Towards a UK Trade Policy Post-Brexit: The Beginning of a Complex Journey

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Abstract

Trade has had a stunning return to the spotlight since the results of the Brexit referendum were announced. While it is much too early to speak of failure or success of the UK's trade policy, we allege that the current debate shows a lack of understanding of modern international trade law and policy. This in turn leads to a lack of appreciation of the tasks ahead for the UK. The limited aim of this short article is to point out the scope of some of the key challenges and the complexities that the UK will face on the road towards a post-Brexit trade policy. We consider a proper appreciation of these complexities to be vital for a transparent, fair and inclusive formulation of the UK's trade policies, which will determine not only the UK's economic fate, but also the UK's laws and many of its domestic policies for decades to come.

Introduction

Trade has had a stunning return to the spotlight since the results of the Brexit referendum were announced. Hardly a day goes by without front-page news on how the United Kingdom (UK) is succeeding or failing in trade politics. While some reports are confident that the UK will quickly conclude numerous trade agreements, which will put it in a more advantageous trade position than EU Member States,[1] others state that the UK is unlikely to reach any trade agreement in a reasonable time frame and recommend focusing on reaching a favourable deal with the EU.[2] The uncertainty is compounded by the perception that the government's goals for the upcoming negotiations with the EU

[1] See e.g. http://www.telegraph.co.uk/business/2016/09/18/uk-can-strike-quick-deal-with-usa-says-former-trade-minister-fra/; https://www.thesun.co.uk/news/1460237/david-davis-tells-brussels-where-to-go-as-uk-begins-trade-negotiations-with-non-eu-countries/; http://www.express.co.uk/news/politics/690191/Britain-ten-Brexit-trade-deals-lined-up-economic-powerhouses

[2] Many reports in the Financial Times and the Guardian point to looming difficulties.

are somewhat opaque. "Red lines" seem to dominate the picture in that regard: the UK wants full control over immigration and law-making and will not submit to control of the Court of Justice of the EU (CJEU) or pay into the EU's budget.[3] On the contrary, the government's rhetoric with respect to free trade agreements is entirely positive, declaring that the UK aims to "become a world leader in free trade"[4] leading the charge for "a fair and rule-based system for global trade and investment".[5]

While it is much too early to speak of failure or success of the UK's trade policy,[6] we allege that the current debate shows a lack of understanding of modern international trade law and policy. This in turn leads to a lack of appreciation of the tasks ahead for the UK. A short article can hardly pretend to lay out a detailed list of such tasks, let alone to provide solutions for many of the related issues. This is not our goal. We merely intend to point out the scope of some of the key challenges and the complexities that the UK will face on the road towards a post-Brexit trade policy. We consider a proper appreciation of these complexities to be vital for a transparent, fair and inclusive formulation of the UK's trade policies, which will determine not only the UK's economic fate, but also the UK's laws and many of its domestic policies for decades to come.

A. Modern International Trade Law

The first step in this journey is to define the scope of the undertaking: what is encompassed by "international trade law". Until the 1960s, the scope of trade agreements was comparatively narrow.[7] The first major multilateral trade agreement, the 1947 General Agreement on Tariffs and Trade (GATT), covers trade in goods only.

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[3] http://www.bloomberg.com/news/articles/2016-10-05/u-k-has-four-red-lines-in-eu-brexit-talks-davis-aide-says.

[4] Liam Fox's free trade speech delivered on 29 September 2016 https://www.gov.uk/government/speeches/liam-foxs-free-trade-speech.

[5] Liam Fox speaking at the launch of the World Trade Report 2016 on 27 September 2016 https://www.gov.uk/government/speeches/launch-of-the-world-trade-report-2016-inclusive-trade-and-smes.

[6] The UK has allegedly not even taken the decision to leave the EU according to its constitutional requirements. See Hestermeyer, *How Brexit Will Happen: A Brief Primer on European Union Law and Constitutional Law Questions Raised by Brexit*, 33 Journal of Int'l Arbitration 429 (2016).

[7] For the history of the GATT, in particular the US reciprocal trade agreements preceeding it, see Jackson, *History of the General Agreement on Tariffs and Trade*, in Wolfrum, Stoll & Hestermeyer (eds), *WTO Trade in Goods*, Brill 2011, 1. For a discussion of earlier treaties see Paulus, *Treaties of Friendship, Commerce and Navigation*, in Wolfrum (ed.), *MPEPIL*, OUP 2011.

One of its goals was to channel trade barriers into tariffs and negotiate these tariffs down in successive trade negotiation rounds. The tariff commitments of WTO Contracting Parties differ from country to country and are contained in so-called "schedules". Besides obligations pertaining to these schedules the GATT contains obligations of non-discrimination between imported and domestic products (Art. III), between imported products from different GATT Contracting Parties (Art. I), a ban on quantitative restrictions (Art. XI), freedom of transit (Art. V), rules on dumping and subsidies (Artt. VI, XVI), exceptions to the obligations (Artt. XX, XXI), a mechanism for settling disputes (Artt. XXII, XXIII), and a provision on signing other free trade agreements (Art. XXIV). Under the GATT regime tariffs were reduced significantly.[8]

However, as tariff walls were dismantled, other impediments to trade started to be tackled in trade talks as well. Some of these are rather technical and rarely capture the attention of the public, such as matters of customs valuation. Most of them, however, involve sensitive and complex domestic policies, for example, discriminatory practices in government procurement, or different standards for the protection of consumers, intellectual property, the environment and public health. It was not just the breadth and variety of these so-called non-tariff barriers to trade that broadened the scope of international trade agreements, but also the inclusion of a liberalisation agenda for trade in services. The establishment in 1995 of the World Trade Organization (WTO) with the additional agreements on trade in services (GATS), intellectual property standards (TRIPS), technical regulations (TBT) and sanitary measures (SPS) was the first clear sign of the widening scope of trade law, but by no means the last. Since then many regional trade agreements have followed a similar approach, although of course, not all such agreements cover all of these issues and not all of these issues are subject to rules of the same legal strength or depth. However, it is fair to say that many areas of law are on the table when trade agreements are negotiated.

To illustrate the scope of modern international trade law it is worthwhile to look at a recently negotiated trade agreement, such as the Trans-Pacific Partnership (TPP) negotiated between the United States and 11 of its partners, including Australia, Mexico, Vietnam and Singapore, but not the European Union. The TPP comprises 30 chapters as well as annexes and related instruments. It is not limited to traditional trade in goods and trade in services, but includes – for example – chapters on investment, the

[8] See WTO, Understanding the WTO, The GATT years: from Havana to Marrakesh, available at https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm.

temporary entry for business personnel, government procurement, competition policy, intellectual property, labour, environment, regulatory coherence and transparency & anti-corruption.[9] At times, the provisions in the agreement are vague and aspirational, but many of them are concrete and require parties to pass very specific national laws. Thus, just to name two seemingly exotic examples, under the TPP states have to grand trademarks for sounds (Art. 18.18) and protect biologics, a category of drugs, e.g. through test data exclusivity for at least eight years (Art. 18.52 para. 1 lit. a).

Even though trade negotiators will and do use other agreements as references, trade agreements differ substantially according to the interests of the negotiating states. Several states, for example, are hesitant to agree on detailed obligations with respect to the movement of natural persons, while others, e.g. China, strive to include such obligations in some of their trade deals. Thus, under the China-Australia FTA, which entered into force on 20 December 2015, Australia provides guaranteed access to Chinese citizens for e.g. intra-corporate transferees and independent executives for up to four years, installers and servicers for up to 3 months, business visitors for up to 90 days or 6 months for service sellers and for contractual service suppliers for up to four years including guaranteed access for up to a combined total of 1800 in four occupations: Chinese chefs, WuShu martial arts coaches, Traditional Chinese Medicine practitioners and Mandarin language tutors subject to standard immigration requirements.[10]

These examples show that modern trade agreements go far beyond mere tariff arrangements. They encompass a wide variety of legal areas ranging from services regulation to intellectual property and immigration and impose both substantive and procedural requirements. Crucially, as legally binding agreements they all limit a state's sovereign choices. In this regard while they may differ from EU law in scope and enforceability,[11] they do not in substance: the portrayal of EU law as limiting sovereignty and trade law as merely guaranteeing free trade is a fallacy. Trade agreements much like

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[9] The text of the TPP is available at https://ustr.gov/tpp/#text.

[10] Australian Government, *China-Australia Free Trade Agreement, Fact sheet: Movemen tof natural persons*, http://dfat.gov.au/trade/agreements/chafta/fact-sheets/Pages/fact-sheet-movement-of-natural-persons.aspx.

[11] The latter is due to the legal doctrines of direct effect and primacy of EU law developed in the 1960s, which allow individuals to directly rely on EU law in national courts and make EU law prevail over national law in cases of conflict. See ECJ Case 26/62 *Van Gent en Loos*, ECLI:EU:C:1963:1 and Case 6/64 *Costa v. ENEL*, ECLI:EU:C:1964:66.

EU law contain commitments by a state to apply certain rules and refrain from passing others. The fewer barriers to trade a state wants to encounter, the more obligations it will have to include in its trade agreements. The real question that we need to answer thus becomes: to what extent, in which areas and how are we willing to limit our sovereign rule-making power to enable freer trade?

B. How Will the Choice Be Made?

Before delving into the complexity of the choices that the UK has to make on its way towards a consistent trade policy (vis-à-vis the EU and the rest of the world), it may be useful to consider to what extent the British electorate has already made the relevant choices in the Brexit referendum. There is broad agreement on all sides – from Prime Minister Teresa May[12] to the president of the European Parliament Martin Schulz,[13] from the President of the European Commission Jean-Claude Juncker[14] to the leader of the Labour Party Jeremy Corbyn[15] – that this vote of the people must be respected. There is, however, far less agreement on what precisely this vote means.

University of Oxford's Richard Ekins argues that the voters expressed discontent with a loss of control over who can enter and remain within the UK and with EU law-making in general. Politicians accordingly should restore these powers to the UK and should not opt for permanent EEA membership.[16] King's College London's Vernon Bogdanor argues more specifically that the people voted to leave the EU for three reasons: to have control over EU immigration, to reject jurisdiction of the European Court of Justice and to not contribute to the EU budget and that any arrangement must respect these three

[12] Theresa May's keynote speech at Tory conference in full, Independent, 5 October 2016, available at http://www.independent.co.uk/news/uk/politics/theresa-may-speech-tory-conference-2016-in-full-transcript-a7346171.html.

[13] Most lately in 'The EU and the UK – parting ways but working together' speech at the European Institute of the London School of Economics, 23 September 2016, available at http://www.europarl.europa.eu/the-president/en/press-room/the-eu-and-the-uk-–-parting-ways-but-working-together-speech-at-the-european-institute-of-the-london-school-of-economics.

[14] Speech by President Jean-Claude Juncker to the plenary session of the European Parliament on the result of the referendum in the United Kingdom, 28 June 2016, available at http://europa.eu/rapid/press-release_SPEECH-16-2353_en.htm.

[15] Corbyn says must respect Brexit vote result, Reuters, 21 July 2016, available at http://uk.reuters.com/article/uk-britain-eu-corbyn-idUKKCN101326.

[16] See his presentation at the roundtable Taking Brexit Seriously, https://www.youtube.com/watch?v=MGgGVu0urVI.

wishes.[17] Both scholars thus find themselves largely in agreement with the four roughly similar "red lines" for negotiations with the EU that the British government has deduced from the referendum: no budget payments, control over immigration, law-making and freedom from jurisdiction of European judges.[18]

However, such a broad interpretation of the referendum's mandate cannot withstand scrutiny. The European Referendum Act 2015 asked the following question: "Should the United Kingdom remain a member of the European Union or leave the European Union?" permitting voters to answer with "Remain a member of the European Union" or "Leave the European Union".[19] The literal mandate of the referendum is thus limited to leaving the EU. It is certainly true that voters had reasons to opt for "leave" that went beyond mere membership of the Union: surveys show that many voted out of a desire for national control over immigration and laws.[20] Others hoped for better NHS funding, feared Turkey's accession to the EU, opposed free trade or desired freer trade. Some rejected the political aspirations of the EU and wanted the UK to be part of a Union limited to economic matters. Still others wished to express their frustration with political elites. While politicians will indubitably try to tap into these various motives, it is unclear by which methodology the referendum's mandate can be interpreted to include several or indeed any of them. The only question put to voters was on EU membership. In fact, we can only determine the voters' underlying motives through surveys. Arguing that they are part of the referendum's mandate would accordingly go beyond respecting the expression of the will of the voters in an act of direct democracy and would elevate surveys to the same status as the referendum.

But a broad interpretation of the referendum's mandate is not just methodologically fragile; it would also entail severe consequences given the nature of modern trade agreements described above. All trade agreements limit sovereign law-making. Several trade agreements provide for some commitments in the area of free movement. To assume that the UK electorate has rejected any type of limitation on the law-making powers of Parliament would force the UK to abstain from free trade agreements and – in

[17] See his presentation at the roundtable Taking Brexit Seriously, https://www.youtube.com/watch?v=MGgGVu0urVI.

[18] http://www.bloomberg.com/news/articles/2016-10-05/u-k-has-four-red-lines-in-eu-brexit-talks-davis-aide-says.

[19] Sec. 1 European Union Referendum Act 2015, c. 36.

[20] See e.g. in this regard Lord Ashcroft Polls 'How the United Kingdom voted on Thrusday ... and why', available at http://lordashcroftpolls.com/2016/06/how-the-united-kingdom-voted-and-why/.

the final consequence – to withdraw from the WTO. Nobody has suggested such a drastic step. It is, accordingly, time for a more nuanced language and for admitting that, while the referendum does contain a clear mandate to leave the EU, the mandate does not go beyond this.

C. The UK's Future Trade Policy

In (re)constituting its own trade policy, the British government will be confronted by several challenges, big and small, short-term and long-term. The change brings about opportunities, too. Identifying both challenges and opportunities is the first tall order for the British government. We offer a flavour of a few of them, starting with the future UK-EU relations, then discussing the relations between the UK and the rest of the world and finally listing a few key policy choices.

I. UK – EU Relations

With regard to a future UK-EU trade agreement, the discussion so far has been dominated by identifying the key features of various 'options' based on existing agreements concluded by the EU, for example, with Norway, Switzerland, Turkey and Canada. An example of this kind of exercise is provided in the table reproduced below, which was compiled by HSBC (October 2016) (even though we would disagree with some of its details).[21] The term 'options' should not be understood as fixed model agreements a country can choose between. Only the "Norway" option – EEA Membership – (and WTO membership as the existing or default option if there is no trade agreement between the EU and the UK) come with largely fixed rights and obligations that do not require negotiation of every single detail. All other 'options' are in reality individually negotiated deals that can serve as a model only. Unsurprisingly, all of these models have advantages and disadvantages. Any overall evaluation – in fact even the evaluation of different elements of a deal – depends on one's preference for the kind of exit from the EU the UK should opt for.

[21] It is, for example, erroneous to refer to the Swiss deal – an individual deal negotiated and in force for Switzerland – as the EFTA option. In fact, all other EFTA members are members of the EEA. The inclusion of the Continental Partnership is misleading, as it is a mere proposal for restructuring relations and it is unclear to what extent it could become reality. Also, the content of FTAs can vary radically.

		Soft exit				Hard exit	
	Full EU membership	1 EEA (Norway)	2 EFTA (Switzerland)	3 Continental Partnership (Bruegel Proposal)	4 Customs Union (Turkey)	5 FTA (Canada)	6 WTO Rules
Access to single market?	Yes	Yes	Partial	Yes, with possible labour market limits	No	No	No
Duty free trade in goods	Yes	Yes	Yes	Likely	Yes	Yes	No
Market access for services	Yes	Yes	Partial	Likely	No	Partial	No
Free to negotiate bilateral trade agreements with non-EU trade countries?	No	Yes	Yes	Probably not	No	Yes	Yes
Must adhere to EU social and employment rules	Yes	Yes	No	Likely partial	No	No	No
Makes EU budget contributions	Yes	Yes, but reduced	Yes, but reduced	Yes, but probably reduced	No	No	No
Part of Common Agricultural Policy	Yes	No	No	No	No	No	No
Ability to restrict inward EU migration	No	No	No	Yes	Yes	Yes	Yes

Source: HSBC

Aside from the necessary approximation of the key features of each option, what clearly transpires from such a table is that, at least in principle, many things are possible. For example, while the Norway/EEA option includes participation in the EU single market and compliance with the four freedoms (including the free movement of persons) and the *acquis communautaire* with regard to social policy, consumer protection, environmental protection and company law, it does not provide for participation in the common commercial policy, traditional investment protection guarantees, and Court of Justice of the European Union (instead setting up its own EFTA-Court). Similarly, while Canada's FTA does not include participation in the single market, it does provide for (albeit limited) access to the single market for goods, services and key company personnel, traditional investment protection guarantees and binding dispute settlement systems. In fact, some of the elements of a deal that are often presented as black or white in the public are in reality complex legal constructs.[22]

There are, however, some constraints. In terms of legal constraints, any future post-Brexit trade agreement between the UK and the EU will need to take into account the

[22] Free movement of persons for example is not granted without limitations even under current EU law. See Directive 2004/38.

law of the WTO, as both the UK and the EU remain members of the WTO. In particular, WTO Members are bound by the MFN principle prohibiting any discrimination between WTO Members. However, as long as the future bilateral agreement meets the conditions specified in WTO law (specifically, Art. XXIV GATT and Art. V GATS), the agreement will be exempted from the general MFN obligation.

Furthermore, the EU (and possibly the UK as well) will also need to consider its MFN obligations found in the various bilateral trade agreements that it has concluded with third countries. This is particularly so as the most recent FTAs concluded by the EU (for example, with Korea, Vietnam and Canada) provide for much narrower MFN exceptions, applicable to deeper forms of regional integration, only. For example, with regard to trade in services and investment in the EU-Canada Comprehensive Economic and Trade Agreement (CETA), the EU right to accord differential treatment to a country pursuant to a future agreement is limited only to any agreement, which "creates an internal market in services and investment", "grants the right of establishment" or "requires the approximation of legislation in one or more economic sectors".[23]

Finally, some options are logically linked: thus, becoming member of a customs union with a common outer tariff necessarily implies refraining from concluding individual agreements committing the state to further reduce tariffs.

Other constraints are of a political nature. For example, the EU will have to bear in mind the political effects of a deal with the UK in its Member States. Thus, the EU will not be able to offer a deal to the UK that could empower eurosceptics in other Member States and undermine the stability of the Union. This is a constraint that is far more threatening than any immediate resentment felt by the EU due to Brexit. They also explain repeated statements by Guy Verhofstadt, the European Parliament's chief Brexit negotiator that any new deal between the EU and the UK could not infringe on the four fundamental freedoms that underpin the European Union.

Within this context, it will be the British government's goal to reach a trade deal with the EU that, on the one hand, manages to mirror as much as possible the current benefits of

[23] See EU Schedule in Annex II of CETA.

the internal market (for example, just to name a few, no tariffs on the import/export of certain products, like cars and car parts, and the right of British-based financial institutions to provide a wide spectrum of services pursuant to their British authorizations) while on the other respecting the legal and political constraints, which each side has to take into account.

II. The UK and the Wider World

The complexities do not diminish when it comes to the British trade policy vis-à-vis the rest of the world. The first issue in this regard is the UK's membership in the World Trade Organization. The level of trade liberalisation granted by each WTO Member and captured in each Member's schedule of commitments constitutes a baseline for negotiating bilateral or regional free trade agreements with other states. While there can be little debate about the UK being a member of the WTO, there is uncertainty with regard to how the UK and the EU will be able to rescind their union with regard to the currently common set of (EU) schedules. The least painful approach to separating the UK schedule from the EU one would consist in maintaining the same commitments where possible (with regard to ad valorem tariffs and commitment in services). Complications arise with respect to separating commitments that are quantitative in nature (in particular the so-called tariff-rate quotas), which despite guiding legal rules in the GATT, are likely to require negotiations with other Members.[24]

Another issue is the fate of all trade agreements concluded and signed by the EU, often jointly with the UK (so called 'mixed agreements'),[25] and third countries (such as Mexico, South Africa, and Korea). It is not clear whether these FTAs will continue to apply both between the EU27 and the third country as well as between the UK and the third country, subject to the necessary adjustment, particularly in terms of each contracting party's schedule of commitments. Such a continuation might be unlikely with respect to EU-only agreements, but less so with respect to mixed agreements. Alternatively, Brexit

[24] See Lorand Bartels "The UK's Status in the WTO after Brexit" (Sept 2016) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2841747.

[25] In the EU legal system, 'mixed agreements' are those international agreements that need to be concluded by the EU and its Member States acting jointly, due to the fact that EU competences do not cover the entire scope of the agreement.

may be considered to represent a fundamental change of circumstances under international law and allow states to terminate or modify the agreement accordingly.[26]

Finally none of these various puzzle pieces can be regarded in isolation. First, there is an issue of sequencing. It will be difficult for the UK to reach (and even begin negotiating) a deal with a third country before and until its trade relations with the EU and in the WTO are clarified. Secondly, trade agreements are interdependent: if the UK agrees to adopt specific policies in one, it has limited its negotiation options for all other agreements.

III. Policy Choices

In outlining its future trade policy, the UK will be faced with difficult policy choices that require democratic debate and discussion. Negotiating an issue in a trade agreement – whether it is intellectual property law or agricultural subsidies – requires an internal policy decision which may be complex to achieve: is a state convinced that geographical indications are a well-founded concept of intellectual property or that trademarks should override them? Are agricultural subsidies required to maintain national farming or a distortion of trade? Out of the myriad issues that can become relevant in trade negotiations we would like to highlight here four that are today particularly topical and controversial: public services, regulatory cooperation, investor-State dispute settlement and non-trade values.

Public services: Despite the strong interest by certain service sectors to achieve greater access to foreign markets both in terms of cross-border provision of services as well as foreign direct investment, there are equally strong feelings in the UK (and elsewhere) against privatising certain public services particularly if at the hands of foreign multinationals. The European Commission has struggled, especially in the context of its trade negotiations with the United States (the so called Transatlantic Trade and Investment Partnership or TTIP), to show that liberalisation of trade in services and investment protection does not equate with privatisation of public services. While this is in principle correct, a lot will depend on the legal details of the trade agreement

[26] See Article 62 of the 1969 Vienna Convention on the Law of Treaties (requiring that (a) the circumstances existing at the time of the conclusion of the treaty were indeed objectively essential to the obligations of treaty and (b) the instance wherein the change of circumstances has had a radical effect on the obligations of the treaty).

including the way in which the various disciplines covering trade in services and foreign investment will be interpreted by the relevant dispute settlement system.

Regulatory cooperation: In terms of obtaining greater access to foreign markets for both goods and services, regulatory cooperation has become a necessary ingredient of a modern trade negotiation. Multiple and different technical regulations and processes applicable at the national level may add unnecessary costs to the production and sale of products as well as the provision of services. While some disciplines already exist within the context of the WTO, recent regional trade negotiations have tried to go further in order to strengthen the regulatory cooperation aimed at eliminating the unnecessary costs of regulation, without however lowering the protection for people's health, the well-being of consumers, and the environment. The challenge here is to identify those instruments that are able to achieve an acceptable balance between the two aims. In the area of services, and of particular interest for the UK, in the area of financial services, this kind of cooperation appears to be as indispensible (in terms of increasing access to foreign markets) as it is difficult to achieve (the systemic importance of financial markets makes this one of the most sensitive areas for (national) regulation).[27]

Investor-State Dispute Settlement (ISDS): As the traditional mechanism, based heavily on commercial arbitration, found in many existing investment and trade agreements to deal with investment disputes has recently been subject to strong criticism, the pressure for reform will likely spread in the near future. In its most recent FTAs (eg., with Canada and Vietnam), the EU has already put forward a new investment court system (ICS) made up by a permanent Tribunal and Appeal mechanism composed by individuals appointed by the contracting parties and subject to strict ethical rules aimed at ensuring independence and impartiality. There are also early suggestions (by the EU and the United Nations) to develop a multilateral investment court that could in the future replace current ISDS systems in existing and future investment and trade agreements, and potentially strengthen the consistency and efficiency of an important and controversial feature of modern trade policy.

[27] Beyond the regional setting, the UK could play a pivotal role in the plurilateral negotiations currently being lead by 23 WTO Members on the Trade in Services Agreement (TiSA).

Non-trade values: As the European integration process has certainly shown, the greater the economic integration one is pursuing, the greater the need to address a host of non-trade issues. A large part of the debate in international economic law and policy in the last twenty years has focused on ensuring that international agreements aimed at liberalising trade and encouraging foreign investment do not inappropriately restrain the ability of states to regulate in the public interest (for example, public health, consumer protection, labour rights, public morals, the environment). However, more recently there have been efforts to make sure that these agreements, in addition to guarantee the so called 'right to regulate', are drafted in ways to more directly contribute to the promotion of a wider set of values and goals beyond trade liberalisation and investment protection. For example, several countries (including Canada and the EU) now expressly acknowledge their commitment to (i) sustainable development as a core objective of their FTAs and (ii) foster the contribution of trade and investment to such objective. CETA, for example, includes commitments for the protection of workers' rights and the environment. There is scope, however, for increasing even more the benefits that trade agreements can have on a wider set of interests. For example, traditional investment protection disciplines could be accompanied by new investment regulation ones that focus, for example, on disciplining anti-competitive behaviour, corporate governance, taxation and State contracts.[28]

Conclusion

The task ahead for the UK on its road towards its own trade policy is a daunting one. Many complex and interrelated policy decisions will have to be taken. A careful and thorough approach has to rely on consultations with all stakeholders, civil society – and of course involve Parliament. The decisions taken in the next few years will have a deep and lasting impact on the UK for decades to come.

[28] Peter Muchlinski *Multinational Enterprises and the Law* (OUP, 2007).