹⁸

Article IV of the agreement establishing the WTO sets out the structure of the organisation. The Ministerial Conference of the WTO is the organisation’s highest authority and comprises representatives from all the members. This meets at least once every two years and can take decisions on all matters under any of the multilateral trade agreements.⁹⁹ Below the Ministerial Conference sits the General Council, which conducts the day-to-day work of the WTO between the Ministerial Conferences.¹⁰⁰ Like the Ministerial Conference, the General Council consists of all WTO members. The General Council meets under three guises. In addition to managing the day-to-day running of the WTO, it can also sit as the Dispute Settlement Body and the Trade Review Body.¹⁰¹

Below the General Council sit three more councils—the Council for Trade in Goods, the Council for Trade in Services, and the Council for Trade-Related Aspects of Intellectual Property Rights—which have responsibility for the workings of the GATT, GATS and TRIPS. In addition, a number of committees, such as the Trade and Environment Committee, and working groups sit below the General Council as well. The three Councils overseeing the agreements also have subsidiary bodies. The Dispute Settlement Body has two subsidiaries—

⁹¹ Craig VanGrasstek, *The History and Future of the World Trade Organisation*, 2013, p 122.

⁹² World Trade Organisation, ‘[Accessions: Russian Federation](#)’, accessed 20 March 2017.

⁹³ World Trade Organisation, ‘[Accessions: China](#)’, accessed 20 March 2017.

⁹⁴ Craig VanGrasstek, *The History and Future of the World Trade Organisation*, 2013, p 128

⁹⁵ Tamar Gutner, *International Organisations*, 2017, p 179; and World Trade Organisation, ‘[The Organisation: Whose WTO is it Anyway?](#)’, accessed 20 March 2017.

⁹⁶ Tamar Gutner, *International Organisations*, 2017, p 179.

⁹⁷ *ibid.*

⁹⁸ *ibid.*

⁹⁹ World Trade Organisation, ‘[Marrakesh Agreement Establishing the World Trade Organisation](#)’, 1994.

¹⁰⁰ World Trade Organisation, ‘[The Organisation: Whose WTO is it Anyway?](#)’, accessed 20 March 2017.

¹⁰¹ *ibid.*

the Dispute Settlement Panels consist of experts who adjudicate on unresolved disputes—and an Appellate Body deals with appeals.¹⁰² Further subsidiary bodies oversee the plurilateral agreements and report to the General Council.

The WTO has observed that “important breakthroughs are rarely made in formal meetings of these bodies, least of all in the higher level councils”.¹⁰³ Informal meetings can include Heads of Delegation (HUD) while some agreements are reached through smaller groups.¹⁰⁴ A number of commentators have noted that there is controversy around the so-called ‘Green Room’ meetings—which refers to the Director General’s conference room. In the past, some countries have felt these meetings have led to deals being agreed without their knowledge.¹⁰⁵

In addition, the WTO Secretariat is led by the Director General who is appointed by the Ministerial Conference. The Secretariat employs around 600 people and is located in Geneva, Switzerland. The WTO has provided an overview of its functions:

Since decisions are taken by members only, the Secretariat has no decision-making powers. Its main duties are to supply technical and professional support for the various councils and committees, to provide technical assistance for developing countries, to monitor and analyse developments in world trade, to provide information to the public and the media and to organise the ministerial conferences.¹⁰⁶

4. UK Trade under World Trade Organisation Rules after Leaving the EU

A number of commentators have considered the possibility that the UK might leave the EU without a deal. In this situation, the UK would trade with the EU under WTO terms.¹⁰⁷ The Prime Minister, Theresa May, argued that “no deal is better than a bad deal” and suggested that the UK would be willing to trade under WTO terms.¹⁰⁸ The Government’s white paper on leaving the European Union stated that the UK’s “WTO membership will form the bedrock on which we build our future trade relationships”.¹⁰⁹ The white paper noted that the UK would have to establish its own schedules covering the trade in goods and services.¹¹⁰

On 21 March 2016, the *Guardian* reported that the issue of the UK’s future trading relationship was “causing tensions behind the scenes, with some ministers said to be almost banging the drum for no deal”.¹¹¹ In addition, it reported that some members of the Cabinet were “relaxed” about the UK potentially trading under WTO rules. Theresa Villiers (Conservative MP for Chipping Barnet), a former Cabinet member and leave campaigner, suggested that if the UK was unable to secure a trade deal with the EU, “WTO rules would still allow us to do billions of pounds of business in goods and services with the EU” and that this would be “by no means

¹⁰² World Trade Organisation, ‘[The Organisation: Whose WTO is it Anyway?](#)’, accessed 20 March 2017.

¹⁰³ *ibid.*

¹⁰⁴ *ibid.*

¹⁰⁵ *ibid.*

¹⁰⁶ World Trade Organisation, ‘[Overview of the WTO Secretariat](#)’, accessed 27 March 2017.

¹⁰⁷ House of Commons Foreign Affairs Committee, ‘[Article 50 Negotiations: Implications of ‘No Deal’](#)’, 12 March 2017, HC 1077 of session 2016–17, p 19.

¹⁰⁸ Prime Minister’s Office, ‘[The Government’s Negotiating Objectives for Exiting the EU: PM Speech](#)’, 17 January 2017.

¹⁰⁹ HM Government, ‘[The United Kingdom’s Exit From and New Partnership with the European Union](#)’, February 2017, Cm 9417, p 56.

¹¹⁰ *ibid.*

¹¹¹ *Guardian*, ‘[Pro-Brexit Ministers ‘Relaxed About Leaving EU Without Trade Deal’](#)’, 21 March 2017.

disastrous”.¹¹² However, remain campaigner Anna Soubry (Conservative MP for Broxtowe) argued that:

There is nothing to be blasé or relaxed about choosing for Britain to trade with our biggest economic partner under WTO rules. Every credible assessment done says this would be the worst trading arrangement possible for jobs, investment and growth.¹¹³

In addition, the Liberal Democrat Leader, Tim Farron, said that trading under WTO terms would be like “Britain falling into the abyss. But ministers, frankly, don’t seem to care”.¹¹⁴

On 23 March 2017, the Parliamentary Under Secretary at the Department for International Trade, Mark Garnier, stated that the Government was conducting an analysis of how WTO rules would affect every sector of the UK economy. He added that it was an “ongoing process”.¹¹⁵ Earlier in March, the Secretary of State for Exiting the European Union, David Davis, stated that the Government had not made an assessment of the economic impact of leaving the EU without a deal “to my satisfaction”.¹¹⁶ He added that the default position for the UK in this situation would be to trade under WTO terms.¹¹⁷ In response to this, Keir Starmer, Shadow Secretary of State for Leaving the European Union, argued that:

The Government is recklessly talking up the idea of crashing out of the EU with no deal. They have repeated the mantra that ‘no deal is better than a bad deal’.

But we now know they have made no assessment of the economic impact of the Prime Minister failing to secure a deal.

What’s clear, from the CBI and others, is that there is no result that would be worse for the British economy than leaving with no deal; no deal would be the worst possible deal. The Government should rule out this dangerous and counter-productive threat before Article 50 is triggered.¹¹⁸

In addition, it was recently reported that officials at the Department for International Trade believed that the UK could obtain tariff-free access to the EU’s single market under WTO rules, if both parties agreed.¹¹⁹ The *Times* reported that some trade specialists believed article 24 of the GATT could be used as the basis for a free trade agreement which would allow the “status quo to be extended while the details were filled in”.¹²⁰ However, the paper noted that others disagreed. Lorand Bartels, a law specialist at Cambridge University, argued that the clause was there to give a country time to reduce trade barriers, but in the case of the UK, such barriers were minimal anyway.¹²¹

¹¹² *Guardian*, [‘Pro-Brexit Ministers ‘Relaxed About Leaving EU Without Trade Deal’](#), 21 March 2017.

¹¹³ *ibid.*

¹¹⁴ *ibid.*

¹¹⁵ [HC Hansard, 23 March 2017, col 910.](#)

¹¹⁶ *Financial Times* (£), [‘Davis Admits UK has Not Assessed Impact of Brexit Deal without Brussels Deal’](#), 15 March 2017.

¹¹⁷ *ibid.*

¹¹⁸ Labour List, [‘Starmer: Tories Talking Up the Idea of Britain “Crashing” Out of the EU’](#), 15 March 2017.

¹¹⁹ *Times* (£), [‘Trade Rules that Would Mean No Tariffs for Decade’](#), 21 March 2017.

¹²⁰ *ibid.*

¹²¹ *ibid.*

4.1 Negotiating New Schedules for the UK

A number of commentators have observed that the UK would need to negotiate a new set of ‘schedules’.¹²² These are a list of commitments that set the terms of a country’s trade, such as tariff levels on particular goods, with other WTO members. Currently, the UK is part of the EU’s combined schedules at the WTO. The House of Lords European Union Committee has observed that when the UK leaves the EU, it would need to separate from the EU’s schedules and any new schedules would be subject to the approval of the WTO’s members.¹²³ The Committee explained that there were two options for amending schedules: rectification and modification.¹²⁴ According to the Department for International Trade, rectification involves “changes of a purely technical character that do not alter the scope or the substance of the existing commitments” while modification means “new commitments or improvements to existing ones”.¹²⁵ In the case of modifications, “WTO members are allowed to modify or withdraw concessions from their schedules through negotiation and agreement with other WTO members”.¹²⁶

In December 2016, the Secretary of State for International Trade, Dr Liam Fox, announced that in order to minimise disruption to global trade, the UK would begin preparing draft schedules to replicate the UK’s current obligations:

The UK’s WTO commitments currently form part of the European Union’s schedules. When we leave the EU we will need UK-specific schedules. In order to minimise disruption to global trade as we leave the EU, over the coming period the Government will prepare the necessary draft schedules which replicate as far as possible our current obligations. The Government will undertake this process in dialogue with the WTO membership. This work is a necessary part of our leaving the EU. It does not prejudge the outcome of the eventual UK-EU trading arrangements.¹²⁷

In evidence to the House of Commons International Trade Committee in February 2017, Dr Fox explained that the Government would seek a technical rectification of the UK’s schedules:

[W]e have decided to go for a technical rectification, rather than a modification. That is for two reasons. First is it will be easier for us to achieve and will therefore have less chance of creating any turbulence whatsoever in global trading as we leave the EU; secondly, because going for EU bound tariffs means that if we change our trade policy, we can only move in the direction of liberalisation, so we do not have the option of increasing our tariffs once we are outside the EU.¹²⁸

¹²² House of Lords European Union Committee, [Brexit: The Options for Trade](#), 13 December 2016, HL Paper 72 of session 2016–17, p 53; Institute for Government, [Brexit Explained: 10 Things to Know About the World Trade Organisation \(WTO\)](#), accessed 21 March 2017; and David Allen Green, [Brexit and the Issue of the WTO Schedules](#), *Financial Times* (£), 28 February 2017.

¹²³ House of Lords European Union Committee, [Brexit: The Options for Trade](#), 13 December 2016, HL Paper 72 of session 2016–17, p 53.

¹²⁴ *ibid*, p 53.

¹²⁵ House of Commons International Trade Committee, [UK Trade Options Beyond 2019](#), 7 March 2017, HC 817 of session 2016–17, p 9.

¹²⁶ *ibid*, p 9.

¹²⁷ House of Commons, [Written Statement: UK’s Commitments at the World Trade Organisation](#), 5 December 2016, HCWS316.

¹²⁸ House of Commons International Trade Committee, [UK Trade Options Beyond 2019](#), 7 March 2017, HC 817 of session 2016–17, p 9.

The UK's Ambassador and Permanent Representative to the UN and other International Organisations in Geneva, Julian Braithwaite, observed that once the UK has its own schedules in the WTO, it would be able to “negotiate changes to the international trading system as well, whether multilaterally (with the whole membership of the WTO) or plurilaterally (with some of it)”.¹²⁹ Mr Braithwaite added that a “country’s WTO schedules also provide the baseline for negotiating bilateral free trade agreements”.¹³⁰ In addition, Mr Braithwaite argued that the UK would aim to replicate its current trading arrangements as closely as possible to minimise opposition in the WTO, noting that new schedules can only be adopted if no WTO members object.¹³¹ He noted that “what the UK is planning to do in the WTO has no precedent” and the UK wanted to ensure that WTO members were comfortable with the process.¹³²

The House of Commons International Trade Committee observed that the “end point of the process of modification or rectification of a WTO schedule is its certification”.¹³³ Some commentators have argued that the UK might face problems if its new schedules were not in place by the time it left the EU. However, the Committee observed that the EU’s schedules “have been consistently out of date”.¹³⁴ The Institute for Government (IFG) has argued that the UK could trade under new draft schedules before they were certified. The IFG suggested that:

At some point the UK will want to certify its schedules, requiring the consensus of all WTO members. But the certification process does not pose an immediate threat to the UK’s ability to trade post-Brexit. We can trade without certification.¹³⁵

The IFG has argued that a possible medium or long-term challenge to the UK is the possibility that other WTO members might contest the UK’s schedules. While this could be “lengthy and expensive for the UK to contest” the IFG has observed that disputes usually take several years to resolve and are not “an immediate threat to our post-Brexit trading arrangements”.¹³⁶ However, the IFG suggested that the UK could face opposition if it moved to certify its schedules:

Other countries’ willingness to certify the UK’s schedules will be driven by several different factors. Countries which have recently joined the WTO have had to place tougher limits on tariffs than the UK currently does as an EU member. For example, Russia had to limit itself to a 6.5 percent agricultural tariff, whereas the EU sets higher tariffs on most agricultural goods. Countries like Russia may not be content to see the UK get a more favourable deal than they achieved.¹³⁷

The IFG added that “other factors (such as international political disputes or powerful domestic interests) may affect the willingness of countries to agree new UK schedules” and that the process of certification may take years.¹³⁸

¹²⁹ Foreign and Commonwealth Office, ‘[Ensuring a Smooth Transition in the WTO as we Leave the EU](#)’, 23 January 2017.

¹³⁰ *ibid.*

¹³¹ *ibid.*

¹³² *ibid.*

¹³³ House of Commons International Trade Committee, [UK Trade Options Beyond 2019](#), 7 March 2017, HC 817 of session 2016–17, p 9.

¹³⁴ *ibid.*, p 12.

¹³⁵ Institute for Government, ‘[Brexit Explained: 10 Things to Know About the World Trade Organization \(WTO\)](#)’, accessed 21 March 2017.

¹³⁶ *ibid.*

¹³⁷ *ibid.*

¹³⁸ *ibid.*

In addition, David Allen Green, a law and policy commentator at the *Financial Times*, has suggested that there has been speculation that WTO members may block UK proposals at the WTO for political motives:

Some have speculated that the ability of any member of the WTO to veto proposed changes would mean the UK was at the mercy of countries playing politics with ulterior motives, say by Argentina over the Falklands or by Spain over Gibraltar. As such, the WTO was another ironic example of a process supposedly about “taking back control” handing real power of the UK’s post-Brexit fate to the whims of outside powers.¹³⁹

Another issue raised with regard to the UK’s schedules involves the division of tariff rate quotas (TRQs) and subsidies.¹⁴⁰ The House of Lords European Union Committee has suggested that the UK would need to negotiate with the EU to “separate out its TRQs and levels of subsidies from those currently shared between the EU’s 28 Member States”.¹⁴¹ The Committee observed that another potential issue involved the division of domestic subsidies, which usually take the form of agricultural subsidies.¹⁴²

4.2 Trading with the Single Market

The House of Lords European Union Committee has provided an overview of how trade with the single market would work under WTO terms in the absence of a deal:

Trading with the EU on the basis of concessions set at the WTO would provide the UK with a baseline of tariffs for trade in goods: the UK would have to apply those tariffs to imports from the EU. EU imports from the UK would, similarly, face EU tariffs. Trading under WTO rules would also provide limited commitments on services, as contained in the GATS. It would not provide the UK with any preferential access (which might be possible under a free trade agreement or EEA membership) to the single market.¹⁴³

Similarly, the House of Commons Foreign Affairs Committee suggested that trading under WTO terms would:

[...] almost certainly involve the immediate imposition of tariffs across a range of sectors, which would have differentiated impact as they are low on many products, such as automotive parts (5 percent), but high in sectors such as agriculture (30–40 percent).¹⁴⁴

Trade in Goods

In evidence to the House of Lords European Union Committee, Richard Eglin, a Senior Trade Policy Adviser at White and Case LLP, observed that tariffs between goods imported to the EU “vary enormously”. He noted that the average tariff imposed by the EU on industrial goods was 4.5 percent, while the average for agricultural goods was 14.5 percent. Moreover, Mr Eglin

¹³⁹ David Allen Green, ‘[Brexit and the Issue of WTO Schedules](#)’, *Financial Times* (£), 28 February 2017.

¹⁴⁰ House of Lords European Union Committee, [Brexit: The Options for Trade](#), 13 December 2016, HL Paper 72 of session 2016–17, p 53.

¹⁴¹ *ibid.*

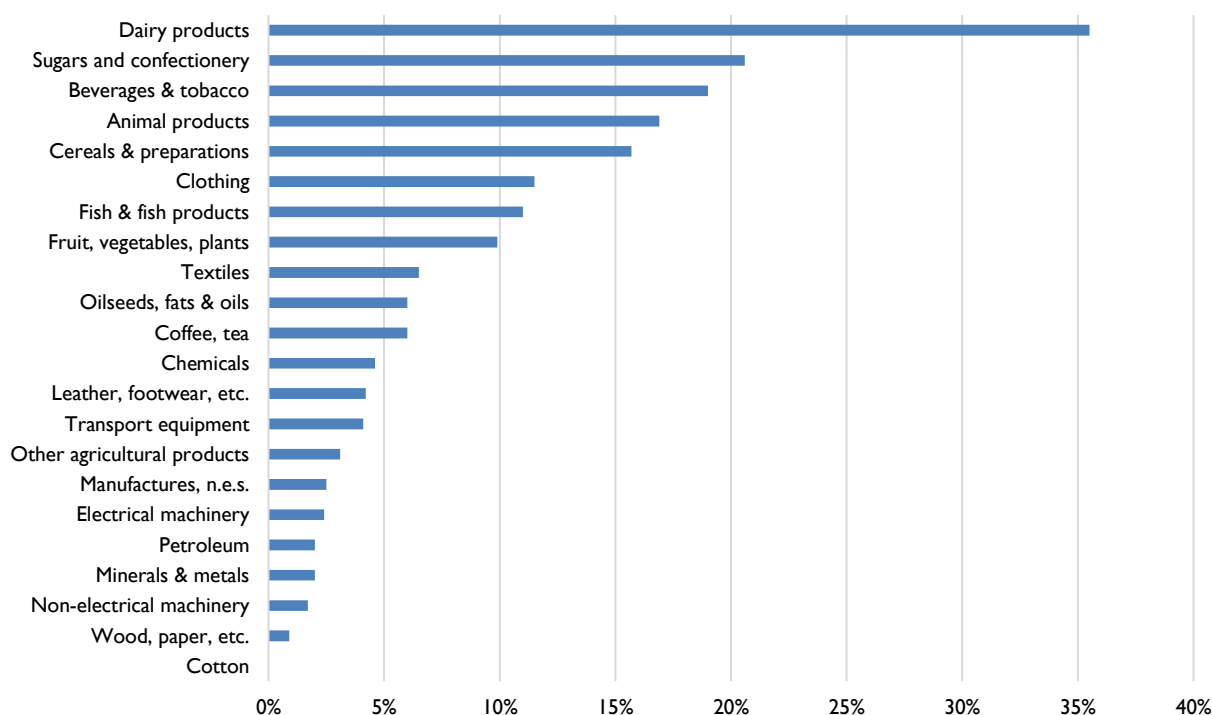
¹⁴² *ibid.*, p 54.

¹⁴³ *ibid.*, p 58

¹⁴⁴ House of Commons Foreign Affairs Committee, [Article 50 Negotiations: Implications of ‘No Deal’](#), 12 March 2017, HC 1077 of session 2016–17, p 19.

observed that the EU schedules were “riddled with quantitative restrictions”.¹⁴⁵ Figure 2, reproduced from the Committee’s report, highlights the different tariff levels that would be placed on UK exports to the EU were no agreement reached.

Figure 2: Average Final Bound Tariff Rates Applied by the EU by Broad Category of Goods



(Source: House of Lords European Union Committee, [Brexit: The Options for Trade](#), 13 December 2016, HL Paper 72 of session 2016–17, p 58)

In an additional report, the House of Lords European Committee argued that UK would “incur significant tariff costs for UK businesses” if the UK traded with the EU under WTO rules.¹⁴⁶ The report added that the impact of tariffs varied across sectors:

While tariffs are zero on civil aerospace parts (under WTO agreements), EU tariffs set at the WTO are 10 percent on cars and can be more than 200 percent on some agricultural products.¹⁴⁷

The Committee also argued that the imposition of tariffs on trade with the EU would be “particularly damaging for sectors with a highly integrated EU supply chain”.¹⁴⁸

Other commentators have argued that trading under WTO terms would impose extra costs for UK exporters. A *Guardian* analysis argued that leaving the European Union “without a trade deal would saddle British exporters with more than £6 billion a year of extra costs”.¹⁴⁹ The paper suggested that the agriculture and car manufacturing sectors “would be hit hardest with

¹⁴⁵ House of Lords European Union Committee, [Brexit: The Options for Trade](#), 13 December 2016, HL Paper 72 of session 2016–17, p 58.

¹⁴⁶ House of Lords European Union Committee, [Brexit: Trade in Goods](#), 14 March 2017, HL Paper 128 of session 2016–17, p 97.

¹⁴⁷ *ibid*, p 4.

¹⁴⁸ *ibid*, p 5.

¹⁴⁹ *Guardian*, [“No Deal”, Brexit Would Mean £6bn in Extra Costs for UK Exporters](#), 20 February 2017.

tariffs ranging from 10 percent for cars and 16 percent for lorries to 23 percent on ham and 109 percent on sugar beet”.¹⁵⁰

However, others have been more positive about trading under WTO terms. Writing in the *Times*, Viscount Ridley (Conservative), has argued that a “future under World Trade Organisation terms looks bright”.¹⁵¹ He suggested that if the UK failed to secure a deal with the EU, WTO terms would not be an impediment to trade:

WTO tariffs are a low barrier to trade with the single market, as China, America and others show every day—and if we abolish the EU’s external tariffs when we leave we will see huge gains from trade.¹⁵²

Lord Ridley (Conservative) added that the WTO’s national treatment principles means that the EU could not discriminate against British goods and services.¹⁵³

Trade in Services

Services account for 44 percent of the UK’s total global exports and of these, 72 percent are non-financial services. In 2015, the 39.43 percent of the UK’s services exports went to the EU.¹⁵⁴ The House of Lords European Union Committee observed that the UK “is the world’s largest exporter of financial services and insurance”.¹⁵⁵ The Committee argued that the financial services industry would fall back on WTO rules, in particular, the GATS, if the UK left the EU without a trade deal. As mentioned above, the GATS divides the services trade into four ‘modes of supply’. The Committee outlined how financial services exports may be effected under these rules:

Commitments to market access vary depending on the mode of supply. Typically, GATS members make limited commitments with respect to cross-border supply and consumption abroad of financial services. Under GATS, members are able to impose licensing or other requirements that make it difficult for a non-resident supplier to conduct business. GATS also includes a ‘prudential carve-out’, which enables members to take measures for prudential reasons: this could lead to the retention or introduction of measures which effectively reduce cross-border supply.¹⁵⁶

The Committee suggested that “under WTO terms the UK would be treated as any other third country, with more limited market access, accompanied by significant drawbacks”.¹⁵⁷

In another report, the House of Lords European Union Committee considered the impact of trading with the EU under WTO terms on non-financial services. The Committee argued that “as with goods and financial services, the EU remains a critical trading partner for the UK’s

¹⁵⁰ *Guardian*, “[No Deal](#)”, [Brexit Would Mean £6bn in Extra Costs for UK Exporters](#), 20 February 2017.

¹⁵¹ Matt Ridley, ‘[Deal or No EU Deal, Britain has Little to Fear](#)’, *Times* (£), 13 March 2017.

¹⁵² *ibid.*

¹⁵³ *ibid.*

¹⁵⁴ Office for National Statistics, ‘[Written Evidence Submitted for the House of Lords European Union Committee’s Inquiry on the UK’s Trade in Non-Financial Services](#)’, accessed 22 March 2017.

¹⁵⁵ House of Lords European Union Committee, [Brexit: Financial Services](#), 15 December 2016, HL Paper 81 of session 2016–17, p 5.

¹⁵⁶ *ibid.*, p 8.

¹⁵⁷ *ibid.*, p 9.

trade in non-financial services” and noted that:

The total volume of UK exports to the EU of non-financial services (£62.9 billion) is growing, and is much higher than the volume of exports of financial services (£26 billion). More jobs are also linked to trade and investment in these sectors.¹⁵⁸

The Committee explained that when the UK leaves the EU, it will need to establish its own schedules under the GATS. However, the Committee argued that trading with the EU on the basis of WTO “would provide less favourable trading conditions than membership of the single market or a FTA [free trade agreement]”.¹⁵⁹ Moreover, because of the most favoured nation (MFN) principle, the UK would not be able to trade with the EU on more preferential terms unless these were applied to other trading partners.¹⁶⁰

The Committee also considered the implications of trading with the EU under WTO for specific services sectors. For example, the Committee observed that “business services are the UK’s largest services export”¹⁶¹ These accounted for 44 percent of the UK’s trade in non-financial services.¹⁶² Professional business services firms (PBS), such as legal firms, “would face increased (and in some cases absolute) barriers to trading with the EU” while “unregulated PBS, like management consulting, would be able to continue trading with the EU, although even they could be indirectly affected”.¹⁶³ Further, in the no-deal scenario, PBS firms, especially those in the legal sector, “would either relocate to the EU, or move resources to partner firms within the EU, in order to continue to trade on preferential terms”.¹⁶⁴ The Committee argued that the proposed Trade in Services Agreement (TiSA) “provides an opportunity to update the global terms of trade for many services”.¹⁶⁵ The TiSA aims to improve on the GATS and open up the trade in services.¹⁶⁶ It is currently being negotiated by 23 WTO members and the EU.¹⁶⁷ However, the Committee observed that negotiations had stalled on this agreement.¹⁶⁸

The Committee also considered how the air services sector could be affected if the UK left the EU without a trade deal. The Committee observed that the UK is “a global leader in air services”, contributing £55 billion to UK GDP in 2015.¹⁶⁹ The EU single market allows the airlines of member states to provide flights between and within any EU member state. This arrangement has also been extended to signatories of the European Common Aviation Area (ECAA) Agreement, provided they implement EU aviation law.¹⁷⁰ However, the GATS does not cover traffic rights or directly related activities.¹⁷¹ The Committee argued that there is “no

¹⁵⁸ House of Lords European Union Committee, [Brexit: Trade in Non-Financial Services](#), 22 March 2017, HL Paper 135 of session 2016–17, p 15.

¹⁵⁹ *ibid.*, p 29.

¹⁶⁰ *ibid.*, pp 29–30.

¹⁶¹ *ibid.*, p 31.

¹⁶² *ibid.*, p 31.

¹⁶³ *ibid.*, p 42.

¹⁶⁴ *ibid.*

¹⁶⁵ *ibid.*

¹⁶⁶ European Commission, [‘Trade in Services Agreement’](#), accessed 23 March 2017.

¹⁶⁷ *ibid.*

¹⁶⁸ House of Lords European Union Committee, [Brexit: Trade in Non-Financial Services](#), 22 March 2017, HL Paper 135 of session 2016–17, p 42.

¹⁶⁹ *ibid.*, pp 65 and 72.

¹⁷⁰ *ibid.*, pp 66–7.

¹⁷¹ World Trade Organisation, [‘Services: Rules for Growth and Investment’](#), accessed 26 March 2017.

adequate ‘fall-back’ position for aviation services in the event that no agreement is reached with the EU”.¹⁷² It added that:

Air services are excluded from the WTO, and the pre-existing bilateral air services agreements between the UK and individual EU Member States may not be valid, given the EU’s extended competence in this area. It follows that, in order to avoid significant damage to the UK aviation sector, either a UK-EU bilateral air services agreement must be agreed before the UK leaves the EU in 2019, or a transitional arrangement must be adopted, to allow continuing UK participation in the single market for aviation pending conclusion of a comprehensive agreement.¹⁷³

Similarly, the Committee observed that WTO rules do not provide for trade in broadcasting services. According to the Committee, the EU’s Audiovisual Media Services Directive currently “establishes minimum regulatory standards that member states and national regulators must implement [...]”.¹⁷⁴ Under this Directive, a broadcaster only needs regulatory approval in one member state in order to offer services in others.¹⁷⁵ During the Uruguay Round negotiations, the EU and Canada sought to exclude cultural services or products from the WTO agreements, which has been described as the “cultural exception”.¹⁷⁶ The Committee explained that under the GATS, “this meant that countries decided not to remove restrictions on the use of quotas or government subsidies” and suggested that this could have a negative impact on the UK’s creative services.¹⁷⁷ The Committee argued that:

A scenario where the UK left the EU without an agreement would be damaging for the UK’s creative services. Audiovisual media services are excluded from the EU’s schedule of commitments at the WTO.¹⁷⁸

The Committee further argued that the European Convention on Transfrontier Television Convention—which establishes rules for the free circulation of transfrontier television programmes in Europe—and other coproduction treaties were not “viable alternatives for trade”.¹⁷⁹ On the issue of intellectual property, the Committee suggested that “protections for intellectual property rights afforded by the WTO’s TRIPS agreement are considerably less than those currently enjoyed by UK businesses and citizens”.¹⁸⁰

¹⁷² House of Lords European Union Committee, [Brexit: Trade in Non-Financial Services](#), 22 March 2017, HL Paper 135 of session 2016–17, p 72.

¹⁷³ *ibid.*

¹⁷⁴ *ibid.*, p 56.

¹⁷⁵ *ibid.*

¹⁷⁶ *ibid.* p 58.

¹⁷⁷ *ibid.*

¹⁷⁸ *ibid.*, p 63.

¹⁷⁹ *ibid.*

¹⁸⁰ *ibid.*

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