



Financial Markets Law Committee (“FMLC”)

BREXIT—HIGH LEVEL ADVISORY GROUP (“HLAG”)

Date: Friday 1 September 2017

Time: 9.30am – 10.00am

Location: Bank of England, Threadneedle Street, London EC2R 8AH

In Attendance:

Paul Double (Chair)	City of London Corporation
Charles Clark	Linklaters LLP
Thomas Donegan	Shearman & Sterling LLP
Kate Gibbons	Clifford Chance LLP
Jonathan Gilmour	Travers Smith LLP
Katy Hyams	The London Metal Exchange
Ian Jameson	Sumitomo Mitsui Banking Corporation Europe Limited
Rashpal Kaul	Rabobank International
Dorothy Livingston	Herbert Smith Freehills LLP
Ian Mathers	
Brendan McGivern	White & Case LLP
John McGrath	Sidley Austin LLP
Ben Perry	Sullivan & Cromwell LLP
Simon Puleston Jones	FIA
Marke Raines	Raines & Co
Arad Reisberg	Brunel University
Andrew Seager	Taylor Wessing LLP
Christian Schett	Bank of England
Nick Shiren	Cadwalader, Wickersham & Taft LLP
Arun Srivastava	Baker McKenzie LLP
Martin Thomas	Altima Partners LLP
Charlie Winefield	(Observer)
Virgilio Diniz	FMLC Legal Volunteer

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Venessa Parekh

FMLC Acting Project Secretary | Communications Officer

Rachel Toon

FMLC Executive Assistant | Events Manager

Minutes:

1. Introduction

1.1. Paul Double opened the meeting and introduced Brendan McGivern

2. The impact of the WTO Rules on the conduct of U.K.-E.U. business post-Brexit (Brendan McGivern)

2.1. Brendan McGivern gave a presentation on the options for the U.K. post Brexit in relation to the World Trade Organisation (“WTO”).

2.2. Mr McGivern explained that the U.K. was a founding member of the General Agreement on Trade and Tariffs (“GATT), signed in 1948, and the WTO (1995). Both the E.U. and the U.K. are Members of the WTO. The E.U. maintains WTO schedules of commitments for trade in goods and services for all E.U. Member states. The U.K. will need its own, independent schedules upon Brexit.

2.3. Upon a hard Brexit it was mentioned that WTO rules would be the default option for the U.K., i.e., in the absence of a Free Trade Agreement (“FTA”), the U.K. would trade with the E.U. and Third Countries on basis of rules set by the WTO.

2.4. Mr McGivern explained that the “Most Favoured Nation (“MFN”)” obligation, provided by the GATT, is fundamental but it will raise new barriers, where there are currently none, in relation to cross-border trade between the U.K. and E.U. A key exception to the MFN principle is FTAs and Custom Unions. Mr McGivern highlighted that many countries have entered into such preferential agreements to expand trade. He also highlighted how under WTO rules these preferential agreements must cover “substantially all trade”, and how the negotiation of these agreements can be time consuming and resource-intensive. Mr McGivern reported that the E.U. has already signed FTAs with around 50 countries and that the U.K. would lose preferential access to those markets on day one of Brexit, unless some kind of continuation agreements were put in place.

2.5. Mr McGivern outlined the impact on the U.K. were it to leave the E.U. without an FTA. The U.K. would have reduced access to the E.U. services market and there will be an

application of tariffs on goods which the U.K. does not currently pay. In these circumstances, the U.K. will lose passporting rights. The E.U. schedule of services commitments could limit the ability of U.K. services providers to access the E.U. market.

- 2.6. A Q&A session followed Mr McGivern's speech and questions were asked in relation to topics including tariff barriers and non-tariff barriers, whether unilaterally reducing or removing barriers to imports might be a simpler answer than renegotiating FTAs, whether the U.K. was at a disadvantage because it has not had trade negotiators and on the U.K.'s strategy to date.

3. Update on FMLC's work on Brexit

- 3.1. Mr Double reported that the FMLC recently published the following two papers on:

- Issues of Legal Uncertainty Arising in the Context of the Withdrawal of the U.K. from the E.U.—the Impact on Cross-Border Insolvency Proceedings; and
- Issues of Legal Uncertainty Arising in the Context of the Withdrawal of the U.K. from the E.U.—the Provision and Application of Third Country Regimes in E.U. Legislation.

- 3.2. It was noted that papers on WTO, Emissions Allowances and BRRD are still in preparation.

4. Plenary discussion on recent Brexit-related developments

- 4.1 Mr Double drew the group's attention to Appendix II on the agenda and explained that this was an opportunity to raise issues members of the HLAG felt the FMLC should be looking at.

- 4.2 A discussion took place as to whether the HLAG might feed more into the FMLC's Brexit work and whether the group should meet more regularly.