

INTERNATIONAL TRADE

amicus

An e-newsletter from
Lakshmikumaran & Sridharan, India

July 2016 / Issue 62

Contents

Article

Impact of Brexit on trade 2

Trade Remedy News

Trade remedy measures by India 4

Trade remedy measures against India 5

WTO News 6

Ratio Decidendi 7



July
2016

Article

Impact of Brexit on trade

By **Edouard Descotis**

On 23 June 2016, the United Kingdom (UK) decided by referendum to leave the European Union (EU). Once the UK officially requests the initiation of the negotiations (via the so-called Article 50 of the Treaty on the European Union that lays down the provisions governing the withdrawal process), the EU and the UK will start negotiating the terms of withdrawal.

The EU has an exclusive competence for the customs union and for the common commercial policy. Once the UK has officially pulled out of the EU, it will have to establish its own tariffs and trade relations with the EU and third countries such as India.

UK's withdrawal from the EU (also called Brexit) is expected to face complex and lengthy negotiations given that it is the very first time an EU Member State has decided to leave. Even though the outcome of the withdrawal procedure is unknown, several options are available to ensure sustainable trade relationship between the EU and the UK.

What will be the EU-UK trade relationship after the Brexit?

Over the years, the EU has negotiated preferential trade arrangements with neighboring countries such as Norway, Switzerland or Turkey. The EU and the UK would likely agree upon one of the following options in order to mitigate the impact of the Brexit on both the UK and EU economies:

- As a first option, the UK could join the

European Economic Area which provides for the free movement of persons, goods, services and capital within the EEA with notable exceptions on agriculture and fisheries. The EEA comprises Iceland, Norway and Liechtenstein as well as the 28 Member States of the EU. With this option, the UK would remain part of the European Single Market and goods would continue to move freely. The option would also allow the UK to set its own external tariffs vis-à-vis the rest of the world given that the EEA is not a customs union. However, being part of the EEA implies the implementation of a major portion of EU legislation without being involved in the decision-making process. EEA members also have to contribute significantly to the EU budget.

- The second option available to the UK would be to rejoin the *European Free Trade Association* (EFTA). The EFTA provides for tariff-free trade in all non-agricultural goods between its Members (Iceland, Liechtenstein, Norway and Switzerland). The EFTA is not a customs union and its members set their own external tariffs. The EFTA has agreed upon 27 free trade agreements (FTA) (covering 38 countries such as Canada, South Korea or Turkey) and FTA negotiations are ongoing with India. It is important to keep in mind that there is no direct trade agreement between

the EFTA and the EU. Rather, Iceland, Norway and Liechtenstein have opted for the EEA while the trade relations between Switzerland and the EU are governed by several bilateral agreements covering trade in goods, trade in services and free movement of persons.

- The third option would be for the UK to enter into a comprehensive *free-trade agreement* with the EU. The scope of the FTA would depend upon the good will of the UK and the EU and may range from a mere FTA covering only trade in goods to a comprehensive agreement encompassing other areas such as trade in services, investment, research, etc. The EU already has a comprehensive FTA with South Korea and has concluded one with Canada and Singapore.
- The last option would be for the EU and the UK to negotiate a *customs union* (like the customs union between the EU and Turkey) where goods would move freely without facing tariffs. The EU and the UK will have to set a common external tariff to be applied on all goods entering the customs union, regardless of the port of entry. As an option, specific goods such as agricultural products could be excluded from the customs union (as it is the case in the EU-Turkey customs union).

In case the EU and the UK do not agree on one of the above options before the UK pulls out of the EU (2 years after the beginning of the negotiations), the relationship between the EU and the UK are likely to be governed by

the rules laid down in the WTO Agreements. Goods imported from the UK into the EU would therefore be subject to the so-called Most-Favored-Nation tariffs levied by the EU.

Will Brexit impact EU free trade agreements?

Over the years, the EU has negotiated various FTAs with third countries allowing for preferential market access. The UK withdrawal of the EU is likely to have a negative impact on them. Indeed, most of the FTAs have specific provisions on the territorial application and those agreements only apply to territories where EU law is applicable. Following the Brexit, FTA partners may wish to renegotiate the trade concessions given the loss of market access in the UK.

In addition, the UK withdrawal is not only expected to have consequences on the ongoing Transatlantic Trade and Investment Partnership (TTIP) negotiations between the EU and the United States but also on the FTA negotiations with other countries such as India. The Brexit will impact the size of the EU market and the trade flows thus modifying the concessions already agreed upon.

Will the UK remain a WTO Member?

The UK joined the WTO in 1995 under the terms of membership negotiated by the EU. By leaving the EU, one could imagine that the UK would have to renegotiate its own terms of membership with the current 161 WTO Members.

Depending on the choice made by the EU and the UK in the withdrawal negotiations,

some of the elements of the UK's WTO membership may need to be renegotiated. For instance, in case the UK decides to set up an external tariff different than the EU tariff, it may have to renegotiate its schedule of concessions and MFN tariff lines. However, given the absence of legal provisions dealing with this unique situation, it is difficult to predict what would happen at the WTO level.

Conclusion

The consequences of Brexit are still unknown and will highly depend upon the outcome of the withdrawal negotiations between the EU

and the UK. The negotiations are not expected to start before the UK officially activates the so-called Article 50 that triggers the 2-year negotiation period. The degree of uncertainty generated by the referendum is expected to impact EU relations with the UK over the next years and companies engaged in trading with the EU or the UK will need to closely monitor the negotiations to find out how the Brexit will impact their business.

[The author is a Principal Associate, International Trade Practice, Lakshmikumaran & Sridharan, Delhi]

Trade Remedy News

Trade remedy measures by India

Product	Country	Notification No.	Date of Notification	Remarks
Colour coated/pre-painted flat products of alloy or non-alloy steel	China and EU	F.No.14/28/2016-DGAD	29-6-2016	Anti-dumping investigation initiated
Crude Napthalene Refined Napthalene	China, EU, Russia, Iran and Japan China, EU and Taiwan	F.No.14/35/2015-DGAD	1-6-2016	Anti-dumping investigation initiated
Glass fibre and articles thereof	China,	F.No. 15/10/2015-DGAD	6-7-2016	Sunset review recommends continuation of ADD
Non Woven Fabric	Malaysia, Indonesia, Thailand, Saudi Arabia & China,	F.No.14/23/2015-DGAD	15-06-2016	Anti-dumping investigation initiated
Pentaerythritol	China	F.No.15/01/2016-DGAD and 26/2016-Cus. (ADD)	7-6-2016 and 13-6-2016	Sunset Review initiated and ADD extended till 13-6-2017
Poly Vinyl Chloride (PVC) Paste Resin	Korea RP, Taiwan, China, Malaysia, Thailand & EU	27/2016-Cus. (ADD)	23-6-2016	Definitive anti-dumping duty continued after sunset review

Product	Country	Notification No.	Date of Notification	Remarks
Polytetra-fluoroethylene (PTFE)"	Russia	23/2016-Cus. (ADD)	6-6-2016	Definitive anti-dumping duty continued after sunset review
Purified Terephthalic Acid (PTA)	China, Iran, Indonesia, Malaysia & Taiwan	28/2016-Cus. (ADD)	5-7-2016	Anti-dumping duty imposed
PVC Flex Film	China	FNo.15/23/2015-DGAD	30-6-2016	Definitive anti-dumping duty recommended after sunset review
Seamless tubes, pipes & hollow profiles of iron, alloy or non-alloy steel	China	FNo. 14/2/2015-DGAD	6-7-2016	Time for completion of AD investigation extended till 7-1-2017
Sewing Machine Needle	China	FNo.15/2/2016-DGAD	10-6-2016	ADD Sunset Review initiated
Textured Tempered Glass	China	FNo.14/3/2016-DGAD	23-6-2016	Anti-dumping investigation initiated
Wire Rod of Alloy or Non-Alloy Steel	China	FNo.14/17/2016-DGAD	2-6-2016	Anti-dumping investigation initiated

Trade remedy measures against India

Product	Country	Notification No.	Date of Notification	Remarks
Corrosion-Resistant Steel Products	United States of America	[A-533-863] 81 FR 28824	2-6-2016	Final dumping margin determined between 3.86% to 4.44%
Corrosion-Resistant Steel Products	United States of America	[C-533-864] 81 FR 35323 and 81 FR 38671	2-6-2016 and 14-6-2016	Final subsidy rate determined between 8% to 29.46%. Negative determination of critical circumstances
Frozen Warmwater Shrimp	United States of America	[A-533-840] 81 FR 44275	7-7-2016	ADD – Affirmative second sunset review
New Pneumatic Off-the-Road Tires	United States of America	[C-533-870] 81 FR 39903	20-06-2016	Preliminary subsidy rate determined between 4.70% to 7.64%

WTO News

Columbia's compound tariff violate GATT provisions : DSB Appellate body

On 7th June, 2016, WTO Appellate Body issued its report in the case '*Colombia—Measures Relating to the Importation of Textiles, Apparel and Footwear*' brought by Panama. The Appellate Body saw no grounds to disturb the Panel's findings that the compound tariff necessarily exceeds Colombia's bound tariff and upheld the Panel's findings that the compound tariff is inconsistent with Article II:1(a) and (b) of the GATT 1994. Concerning the Panel's findings under Article XX of the GATT 1994, the Appellate Body found that the Panel erred in concluding that Colombia had failed to demonstrate that the compound tariff is a measure 'designed' to protect public morals given the Panel's recognition that the compound tariff is not incapable of combating money laundering, such that there is a relationship between that measure and the protection of public morals. The Appellate Body therefore reversed the Panel's finding that Colombia had failed to demonstrate that the compound tariff is 'designed' to combat money laundering though it concluded that Colombia had not sufficiently demonstrated that the compound tariff was a necessary measure. The report has been adopted by the DSB.

Other developments in DSB

A panel has been established on 4-7-2016 in the dispute between Japan and Korea against the latter imposing anti-dumping duties on imports of Japanese pneumatic transmission

valves. According to Japan, Korean measures violate Articles 1, 3.1, 3.2, 3.4, 3.5, 4.1, 6.5, 6.5.1, 6.9, 12.2 and 12.2.2 of the Anti-Dumping Agreement and Article VI of the GATT 1994.

On the compliance side, there has been a spurt in the establishment of compliance panels lately. Two more panels were established last month in the disputes DS381 and DS427. While the former dispute, brought by Mexico, is regarding US measures on importation, marketing and sale of Tuna and Tuna products (popularly known as dolphin safe labelling measures), the later dispute is regarding China's continued application of anti-dumping and CVD measures on import of broiler products from USA.

Ecuador's import surcharge - Consultations continue in WTO

On 23rd June 2016, WTO members remained divided on whether Ecuador's import surcharge imposed on balance-of-payments grounds is in line with WTO rules. The Members met in the Committee on Balance-of-Payments Restrictions. It may be noted that Ecuador has been applying various surcharge rates for different products to restore equilibrium to its balance of payments and in view of 'unfavourable economic climate' which worsened following the earthquake in April, has extended the phasing out of its import surcharge, from June 2016 to June 2017. WTO members reiterated concerns about whether the measure could be economically justified and called for consultations to continue.

GCC launches Safeguard investigation on flat-rolled products of iron or non-alloy steel

On 9 June, 2016, the Cooperation Council for the Arab States of the Gulf (GCC) consisting of member states namely, Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates initiated a safeguard investigation on flat-rolled products of iron or non-alloy steel. The investigation was initiated after safeguard application was filed by Universal Metal Coating Company Ltd.

Trade restrictions on the rise

Trade restrictive measures imposed by Member countries are on the rise. Recently, WTO's fifteenth trade monitoring report on

G20 trade measures, which was issued on 21 June, showed that application of new trade-restrictive measures by G20 economies has increased. According to the report, during mid-October 2015 to mid-May 2016, G20 economies applied 145 new trade-restrictive measures, or an average of almost 21 new measures a month, while implemented only 100 measures aimed at facilitating trade, averaging just over 14 per month. G20 group consists of India along with Argentina, Australia, Brazil, Canada, China, European Union, France, Germany, Indonesia, Italy, Republic of Korea, Japan, Mexico, the Russian Federation, Saudi Arabia, South Africa, Turkey, the United Kingdom and the United States.

Ratio Decidendi

ADD – Date of effect of anti-circumvention duties

Court of Justice of the European Union has held that Regulation extending anti-dumping on goods from China to imports from Taiwan, is not applicable retroactively in respect of goods consigned from Taiwan and released for free circulation in the EU after the date of coming into force of the Original Regulation, imposing ADD on imports from China, but before the Regulation initiating anti-circumvention investigation. It was however held that anti-dumping duty introduced by the Original Regulation would be applicable to imports of such goods, if it is established that, despite being consigned from Taiwan and declared as originating in that country, those goods

in fact originated in the People's Republic of China. Imports, in the dispute, were carried out before the date of entry into force of the initiating Regulation, i.e. before they could have been registered in accordance with the initiating Regulation. [*Selena România SRL v. Direcția Generală Regională a Finanțelor Publice (DGRFP) București* – Judgement dated 30-6-2016 in Case C-416/15, CJEU (Ninth Chamber)]

ADD on imports from NME – Selection of surrogate country – Comparative analysis required

The United States Court of International Trade has rejected the selection of Philippines as surrogate country for the purpose of valuing factors of production during the investigation

period. The dispute involved anti-dumping duty on fresh garlic from China and the Department of Commerce, consequent to earlier remand, did not revise its selection of Philippines, observing that Philippines ranks forty-third out of the ninety-five countries which produced fresh garlic during the period of review (excluding China). Finding this ‘further explanation’ as insufficient, the court rejected the selection, observing that a mid-range rank in a list of countries with insignificant production does not make the Philippines a ‘significant producer’ overall.

The court in this regard noted that the statute was ambiguous on ‘significant producer’. It however held that department’s superficial

analysis did not address the concern that using the Philippines, whose production is minimal, might create an unreasonable basis for factors of production in China where there are undoubtedly significant economies of scale. The Department’s lack of comparative analysis was also noted by the court while it held that simply because nine million metric tons (amount produced by Philippines) is a large number in the abstract, it does not mean that such level of production is significant. The matter was remanded to the DoC for reconsideration of surrogate country selection. [*Fresh Garlic Producers Association v. Hebei Golden Bird Trading Co. Ltd.* - Slip Op. 16-68, dated 7-7-2016, US CIT]

NEW DELHI

5 Link Road, Jangpura Extension,
Opp. Jangpura Metro Station,
New Delhi 110014
Phone : +91-11-4129 9811

B-6/10, Safdarjung Enclave
New Delhi - 110 029
Phone : +91-11-4129 9900
E-mail : lsdel@lakshmisri.com

MUMBAI

2nd floor, B&C Wing,
Cnergy IT Park,
Appa Saheb Marathe Marg,
(Near Century Bazar)Prabhadevi,
Mumbai - 400025.
Phone : +91-22-24392500
E-mail : lsbom@lakshmisri.com

CHENNAI

2, Wallace Garden, 2nd Street
Chennai - 600 006
Phone : +91-44-2833 4700
E-mail : lsmds@lakshmisri.com

BENGALURU

4th floor, World Trade Center
Brigade Gateway Campus
26/1, Dr. Rajkumar Road,
Malleswaram West, Bangalore-560 055.
Ph: +91(80) 49331800
Fax: +91(80) 49331899
E-mail : lsblr@lakshmisri.com

HYDERABAD

'Hastigiri', 5-9-163, Chapel Road
Opp. Methodist Church,
Nampally
Hyderabad - 500 001
Phone : +91-40-2323 4924
E-mail : lshyd@lakshmisri.com

AHMEDABAD

B-334, SAKAR-VII,
Nehru Bridge Corner,
Ashram Road,
Ahmedabad - 380 009
Phone : +91-79-4001 4500
E-mail : lsahd@lakshmisri.com

PUNE

607-609, Nucleus, 1 Church Road,
Camp, Pune - 411 001.
Phone : +91-20-6680 1900
E-mail : lpune@lakshmisri.com

KOLKATA

2nd Floor, Kanak Building
41, Chowringhee Road,
Kolkatta-700071
Phone : +91-33-4005 5570
E-mail : lskolkata@lakshmisri.com

CHANDIGARH

1st Floor, SCO No. 59,
Sector 26,
Chandigarh - 160026
Phone : +91-172-4921700
E-mail : lschd@lakshmisri.com

GURGAON

OS2 & OS3, 5th floor,
Corporate Office Tower,
Ambience Island,
Sector 25-A,
Gurgaon- 122001
Phone: +91- 0124 - 477 1300
Email: lsurgaon@lakshmisri.com

ALLAHABAD

Lakshmikumaran and Sridharan,
3/1A/3, (opposite Auto Sales),
Colvin Road, (Lohia Marg),
Allahabad -211001 (U.P.)
Phone : +0532 - 2421037, 2420359
Email: lsallahabad@lakshmisri.com

INTERNATIONAL OFFICES :

LONDON

Lakshmikumaran & Sridharan Attorneys (U.K.) LLP
Octagon Point,
St. Paul's,
London EC2V 6AA
Phone : +44 20 3823 2165
E-mail : lslondon@lakshmisri.com

GENEVA

Lakshmikumaran & Sridharan SARL
35-37, Giuseppe Motta
1202 Geneva
Phone : +41-22-919-04-30
Fax: +41-22-919-04-31
E-mail : lsgeneva@lakshmisri.com

Disclaimer: *International Trade Amicus* is meant for information purpose only and does not purport to be advice or opinion, legal or otherwise, whatsoever. The information provided is not intended to create an attorney-client relationship and not for advertising or soliciting. Lakshmikumaran & Sridharan does not intend to advertise its services or solicit work through this newsletter. Lakshmikumaran & Sridharan or its associates are not responsible for any error or omission in this newsletter or for any action taken based on its contents. The views expressed in the article(s) in this newsletter are personal views of the author(s). Unsolicited mails or information sent to Lakshmikumaran & Sridharan will not be treated as confidential and do not create attorney-client relationship with Lakshmikumaran & Sridharan. This issue covers news and developments till 8th July, 2016. To unsubscribe e-mail Knowledge Management Team at newsletter.itrade@lakshmisri.com