

# Unscheduled stops

Blog post by Partner Stephen Adams, 16 March 2017

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One of the many things the UK will need to do on its way out of the EU is to establish its new ‘most favoured nation’ trading profile at the WTO in Geneva. This means establishing the tariffs for goods, minimum market access conditions for services trade and a number of other notified conditions that will apply in the UK market. Other WTO member states will have the right to challenge this process if they feel they have been disadvantaged by it. To help avoid this, the UK has said that it proposes to adopt for itself the goods and services schedules that it currently applies as an EU member state, except in a small number of areas where quantitative EU import quotas will need to be divided in some way between the two markets.

It has been widely noted that the UK may be challenged to improve on this by some WTO members, with the threat of opposition as leverage. This is certainly likely. What is less likely is that it actually means very much for trade. Here it becomes important to distinguish between states seeking to use the UK’s unique situation opportunistically and a genuine challenge likely to survive a WTO dispute settlement process. Most countries can name a concession they would like to extract from the UK. But what will actually matter is how credible their case is for compensation (in the form of improved market access) under WTO rules - and how much of a problem resisting any opportunistic demands actually poses for the UK.

To be sure, it is not very desirable in the long-term for the UK to be unable to completely stabilise its MFN profile. But the failure to do so does not mean the UK will be unable to trade. Assuming the UK has not had its new schedules tacitly or explicitly acknowledged by all WTO members at the point of leaving the EU, it will simply trade on a provisional schedule of its proposed design. This provisional schedule will clearly be subject to possible change if successfully contested. However, those that sell to the UK will not be dis-incentivised by this fact, as these provisional tariff schedules are only ever likely to be revised downwards. As long as the UK applied provisional tariffs on an MFN basis to other WTO states (which it would), its basic rights in export markets would be on solid ground.

So, what is the actual cost of a period of uncertainty about some element of the UK’s schedules, apart from the ongoing headache of negotiations in Geneva? The most important is that it potentially makes it harder to negotiate preferential trade agreements - as the UK has said it would like to do - without a stable baseline from which to discount market access for privileged partners. Without knowing the size of this discount, other countries might find it hard to price the concessions they might want to make to the UK. This might potentially put some partners off.

But this is very easy to overstate. It depends entirely on how wide and credible the challenge to the UK approach is, and what tariffs or services commitments it is focused on. The EU negotiated FTAs with Korea, India and Canada (among others) while still debating at the WTO the changes to its tariff schedule imposed by the accession of the new member states in 2004. States that already have preferential trading relationships with the UK (including the EU) will have a very strong

incentive to focus on getting their preferred terms into new bilateral deals, even if there is an element of uncertainty while the UK and Ecuador slog it out over the UK's banana tariff (or similar). Any country that anticipates an FTA with the UK (including the EU) will actually want the UK's MFN tariff left as high as possible - meaning the widest possible tariff preference when its own bilateral deal is struck.

The process of establishing the UK's WTO MFN trading profile is clearly important, but it has been turned in some parts of the UK media into a 'license' without which rights are withheld. For businesses worrying about actual trade this is very unhelpful. What is true about confirming WTO schedules for the UK is that they will almost certainly be contested and the process could drag on a long while. It may possibly create issues for the UK in attracting future FTA partners (but probably won't). But for the overwhelming bulk of day to day trade it will mean very little.