

## Lack Of UK Trade Staff Muddies Post-Brexit Waters

By **Alex Lawson**

*Law360, New York (July 29, 2016, 7:11 PM ET)* -- Ranking high among the litany of challenges plaguing the United Kingdom as it prepares to exit the European Union is its considerable lack of trade negotiators and other critical personnel, a problem that experts stressed will need to be tackled immediately to craft meaningful new trade policy.

The EU maintains sole control over trade negotiations for its member states, and national governments have seen their influence on trade in Brussels sharply curtailed over the last several decades. This leaves the U.K. in a vulnerable position as it aims to prop its own newly sovereign trade regime, according to Perkins Coie LLP attorney David Christy.

"The U.K. government does not have the requisite negotiating expertise precisely at the time when they most need it," Christy told Law360. "They need to be negotiating with the EU, they need to be negotiating vis-a-vis the [World Trade Organization], and then with regard to [free trade agreements]. All of that is going to have to be negotiated on some level."

Negotiations with Brussels are London's top priority, as Britain must complete those to ensure Brexit actually comes to fruition. That process will be incredibly intricate from a trade perspective, as the U.K. will have to determine what kind of relationship it has with the EU, which will go a long way toward informing the country's relationship with the rest of the world.

There has been a lack of consensus about what exactly the U.K. will have to do with regard to its WTO membership once Brexit takes hold. While the U.K. will remain a member of the multilateral trade body, it's unclear whether Britain can merely adopt the EU's tariff schedules on goods and services or will need to negotiate its own.

At the very least, the U.K. may want to make tweaks to the portions of the EU schedule the country has opposed in the past but could do little to change. Dechert LLP partner and former EU negotiator Miriam Gonzalez stressed that this will take the type of deep-seated trade knowledge that the U.K. may not possess at this juncture.

"For that, you require people who really understand the World Trade Organization and the international trading system," Gonzalez said. "Those are not necessarily negotiators themselves but people with a good knowledge of the nitty-gritty of the rules."

Mark Price, the U.K.'s Minister of State for Trade and Investment, has said that the government has

about 40 trade staffers on hand now and that he hopes to get the number closer to 300 over the next several months.

Publicly, the U.K. has been demure about how exactly it is seeking out new talent, but the majority of observers have said that the most logical place to begin would be from within Britain's own ranks as it begins withdrawing U.K. nationals from their outposts at the European Commission in Brussels.

"If I were them, I would be trying to build capacity right now and I would contract with experts to work side by side with and train officials," Christy said. "I would also be identifying British EU officials and any former officials in the area that could I hire back."

Inevitably, though, London will have to consider seeking high-priced private counsels to do its negotiations. But that strategy comes with its own set of political challenges given the atmosphere surrounding the Brexit vote, according to former U.S. Trade Representative and Mayer Brown LLP partner Susan Schwab.

"Part of the whole Brexit debate was about contracting out your sovereign government activity, so the last thing on Earth they want to say is that they are outsourcing these activities to anyone else," Schwab told Law360.

It is not uncommon for sovereign governments to hire outside counsels to negotiate a specific agreement or address some outstanding conflict with one of its partners. But the U.K. is attempting to do something more ambitious than that.

Because it has previously ceded control of trade to the EU, the U.K. is not merely negotiating an agreement or two, it is essentially constructing its own trade policy from scratch, which will create pressure for them to do so with as much help from their own nationals as possible.

Gonzalez said the U.K. has begun a soft outreach to private-sector counsels. Depending on the kind of work firms end up doing, she said, it does raise conflict-of-interest issues that attorneys should bear in mind.

"You could not possibly commercialize or be in a position where you might be perceived to be commercializing some information that you have received in the context of working for the government," she said.

Given those thorny components, Schwab and other experts said that the U.K. would be wise to recruit out of law firms, businesses, think tanks, academia and advocacy groups within their own borders, offering contracts to those workers as a form of temporary government service.

While much of the focus now is on negotiators and sector-specific experts, the U.K. will also eventually need to arrange its own fleet of customs officials to oversee goods moving in and out of its market. That poses its own problems, Christy said, due to the sheer number of individuals the U.K. will need to monitor its ports of entry as an island bloc.

"Customs officials are not invented," he said. "The U.K. has at least a couple of years to hire and train customs officials, which can work if the effort starts very soon."

--Editing by Katherine Rautenberg and Edrienne Su. All Content © 2003-2016, Portfolio Media, Inc.