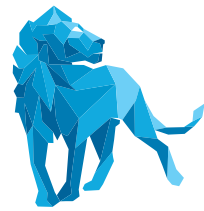


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**THE EU, THE UK AND GLOBAL TRADE  
A NEW ROADMAP**

DAVID COLLINS

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## David Collins

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# How to Trade After Brexit BUILDING ON ECONOMIC FREEDOM AND LEGAL INDEPENDENCE\*

## The UK Referendum, Brexit and EU-UK Trade. The options.

by Sheila Lawlor, Politeia's Director



After Britain's electorate voted to leave the EU in 2016, the UK government and both major political parties pledged to honour the decision. The prime minister announced that the UK would leave the EU, the Single Market and Customs Union. The UK, she added, intended to strike its own trade deals including a Free Trade Agreement with the EU.

A UK-EU trade deal should have been straightforward in principle and practice. Both parties would be starting off with identical laws and standards. An FTA was in the interests of each, given the volume and value of trade between both. If anything, since the EU's exports to the UK are proportionately greater than the UK's to the bloc, the EU would have more to gain from an FTA.

That a trade deal has not been agreed owes much to Brexit's opponents on both sides of the Channel who sought to undermine the leave vote if they could not overturn it. Now, despite the many obstacles, delays and attempts to frustrate the referendum decision, such a trade deal is not only possible, but legally quite straightforward, as David Collins the UK economic and trade lawyer, explains in this analysis. Moreover, it would not only respect the referendum decision but be to the benefit of both parties. If, however, the EU continues to refuse or delay on such a deal, the UK has much to gain by embracing WTO trade, the misnamed 'no deal' scenario. The WTO rules provide the basis for around 96 per cent of the world's successful trade. Professor Collins explains the legal framework for both the FTA and WTO options and the steps needed for each.

The task now is for the UK government to move swiftly ahead and seek an FTA, while simultaneously preparing for WTO trade, a 'no deal' scenario. To do so, it must leave behind the battles fought by those opposed to Brexit on both sides of the Channel. Since the referendum, as this introduction will explain,

both the EU's political and economic demands and internal UK domestic political hostility which aimed to obstruct Brexit, have been inimical to the freedoms on which the UK's post Brexit future will be based: independent trade, economic freedom and constitutional sovereignty.

### Frustrating the Brexit people voted for.

For the EU and its response to the UK decision to leave the bloc, political and economic goals have been dominant. It wanted any settlement with the UK to be, and appear to be, sufficiently punitive so as to avoid other countries across the continent with large numbers of Eurosceptics being encouraged to leave. Economically the UK must not be seen to gain from Brexit, it should not enjoy the fruits of freedom or appear to other states to be better off out. A carefully orchestrated negotiation timetable, with tightly defined aims, was designed to achieve both goals. The UK made the tactical error of falling in with the EU's staged timetable and proposed agenda for the negotiations. After that from Autumn 2017, the EU's political and economic aims emerged in stages during the protracted Brexit talks. But, as far as future trade went, the dye had been cast at the outset by Angela Merkel when EU leaders met in June 2016 to consider their response to the UK decision and the German Chancellor announced that Britain could not 'cherry pick'.

Talks for a EU-UK trade deal were put on ice, only to begin properly and in detail when the UK had acquiesced satisfactorily in the EU's first stage demands. These were for the future rights of EU citizens in the UK to be resolved, for a large UK payment to be made to the EU and for a 'solution' to keep the border in Ireland soft.

The future relationship for trade and economic matters was subsequently mapped out. From the outset the EU made no secret of its determination that the UK must align its rules with the EU's, the playing field must be levelled. Britain, contended the Council President, Donald Tusk, in March 2018, must remain closely aligned to the EU and should enjoy no 'unfair competitive advantage' once outside the EU: its goods production should be aligned to the EU regulatory model and bound by a similar rulebook. The goal to which the EU was moving was UK economic subservience to the EU system, ideally

via a customs union if the Single Market could not be revived. A customs union would be promoted through the political tactic of claiming it was needed to keep the Irish border 'soft'. Although the UK had proposed technological solutions for cross border traffic that would keep both the status quo and the soft border – a similar solution had been proposed by an EU study group and is quite commonly used for international trade today – the EU had its eye on the bigger prize of binding Britain and its economy to the rulebook of the EU's customs union.

The Irish border was therefore deployed by the EU to keep the UK in the economic straightjacket of the customs union on the back of the claim that to keep the border 'soft' the UK must stay in a customs union type legal framework with the bloc. That, by November 2018, turned out to be an indefinite stay with no date set to leave and no unilateral right to exit – the default position under the Northern Irish Protocol of the Withdrawal Agreement (November 2018) unless or until a different solution satisfactory to the EU were proposed. Seeking to frustrate the exit for which people voted, and keeping the UK as closely bound as possible into and under the EU economic system and law in an EU customs union, had been a central aim from the outset. That would be achieved through the Northern Irish Protocol and the UK could not, as a result, benefit from an independent trade policy to strike optimum trade deals with third countries and, as a result, could not compete to advantage with the bloc.

In the UK remain supporters, who claimed an economic downside would result from leaving the Single Market and Customs Union, were handed what seemed to be an additional weapon in the war to keep their remain dream alive, and appeared happy to seize on the tactical use to be made of the EU's Irish border ploy. Many of these were now parliamentarians or ministers responsible for executing the leave vote, or civil servants responsible for negotiating the UK's

\* This foreword draws on the themes in my publication *Deal, No Deal? The Battle for Britain's Democracy*, published by Politeia, September 2018

exit on Britain's behalf. Their main aim continued to be to frustrate the Brexit for which people voted and to remain 'in' or under as much of the EU as possible. Helped by the scaremongering of some business spokesmen lobbying for vested interest groups (including big names which had funded the remain campaign), a number sought more openly to integrate the UK into the EU economy and customs union. Although that would involve binding the country to the EU rulebook so that it was subject to EU laws, on the making of which it would have no say and on the interpretation of which the ECJ would have the dominant voice, these disadvantages were overlooked. Just as before the referendum vote (2014-16), these groups had claimed that leaving the EU would cause mayhem, damage the UK's economy and cause job losses, now (2016-19), they insisted that without an EU-UK deal which bound the country closely into the EU, jobs, the economy would suffer, there would be chaos in the supply chain and hold ups at the ports.

The proposed EU-UK withdrawal deal (November 2018) would keep the UK indefinitely in the customs union with no UK automatic right or date to exit, with the whole of Northern Ireland under much of Single Market law (in order, it was claimed, to keep the Irish border 'soft'). As the Attorney General put it in his advice to the prime minister on the Irish backstop on 13<sup>th</sup> November: 'in international law the protocol would endure indefinitely until a superseding agreement took its place'.

While many MPs who supported staying in a customs union and others who did not rejected the withdrawal agreement, those still intent on remaining in as much of the EU as possible put all their focus on avoiding a 'no deal Brexit'. For them, no less than Brexit's opponents in the EU, it seemed to be an irrelevance that the referendum decision owed much to people's desire to restore UK sovereignty.

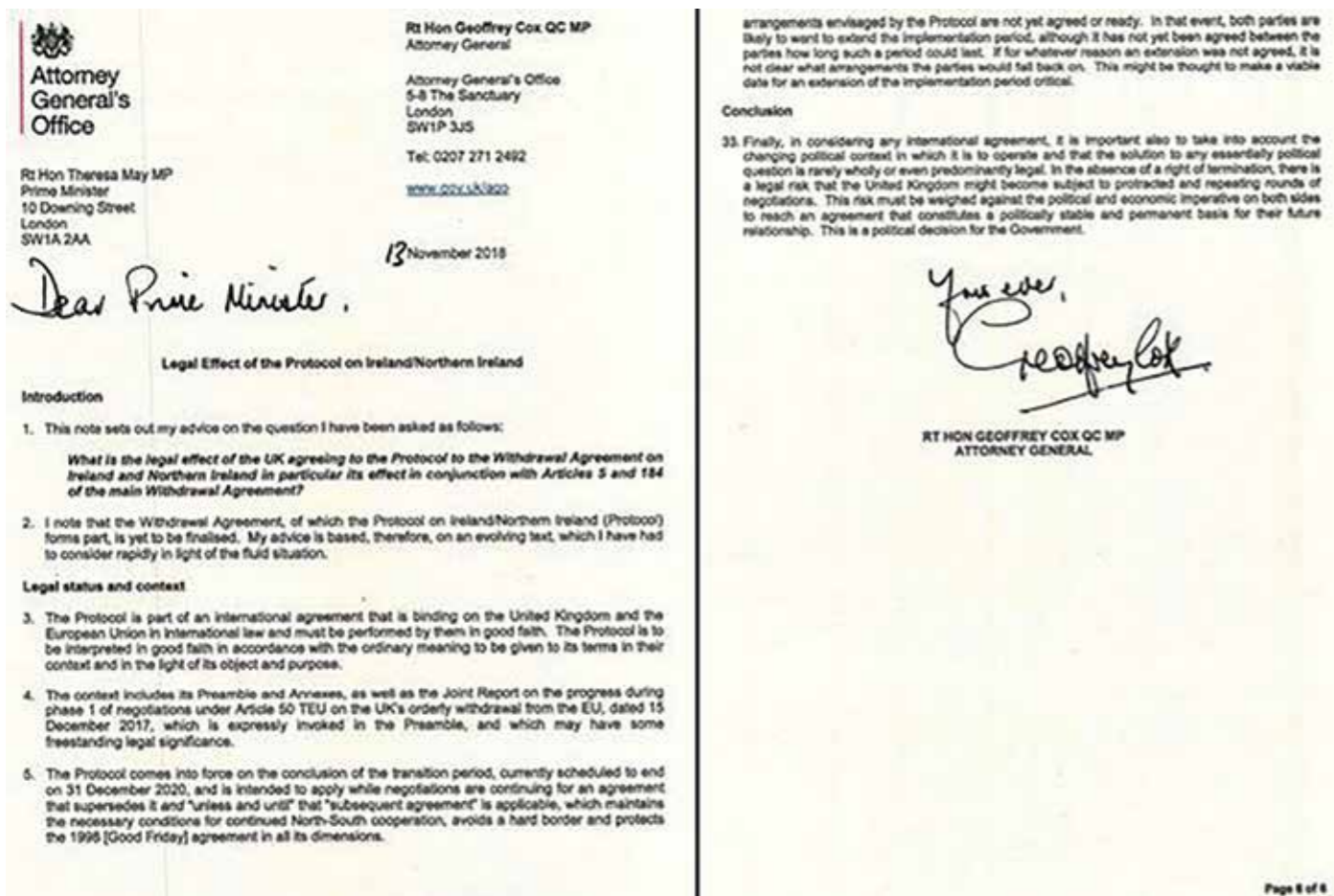
## Economic freedom, trade and constitutional sovereignty.

When the British Parliament rejected the proposed Withdrawal Agreement, the UK's default position under law was that the UK would leave the EU without a deal on 29 March 2019. That position stands unless both sides agree on alternative terms which the UK parliament agrees (or the UK government decides to postpone Brexit, something the prime minister has ruled out).

The opportunity to leave behind the terms that could bind Britain to the EU's economic system under EU law should be seized. If the referendum decision is honoured by restoring constitutional sovereignty and political and legal independence, the benefits will be an independent trade policy and the restoration of an economic system in line with Britain's historic freedoms. The UK's economy has by and large flourished because it has been based on free markets, trade, entrepreneurship and competition underpinned by the rule of law, the Common Law. By contrast, the EU's economic model reflects the dirigiste centrally run system, under a process-driven set of laws and regulations, the aim of which is full political, monetary and economic union.

When the UK leaves behind that system, together with its legal and regulatory framework, the economy, goods and services will be poised to flourish. The UK government should therefore move ahead without regret, to forge a trade policy on the lines proposed by David Collins, to trade on WTO terms if a Free Trade Agreement with the EU is not forthcoming. By following its own star Britain may well upset Brexit's opponents for whom the UK 'belongs' to planet EU not earth. But for the many millions of people, those who voted for Brexit at home, those across the EU's 27 member states who hope for their own exit, there will be a symbolic and a real gain. The UK's historic democracy will have held firm. The world's fifth largest economy will be poised for success and for the benefits its new freedom will bring its own people and those with whom it trades in Europe and the world over.

*Sheila Lawlor*  
Director, Politeia



UK Attorney General letter of Advice on Irish Backstop , 14 November 2018

# INTRODUCTION

This publication will examine the UK's trade future with respect to the EU under two scenarios: first, through the establishment of a Free Trade Agreement (FTA); and second, without any formal trade arrangement, under which the UK's trading relationship with the EU will be governed by the rules of the World Trade Organization (WTO). Following this discussion, this publication will consider the UK's trade position with respect to other countries following its departure from the EU, scheduled to take place on 29 March 2019.

Given the strategic importance of the EU as a trading partner for the UK, the negotiation of an EU FTA covering both goods and services is still a top priority. Without such an agreement in place, trade terms with the EU will be under the framework of the WTO. Although sometimes misleadingly and ominously described as 'no deal', 'crashing out' of the EU, or the 'cliff edge', trading under WTO rules will be entirely

manageable and should lead to minimal disruptions. WTO rules should minimize the harmful impact of many potential legal barriers to trade between the UK and the EU as well as between the UK and third countries.

The UK has indicated that it intends to pursue bilateral and possibly regional FTAs with other countries, including notably those of the Commonwealth and the United States. This is a sensible strategy and while FTAs are never easy, it is likely that after Brexit the UK will enjoy reasonable success in concluding these arrangements given its strong economic position and the fact that, unbridled from the EU, it will not be required to make compromises in favour of other member states in the bloc. Even without such arrangements, trade terms with the rest of the world will be under the framework of the WTO, preventing arbitrary barriers to trade and keeping tariffs on most goods reasonably low.

ARTICLE  
XXIV5 c), General  
Agreement on Tariffs  
and Trade (1947)

5. Accordingly, the provisions of this Agreement shall not prevent, as between the territories of contracting parties, the formation of a customs union or of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or of a free-trade area; Provided that:

(a) with respect to a customs union, or an interim agreement leading to the formation of a customs union, the duties and other regulations of commerce imposed at the institution of any such union or interim agreement in respect of trade with contracting parties not parties to such union or agreement shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union or the adoption of such interim agreement, as the case may be;

(b) with respect to a free-trade area, or an interim agreement leading to the formation of a free-trade area, the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the formation of such free-trade area or the adoption of such interim agreement to the trade of contracting parties not included in such area or not parties to such agreement shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area, or interim agreement, as the case may be; and

(c) any interim agreement referred to in sub-paragraphs (a) and (b) shall include a plan and schedule for the formation of such a customs union or of such a free-trade area within a reasonable length of time.

2

UK-EU FREE TRADE  
AGREEMENT (FTA)

The UK and the EU should seek to conclude as soon as possible a comprehensive FTA allowing for deep economic integration while maintaining the promises made by the government during the referendum and enshrined in the Withdrawal Act of 2017. These are: full regulatory autonomy, the end of free movement of people and the termination of the jurisdiction of the European Court of Justice (ECJ).

The starting point of this FTA should be that which the EU concluded with Canada (CETA) but it should go further, offering deeper liberalization in financial services in particular. This is why the proposed FTA between the UK and the EU has sometimes been referred to as Canada + or Super Canada. A UK-EU FTA will involve agreement on a range of matters such as goods and product standards, services and foreign investment.

## Goods and Product Standards

The UK-EU FTA will seek to replicate as closely as possible the zero-tariff environment which existed through the UK's membership in the EU. Article XXIV of the WTO's General Agreement on Tariffs and Trade (GATT) facilitates FTAs in which FTA parties grant preferential tariffs to those within it relative to other WTO members, which would otherwise violate the GATT's Article I Most Favoured Nation (MFN) obligation,

obliging members to treat goods from all other countries the same as each other. The only requirements for an FTA are that there must be a notification to the WTO and that the FTA must cover 'substantially all trade'. The precise meaning of this phrase is unclear, but we know that sector-specific FTAs would not be permitted. While some products could be excluded, the expectation is that the arrangement will cover all or almost all goods.

## Technical Barriers to Trade (TBTs)

One of the most difficult aspects of the goods component of a UK-EU FTA will undoubtedly relate to non-tariff product standards, otherwise known as Technical Barriers to Trade (TBTs) or Sanitary and Phytosanitary (SPS) measures in the case of foods and agricultural products. The EU has resisted importation of a range of goods which do not fit with European understandings in relation to health (e.g. hormone treated beef and genetically modified organisms or biotech products) originating from countries like the US. It remains to be seen what stance the UK government will take on these matters, but presumably should the UK insist on its capacity to export such products to the EU (which is unlikely as few of these controversial goods actually originate from the UK).

As indicated above, it is most likely that the UK-EU FTA will resemble that of the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada where there was agreement to recognize most of each other's product standards, conforming to the WTO SPS and TBT Agreements. Under CETA the EU remains free to impose its own regulatory controls on products like hormone-treated beef and genetically modified organisms, both of which are produced in Canada. This did not require acceptance of the jurisdiction of the ECJ over product standards by Canada, another non-negotiable position under Brexit.

## Customs Arrangements

Another pressing concern following the UK's departure from the EU will be customs arrangements regarding goods. Outside of the customs union, all goods traded between the two countries will be subject to customs inspections and verification for Rules of Origin which is a key component of granting preferential tariff access through an FTA.

The UK government has spoken of the desire for 'frictionless trade' in goods. This could involve some kind of simplified customs procedures falling short of an actual customs union, possibly using a virtual border involving periodic customs self-assessments by exporters coupled with the use of information technology like bar code scanning. Furthermore, the EU would certainly require reassurance that the UK does not position itself as a 'backdoor to the EU' by allowing goods into its territory from a third state which could then be shipped into the EU as if they were UK goods.

## Services

Services will be a key component of the UK-EU FTA, particularly the lucrative financial services market comprising industries like banking, legal, insurance, and accounting. Market access for financial services in the EU will be a crucial feature of the UK-EU FTA given its importance to the UK economy (over 10 per cent of the UK's GDP, £176 billion per year in value and over 7 per cent of employment). The UK's objective

## Foreign Investment

While foreign investment is quite distinct from trade it is important to address some key issues here as an FTA with the EU is likely to include an investment chapter. Freedom of establishment was one of the pillars of the Single Market and the UK will seek to create a future arrangement where its firms enjoy comparable conditions, just as it will wish to remain attractive to EU firms seeking a commercial presence in the UK. The agreement should contain guarantees against discrimination and unfair treatment as well as compensation in the event of expropriation which are standard in these instruments. The UK must be certain to retain strong protections for foreign investment considering the statements made by the opposition Labour party indicating a desire to nationalize

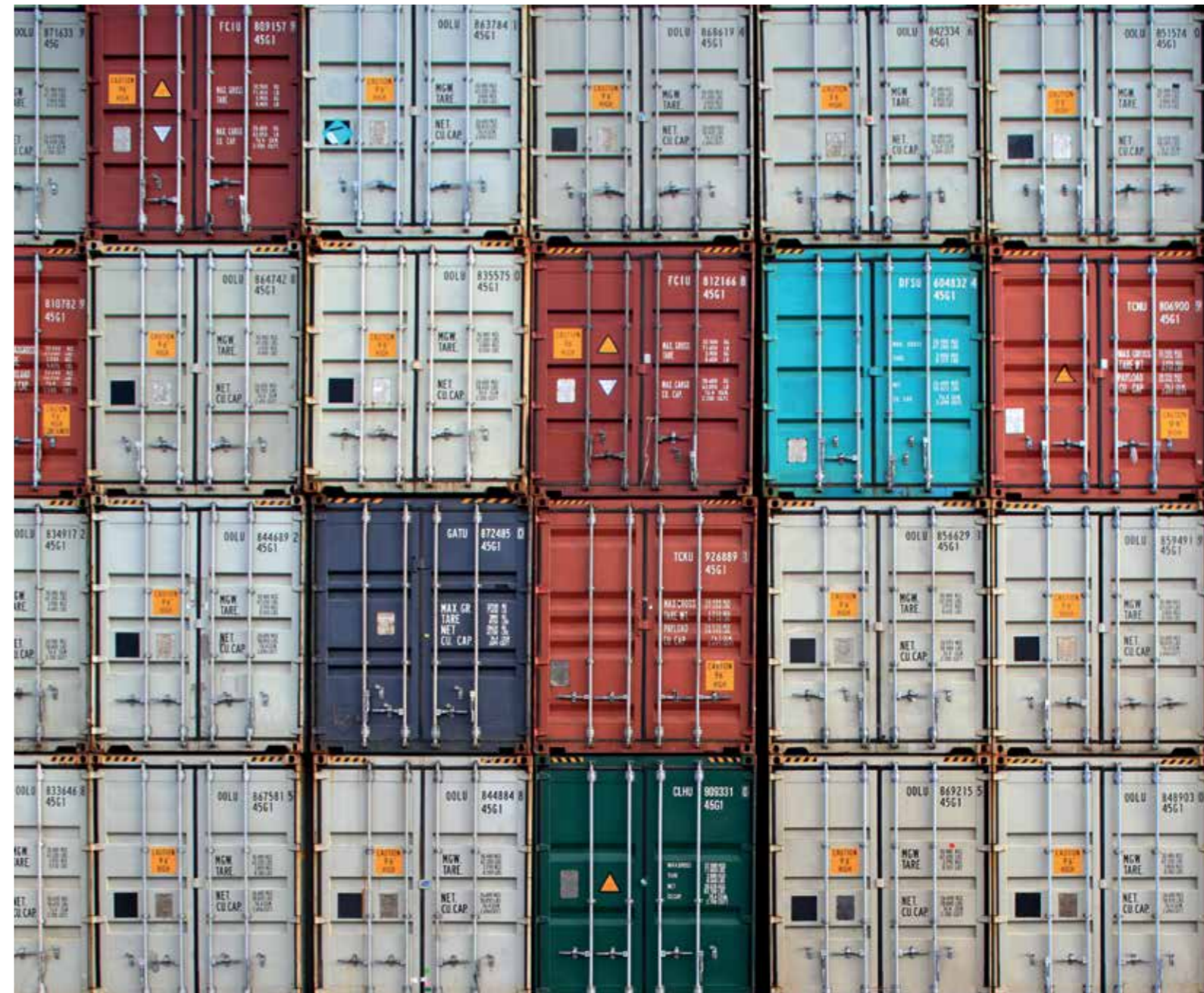
Compliance with Rules of Origin (ROO) to enjoy the preferential treatment of the FTA with respect to lower tariffs will require some inspections. The burden of these inspections is often exaggerated, typically costing less than 1 per cent of the value of the traded good.

The land border between the UK and Ireland need not have any physical infrastructure, especially under UK-EU FTA where preferential treatment for certain trading partners is expressly contemplated. Article XVIII of the GATT and the Trade Facilitation Agreement of the WTO require that WTO members must minimize customs procedures as far as reasonably possible. Moreover, special arrangements to streamline borders (as between Northern Ireland and the Republic of Ireland) such as those involving regular trader exemptions and technology, are contemplated by the exemption for border traffic under Article XXIV of the GATT.

here will be to preserve the conditions which sustain the UK's dominance in services, particularly since services are also becoming important for the UK's manufacturing base. A sensible blueprint for the UK and EU's trade in financial services would involve a system of 'enhanced equivalence' as proposed by Barnabas Reynolds in a 2017 Politeia publication.

many industries, some of which have a significant component of foreign ownership.

Traditional investment treaties (which the UK was able to conclude before the Lisbon Treaty) contain Investor-State Dispute Settlement (ISDS) mechanisms, which permit private investors to bring claims directly against host states in international arbitration, with party appointed arbitrators – a system which has worked well for the UK over several decades. This process has become controversial in recent years in part due to its perceived secrecy. The EU consequently devised an Investment Court System (ICS) which consists of state appointed arbitrators (rather than party appointed ones, as



under traditional ISDS) coupled with an appeal court of standing judges. The procedure will have enhanced transparency and the judges will be experts in international law, rather than in commercial matters as typically the case in normal ISDS. The CETA between the EU and Canada contains this procedure and it

would seem as though the EU intends to include the ICS in its future IIAs. Going forward the EU has put much effort into proposals for a Multilateral Investment Court system. The UK should take part in these discussions and consider whether to support this initiative in the coming years.

## Intellectual Property, Data Protection, Procurement and Competition

A comprehensive FTA between the UK and the EU should also involve matters such as intellectual property, data protection, procurement and competition. Given that UK laws in these spheres generally correspond to those of the EU already by virtue of the UK's long-

standing membership in the EU, it is expected that there will be limited legal difficulties in these areas, however there may be short-term pragmatic problems concerning the UK's lack of institutional infrastructure to enforce some of these regulations.

## Timing

Although CETA took seven years to conclude, the negotiation and ratification of an UK-EU FTA are likely to take less time given that the UK is negotiating from the position of a similar legal framework to that of the EU. Still, it will be nearly impossible to put such an agreement in place before 29 March this year, even with the political will from both parties. However, the UK would be able to offer zero or low tariffs and minimal non-tariff barriers as enshrined in an FTA without violating the WTO's MFN obligation (granting the EU better treatment than other WTO members) by virtue of the 'interim agreement' exception contained within GATT Article XXIV (the provision which allows for MFN-breaching FTAs). Article XXIV(5)c states that any such 'interim agreement' should provide for the formation of an FTA 'within a reasonable length of time', meaning that it does not have to be in place immediately. The transitional, interim period with the EU, provided that it leads to an FTA within ten years should be able to foreclose any MFN-based complaints from other WTO members. It is important to understand, however, that

this does require agreement from both parties, along with a clear commitment to conclude an FTA in the future. The UK cannot simply trigger Article XXIV of the GATT on its own.

The WTO has indicated that it considers a temporary arrangement between the UK and EU with zero tariffs and minimal non-tariff barriers to be entirely compliant with the MFN principle as long as the UK and EU have agreed to negotiate a permanent FTA. Although in theory such an interim arrangement could be challenged by third parties (as an MFN violation) this is unlikely. In any event such challenges would take a long time to work their way through the dispute settlement system during which time the UK could continue to offer the EU the preferential treatment prior to the conclusion of an actual FTA. Practically speaking, this means that no transition period is necessary, precluding one of the main purposes of the now-rejected Withdrawal Agreement.

## NO DEAL – TRADING UNDER THE WORLD TRADE ORGANIZATION (WTO) RULES

In the absence of FTAs, UK trade with the EU and non-EU countries will take place under the WTO rules. Given that the WTO framework accounts for most of the world's trade and has a track record of success in removing barriers to trade, this arrangement is entirely manageable and should not be a cause of anxiety for the British public. Most of the work preparing for trading on WTO terms has already been done and more is pending.

The success of the WTO in promoting economic growth and increased standards of living around the world belies the attempts to dismiss it pejoratively as the 'no deal scenario' in which the UK would operate in the absence of FTAs with the EU or with third countries. The WTO was created in 1995 following on from the many decades of the GATT's operation as a stand-alone treaty. It currently consists of 164 countries, including the EU bloc and its member states along with the UK, as well as all of the world's major economies. The WTO's purpose, like that of the GATT before it, is to eliminate barriers to trade in goods with a view to raising standards of living. It now also covers trade services and intellectual property through its roughly 30 constituent agreements. More than 98 per cent of world trade falls within the WTO's umbrella, making it a vitally important component of global commerce.

The WTO consists of a negotiating forum which pursues trade negotiations on a multilateral consensus basis and a dispute settlement body which issues binding legal judgments (called recommendations) and which authorizes enforcement through retaliation. The WTO court system has been described as the most successful international court in the world in terms of its caseload and compliance rates, although

as noted its Appellate Body is currently suffering from a deficient roster of judges because of blocking by the US.

Over the years the WTO regime has been remarkably successful in reducing tariffs, particularly on industrialized goods, which have dropped from over 40 per cent in the 1940s to around 4 per cent on average today. This was achieved through the WTO's main principles of tariff reduction, non-discrimination and transparency. It has also been able to control more modern forms of protectionism, such as subsidies and products standards, with comprehensive disciplines on all these issues, although its efforts in liberalizing trade in services have been somewhat less successful.

WTO membership lowers consumer prices and therefore has a beneficial impact on real wages and competitiveness throughout the economy. The implications for the UK of trading only on WTO terms outside of the EU and without FTAs are broadly positive. Overall productivity would likely rise as the structures of production would become concentrated in non-protected sectors.

The UK would no longer need to maintain tariffs on sectors which it has no significant domestic production to satisfy industrial lobbies elsewhere in Europe. Some economists have estimated that this would lead to a net gain to consumer welfare and GDP of 4 per cent. Furthermore, WTO membership would allow UK to abandon all EU regulations required by the Single Market, which many economists have argued should bring further efficiency gains in terms of GDP.

### Vienna Convention on Succession of States in respect of Treaties, 1978

## ARTICLE 34

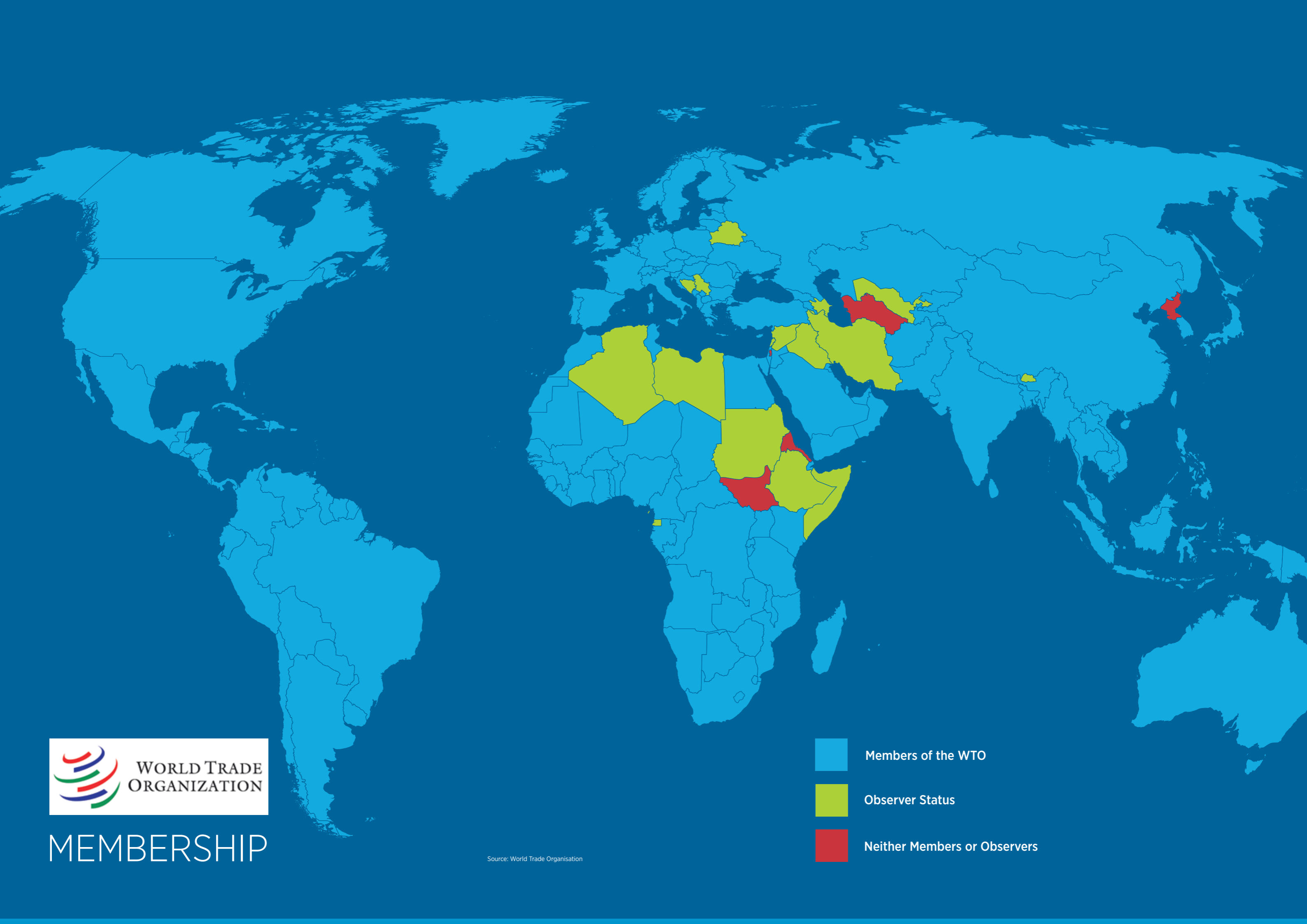
### Succession of States in cases of separation of parts of a State

1. When a part or parts of the territory of a State separate to form one or more States, whether or not the predecessor State continues to exist:




- (a) any treaty in force at the date of the succession of States in respect of the entire territory of the predecessor State continues in force in respect of each successor State so formed;
- (b) any treaty in force at the date of the succession of States in respect only of that part of the territory of the predecessor State which has become a successor State continues in force in respect of that successor State alone.

2. Paragraph 1 does not apply if:

- (a) the States concerned otherwise agree; or
- (b) it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.



# MEMBERSHIP

-  Members of the WTO
-  Observer Status
-  Neither Members or Observers

Source: World Trade Organisation

## The UK's Status in the WTO

The UK became a member of the WTO on the day in which the WTO itself was established by virtue of its status as a contracting party to the original GATT from 1947. The UK accepted the WTO agreements in accordance with Article XIV:1 of the WTO Agreement by ratification on 30 December 1994. As the UK joined the EU in 1974, when GATT was updated in 1994, the EU annexed a schedule of concessions (specific trade commitments) for the UK, and all other EU member states at that time. With respect to the services agreement GATS, the EU and its member States including the UK jointly submitted a schedule of specific commitments.

The UK has a right to inherit the EU's rights and obligations with respect to the WTO based on the principle of customary international law reflected in Article 34 of the 1978 Convention on the Succession of States in respect to treaties, as well as under past practice under the GATT 1947. This means that upon its departure from the EU, the UK will possess all the rights and obligations of an original member of the WTO. It does not need to re-apply for membership, although some of its obligations are as yet unresolved, as will be explained further below. The EU will no longer be responsible for exercising the UK's rights (and obligations) as a WTO member after Brexit – this will fall to the UK itself.

With respect to trading with the EU, EU tariffs to all WTO members on most goods are reasonably low. The EU's average tariff is around 4 per cent, which has been offset already by the decline in value of the pound since Brexit. EU MFN tariffs are higher on some products, notably automobiles and agriculture, but savings from tariffs earned by the UK on EU goods and from a significant portion of the £37 billion exit fee imposed by the EU (but not paid if there is no FTA) could be used towards compensating UK industries which suffer from these barriers through re-training and re-adjustment programmes.

As a member of the WTO, the EU cannot impose arbitrary regulatory barriers on goods in the form of conformity assessment procedures on imports from other WTO members such as onerous product testing. This is especially so where 'like conditions' prevail. Conditions, meaning the regulatory

environment, will remain the same after the UK leaves the EU because the UK is not changing its own conformity assessment / testing procedures – this is precisely the purpose of the Great Repeal Bill. They will remain identical to the way they currently are within the EU, at least for the time being. The only 'change' is that the UK will not be an EU member – this is not a change in the level of scientific risk on food or any other products, which might justify additional procedures at the border. It is therefore arguable that additional regulatory barriers imposed by the EU on UK goods would be arbitrary and unjustified. It is true that some customs procedures could become more burdensome than they are today because of the need to assess any tariffs and verify health compliance for some food and agricultural products. But this process must be risk-led and no more onerous than necessary.

It is expected that these issues can be tackled through enhanced infrastructure and technologies at our borders. Preparations for this have taken place over the last six months by both the UK and ports in the EU (the Netherlands, Belgium and France). Officials

in these countries have assured the UK that they are endeavouring to make customs procedures as smooth as possible, as required under the GATT and the WTO's Trade Facilitation Agreement. There is nothing to gain by restrictive customs procedures and all parties are aware of this. While there may be some initial impediments as traders adjust to the new environment, this should be temporary and will not be massively disruptive.

With respect to the border with Ireland, again there is no reason to impose a so-called 'hard border' involving customs officers, barriers and inspections. Many inspections can be performed away from the border using technology and trusted trader pre-registration schemes, as suggested above. Arrangements of this kind in Ireland will not constitute a breach of the WTO's MFN principal because soft-touch customs procedures either for tariff collection or health and safety inspections can be minimized for traders who originate from the border region and cross it regularly (under the GATT Article XIV exemption for 'border traffic', mentioned above).

Moreover, were another WTO member to complain that goods entering the UK from the EU (through Ireland) were treated preferentially because of these streamlined processes, there is a strong argument to be made that this approach would be justified under the GATT Article XXI exemption for national security. This is because of the risk that full border controls could undermine the fragile peace on the island of Ireland. National security might even be used to justify a special zero tariff for all goods crossing the border, even in the absence of an FTA. Given the very small volume of goods which cross the Northern Ireland / Ireland border it is highly unlikely that any WTO member would attempt to instigate such a complaint anyway.

In order to get ready for trading under WTO rules on its own, UK has established The Trade Remedies Authority, which is a domestic agency to deal with issues relating to international trade regulations and their enforcement under WTO rules. This function had previously been fulfilled on the UK's behalf by the European Commission.

## The UK's WTO Tariffs

Article II of the GATT specifies that each WTO member is bound by its schedule of concessions, meaning its tariff commitments on goods. As noted above, the EU annexed a schedule of GATT concessions on behalf of the UK when it joined the EU. The UK is accordingly legally committed to offer the EU bloc's bound tariff rates on all the listed goods, though it is free to offer lower tariff rates than these should it wish to do so.

The UK aimed to present its WTO schedule for goods as a straightforward 'rectification' of the EU's schedule for goods in the summer of 2018. However, WTO members demanded renegotiation of the agricultural tariff rate quotas within those schedules (of which more below). The UK's goods schedule led to objections from more than 20 WTO member

states, most of which were agricultural exporters. Such objections are not fatal, they simply mean that negotiations will be more protracted. This will in no way prejudice the UK's arrangements for 'no deal' departure. With existing EU tariffs in place for the time being, the UK can levy tariffs against EU products in the event of no-deal, which of course act as a source of revenue for the government even as they restrict trade. More importantly, the UK is free to lower its tariffs on all goods to both the EU and the rest of the world as it wishes, which should advantage UK consumers who will end up paying less for many goods than they do inside the EU bloc. It is expected that in the years ahead the UK will begin dismantling the tariffs it has chosen to inherit from the EU with a view to opening its market to global trade.

## The UK's Tariff Rate Quotas

Under GATT Article XIII:2, the EU offered import tariff rate quotas (a certain percentage of goods entering at a lower than normal tariff) to other WTO members.

The EU has almost 100 tariff rate quotas, 86 of which are for agricultural goods, the largest portion of which are on meat. As an aside, the EU's official schedule

### WTO Agreement on Agriculture

## GENERAL AGREEMENT ON TARIFFS AND TRADE (1947)

### Article II, Schedules of Concessions

#### 1.

**(a)** Each contracting party shall accord to the commerce of the other contracting parties treatment no less favourable than that provided for in the appropriate Part of the appropriate Schedule annexed to this Agreement.

**(b)** The products described in Part I of the Schedule relating to any contracting party, which are the products of territories of other contracting parties, shall, on their importation into the territory to which the Schedule relates, and subject to the terms, conditions or qualifications set forth in that Schedule, be exempt from ordinary customs duties in excess of those set forth and provided therein. Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with the importation in excess of those imposed on the date of this Agreement or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date.

**(c)** The products described in Part II of the Schedule relating to any contracting party which are the products of territories entitled under Article I to receive preferential treatment upon importation into the territory to which the Schedule relates shall, on their importation into such territory, and subject to [...]

of tariff quotas have not actually been certified since the enlargement of the EU, which could potentially frustrate negotiations. When it leaves the EU, the UK will be required to share the burden of the lower tariff quotas offered by the EU to other WTO members. This will in theory involve the UK reaching an agreement with all supplying WTO members which have a substantial interest in exporting the various products into the UK at the lower than normal tariff rate. This has proven to be complicated in that other countries have taken the opportunity to attempt to enlarge the number of tariff rate quotas which fluctuate from year to year. Brazil indicated that it will do this. New Zealand also has a strong interest in demanding that the UK adopt a large share of the EU's lamb quota as it ships more than half of its EU lamb to the UK. These quotas could involve negotiations with the EU-27 as members of the WTO, each of which should have the right to access UK tariff rate quotas on a non-discriminatory basis, if it has a substantial exporting interest to the UK. Failure to resolve other WTO members' expectations regarding their ability to access the UK through its share of the tariff rate quotas promised by the EU through the various negotiations could lead to a complaint through the WTO dispute settlement system.

All tariff concessions may be modified or withdrawn entirely under the procedure outlined in Art XXVIII of the GATT, which involves consultations with other WTO members with special emphasis placed on negotiations with those members which have a substantial interest in supplying the goods involved. All future changes would be reflected in the UK's schedule of tariff commitments discussed above.

## Agricultural Subsidies

Agricultural subsidies are a significant aspect of the EU's commercial and trade policy. The Common Agricultural Policy (CAP) which governs subsidies comprises something near 40 per cent of the EU's total budget. Without the WTO, agricultural subsidies in the EU would be considerably larger and more distortive than they are today and for this the organization deserves much credit in eliminating much of this harmful feature of domestic economic policy.

The key issue for the UK after Brexit will be establishing its share of the EU's commitment *not to* subsidize its agricultural sector beyond the threshold set by the EU.

## WTO Agreement on Agriculture PART IV: ARTICLE 6

### Domestic Support Commitments

1. The domestic support reduction commitments of each Member contained in Part IV of its Schedule shall apply to all of its domestic support measures in favour of agricultural producers with the exception of domestic measures which are not subject to reduction in terms of the criteria set out in this Article and in Annex 2 to this Agreement. The commitments are expressed in terms of Total Aggregate Measurement of Support and "Annual and Final Bound Commitment Levels".

2. In accordance with the Mid-Term Review Agreement that government measures of assistance, whether direct or indirect, to encourage agricultural and rural development are an integral part of the development programmes of developing countries, investment subsidies which are generally available to agriculture in developing country Members and agricultural input subsidies generally available to low-income or resource-poor producers in developing country Members shall be exempt from domestic support reduction commitments that would otherwise be applicable to such measures, as shall domestic support to producers in developing country Members to encourage diversification from growing illicit narcotic crops. Domestic support meeting the criteria of this paragraph shall not be required to be included in a Member's calculation of its Current Total AMS.

3. A Member shall be considered to be in compliance with its domestic support reduction commitments in any year in which its domestic support in favour of agricultural producers expressed in terms of Current Total AMS does not exceed the corresponding annual or final bound commitment level specified in Part IV of the Member's Schedule.

4.

(a) A Member shall not be required to include in the calculation of its Current Total AMS and shall not be required to reduce:

(i) product-specific domestic support which would otherwise be required to be included in a Member's calculation of its Current AMS where such support does not exceed 5 per cent of that Member's total value of production of a basic agricultural product during the relevant year; and

(ii) non-product-specific domestic support which would otherwise be required to be included in a Member's calculation of its Current AMS where such support does not exceed 5 per cent of the value of that Member's total agricultural production.

(b) For developing country Members, the de minimis percentage under this paragraph shall be 10 per cent.

5.

(a) Direct payments under production-limiting programmes shall not be subject to the commitment to reduce domestic support if:

(i) such payments are based on fixed area and yields; or

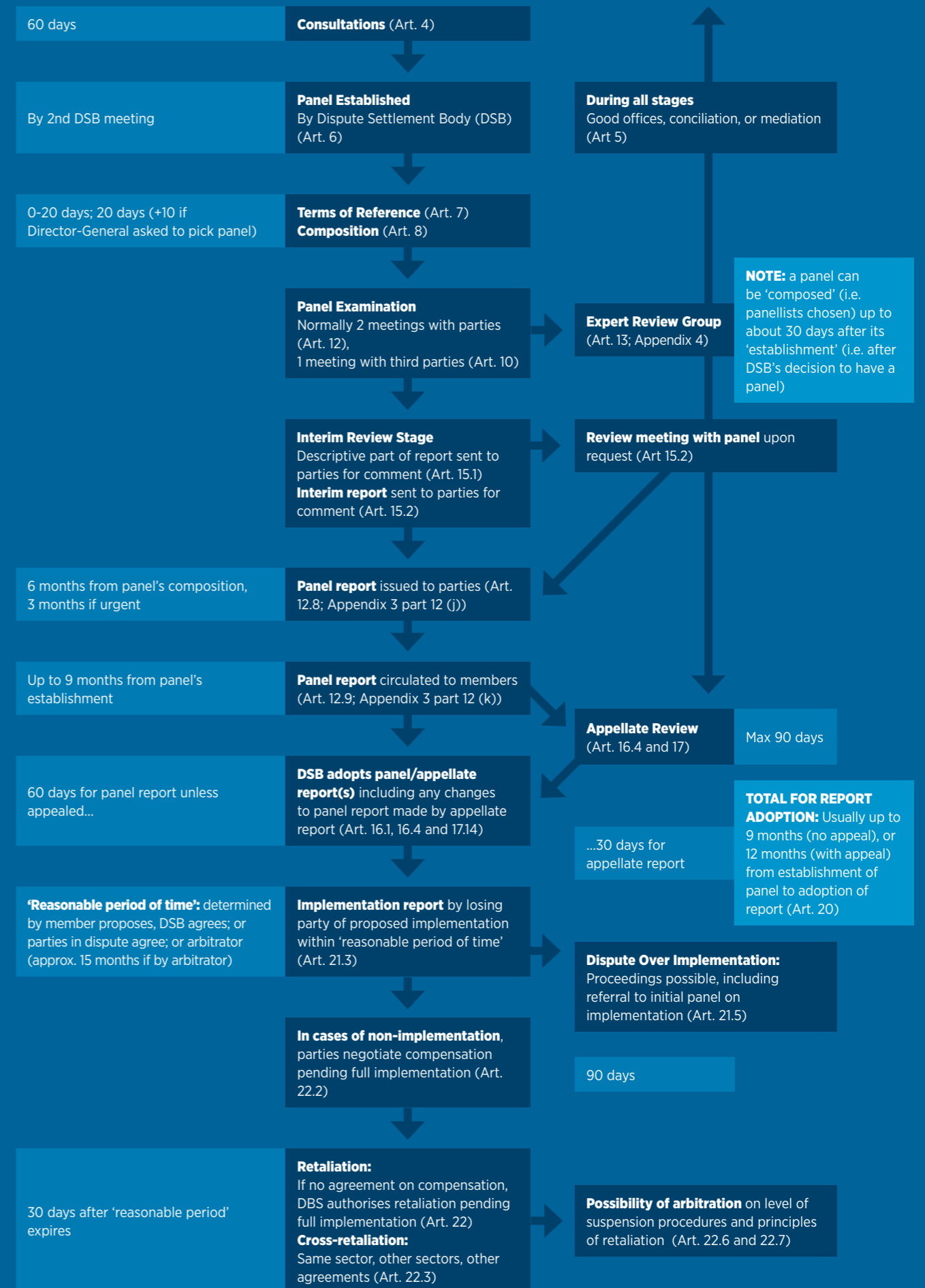
(ii) such payments are made on 85 per cent or less of the base level of production; or

(iii) livestock payments are made on a fixed number of head.

(b) The exemption from the reduction commitment for direct payments meeting the above criteria shall be reflected by the exclusion of the value of those direct payments in a Member's calculation of its Current Total AMS.

Article VI, WTO Agreement on Agriculture (1995), [https://www.wto.org/english/docs\\_e/legal\\_e/14-ag\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/14-ag_01_e.htm)

## WORLD TRADE ORGANISATION DISPUTE SETTLEMENT: THE PANEL PROCESS



Source: World Trade Organisation

The UK, as with all other EU member states, is entitled to subsidize its agriculture sector up to a certain degree (known as the Total Aggregate Measure of Support), based on the EU's obligations as a member of the WTO. This is the so-called Amber Box of agricultural subsidies specified under Article 6 of the WTO Agreement on Agriculture. These are subsidies which are considered to distort production and trade so should be minimized. It is likely that this issue will not be significantly problematic, however, because as enormous as they still are, the EU's level of agricultural subsidies is only at about 7 per cent of the total value which it is allowed (about 6 billion euros out of 72 billion per year across all agricultural products) and the EU (like all developed countries) is committed to phasing out its export subsidies on agricultural products by 2020 under WTO rules. In other words, there is quite a bit of room for the UK to extend lawful agricultural subsidies of the Amber Box variety based on the EU's commitment even with only a small share of the EU's allocation, whatever that level might be. The UK must negotiate its share of Amber Box subsidies following Brexit, likely based on its allocation of the CAP budget.

Still, the UK's share of the EU's right to subsidize could be problematic if it exceeded this entitlement,

## Services

Unlike the GATT, the General Agreement on Trade in Services (GATS) agreement is in large part voluntary, with each WTO member specifying its commitments in terms of liberalization (essentially market access for services as well as the promise of non-discrimination against foreign services and service suppliers). This is in some way analogous to the GATT schedule of tariff commitments. The EU's GATS services commitments were undertaken on an individual member basis: the EU's schedule of commitments specified different levels of services liberalization for each of the 28 member states. The EU's GATS schedule sets out a framework for market access which is modified by each member's derogations in particular sub-sectors (horizontal) and modes of supply (vertical). Around 160 types of services are covered across the four modes of supply with varying derogations across the member states, some of which are more onerous than others.

As the UK exports about £220 billion and imports about £130 billion of services per year, maintaining an open trading arrangement in services with the EU and

leaving itself open to a complaint from another WTO member that the UK was unlawfully subsidizing its agricultural sector. The best way to deal with this issue is for the UK to establish a level of subsidization that represents the portion of the EU's agricultural subsidies which are currently granted to the UK or have been in the last three years as a representative period. This amount would be the UK's share of the benefits it derives from the EU's CAP. Alternatively, the share could be assessed based on the UK's contributions to the CAP, which are tied to its share of the EU GDP. It should be noted that the UK will still be free to subsidize its agricultural sector in other ways without WTO restriction (under the Agreement on Agriculture's Blue and Green Box subsidies respectively). The amount of money available to do so may change based on the UK's contributions to and drawings from the CAP as negotiated during the Article 50 process, but they do not engage WTO compliance issues. Following departure from the EU, a new regime for assisting UK farmers will need to be established, recognising that smaller and more vulnerable farmers will need to be helped. It might be a good opportunity to terminate other distortive and environmentally harmful subsidies on certain classes of farmers.

the rest of the world through the WTO will be crucial. The UK's under-performing services exports to non-EU countries like Canada and India are believed to be even larger than those relating to goods, representing massive potential gains post-Brexit. For example, the UK insurance industry has been poorly supported by the EU due to language barriers and legal differences.

The UK submitted its draft schedule of commitments on services to the World Trade Organization in December 2018 in order to have a complete set of schedules in place by the time it leaves the EU. The new schedule, disaggregated from that of the EU27, will essentially represent continuity for the service providers involved.

Unlike the UK's schedule for commitments on goods, for services it is more an issue of replicating the status quo. For this reason, it should be better received by the rest of the WTO membership. Under the GATS, WTO members must submit schedules that set out the extent to which they are prepared to open their markets

to foreign service providers. For the EU's each sector contains exemptions and opt-outs, with individual member states either declining to open their national markets in specific areas or setting out conditions for doing so. The UK's schedule has less exceptions than those of most member states. This is because it has a more open approach to services. Consequently, this process should be less problematic for third countries.

As with the UK's earlier submission of its goods schedule, WTO members had 45 days to raise objections, with an additional 45-day consultation period during which the UK can discuss any concerns raised. The full 90-day review period will end on 3 March, which is less than a month before the UK leaves the EU. There was some concern that other WTO members will object that the new UK commitment on services because it does not replicate all the benefits they have had until now. This is because the UK will not be part of the EU's Single Market, depriving third countries of access the EU market simply by setting up a subsidiary in the UK, as they may have done in the past. It is therefore possible that the EU could also be challenged in this process, when it will have to rectify its schedule reflecting the UK's absence. However, establishment in an EU country has never been a guarantee of full access to the bloc's services market. The EU's schedule of GATS commitments states that the treatment accorded to subsidiaries (of third-country companies) is not extended to branches or agencies established in a member state by a third-country company. The UK services schedules should come into effect on an uncertified basis upon Brexit, regardless of whether objections are raised during the review period. The EU's own WTO schedules are uncertified, as the WTO membership never formally ratified amendments made since 1999.

It should be noted that in January 2019, Russia, Taiwan and Costa Rica objected to UK's draft schedule for GATS schedule. It is not clear what these three countries oppose, as such documents are confidential. It might be inferred that Russia's objection is simply a reflection of its strained diplomatic ties between the UK. Under WTO rules, the objections trigger a 45-day consultation period which runs until 4 March. During this time the UK

must hold discussions with the three parties to attempt to resolve their concerns. As with goods, the UK's schedules on services can only be certified if all objections have been lifted. The consultation period means certification may not be completed until just weeks before Brexit day at the earliest. Crucially, however, failure to complete certification by that date would not be fatal for the UK, which should declare its draft schedule to be in force on a provisional, uncertified basis. This is already set to happen for the UK's schedule for trade in goods under the GATT. As mentioned above, numerous objections to the UK and the EU's proposed formula for dividing up EU tariff rate quotas after Brexit have prevented ratification pending further negotiations.

With respect to the UK's supply of services to the EU (£59 billion worth of services are exported to the EU every year) GATS will represent significantly weaker market access than the UK currently enjoys as a member of the EU's Single Market. This is because very few WTO members, including the EU-27 made significant GATS commitments to the rest of the world. Outside of the EU, UK services firms will need to examine the EU schedule of GATS commitments and each member state's derivations from it to see what treatment they are entitled to. However, the GATS-only situation may not be as bad as is often thought because, since countries are free to apply more liberal services policies than they committed to under the GATS, many in fact do so. Actual services policy regimes among the EU-27 typically afford (much) better market access than what GATS schedules would prescribe. So market access and national treatment for the UK as a WTO member post-Brexit may appear to be somewhat worse compared to the status quo as an EU member yet in reality, it may not be as bad as a reading of GATS schedules might suggest. Of course, applied regimes (which are extended on an MFN basis) lack the legal certainty of membership in the Single Market. Finally, as noted earlier, the EU's schedule of GATS services is not complete – schedules for the 16 newer EU member states have not been incorporated into the EU's commitments, so the extent to which the UK will be able to supply services into the EU purely on WTO terms is not readily discernible.

## The Government Procurement Agreement (GPA)

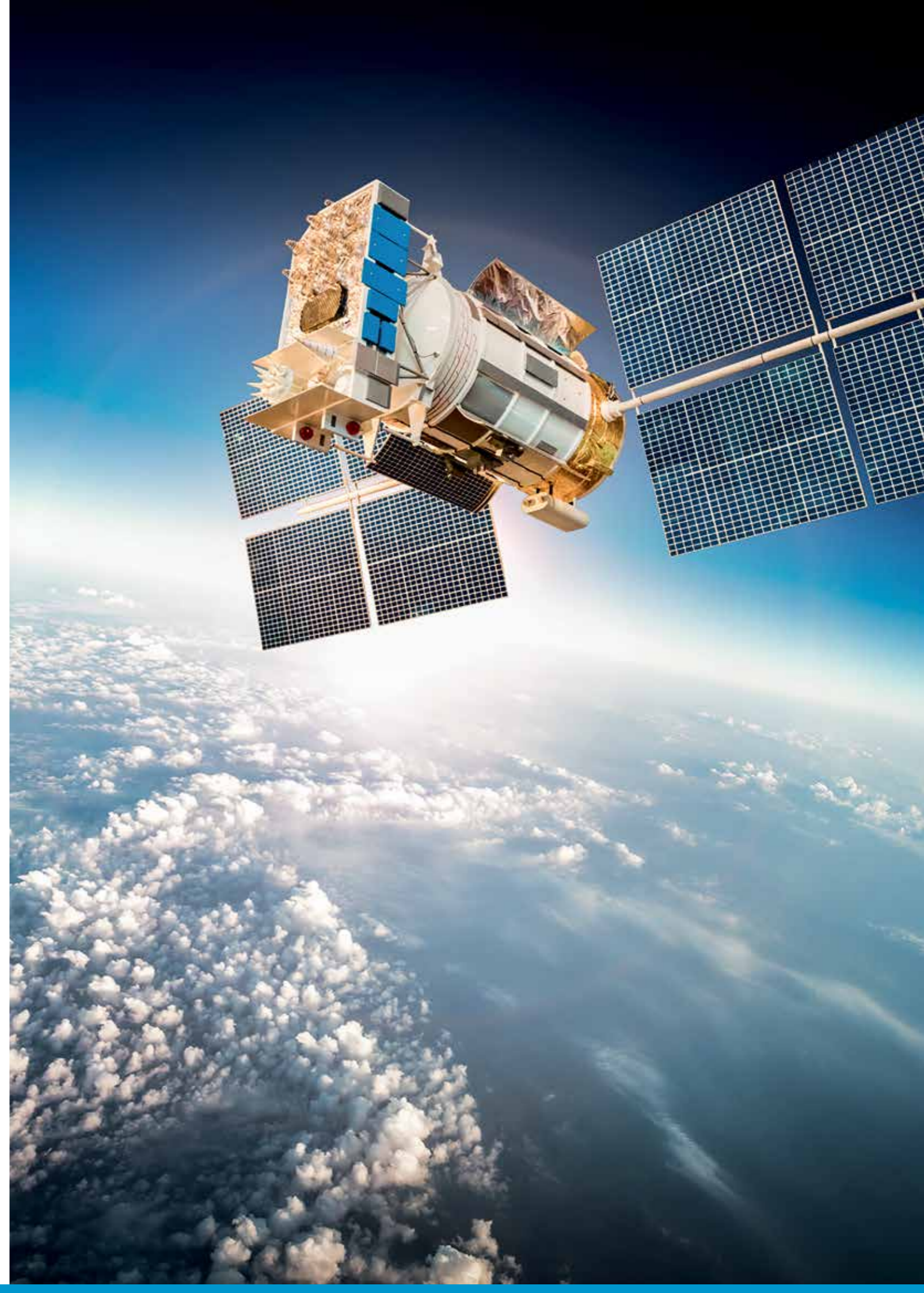
The GPA is a plurilateral WTO agreement, which means that it is optional to existing (and future) WTO members. It is the EU which is a party to this agreement, not the UK, which means that the EU is responsible for fulfilling the obligations under the treaty, including those which are within the competence of its member states. The UK is still awaiting formal approval for its application to join the GPA. The substance of the application was approved in late November, but the GPA's other signatories are still trying to organize a draft decision for approval.

## Digital Trade

Seventy WTO members indicated their intention to commence negotiation for a plurilateral agreement covering e-commerce, as announced in Davos last week. It will include such matters as combatting spam

and preventing data localization requirements. The UK should consider signing onto this agreement following Brexit as it is a leader in the field of digital trade and e-commerce.

The language for the draft decision has not been decided yet, but the substance of the GPA offer will not change. This process remains a formality. There is a practical problem that the UK does not currently have the institutional infrastructure to fulfil or enforce GPA obligations (for example relating to tendering procedures) and it will need to get this in order in the coming months or else it will risk facing complaints by other WTO members for failure to uphold its GPA obligations.



## UK FTAs WITH THIRD COUNTRIES

As a member of the EU, the UK was limited to the trade agreements negotiated by the EU because the EU reaches trade agreements on behalf of the bloc for each

member state for goods and services. After Brexit, the UK will want to conclude FTAs with other countries, including those with which the EU already has FTAs (the benefits of which the UK lost upon Brexit).

### Rolling Over EU-FTAs

The UK has wisely sought to rollover the 37 FTAs with 67 countries which the EU has with third states which will no longer apply once the UK departs from the EU. Collectively these account for roughly 15 per cent of the UK's trade in goods and about 12 per cent of its trade in services. It is not clear whether these countries are willing to offer the same terms to the UK as they did to the EU and this will require some negotiation. Encouragingly, some countries, notably Canada, have indicated that they intend to offer the UK even better terms than it did to the EU under CETA, although this has yet to materialize, most likely because the UK has not yet established the nature of its future relationship with the EU. This is perhaps the single greatest drawback which has resulted from the protracted withdrawal negotiations between the UK and the EU.

Some of the EU's FTA partners may be unwilling to simply offer the same trade agreements to the UK because they may not be prepared to extend the same level of access to the smaller UK and its smaller market than they did to the EU with its size and considerable negotiating power. Another difficulty associated with rolling over the EU's FTAs involves Rules of Origin (ROO). As discussed above, these are rules which verify how much of a product is deemed to be from a party country, allowing it to qualify for preferential access. ROO are complicated for composite products which are part of multi-state value chains, as where some components come from the UK and some from the EU. Re-negotiating ROO in the context of rollover requires what is known as 'diagonal cumulation' – all three states must agree on

rules for cumulative content – meaning the UK, the EU and the third party. There has not yet been any indication that the EU will agree to cooperate in this process to benefit the UK, although failing to do so arguably evinces a lack of good faith.

Another potential problem relates to the issue of MFN in the case of services and investment commitments in FTAs. Some EU agreements, like the CETA with Canada, are worded such that there is a promise under the MFN provisions that later agreements offering deeper liberalization than the one at hand must be offered to existing partners. This pressure for greater liberalization applied retrospectively could jeopardize a special UK-EU FTA, such as the one discussed above, were Canada to demand the same treatment. Likewise, if the UK manages to secure an FTA with Canada based on CETA, the MFN provision in this treaty, if kept in that format, could frustrate future UK arrangements because, again, the UK will have to offer these better arrangements to Canada, creating the need for regular renegotiation.

Finally, rolling over the EU's FTAs could compel the UK to adhere to EU standards on goods and potentially also services. The third state may not consent to the rollover with the UK unless these standards are duplicated. While this could be mitigated to a degree by mutual recognition of standards, this requirement could result in a situation where the UK would be unable to diverge from EU standards in order to form FTAs with third countries employing somewhat laxer regulations.

There have been some positive developments on preferential trading relations with the rest of the world. The UK concluded a trade agreement with Switzerland in December 2018, although it has yet to be signed officially. This agreement will replicate Switzerland's 100+ agreements with the EU, covering such matters as taxation and agriculture. It was reported recently that the UK has also agreed in principle on an FTA with Israel. An FTA with South Africa is also thought to be close to conclusion. Encouragingly, the UK has signed trade agreements with Australia and New Zealand, however these

are Mutual Recognition Agreements (recognizing conformity assessment procedures for goods and services) rather than comprehensive FTAs. Trade negotiations with other countries have been underway for months and should be expected to pick up steam following Brexit when there is a clearer picture of the UK's trading relationship with the EU. The US has expressed a willingness to conclude an FTA and there are indications that the UK will seek to join the Comprehensive and Progressive Trans Pacific Partnership (CPTPP), an 11-nation trade pact concluded among countries on the Pacific Rim.

scientific consensus and allow these products by recognizing US product assessment procedures, to the extent that they also conform to WTO SPS and TBT requirements.

Foreign investment is a vital component of the UK economy, with inward and outward FDI stocks roughly even at just under £1 billion per year respectively. It should therefore feature in the UK's FTAs with the rest of the world. The UK has 97 Bilateral Investment Treaties (BITs) currently still in force, most of which are with developing countries. It is a party to the Energy Charter Treaty, which facilitates trade and investment in the energy sector. As indicated above in relation to the UK-EU FTA, the UK should include an investment chapter in its future FTAs with other countries offering foreign investors the basic protections contained in these treaties. Whether as part of FTAs or through BITs, the UK should take this opportunity to update its investment treaty practice from its Model BIT of 2008 in line with modern trends.

These include providing clearer definitions of indirect expropriation and Fair and Equitable Treatment, the standard under which most investment claims have been brought. It would be advised to include provisions specifying the right to regulate in matters of public interest in order to foreclose claims based, for example, on regulations designed to address public health matters. Such precautions should not be viewed as interferences with normal market conditions in the UK, but rather insurance against frivolous claims, which, although rare, are best avoided. As indicated above, the UK should avoid departing from standard ISDS in its investment treaties as this represents an attractive feature to foreign investors and could be advantageous to UK firms operating overseas in environments with weak rule of law. Since many of the UK's future investment partners will be emerging and developing countries the importance of the procedural and substantive protections of investment treaties must not be underestimated.

## The Contents of Future UK FTAs with Third States

It is unquestionable that the UK's FTAs with the rest of the world will include services given that the UK exports £220 billion in services per year to the EU and the rest of the world and represents its key comparative advantage. Priority in this regard will be liberalizing financial services as well as securing mutual recognition agreements for professional qualifications to allow movement of services professionals on a temporary basis. Article V of the GATS which facilitates FTAs, requires that such arrangements cannot be sector-based. GATS Art V requires 'substantial sectoral coverage' which means that all or near all services must be covered in an FTA. Services negotiations in FTAs are bound to be more complex because of the highly regulated nature of this kind of economic activity. The UK's priority will be financial services and it will seek arrangements such as those indicated above in relation to the EU. Since, as noted earlier, the UK is very much a global leader in financial services regulation it is expected that the UK will be in a strong bargaining position with respect to setting the terms of such agreements.

which are developing countries) so negotiations on TiSA could proceed more efficiently than it would were 164 members involved. The plan is eventually to incorporate the TiSA into the WTO with a view to it encouraging other WTO members to join incrementally. The last round of negotiations for the TiSA concluded in November 2016 and there is no set deadline to terminate the negotiations.

The UK's trade agreements with other countries will prioritize the removal of tariffs on a wide range of goods, including some which had been protected in the past at the behest of other EU member states and for which there is no UK domestic market needing protection. These represent immediate efficiency gains which may well compensate for any losses engendered by declines in trade with the EU, which represents an ever-decreasing component of UK trade. As a consequence of the success of the WTO/GATT regime, tariffs on most manufactured goods around the world is quite low, but some agricultural goods bear very high tariffs as do some composite goods such as automobiles. This is precisely why FTAs are so attractive to many countries.

With the importance of services in mind, the UK should consider becoming a signatory of the Trade in Services Agreement (TiSA) which is an FTA covering services currently being negotiated among 23 WTO member states including the EU and many other developed countries. Together these countries comprise approximately 70 per cent of world trade in services. TiSA is essentially an expansion of the WTO GATS, meaning that the participants will commit to greater liberalization for their services than they did under GATS in part because, as developed countries, these parties have more interest in opening services than most WTO members (two-thirds of

The issue of product standards regarding health and safety in FTAs will be more complex and raise some difficulties from a negotiating standpoint. It is not clear what stance the UK will take regarding certain controversial products like hormone treated beef or genetically modified organisms. This could present an obstacle to an FTA with a country like the US were the UK to insist on retaining EU-type restrictions on these products. As the WTO dispute settlement tribunals ruled against the EU's restrictions on both these classes of products the UK could follow global,

## CONCLUSION

The optimal conclusion to the lengthy Brexit withdrawal negotiations with the EU is a comprehensive FTA offering deeper integration than any of the EU's previous FTAs, based upon replication of existing levels of market access and tariffs between the two countries where possible. While it is hard to imagine that such an agreement could be concluded by 29 March, an interim agreement with many of these features could be put in place now and would be entirely WTO-compliant.

If this does not happen in time for Brexit Day, departure from the EU without a formal trade agreement should in no way be viewed as a nightmare 'no deal' scenario. While some tariffs will be slightly higher vis a vis the EU, other tariffs will be lower and outside the Single Market the UK will be able to implement its own regulatory standards on goods and services internally and with to other countries. New customs procedures at borders can be mitigated with the right infrastructure and technology. Preparations for trading with the EU under WTO terms are well under way. Industry and the general public are beginning to realize that many of the dangers of life outside the EU have been exaggerated.

Settling the UK's position as an autonomous WTO member raises some legal issues, but these will

eventually be resolved without serious difficulty. While there have been objections to the UK's schedule for goods (relating to tariff rate quotas) and services, these do not need to be dealt with immediately. The UK can trade with the EU and the rest of the world as a WTO member under an uncertified schedule for the foreseeable future.

Finally, the UK is in a strong position to negotiate trade agreements with other countries and to enjoy the benefits of free trade unbridled by the regulatory and political impediments posed by its status within the EU. While this process has not proceeded as rapidly as the government might have wished initially, the slow progress on FTAs is largely the consequence of the UK having not established their future relationship with the EU. This has understandably made potential trade partners wary regarding the UK's capacity to control its own economy (particularly since the Withdrawal Agreement contemplated full regulatory alignment with the EU on goods). Once the Brexit process is complete, we can expect that many mutually beneficially FTAs will be forthcoming, with the big prize of an FTA with the US especially highly anticipated. As the UK begins to conclude FTAs with third states it is quite likely that the EU will come around and eventually an FTA with its former member will also materialize.







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