



THE RAMPAL INSTITUTE CONFERENCE: BREXIT AND EPAS: EXPLORING THE IMPLICATIONS FOR THE TRADE OF COMMONWEALTH DEVELOPING COUNTRIES

NOTE ON POSSIBLE IMPACT ON ACP NAMA EXPORTS

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This brief note uses the WTO definition of NAMA, i.e. fish, minerals, chemicals, plastics, rubbers, raw hides, textiles, footwear, metals, machinery and transportation.

Similar to most OECD Members, the EU's applied industrial tariffs are relatively low, amounting to a simple average of 6.4% and a trade-weighted average of 2.3%. EU AVE on fish ranges between 4% (fats and oils) and 20% for crustaceans. There is a clear case of tariff escalation with live fish attracting a 5% tariff compared with processed fish (18%). ACP countries benefit from duty-free preferential access to the EU market either through the EPA or EBA. This preference margin has allowed the development of fish processing plants in Ghana, Kenya, Cote d'Ivoire, Madagascar, Mauritius, Senegal, Seychelles and Solomon Island.

In post-Brexit, questions remain with respect to the nature of a UK Fisheries Policy – tariff profile, what rules of origin will emerge, treatment of fish caught in the EEZ and trade contingency measures.

NON-TARIFF MEASURES

In order to gauge the possible impact on ACP exports, it is also important to canvass the range of NTMs that would define effective market access in a post-Brexit UK environment.

- a. With UK regaining full sovereignty re its external trade policies and seeking to negotiating its own FTAs, what will be the country's approach to rules of origin? Will the current EU product specific requirement approach be mirrored or an embrace of the US value-added approach? Note that any strong variance between EU and UK approaches to ROOs could result in ACP exporters to the UK face and additional 4-15% in compliance costs. Similarly, the UK's orientation to customs administration remains unknown along with EU-UK transshipment provisions affecting third parties' trade. Here again, the existence of two distinct customs administration regimes would increase ACP exporters' compliance costs and thereby further reduce their trade competitiveness.
- b. Standards: There are two types of TBTs, technical regulations that are mandatory and standards that are voluntary. Only 25% of EU standards are based on legislation with the remainder constituting private standards. The extent of private standards in the UK is even more significant. Brexit would entail that the UK

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no longer contributes to the development of EU-wide NTBs nor is subjected to them. Post-Brexit, at what level would UK standards be pitched and what would be that country's orientation in developing them? Any variance between EU and UK measures would also trigger increased compliance cost. Furthermore, any UK approach to establish MRAs would meet the generally limited ACP institutional/regulatory TBT capacity.

- c. Trade contingency measures: What will be the UK's approach to national safeguards and anti-dumping/countervailing measures? The CEPA provides for a 5-year exemption of CARIFORUM exports in applying the use of an EU multilateral safeguard, along with various options for treating import surge - introduction of TRQ, suspension of tariff liberalization and imposing MFN duties. What will be the UK approach and preferred threshold to trigger a safeguard investigation and will its OCTs benefit from preferential treatment, e.g. be excluded from market determination or product exclusion?
- d. Subsidies and Countervailing measures: The UK would need to establish and notify its new specific subsidies under the Agreement on Subsidies and Countervailing Measures product coverage, prohibitions and ceilings.
- e. The UK would need to establish its own public procurement regulations, most notably on thresholds, coverage, rulings and dispute settlement. Similarly, would the UK as an independent WTO Member seek to make GPA membership a condition of ACP countries' accession to the WTO.
- f. Competition Policy: Although a full EU Member State, the UK applied a conservative approach to the treatment of transnational effects of competition policy. In addition, the UK maintains a different approach to competition policy with voluntary approach to mergers in contrast to the ex-ante compulsory notification required by EU regime. Brexit would result in the UK competition law no longer conforming with that of the EU's system. The existence of two parallel systems of enforcement would end the one-stop shop principle for EU merger and anti-trust regulations yielding increased administrative costs for companies. The double investigation process would be of longer duration and render merger cases more difficult and raise uncertainty re prevailing market conditions. Will the UK as an independent WTO Member seek to make acceptance of the OECD Directive on competitive neutrality a requirement for WTO accession of the 6 ACP countries conditional to discipline state-owned enterprises?
- g. What will be the UK's approach to the DSB?
 - i. TRIPS - UK is home to a traditionally strong pharma industry with a vested interest in limiting the treatment of generic drugs. The UK has benefitted from considerable transfer of patent rents under TRIPS with the World Bank calculating that it ranks No.5 behind US, Germany, Japan and France in receipts from developing countries. In this context, will post-Brexit UK be aggressive in pursuing its national interests under TRIPS or a genuine development partner to ACP countries re facilitating TRIPS flexibilities on public health and technology transfer?