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TF50 (2018) 29 – Commission to EU 27

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**Subject:** Internal EU27 preparatory discussions on the framework for the future relationship: "International Agreements"

**Origin:** European Commission, Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU

**Remarks:** These slides are for presentational and information purposes only and were presented to the Council Working Party (Article 50) on 31 January 2018. The contents are without prejudice to discussions on the framework of the future relationship.

In December 2017, the European Council invited the Council (Art. 50) together with the Union negotiator to continue internal preparatory discussions on the scope of the future EU-UK relationship. The slides support those discussions. They are based on the April European Council guidelines which continue to apply in their entirety.

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Internal preparatory discussions on  
transitional arrangements

# **International agreements and trade policy**

**AD HOC WORKING PARTY ON ARTICLE 50** (*Seminar mode*)

**31/01/2018**

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## **International agreements**

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# Consequences of withdrawal (1/3)

The European Council **Guidelines of 29 April 2017** make explicit the consequences regarding international agreements concluded by the EU:

*Point 13: "Following the withdrawal, the United Kingdom will no longer be covered by agreements concluded by the Union or by Member States acting on its behalf or by the Union and its Member States acting jointly. The Union will continue to have its rights and obligations in relation to international agreements (..)"*

## Consequences of withdrawal (2/3)

*"the United Kingdom will no longer be covered"*

- the agreement no longer applies to the *territory* of the UK
- *the UK* loses the benefits and is no longer bound by the obligations
- *automatic*, from the day of withdrawal - save consequences of transitional arrangements

*"The Union will continue to have its rights and obligations"*

- No legal consequences for the Union and the other Member States

## Consequences of withdrawal (3/3)

The UK will no longer be covered by

- "EU only" agreements: agreements concluded by the EU (and/or Euratom); or by the Member States on its behalf
- Bilateral "mixed" agreements: concluded on the one hand by the Union and its Member States, and on the other hand by the third country partner (e.g. Association agreements; Cooperation and Partnership agreements; Aviation agreements; European Economic Area)

The UK will remain party to multilateral agreements to which the EU is also a party, to the extent that UK is party in its own right (e.g. WTO agreements, Paris climate). It will recover the full competence.

# Types of international agreements

- Association agreements: e.g. EEA, stabilisation
- Trade agreements: e.g. WTO, FTAs, GPA
- Sectorial agreements: e.g. aviation (safety, open skies), fisheries, customs, environment (Paris climate)
- Civil justice: e.g. Lugano
- CFSP/CSDP: e.g. EU missions and operations

# Transition – Principles (1/3)

The European Council **Guidelines of 15 December 2017:**

*Point 3: "As regards transition, the European Council notes the proposal put forward by the United Kingdom for a transition period of around two years and agrees to negotiate a transition period covering the whole of the EU acquis, while the United Kingdom, as a third country, will no longer ( ...) participate in the decision-making of the Union bodies, offices and agencies. "*

# Transition – Principles (2/3)

## Supplementary Negotiating Directives of 29 January 2018

Point 13: *"(...) any transitional arrangements provided for in the Withdrawal Agreement should cover the whole of the Union acquis (...) the Union acquis should apply to and in the United Kingdom as if it were a Member State. Any changes to the Union acquis should automatically apply to and in the United Kingdom (...)"*

Point 15: *"During the transition period (...) the United Kingdom should remain bound by the obligations stemming from the agreements concluded by the Union, or by Member States acting on its behalf, or by the Union and its Member States acting jointly, while the United Kingdom should however no longer participate in any of the bodies set up by those agreements."*

# Transition – Principles (3/3)

## Supplementary Negotiating Directives of 29 January 2018

Point 16: *"(...) The United Kingdom should take all necessary measures to preserve the integrity of the Single Market and of the Customs Union. The United Kingdom should continue to comply with the Union trade policy (...)"*

Point 16: *"(...) During the transition period, the United Kingdom may not become bound by international agreements entered into in its own capacity in the fields of competence of Union law, unless authorised to do so by the Union."*

# Safeguards for EU during transition

- Point 15: the UK *"should remain bound by the obligations stemming from the agreements"*
- Point 16: the UK *"should take all necessary measures to preserve the integrity of the Single Market and of the Customs Union"*
- Point 16: the UK *"should continue to comply with the Union trade policy"*

## Internal consequences (1/2)

- UK is bound by these international agreements (Art. 216(2) TFEU); it must apply them in relation to third countries  
→ explicit in point 15 SNDs: UK "*should remain bound by the obligations stemming from the agreements*"
- Same legal effects (point 14 SNDs), in particular primacy over national law and (as the case may be) direct effect

## Internal consequences (2/2)

- **Governance of the agreements** (point 15 SNDs): "*...while the United Kingdom should however no longer participate in any of the bodies set up by those agreements* "
- In principle, as a non-Member State, the UK would be able to negotiate international agreements

### **But**

- i. the *bona fide* application of the Withdrawal Agreement (WA) prohibits conflicting obligations
- ii. duty of sincere cooperation
- iii. explicit provisions in the WA (point 16 SNDs): "*During the transition period, the UK may not become bound by international agreements entered into in its own capacity in the fields of competence of Union law, unless authorised to do so by the Union.*"

# External consequences

The Withdrawal Agreement can oblige the UK to respect "*the obligations stemming from the agreements*" (point 15 SNDs)

However, the Withdrawal Agreement cannot guarantee the extension of the benefits from those international agreements to the UK

Need to clarify UK approach towards third country partners, international organisations in relation to such benefits

# Internal preparatory discussions on transitional arrangements

## **Trade policy**

**AD HOC WORKING PARTY ON ARTICLE 50** (*Seminar mode*)

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# Default scenario for trade policy

The UK becomes a third country:

- EU-UK trade relations based on WTO rules:
  - MFN tariffs apply for trade of goods between the EU and the UK
  - Services commitments
  - Other aspects: Trade Related aspects of Intellectual Property (TRIPs), Trade Facilitation Agreement (TFA), Sanitary and Phyto-Sanitary (SPS), Technical Barriers to Trade (TBT), etc.
- The EU continues to apply existing trade agreements with other third countries, e.g. FTAs, Government Procurement Agreement (GPA), WTO
- Apportionment of WTO quantitative commitments

# Transition – General principles

- General obligation on the UK to ensure the integrity of the EU Customs Union and Single Market:
  - Compliance with all Single Market acquis, including supervision and enforcement
  - Alignment on EU trade policy
  - UK authorities continue to act in accordance with the mission of EU customs authorities (e.g. collecting EU customs tariffs and performing checks)
  - No UK participation in EU institutional bodies, but could be invited to attend without voting rights exceptionally on a case-by-case basis
  - The UK remains bound by the obligations stemming from the agreements concluded by the EU
  - The UK may not become bound by international agreements entered into in its own capacity in fields of EU competence, unless authorised by the EU

# EU trade policy – Overview of components

- Unilateral/autonomous measures, including secondary legislation
- Bilateral and EU-only agreements  
(e.g. FTAs, other bilateral agreements, GPA)
- Multilateral agreements  
(WTO agreements: e.g. GATT, GATS, TRIPs, TFA)

# Unilateral/autonomous measures

- Tariff - General System of Preferences (including GSP+ and EBA)
- Checks at the external border
- Trade defence instruments
- Other secondary legislation
  - import/export regulation
  - conflict minerals
  - dual use
  - etc.

# International trade agreements (1/2) - Typology

- Preferential trade agreements (FTAs, Economic Partnership Agreements)
  - 40 agreements with 71 countries
  - Some FTAs are part of Association Agreements
- Other trade related agreements
  - Bilateral agreements referenced in FTAs: e.g. customs cooperation agreement
  - Other bilateral trade related agreements: wine, mutual recognition agreements (MRAs) on conformity assessment, veterinary, etc.
- Government Procurement Agreement (GPA)

# International trade agreements (2/2) - Effects

- Territorial application of EU trade agreements
  - Territory to which the Treaties apply
  - EU customs territory
- Goods
  - Tariff concessions
  - Quantitative commitments, e.g. tariff rate quotas (TRQs)
  - Rules of origin, cumulation
- Others: services, investment, public procurement, MRAs for conformity assessment, etc.
- Institutional aspects: no UK participation in bodies set up by agreements
- Disputes under bilateral mechanism

# World Trade Organisation (WTO) agreements

- The UK is a member of the WTO
- Commitments (schedules)
  - Status quo - common EU schedules
  - The UK intends to establish its own schedules
  - Apportionment of quantitative commitments: e.g. tariff rate quotas (TRQs), aggregate measure of support (AMS)
- Representation and coordination in the WTO:
  - Duty of sincere cooperation
- Disputes in the WTO
  - Offensive/defensive disputes
  - Complainant, defendant, third party
  - Ongoing/new disputes

# Preparedness

Preparedness for orderly handling of end of UK's EU membership includes:

- Raising public/stakeholders' awareness of need to anticipate and adjust (see notices on import/export licences for certain goods, customs)
- No change as regards EU trade agreements
- Apportionment of quantitative commitments in the WTO (TRQs, AMS)
- The UK establishes its own schedules, joins the GPA