

12 Points on Brexit and the Problem of Behind-the-Border Issues

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Panel 1

1. Contemporary international trade is characterised by trade in components. More than 50% of goods cross borders at least twice before reaching final consumers. Companies operate in global value chains, and operations are increasingly mixing goods and services in the age of information technology. We speak of “servicification” of production and products.
2. Modern trade policy today thus is mainly concerned with regulatory issues. Except for agriculture, attention moved to non-tariff barriers ever since the GATT Kennedy Round in the 1960s. It culminated in the inclusion of services (GATS) and intellectual property (TRIPs) in the GATT Uruguay Round. Both pillars of the WTO focus on behind-the-border regulations and domestic law, no longer essentially dealing with border measures and customs.
3. Behind-the-border issues (BBI) address regulatory barriers inside of jurisdictions. Politically, they are highly sensitive to concerns of sovereignty and self-determination. Modern standards also entail problems of extraterritorial effects to the extent that they address production and process methods (PPMs). At the same time, removing such barriers is essential for cross border trade, in particular for SMEs which do not operate in vertically integrated value chains and private standards. Equally, combating climate change requires substantial harmonization in the field of energy supplies.
4. The WTO offers a robust and solid framework in addressing discriminatory domestic regulations limiting market access. It does not offer mutual recognition or harmonization itself. An exception is intellectual property, establishing global minimal standards, and SPS for food standards, in combination with binding WHO/FAO Codex Alimentarius standards, yet subject to more restrictive domestic rules. Regulation of services still is in its infant stage, mainly codifying domestic standards in members’ schedules of commitment. TISA may make some progress.
5. Behind-the-border issues are partly addressed in PTAs. These agreements deploy spill-over effect, benefiting non-members as the agreements set standards which are equally applied as domestic standards to non-members and thus are open to free-riding. An exception to this is mutual recognition which requires specific agreements (MRAs). CETA does not provide for mandatory regulatory cooperation, nor does TPP or RCEP, so far.
6. TTIP is the most important effort in addressing behind-the-border issues as it covers 30% of world trade and 50% of world GDP. The agreement seeks to introduce

enhanced regulatory cooperation between the EU and the US. TTIP regulations and standards will deploy global spill-over effects and path the way to subsequent formal global standards in international organizations, including the WTO, in the process of multilateralising PTAs.

7. The Trump Trade Policy and Brexit do not reflect these modern developments. They address the past world of tariff concessions and domestic production, perfectly suitable for bilateral agreements. Unlike TTIP, there is much less leeway to address behind-the-border issues and regulatory cooperation in bilateral agreements limited to two States due to spill-over and free-riding effects, in addition to enhanced concerns of national sovereignty of the US and UK Governments.
8. Upon leaving the EU, Britain will be able to maintain EU regulations and standards unilaterally and to adopt new rules unilaterally and which is called in Switzerland *Unilateral Compliance*. It may be able to negotiate MRAs where reciprocity is required for recognition and market access. Given the comparable size of the economies, EU regulations and standards are likely to prevail.
9. The UK upon Brexit may address behind-the-border issues in an agreement with the United States. Given the comparable size of the economies, US regulations and standards are likely to prevail. Additional variants may result from additional bilateral agreements concluded with other trading partners around the world, in particular India and China, depending on market size and bargaining power. These countries alike need to avoid proliferation of additional standards and will insist on their own rules. Others will refer to US or EU law. Canada, for example will have to align to EU and/or US standards in dealing with the UK. Switzerland will insist on EU standards, avoiding duplications and conflict in domestic law.
10. The UK, upon Brexit will in result be faced with different domestic standards to be applied to different trading partners, adding to costs of production and reducing competitiveness of exported products. Canada today faces similar problems in EU and US relations in CETA and NAFTA, respectively (protection of Geographical Indications).
11. The UK, upon Brexit, therefore may be interested in multilateral harmonization in respective international organizations, including the WTO. Brexit may reinforce multilateral trade negotiations once the Trump Trade Policy has shown ineffective and disappointing to those it promised to serve as it ignores the problem of behind-the-border issues and of modern trade.
12. Overall, Britain would best be served to continue to support TTIP and EU internal market harmonization, amounting to 50% of its exports. BBIs call for a multilateral approach. From the point of view of modern trade policy and the problem of behind-the-border issues, EU membership or a customs union with the EU clearly amounts to the most advantageous solution. The avenue of bilateral agreements will not be supportive in addressing these issues effectively to the benefit of the UK economy.
