Annual Conference 2017

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Brexit implications now that Article 50 has been triggered

The UK's divorce from the EU was formally triggered on 29 March 2017. The British Prime Minister's notification letter states that Britain will leave the Single Market but wishes for a "deep and special partnership"; covering economic as well as security cooperation. If there is no agreement, future UK-EU trade will be conducted on WTO terms. Abrupt changes (a cliff-edge) should be avoided. Implementation periods are necessary to adjust to new arrangements. The UK has also prepared its own *Great Repeal Bill,* which will convert the EU *acquis* into UK law to ensure continuity.

The EU President replied two days later. The EU Council meets on 29 April to approve final negotiating guidelines. In the light of the draft guidelines of the EU President the Union will negotiate two agreements with the UK; its withdrawal under Article 50 and a second agreement about future trade relations. In the meantime, there will be important political developments to watch; such as the elections in France and Germany.

Article 50 provides that EU Treaties shall cease to apply to the UK from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period. The withdrawing Member State shall not participate in the discussions of the EU Council or its decisions. The UK must also settle a divorce bill of €60 bn; according to the EU. The repayments are for UK budget contributions, pension liabilities, moving EU agencies based in the UK, research funding, and for obligations to third states.

The EU's primary goal is to preserve the integrity of the Single Market. It will aim for the UK to be a close future Partner, but will prepare for failure too. There will not be a sector-by sector approach; nothing is agreed until everything is agreed. The EU wants an orderly withdrawal; no legal vacuum. Reciprocal guarantees for citizens and their rights are a priority. The withdrawal agreement will include a dispute settlement mechanism.

The final agreement will be a ‘mixed agreement’. It requires unanimity among the remaining 27 members, consent of the European Parliament, and agreement by 38 national and regional parliaments, including Wallonia. Article 50 concerns the divorce and the divorce alone. It can be concluded by a qualified majority in the Council but cannot be used to circumvent Articles 207 and 218 TFEU regarding the future relationship. The latter provisions will govern the second phase negotiations. The Article 50 trigger cannot be reversed. There will thus be one of 3 outcomes: (i) a divorce agreement, perhaps accompanied by transitional arrangements; or (ii) an agreement to extend the negotiating period; or (iii) no agreement. Then the EU Treaties simply cease to apply to the UK. This will be a ‘disorderly Brexit’. However, post-Brexit the EU will still be the world’s largest market and the UK’s biggest trading partner. The default position is EU-UK trade will be conducted under WTO rules and MFN; meaning higher tariffs. GATS is more restrictive than the EU in services; resulting in reduced access to EU markets for UK service producers. Free labour mobility between UK and EU would cease; with no passporting rights for UK-based firms.

Assume there is a UK-EU FTA, what rules will govern the UK’s other International Trade? WTO rules will apply since the UK reverts back to full WTO membership after Brexit. There is a problem though; since 1973 (when the UK joined the EU) its trade in goods was regulated by the EU common external tariff and EU tariff quotas. After 1973 the UK remained a WTO member but sans new Tariff and GATS Schedules. The old schedules predate the WTO. How will new UK schedules come about? What will the UK’s MFN obligations be? How will EU tariff rate quotas be decided? New negotiations with the WTO are also urgent.

What are the implications for SACU and for Africa? The EU of 27 will still be bound by the rights and obligations under its international agreements. The UK will no longer be covered by agreements concluded by the EU. The EU expects the UK will honour its international commitments accepted while an EU member. These agreements include the EPAs and several FTAs. Clarity about the UK’s relationships with African states is vital; the UK is a major investor, source of remittances, development aid donor, and trade (goods as well as services) partner. South Africa, Nigeria and Kenya stand to be most directly affected. How to fit these issues into the Article 50 process and when? What does the promise to avoid a cliff edge mean? The UK has suggested its own FTAs with Africa. What will they cover and how generous will the UK be? Services, finances, and investment are important for London. Will the UK also have its own GSP as restored WTO member? What could the Commonwealth contribute? African Policy Makers should clarify all relevant issues and act swiftly. The best scenario would be for at least the EPAs to be included under Article 50 talks on *transitional arrangements.* Commercial realities matter – where do SACU grapes and South African wine destined for the UK for example land? How do they then arrive on Tesco’s shelves? We should hope for a “deep and special UK-EU partnership”.