

# Spain, Argentina: who will be next to stake a claim in Brexit?

With Brexit now triggered, both the UK and the EU are drawing up the opening red lines for the negotiations. The UK has said that it is ready to walk away from the negotiations with no deal and base future trade relations with the EU on WTO rules. There is less clarity as to EU's red lines. The EU insists that all negotiations be conducted by the Commission on behalf of and in the joint interests of the 27 remaining Member States. However, in his letter of 29 March President Tusk suggests that Spain be given a veto over any deal between the UK and EU by making the deal conditional upon Spain and the UK reaching an agreement on Gibraltar.

That Brexit would open a Pandora's box of issues between the UK and other member states which, like Gibraltar, were kept in check whilst the UK was part of the EU was to be expected. Given the precarious position Prime Minister Rajoy and his party find themselves in governing Spain bedevilled by its own CATexit (Catalonia has announced it will hold a referendum on independence by September this year), it is not surprising that he should use Brexit as an opportunity to try to reopen the issue of Gibraltar – an issue which has long been a bone of contention between London and Madrid.

But there are also countries outside the EU that are seeking a stake in the Brexit negotiations. Seeking to use Brexit to gain leverage over the status of the Falkland Islands, Argentina has late last year suggested it had the power to prevent the UK from falling back on WTO rules.

Neither Argentina nor any other WTO Member has the power to block UK's membership in the WTO. This is because the UK is a Member of the WTO in its own right. And, as such it will remain a member of the WTO after Brexit.

The EU has since 1995 submitted schedules of tariffs and service sector commitments on behalf of the UK. So provided that the UK rectifies its current WTO schedule by submitting a schedule which maintains tariff and service sector commitments identical to those presently established on its behalf by the EU, Argentina and other countries outside the EU are likely to find it difficult to use Brexit as a means to gain leverage over the UK. WTO issues are only likely to rise if the UK decides to "modify" its tariff and service schedules by clawing back concessions made by the EU in the goods and services sectors. It is only in such a case that WTO Members would have to approve new UK schedules by consensus.

However, the role of third states in the Brexit negotiations should not be underestimated by either the UK or the EU. Under the WTO Agreements, and the over fifty Free Trade Agreements that the EU has signed with third states, tariff rate quotas and agricultural subsidies are set for the EU as a whole.

The agreement between the UK and the EU on the apportionment of these quotas and agricultural subsidies will need to be reached by the time of Brexit. And WTO Members, and all countries with whom the EU has Free Trade Agreements, will have to be consulted and agree to such apportionment.

The extent to which WTO Members, both inside and outside the WTO will seek to take advantage of the situation to obtain different or better trade deals or achieve external political goals remains uncertain. Two things are, however, clear. First, that it will be in the interest of businesses involved in cross-border trade, be they UK, Argentinian, Spanish or otherwise to help drive mutually beneficial solutions in the forthcoming complex negotiations. Second, that contrary to what many believe, Brexit negotiations will, at least in respect of trade, be multilateral in nature and involve multiple stakeholders.

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