

Post-Brexit Trade in the Commonwealth Commonwealth Law Conference

Thank you, David.

I am equally delighted to speak today at the Commonwealth Law Conference and to share a platform with a very distinguished panellist in front of a very distinguished audience.

I would like to start by saying how strongly I agree with Baroness Scotland's words on the immense opportunities for trade growth amongst Commonwealth countries as well as the central role of lawyers in unleashing these opportunities on behalf of their clients.

I would equally agree that having this shared heritage of the Common Law is a great facilitator of trade amongst Commonwealth countries, for example in how contracts are structured, and disputes resolved.

I would like during my presentation to focus on the journey the United Kingdom has been through in these past few years and on the challenges it has had to face in re-establishing its own place in the world of international trade, outside of the European Union, and in developing its own independent trade policy.

I will also look ahead to the next few years and what that could mean for trade relations between the UK and the Commonwealth.

In doing so, I will use, if I may, examples of how we, as Law Society of England and Wales, have worked with the UK government on their new trade policy, most particularly in relation to trade in legal services but also mobility issues.

In deciding to leave the European Union, I would suggest the UK has faced three main challenges in relation to international trade:

- establishing its new relationship with the EU;
- maintaining the trade relationships it had previously acquired as an EU member;
- and, finally, developing its own independent trade policy.

First challenge: the relationship with the EU

The first challenge, agreeing its new relationship with the EU, has been widely reported. This has been the long rollercoaster ride, of political, constitutional and legal developments, which lasted from the June 2016 referendum to the end of the so-called transition period on 31st December 2020. This challenge, this new relationship, has now to a large extent been settled with two agreements: the Withdrawal Agreement of January 2020 and the EU-UK Trade and co-operation agreement of December 2020.

These are important documents, which formalise the fact that the UK has fully left the EU customs union and single market and now trades with the EU on the basis of a Free Trade Agreement.

Not all aspects of the relationship have been successfully resolved, or resolved in a sustainable manner, for example in relation to the position of Northern Ireland and particularly trade between Northern Ireland and Great Britain. You may have heard of the so-called sausage wars and transitional provisions which keep being extended.

It is also fair to say that the relationship will still develop over time, most likely with ups and downs, in many other aspects not covered by the TCA, for example on data flows.

But these agreements are still important milestones, which, as Baroness Scotland rightly pointed out, will govern the trade relationship between

the UK and Cyprus and Malta, but also gives other countries the clarity and certainty of how they can trade with both the UK and the EU.

Second challenge: maintaining the trade relationships the UK had previously acquired as an EU Member State.

The second challenge the UK has faced has been how to maintain the trade relationships previously acquired as an EU Member State.

In 2020, the EU has 45 trade agreements encompassing nearly 70 jurisdictions around the world. As of 1 January 2021, these EU trade agreements would no longer have applied to the UK.

So there has been tremendous work by the UK government in seeking to reproduce the effects of trading agreements that previously applied to it to ensure continuity for trade and business.

Many of these agreements with the EU included Commonwealth countries:

- Either of their own standing, like Canada, Ghana, Cameroon, Singapore or Kenya (although the latter is open in principle to other nations of the East African Community).
- Or agreements with trading blocks like the Eastern and Southern Africa trade block; the Southern Africa Customs Union and Mozambique; Pacific States or indeed the Cariforum trade bloc, which encompasses Commonwealth Caribbean countries including our host The Bahamas;

So, the UK Department for International Trade worked really hard in a short period of time to achieve a very successful programme of rolling over these agreements. At the end of the day, only three of these EU agreements (with Algeria, Bosnia-Herzegovina and Montenegro) have not been rolled over, although those which have been rolled over may still be waiting for full ratification and are provisionally applied in the meantime, including the one with Cariforum.

This was not an easy task and could have had the potential to disrupt trade and supply chains between the UK and these non-EU countries.

A particular thorny issue was around quotas for goods, and particularly tariff rate quotas where different tariffs are applied after a certain volume of goods has been traded. The question was which portion went to the UK and which to the EU, with an opportunity for the third country to ask for more.

The UK has also rolled over mutual recognition agreements (MRA) with Australia, New Zealand and the USA so that the mutual recognition of conformity assessments for industrial products continue, notably on testing, inspection, and certification.

An example of the importance of this work, which is relevant to trade in legal services, was that 5 UK-headquartered law firms were in Seoul, South Korea, thanks to the EU-Korea agreement and we, as Law Society of England and Wales, worked really hard with both UK and Korean governments as well as the Korean Bar association to make sure that these provisions would be rolled over in time.

Third challenge: developing a UK independent trade policy

Moving on to the third challenge, which is around developing a UK independent trade policy.

It is worth mentioning that, for over forty years, trade policy was made in Brussels with the policy expertise and the negotiators very much based there.

When I say this, do not get me wrong, EU trade policy was made with full input from the UK and we have had several prominent British politicians who have held the position of EU Commissioner for Trade.

However, the reality has been that the UK has had to learn again, in a short period of time, and has as a result had to call on the expertise of individuals of Commonwealth trading nations such as Australia, New Zealand and Canada, with for example the appointment of Crawford Falconer, a New Zealander, as the UK Chief Trade negotiator.

Developing an independent trade policy for the UK has had many different aspects, including:

- Assuming its independent seat at WTO level and being active and proactive in the multilateral arena. The 12th WTO Ministerial Conference will take place in Geneva in December with important negotiations on e-commerce and domestic regulations;
- Putting in place the UK global tariff;
- Putting in place the UK's Generalised Scheme of Preferences, which offers duty-free and quota-free market access to the 13 least developed of Commonwealth countries.
- Setting up a new agency the UK Trade Remedies Authority, the role of which is to investigate whether new trade remedies (anti-dumping or anti-subsidies) are needed to prevent injury to UK industries caused by unfair trading practices and unforeseen surges in imports.

Turning to Free Trade Agreements negotiations, much is being said of them and the UK has set out an ambitious list of priorities for negotiations, either with jurisdictions the EU does not have an FTA with or to go further than the continuity agreements already agreed.

The UK initial priorities have included Australia, New Zealand as well as the USA. The first two are progressing, the last one less so.

Initial priorities have also included the UK joining the CPTPP (Canada, Australia, Brunei, Malaysia) with important provisions on e-commerce.

And we have had in June the opening of negotiations on a digital agreement with Singapore.

Looking to the future, the next wave of negotiations, on which the UK government is currently consulting business groups and civil society organisations, will include Canada, Mexico as well as India.

Priorities for further waves of negotiations are still to be discussed and agreed but UK Secretary of State for International Trade Liz Truss recently mentioned the Gulf Cooperation Council and Israel as potential contenders.

FTA negotiations are very much in limelight, because the UK government is keen to portray them as one of the benefits of leaving the EU but also because they can be controversial with business or civil

society: Australia AIP agriculture exports or with the US, the issue chlorinated chicken and how to protect the NHS from private health companies.

They are not necessarily easy and they remain at the end of the day difficult negotiations.

Beyond FTAs, bilateral trade dialogues are also important. FTA negotiations take time and resources but can also be blunt instruments in dealing with “behind-the-border” barriers, and this is particularly true for trade in services.

The UK government, with Embassies and High Commissions around the world, is conducting a number of bilateral trade dialogues. Coming back to the Law Society experience, we are inputting into dialogues on legal services between the UK and the governments of Nigeria, Malaysia as well as India.

To add more broadly on the Law Society experience, we have worked and are working very closely with HMG on trade in legal services and mobility issues. Starting with leaving the EU single market, rolling over the EU agreements to looking at new opportunities. We are represented on the Trade Advisory Group for Professional and Business services and I and a colleague in my team have signed confidentiality agreements with the DIT so that we can input directly into negotiations even though we are not in the room.

To conclude, the development of the UK trade policy and what that would ultimately mean for post-Brexit trade in the Commonwealth will no doubt be a long journey but I would like to come back to where I started, in agreement with Baroness Scotland, with the immense opportunities for trade growth amongst Commonwealth countries as well as the central role of lawyers in unleashing these opportunities on behalf of their clients.

Thank you.