

How international regulatory cooperation can ease a 'hard' Brexit

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*Many observers viewed Theresa May's speech on 17 January as a sign that the UK is heading for a so called 'hard Brexit' after leaving the EU. But what is the most likely outcome of the upcoming Brexit negotiations and how can the UK minimise any negative economic consequences? **Robert Basedow** argues that a 'hard' Brexit is unlikely to happen from a trade perspective, but suggests that a key priority should be to prevent non-tariff barriers developing between the EU and the UK through the use of international regulatory cooperation.*



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For many months, the spectre of a 'hard' Brexit has been haunting European and British political elites. The determination of the current British government to cut off its ties with the European Union (EU) seems to be as strong as the determination of European decision-makers to make the United Kingdom feel the pain of leaving the EU. The hard talk has triggered concerns over the reinstating of tariffs and other market access barriers between the EU and the United Kingdom as foreseen under the rules of the World Trade Organisation (WTO).

Such a 'hard' Brexit is thought to hurt the European and British economy and to increase unemployment. Yet, as I will argue, a 'hard' Brexit and return to basic WTO rules for EU-UK trade is unlikely to happen. Policy-makers should rather reflect about how to limit non-tariff barriers in the form of regulatory divergence after a Brexit. International Regulatory Cooperation (IRC) offers an array of helpful instruments to weather this challenge.

The WTO as a safety net for EU-UK trade after a 'hard' Brexit?

The scenario of a 'hard' Brexit stipulates that trade between the United Kingdom and the EU will in the future be governed by basic WTO rules and liberalisation commitments. In the 'hard' Brexit scenario, the United Kingdom will cut its political and legal ties with the EU and lose free and full access to the EU's single market. The British and EU

liberalisation commitments enshrined in their WTO schedules will determine the mutual openness of their markets. In the WTO, countries set their tariffs for trade in goods and market access commitments for trade in services in national schedules. Any bilateral trade between WTO members in principle should take place under the conditions specified in these national schedules. Governing EU-UK trade on the basis of basic WTO rules and schedules would indeed significantly deteriorate trading conditions and harm the British and European economies.

Yet, one should keep in mind that the bulk of world trade does not take place under basic WTO rules and liberalisation commitments enshrined in national schedules. More than half of world trade is governed by more advantageous rules, tariffs and market access commitments, which are set out in hundreds of preferential trade agreements (PTAs). PTAs allow countries to lower tariffs for goods and to enhance market access for service providers on a discriminatory basis without the requirement to extend such preferential trading conditions to other WTO members. Due to the limited progress in multilateral trade negotiations in the WTO, countries have entered into hundreds of PTAs during the last decades.

Why treat EU-UK trade worse than EU-Ukraine trade?

The EU has been highly active in negotiating PTAs. It has concluded some 35 PTAs with countries as diverse as Algeria, Chile, Egypt, Mexico, South Africa, South Korea, Papua New Guinea, Singapore and Ukraine. And more PTAs are in the making. The EU's trade with these countries does not take place under the conditions specified in its WTO schedule, but indeed benefits from lower tariffs for goods and better market access conditions for service providers.

The assumption that after a 'hard' Brexit EU-UK trade will take place under basic WTO rules and schedules seems unrealistic. It implies that EU-UK trade would be subject to higher tariffs and more market access restrictions than trade between the EU and Ukraine or Mexico. It would be difficult to communicate why a former core Member State of the EU should have more limited access to the single market than countries in other world regions.

The EU would look like it was deliberately punishing the United Kingdom for its decision to leave. The EU would thereby degrade itself. It would send the political message that EU membership is essentially about economic benefits, which are withdrawn once a country leaves. Yet, for the forefathers of the EU, trade was never an end in itself. Trade is a tool to promote political integration, peace, prosperity and individual freedom as part of a European 'democracy'. The EU's leadership should be careful when playing the economic card. It may pervert the spirit and objectives of the EU.

Non-tariff barriers are the real challenge in a post-Brexit world

This discussion suggests that the British and EU leadership will – once the time for Brexit talks has come – aim for a (provisional) PTA so as not to excessively disrupt their trade relations. While this may sound comforting, it is commonplace nowadays that tariffs and outright market access restrictions play only a marginal role in trade relations among OECD economies. While tariffs among OECD economies used to be as high as 40% after World War II, they average 3% today. In the future, the key barriers to trade between the EU and the United Kingdom will stem from regulatory divergence.

Specifying products and services to diverging regulatory requirements and demonstrating compliance to national regulators often imposes very substantial costs on businesses and consumers. As the United Kingdom leaves the European legal order to arguably reclaim its sovereignty over rule-making, regulatory divergence is likely to increase and to impede trade. Such regulatory divergence may be necessary where regulators pursue different objectives, but is unnecessary and harmful where regulators pursue similar objectives but fail to communicate and to cooperate.

International Regulatory Cooperation as a solution

A traditional swiftly negotiated EU-UK PTA cannot prevent unnecessary regulatory divergence and its negative

impact on trade. International Regulatory Cooperation (IRC), on the other hand, offers an array of promising tools to limit regulatory divergence to areas where British and EU regulators indeed pursue different public policy objectives. The [OECD identifies 11 IRC instruments](#) ranging from informal information sharing to supranational rule-making. A smart sector-specific combination of these IRC instruments may significantly ease the negative economic fallout of Brexit for business, consumers and employees.

The British government may draw on several ‘unilateral’ IRC instruments. The United Kingdom may unilaterally recognise and adopt EU legislation and step up its recognition of international regulation and standards elaborated by international organisations such as the ISO or UNECE to avoid regulatory divergence vis-à-vis the EU. In a similar vein, a recent [OECD study](#) shows that Good Regulatory Practices such as impact assessments and ex post evaluations of regulations and laws may enable British regulators to systemically take EU legislation into account when developing and implementing measures and thereby to limit regulatory divergence and trade barriers.

‘Unilateral’ IRC is a first important step to limiting regulatory divergence. It has, however, limitations in terms of effectiveness. British and EU regulators have to proactively work together to limit certain types of regulatory divergence and trade barriers. Limiting costs stemming from double certification and market admission procedures in the two jurisdictions may, for instance, require so-called mutual recognition of regulations and regulatory decisions. In other cases, transnational networks for information sharing, peer learning and joint rule-development may be necessary to limit regulatory divergence. Each sector and regulatory challenge needs careful consideration as to whether and how best to organise IRC.

Ultimately, a ‘hard’ Brexit is unlikely to happen from a trade perspective. It would mean treating EU-UK trade worse than most other trade relations. A PTA – perhaps in a provisional form – is the most likely outcome of the Brexit talks. Yet, this insight does not offer comfort with regard to non-tariff barriers. As the United Kingdom will leave the EU’s legal system, non-tariff barriers may become a significant burden. Policy-makers need to study the various alternative IRC instruments to ensure regulatory homogeneity and a smooth Brexit.

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Note: This article gives the views of the author, and not the position of EUROPP – European Politics and Policy, nor of the London School of Economics.

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