

# LEAVE ALLIANCE

## Brexit Monograph 8

### WTO schedules and concessions

21 August 2016

corrected

#### Introduction

In a public intervention in the Brexit debate on 25 May 2016, WTO director-general, Roberto Azevêdo, warned that Britain would face "tortuous negotiations" with WTO members. The likely complexity of such talks, he said, made them akin to the tortuous "accession" negotiations countries go through to join the WTO.<sup>1</sup>

This was later, in early July 2016, wrongly interpreted by Charles Grant, director of the Centre for European Reform, as indicating that the UK would have to undergo the WTO accession process on leaving the EU. His reasoning was that Britain is currently "a member [of the WTO] via the EU". It was thus required, in Mr Grant's view, to attain full membership.<sup>2</sup> This is a view he has since repeated.<sup>3,4</sup>

In fact, the UK is already a full member of the WTO in its own right, the treaty having been presented to Parliament in June 1996.<sup>5</sup> The European Union, invoking its own legal personality, is also a member in its own right. But the EU treaty database records the Agreement Establishing the WTO as a "mixed agreement", with EU Member States separately identified as contracting parties, including the UK.<sup>6</sup>

---

<sup>1</sup> *Financial Times*, 25 May 2016, WTO warns on tortuous Brexit trade talks, <http://www.ft.com/cms/s/0/745d0ea2-222d-11e6-9d4d-c11776a5124d.html#axzz4HhBFM3mw>

<sup>2</sup> <https://www.cer.org.uk/insights/theresa-may-and-her-six-pack-difficult-deals>

<sup>3</sup> <http://www.prospectmagazine.co.uk/world/theresa-may-difficult-brexit-deals-fta-wto>

<sup>4</sup> <http://blogs.lse.ac.uk/brexit/2016/08/04/the-brexit-negotiations-the-uk-government-will-have-incentives-to-compromise/>

<sup>5</sup> <http://treaties.fco.gov.uk/docs/pdf/1996/TS0057.pdf>

<sup>6</sup>

<http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=565>

Separately, the WTO database records the UK as a full member (alongside the EU) and a linked web-page notes that, "the 28 member States of the EU are also WTO members in their own right".<sup>7,8</sup> There can, therefore, be absolutely no doubt that Mr Grant is wrong.

Furthermore, within the Marrakesh Agreement establishing the WTO, there is provision for member states to withdraw (Article XV), but none for expelling or suspending members.<sup>9</sup> On that basis, there can also be no doubt that, after withdrawal from the EU, the UK will remain a full member of the WTO.

This was confirmed by Azevêdo himself on 7 June 2016 during a speech in London, when he stated that the UK, as an individual country, "would of course remain a WTO member". But, he added, it would not have defined terms in the WTO for its trade in goods and services. It only had these commitments as an EU member. And it that wasn't enough, it would need to re-establish its terms of trade within the WTO.<sup>10</sup>

Azevêdo's reminded his audience that negotiations merely to adjust members' existing terms had often taken several years to complete - in certain cases up to ten years, or more. However, he said, "as far as the UK's case is concerned, it is impossible to tell how long it may take".<sup>11</sup>

This later intervention, together with Grant's input, has been seized upon in the post-referendum debate to illustrate the complexities involved in leaving the EU. Amongst those concerned about such matters, we have seen offerings from Ben Wright of the *Telegraph* and Jennifer Rankin in the *Guardian*.<sup>12</sup> Even the *Economist* has joined in.<sup>13</sup>

From this has emerged a public discussion on the problematic relationship with the WTO, which is gaining a great deal of traction – especially over the prospect that any negotiations with the WTO might fail and set back the entire Brexit process.

Grant, for instance, hypothesises that negotiations could be stalled if, for example, Argentina or Russia wanted to create difficulties. Any one country could block the British schedules, in theory making it extremely difficult for the UK to normalise its WTO membership within the two years of the Article 50 negotiations.

---

<sup>7</sup> [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm)

<sup>8</sup> [https://www.wto.org/english/thewto\\_e/countries\\_e/european\\_communities\\_e.htm](https://www.wto.org/english/thewto_e/countries_e/european_communities_e.htm)

<sup>9</sup> [https://www.wto.org/english/docs\\_e/legal\\_e/04-wto\\_e.htm#articleXV](https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm#articleXV)

<sup>10</sup> [https://www.wto.org/english/news\\_e/spra\\_e/spra126\\_e.htm](https://www.wto.org/english/news_e/spra_e/spra126_e.htm)

<sup>11</sup> *Ibid.*

<sup>12</sup> <http://www.telegraph.co.uk/business/2016/08/16/a-deal-on-brex-it-was-never-going-to-be-easy/> and <https://www.theguardian.com/business/2016/aug/17/brexit-trade-deals-gruelling-challenge-taking-back-control>

<sup>13</sup> <http://www.economist.com/news/britain/21705347-case-delaying-start-brexit-process-pull-or-not-pull>

Potential problems are explored in more detail by former WTO press officer Peter Ungphakorn, who has attracted many plaudits for his analyses and his suggestions for resolving the issues which could arise.<sup>14</sup> What is remarkable, however, is that so much is being made of what is actually a relatively small problem in the grander scheme of things.

Nevertheless, because this arcane subject, which should not have merited more than a footnote in the account of the Brexit negotiations, is being given considerable coverage, it is addressed in this Monograph. The purpose is partly to explain the issues, but primarily to set the record straight.

### **The core issues**

WTO negotiations produce general rules that apply to all Members, and specific commitments made by individual Member governments. The specific commitments are listed in documents called "schedules of concessions". Collectively, they comprise about 27,000 pages.<sup>15</sup>

For trade in goods, these consist of maximum tariff levels, referred to as "bound tariffs" or "bindings" (GATT Article II). There are the maximum tariff levels which can be levied on countries with Most Favoured Nation (MFN) status, although they are not necessarily the rate that a WTO member applies in practice.<sup>16</sup> In the case of agricultural products, these concessions and commitments also relate to tariff rate quotas (TRQs), limits on export subsidies, and some kinds of domestic support (subsidies).<sup>17</sup>

Schedules of concessions for goods are either annexed to the Marrakesh Protocol to the GATT 1994 or to a Protocol of Accession for individual countries. They are listed by the WTO secretariat on a periodically updated table.<sup>18</sup> The details are entered on multiple files in excel format and can be downloaded from the WTO website.<sup>19</sup> Schedules of commitments for services are listed separately. Most of these are country-specific, and include exemptions, where some service provisions are taken out of the general agreement. Only two UK-specific items (one commitment and one exemption) appear to be recorded.<sup>20</sup>

In the country listings, there is no separate entry for the UK (or other EU Member States pre-1994), despite it being a full member of the WTO. Within the EU, trade is an exclusive competence of the EU, which left the European Commission to negotiate the "schedules of concessions" *en bloc*, for the entire

---

<sup>14</sup> <https://tradebetablog.wordpress.com/2016/08/17/2nd-bite-how-simple-uk-eu-wto/>

<sup>15</sup> [https://www.wto.org/english/res\\_e/publications\\_e/handbook\\_sched\\_e.htm](https://www.wto.org/english/res_e/publications_e/handbook_sched_e.htm)

<sup>16</sup>

[http://wits.worldbank.org/wits/wits/witshelp/Content/Data\\_Retrieval/P/Intro/C2.Types\\_of\\_Tariffs.htm](http://wits.worldbank.org/wits/wits/witshelp/Content/Data_Retrieval/P/Intro/C2.Types_of_Tariffs.htm)

<sup>17</sup> [https://www.wto.org/english/tratop\\_e/schedules\\_e/goods\\_schedules\\_e.htm](https://www.wto.org/english/tratop_e/schedules_e/goods_schedules_e.htm)

<sup>18</sup> [https://www.wto.org/english/tratop\\_e/schedules\\_e/goods\\_schedules\\_table\\_e.htm](https://www.wto.org/english/tratop_e/schedules_e/goods_schedules_table_e.htm)

<sup>19</sup> [https://www.wto.org/english/tratop\\_e/schedules\\_e/eec.zip](https://www.wto.org/english/tratop_e/schedules_e/eec.zip)

<sup>20</sup> [https://www.wto.org/english/tratop\\_e/serv\\_e/serv\\_commitments\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/serv_commitments_e.htm)

membership at the time. States acceding to the EU after 1994 have been required to withdraw their schedules and adopt the EU's (which themselves have required adjustment as a result).

Once the UK leaves the EU, however, it will emerge without its own, country-specific schedules, whence it is expected that it will have to start afresh to create its own schedules, covering both goods and services. And, as Mr Azevêdo readily acknowledges, there is no precedent for this. Even the process for conducting negotiations, he says, is unclear at this stage.<sup>21</sup>

Similar concern had already been expressed in February 2016 by the UK Government in its White Paper on the process of withdrawing from the EU, writing of the implications of Brexit on our WTO membership. In the event that we leave the EU, it said:

... we would need to update the terms of our WTO membership where the commitments taken have previously applied to the EU as a whole. This would not be a straightforward process as, if we leave the EU, then we would need all other WTO Members to agree how the UK will take on the rights and obligations which we have formerly taken as a part of the EU. This would mean negotiating and agreeing updated UK schedules of commitments with all 161 WTO members. And until our schedule of commitments was updated, there could be questions surrounding our rights to access WTO members' markets, and our ability to enforce those rights.<sup>22</sup>

Ironically, before the advent of the WTO Agreement, there was an inbuilt procedure relating to dependent territories of members, on their attaining independence. Once they became contracting parties in their own right, a new schedule was automatically established for them, essentially duplicating the schedules of the nations which had made the original commitments.<sup>23</sup>

The provision, although it could have been useful to the UK, has not been carried forward into the WTO Agreement. Under current arrangements, seceding states are obliged to seek accession anew. This was the case with the Czechoslovakian "velvet divorce", where both the Czech Republic and Slovakia were required to make applications to join the WTO. Latterly, studies on the potential effects of the secession of Quebec from Canada indicate that Quebec would be required to apply for WTO membership. Furthermore, entry would involve substantive negotiations.<sup>24</sup>

The question, therefore – addressing Mr Azevêdo's warning – is whether there would have to be a similar degree of "substantive negotiations", and what the

---

<sup>21</sup> *Op cit*: [https://www.wto.org/english/news\\_e/spra\\_e/spra126\\_e.htm](https://www.wto.org/english/news_e/spra_e/spra126_e.htm)

<sup>22</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/504216/The\\_process\\_for\\_withdrawing\\_from\\_the\\_EU\\_print\\_ready.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/504216/The_process_for_withdrawing_from_the_EU_print_ready.pdf)

<sup>23</sup> [http://assets.cambridge.org/97805218/04493/excerpt/9780521804493\\_excerpt.pdf](http://assets.cambridge.org/97805218/04493/excerpt/9780521804493_excerpt.pdf)

<sup>24</sup> [https://csis-prod.s3.amazonaws.com/s3fs-public/legacy\\_files/files/media/csis/pubs/ppustrade%5B1%5D.pdf](https://csis-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/media/csis/pubs/ppustrade%5B1%5D.pdf)

consequences would be if the UK failed to conclude those negotiations before Article 50 negotiations had been finalised. Potentially, or so it could appear, this hitherto neglected aspect of the exit process could prejudice a successful withdrawal.

### **Agricultural issues**

In terms of the issues relating to agriculture, these arise from the 1995 Agreement on Agriculture. The first is payments of different types of agricultural subsidies, which are subject to agreed restrictions, negotiated on an EU level.<sup>25</sup> Pre-1995, these related to domestic subsidies and export payments. However, the EU has since phased out export payments, leaving just the domestic subsidies to be dealt with.<sup>26</sup>

Because the schedules for EU member states have been agreed *en bloc*, in respect of all 28 members, in theory the UK would not automatically take with it any rights to pay agricultural subsidies. It would first have to settle the amounts permissible for it to pay, and then present a new proposal to all WTO members, the sum of which cannot exceed what they have already committed as part of the EU.<sup>27</sup>

Although this has the makings of a problematic issue, it is less troublesome than might appear. Restrictions apply only to trade-distorting subsidies, in what is called the "amber box". So-called "green box" and "blue box" subsidies are exempt. The "blue box" subsidies cover payments directly linked to acreage or animal numbers, but under schemes which also limit production by imposing production quotas or requiring farmers to set aside part of their land.

"Green box" subsidies must not distort trade, or at most cause minimal distortion. They include environmental protection and regional development programmes. Specifically, these have to be government-funded (not by charging consumers higher prices) and must not involve price support. Rather than directed at particular products, they tend to include direct income supports for farmers "decoupled" from current production levels or prices. There are no limits to these subsidies.<sup>28,29</sup>

Fortunately for the UK, of the subsidies paid under the current EU Multiannual Financial Framework (MFF) under the 2010 CAP reforms, 94 percent would accord with "green box" and other exempt categories. They could, therefore, continue to be paid by an independent UK without breaching WTO provisions.

As the EU has only used €8.76 billion of the €72.2 billion ceiling agreed with the WTO in 2009/2010, a fraction of the allowable limit, re-apportioning subsidy concessions would be relatively uncomplicated. Even if there was no

---

<sup>25</sup> [https://www.wto.org/english/docs\\_e/legal\\_e/14-ag.pdf](https://www.wto.org/english/docs_e/legal_e/14-ag.pdf)

<sup>26</sup> [http://www.wto.org/english/docs\\_e/legal\\_e/14-ag.pdf](http://www.wto.org/english/docs_e/legal_e/14-ag.pdf)

<sup>27</sup> <http://uk.reuters.com/article/2013/05/16/uk-britain-europe-trade-idUKBRE94F0I220130516>

<sup>28</sup> [https://www.wto.org/english/tratop\\_e/agric\\_e/agboxes\\_e.htm](https://www.wto.org/english/tratop_e/agric_e/agboxes_e.htm)

<sup>29</sup> href="http://www.wto.org/english/tratop\_e/agric\_e/agnegs\_bkgrnd\_e.pdf"

agreement in time, as long as there was overall parity in subsidies paid in the "amber box", any technical breaches in WTO would be unlikely to trigger a complaint procedure.

More problematic are the 87 TRQs negotiated by the EU, which set the maximum levels of some imports.<sup>30</sup> Some, such as those relating to New Zealand butter and South American beef, are particularly important for the UK because it takes a significant share. The precise uptake would be matter for negotiation but it is possible that the EU might wish to offload a larger than *pro-rata* proportion to the UK.<sup>31</sup>

No matter what the allocation, some third countries may well be aggrieved and argue that their exports (either to the UK or EU-27 markets) faced greater market access difficulties than before. If no agreement is forthcoming, this could lead to formal dispute proceedings and claims for compensation.<sup>32</sup>

Another potential difficulty is the special agricultural safeguards (SSGs) system. The safeguards are contingency restrictions on imports taken temporarily to deal with special circumstances such as a sudden surge in imports. The SSG is an alternative to the general safeguard provision of the GATT and is easier to invoke because it does not require a test of injury or threat of injury.<sup>33,34</sup>

These provisions allow the imposition of an additional tariff where certain criteria are met - either a surge in imports (volume trigger) or on a shipment by shipment basis, a fall of the import price below a reference price (price trigger). The additional duties cannot be applied to imports taking place within tariff quotas.<sup>35</sup>

The EU has negotiated the right to restrict 539 listed agricultural products, should circumstances require.<sup>36</sup> The EU is an enthusiastic proponent of these safeguards, and argues strongly for their continuation on the basis that they give members the confidence to liberalise trade by protecting them against sudden and unforeseen fluctuations in prices and volumes.<sup>37,38</sup>

The use of such safeguards, however, is contentious, regarded by many as trade restriction.<sup>39</sup> Thus, the UK might have to take a view on whether to carry over safeguard rights into its own schedule of concessions, bearing in mind that their

---

<sup>30</sup> [https://www.wto.org/english/tratop\\_e/agric\\_e/negs\\_bkgrnd10\\_access\\_e.htm](https://www.wto.org/english/tratop_e/agric_e/negs_bkgrnd10_access_e.htm)

<sup>31</sup> <http://capreform.eu/wto-dimensions-of-a-uk-brexite-and-agricultural-trade/>

<sup>32</sup> *Ibid.*

<sup>33</sup> [https://www.wto.org/english/docs\\_e/legal\\_e/25-safeg\\_e.htm](https://www.wto.org/english/docs_e/legal_e/25-safeg_e.htm)

<sup>34</sup> <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/RL32916.pdf>

<sup>35</sup> [https://www.wto.org/english/tratop\\_e/agric\\_e/ag\\_intro02\\_access\\_e.htm](https://www.wto.org/english/tratop_e/agric_e/ag_intro02_access_e.htm)

<sup>36</sup> [https://www.wto.org/english/tratop\\_e/agric\\_e/guide\\_agric\\_safeg\\_e.htm](https://www.wto.org/english/tratop_e/agric_e/guide_agric_safeg_e.htm)

<sup>37</sup> <http://trade.ec.europa.eu/doclib/html/122312.htm>

<sup>38</sup> [http://europa.eu/rapid/press-release\\_MEMO-01-28\\_en.htm](http://europa.eu/rapid/press-release_MEMO-01-28_en.htm)

<sup>39</sup> [http://www.wti.org/media/filer\\_public/e5/50/e55003b1-b983-4982-9325-c611f08ca939/masters\\_thesis\\_vladimir\\_talanov.pdf](http://www.wti.org/media/filer_public/e5/50/e55003b1-b983-4982-9325-c611f08ca939/masters_thesis_vladimir_talanov.pdf)

presence might invite principled objections from other WTO members. But there are also the questions of whether to express solidarity with the EU, in supporting the measures in principle, and the potential effects of a safeguard-free regime on UK agriculture.

### **The UK's distinctive position**

The crucial difference between the UK's position and that of any accession state is that the UK will remain a full member of the WTO, with full rights and privileges – and obligations. As such, the UK is able to take advantage of the right of a member to modify or withdraw a concession or, as the case may be, negotiate new concessions.

Invoking that right is not particularly rare or problematical. Between 1951 and 1994, at least 42 members initiated roughly 300 renegotiations. Since the establishment of the WTO in 1995, there have been 39 further requests for renegotiations. Five have been withdrawn and 14 have been formally concluded, a process known as "certification". Eight have been verified by members and await certification. The remaining 12, relating to EU enlargement, are in principle still on-going.<sup>40</sup>

As long as the prescribed procedures, set out in Article XXVIII of the 1994 GATT Agreement, are followed, the right to modify or withdraw a concession is an absolute. It does not depend on agreements being reached with other members.<sup>41</sup> And although commitments agreed with specific countries have to be renegotiated, this does not apply to general commitments where, in technical terms, there are no Initial Negotiation Rights (INRs). Under the circumstances which are most likely to prevail in respect of the UK, the probability is that no negotiations will be needed.<sup>42</sup>

The essential requirement, to avoid falling foul of WTO rules, is that any new schedules should: "maintain a general level of reciprocal and mutually advantageous concessions not less favourable". This is the concept of "equivalence of concessions".<sup>43</sup> As long as this is maintained, no member can successfully claim to have been disadvantaged by any changes.

Despite this, there is a possibility that the procedural steps required may not have been completed by the time Article 50 negotiations have been concluded. Given that trade is an exclusive competence of the EU, it is arguable that the UK cannot finalise negotiations with the WTO until it has left the EU. Yet, in seeking to trade with the rest of the world without having its new schedules certified, it could be in breach of its technical requirements.<sup>44</sup>

---

<sup>40</sup> [https://www.wto.org/english/tratop\\_e/schedules\\_e/goods\\_schedules\\_table\\_e.htm](https://www.wto.org/english/tratop_e/schedules_e/goods_schedules_table_e.htm)

<sup>41</sup> *Op cit*: [http://assets.cambridge.org/97805218/04493/excerpt/9780521804493\\_excerpt.pdf](http://assets.cambridge.org/97805218/04493/excerpt/9780521804493_excerpt.pdf)

<sup>42</sup> [https://www.wto.org/english/res\\_e/booksp\\_e/gatt\\_ai\\_e/art28\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art28_e.pdf)

<sup>43</sup> *Ibid.* see page 943, 3. Paragraph 2.

<sup>44</sup>

However, the WTO is not the EU. Different rules apply when a country defaults on its treaty obligations. Unlike the EU where a member state can be taken to the ECJ merely for infringement (violation) of the rules, this is not the case with the WTO. Non-conformity, *per se*, is not an actionable event. Action is triggered only when there is actual (or alleged) harm.

The legal mode of the WTO's Dispute Settlement Understanding (DSU) is seen as a *corrective* which must be aimed at seeking to repair harm done rather than imposing conformity for the sake of it.<sup>45</sup> Thus, a peculiarity of the system is that for action to be taken against a member, there must be demonstrated a *prima facie* case of "nullification or impairment". From this follows a presumption that a breach of the rules necessarily has an adverse impact on other members' parties.<sup>46</sup>

Ungphakorn argues that the UK could seek a resolution by not creating any new commitments but by working within the EU's apportionment – thereby maintaining the *status quo*.<sup>47</sup> This would allow the UK to claim "equivalence of concessions" and, even if it was technically in breach of WTO rules, no party could claim "nullification or impairment" and no action could be taken.

If any changes are made which are likely to impact adversely on other WTO members, the member seeking modification or withdrawal is expected to give compensatory concessions on other products. If agreement is not reached, the affected members may withdraw substantially equivalent concessions. This could be applicable to the UK if it sought to make any substantive changes to their concessions. But as long as "equivalence" is maintained, the problem should not arise.

### **Reservations and waivers**

The schedules of commitments are an integral part of the overall WTO agreements with the same legal status as any other WTO agreements.<sup>48</sup> As such, these amount to formal treaty changes under the provisions of the Vienna Convention on the Law of Treaties (VCLT). Objections to changes – such as might be proposed by the UK – are registered by way of "reservations" mandated by the VCLT (Article 19).<sup>49</sup>

Before any changes to a schedule can be certified and become legally binding, they must be "verified" by all WTO members. For this to happen, there must be no outstanding objections or "reservations". In principle, these can be resolved

---

oranda%202013/Group%20A\_The%20Future%20of%20the%20United%20Kingdom%20in%20Europe.pdf

<sup>45</sup> <http://www.jeanmonnetprogram.org/wp-content/uploads/2014/12/060501.pdf>

<sup>46</sup> [https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_settlement\\_cbt\\_e/c4s2p1\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispu_settlement_cbt_e/c4s2p1_e.htm)

<sup>47</sup> *Op cit*: <https://tradebetablog.wordpress.com/2016/08/17/2nd-bite-how-simple-uk-eu-wto/>

<sup>48</sup> [https://www.wto.org/english/res\\_e/booksp\\_e/handbook\\_sched\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/handbook_sched_e.pdf)

<sup>49</sup> <http://crossborder.ie/site2015/wp-content/uploads/2015/11/1969-Vienna-Convention-on-the-Law-of-Treaties.pdf>



through the dispute procedure, and there is provision for withdrawal of reservations in the VCLT. But there appears to be no mechanism by which any member can be compelled to make a withdrawal or to invoke the dispute procedure.

Thus, on the face of it, a reservation could be left standing, potentially blocking the UK from establishing new schedules. The same problem might affect the EU which might also need to secure schedule changes to regularise its own commitments. However, as long as the "equivalence of concessions" is maintained, unilateral action by either of the parties (the UK or EU) should bring no repercussions, in the absence of either nullification or impairment.

On that basis, any reservations lodged as a result of the UK's attempts to lodge new schedules of concessions would be largely symbolic, with no practical effect. Post-Brexit, the absence of certified schedules alone would not prevent the UK trading normally with other WTO members.

For a party to remain in technical breach of WTO rules, though, is generally unsatisfactory. Members anticipating a breach, however, can avail themselves of a remedy within the WTO system known as the "waiver of obligations", exempting them from specific obligations. Waivers may be requested by single members, or by groups seeking "collective waivers". Applicants must cite the reasons which prevent them from achieving policy objectives and the waivers last for two years unless extended (which they can be, without limit).<sup>50,51</sup>

Specifically, the function of a waiver is to relieve a Member, for a specified period of time, from a particular obligation and is exceptional in nature, subject to strict disciplines.<sup>52</sup> When applied, it serves to regularise actions which are inconsistent with GATT/WTO provisions.<sup>53</sup>

For the UK seeking to manage the Brexit process, there could be no doubt about the exceptional nature of the situation. A waiver would be of possible value in two respects. Firstly, it could be used to cover any time gap between leaving the EU and regularising its schedules, allowing it to continue trading under current arrangements. Alternatively, it could be used to neutralise the effect of any political blockage arising from one of more members lodging reservations to any proposed schedule, buying time for further mediation and eventual resolution.

## **Conclusions**

For all his dire warnings prior to the EU referendum, WTO Director General Azevêdo was quick to respond to the "leave" vote by stating on social media

---

<sup>50</sup> [https://www.wto.org/english/docs\\_e/legal\\_e/11-25\\_e.htm](https://www.wto.org/english/docs_e/legal_e/11-25_e.htm)

<sup>51</sup> [https://www.wto.org/english/tratop\\_e/schedules\\_e/goods\\_schedules\\_table\\_e.htm](https://www.wto.org/english/tratop_e/schedules_e/goods_schedules_table_e.htm)

<sup>52</sup> [https://www.wto.org/english/res\\_e/booksp\\_e/analytic\\_index\\_e/wto\\_agree\\_03\\_e.htm](https://www.wto.org/english/res_e/booksp_e/analytic_index_e/wto_agree_03_e.htm)

<sup>53</sup> <https://crawford.anu.edu.au/pdf/wp98/sp98-3.pdf>

that: "The WTO stands ready to work with the UK and the EU to assist them in any way we can".<sup>54</sup>

That stance seems better to represent the role of the WTO which exists to facilitate trade rather than create obstacles to it. It perhaps indicates the political nature of the Director General's pre-referendum intervention, in common with interventions by the IMF, the OECD and other international agencies, which warned of the perils of Brexit.

With the assistance of the WTO, however, it would appear that regularising its obligations with the WTO will be one of UK's less pressing tasks. That is not to suggest that producing schedules will not be time consuming and complex. Rather, any non conformity that arises during the process can be addressed by a variety of means, any of which will ensure that there are no harmful effects.

This highlights the crucial difference between the EU and the WTO. In the former, as we have discussed, compliance with treaty provisions is an end in itself and non-conformity is actionable. In the latter, intervention is predicated on there being evidence of harm. And, while the WTO is rule-based, when the rules interfere with the achievement of a necessary outcome, they can be set aside by use of the waiver.

In terms of the public discourse, assertions that the UK would have to undergo a complex (and possibly uncertain) accession process are both alarmist and wrong, and the fact that full membership is retained even after Brexit means dealing with the consequences, as they affect the WTO, will be far less problematical than imagined. There will be no great pressure for an immediate resolution, especially as contentious issues can be "parked".

One sees in the exaggerated accounts of the adverse consequences that might be experienced, therefore, evidence of a post-referendum phenomenon, whereby former "remain" supporters and others are tending to over-complicate the Brexit process, introducing needless complications.<sup>55</sup> Some appear, by this means, to be seeking to reverse the referendum decision.

Confounding this, the evidence adduced in this Monograph would suggest that the pessimism is wholly unfounded. No sensible person could argue that the Brexit process will not be complicated and time consuming, but there is no value in presenting it as more complex than it is. The public debate on WTO schedules of concessions has, in our view, veered in that direction.

ends.

---

<sup>54</sup> <http://uk.reuters.com/article/britain-eu-wto-idUKL8N19G4WU>

<sup>55</sup> <http://www.ictsd.org/opinion/nothing-simple-about-uk-regaining-wto-status-post-brexite>