The Scottish Parliament
Pàrlamaid na h-Alba

SPICe The Information Centre
An t-Ionad Fiosrachaidh

SPICe Briefing
Pàipear-ullachaidh SPICe

UK trade policy and Brexit

Iain McIver, Anouk Berthier and Professor Ian Wooton

This briefing, prepared for the Scottish Parliament's Culture, Tourism, Europe and External Relations Committee, examines what the UK's international trade policy might look like as a result of Brexit. It sets out details of the EU's current trade agreements with third parties in the form of case studies providing background on the agreements with South Korea and Ukraine. The briefing also discusses whether the UK will be able to continue to benefit from the EU's third country trade deals during any transition and sets out the challenges the UK Government might face as it seeks to replicate the EU's current trade agreements at the end of any transition period.

7 March 2018
SB 18-17

Contents

Executive Summary 3
Glossary 4
Context 8
The UK's current trading relationship with the EU 9
The EU Customs Union 9
The Single Market 13
The UK and Scotland's current international trade flows 15
The international trade landscape 19
The European Union's existing trade agreements 20
Case studies of EU trade agreements 22
Case Study - the Free Trade Agreement with South Korea 22
Case Study - EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area (DCFTA) 23
Could the EU's trade agreements with third countries continue to apply to the UK during the transition period? 25
Can the EU's trade agreements with non-EU states continue to apply to the UK following Brexit and the transition? 28
Grandfathering trade agreements 28
Rules of Origin 29
Most Favoured Nation clauses 32
Mutual recognition of standards 34
Tariff rate quotas 36
The new trade agreement with the EU 39
"WTO rules" scenario 41
New trade deals 43
Unilateral free trade? 44
Bibliography 45

Executive Summary

This briefing summarises the recent debate around the UK's withdrawal from the EU and the implications of the UK's position for its future trading relationship with the EU as well as third parties.

Embedded within the EU treaties is agreement over a common external tariff policy, creating a customs union. Therefore without being a member of the EU, the UK cannot be part of the Customs Union as defined in the EU Treaties. The UK could seek to secure a new customs arrangement with the EU, as Turkey has done, but whether or not this would impose customs checks between the UK and the EU hinges on a) whether there are any tariffs for goods, b) whether there are any non-tariff barriers for goods. The latter will depend in part on the degree of regulatory alignment between the UK and EU for goods.

In addition, an internal EU market for services has developed over decades of EU efforts to deepen the EU Single Market. Any future trade arrangement between the UK and the EU is unlikely to allow for the same freedom of trade in the services market as is currently the case. The less regulatory alignment/convergence there is between the UK and the EU, the less integrated the EU-UK services market will inevitably be.

The UK could potentially remain part of the Single Market without being an EU Member State in a 'Norway type' model - this would be the least disruptive option for trade as it involves the UK complying with EU rules. However, the UK Government has rejected membership of the European Economic Area (EEA) as an option as it would not allow the UK to vote on EU rules - and includes all four of the 'freedoms' including free movement.

A key issue for the EU at this point in relation to the UK's future trading relationship with the EU is the avoidance of a border on the Island of Ireland. While the UK is committed to avoiding this, including any physical infrastructure or related checks and controls, it has not proposed any concrete solutions post-withdrawal, spurring the EU to put forward a draft agreement establishing a common regulatory area comprising the EU and the UK in respect of Northern Ireland. The UK has yet to propose a concrete alternative.

Beyond the EU, the UK may be able to retain the benefits of the EU's trade deals with third parties (e.g. Singapore) during the transitional phase of withdrawal. After that, it will have to make its own trade deals. In this regard, it can attempt to 'grandfather', or replicate the EU's current trade deals with third parties, though its relatively weaker market power compared to the EU may make it difficult to secure to same access as the EU in third parties' markets.

Glossary

Applied tariff

Tax rate that a country imposes on an imported product (may be less than the bound tariff).

Article XXIV of the General Agreement on Tariffs and Trade 1994

This article provides for an exception to the Most Favoured Nation (MFN) principle in the WTO in that it permits countries to establish bilateral/plurilateral free trade agreements if they meet the criteria of:

- establishing substantially free trade between members (i.e., not simply a reduction of trade barriers);
- covering substantially all trade (in reality, frequently limited to manufactures or specific industries); and
- resulting in no harm to third countries that are external to the trade agreement.

Bound tariff

Tax rate on an imported good that has been negotiated with the WTO. The importing country can apply a lower rate if it chooses on an MFN basis, i.e. it apples the same tariff to all its trading partners.

Common external tariff (CET)

Tariffs set by all member countries of a customs union (CU) on imports from countries outside the union. Allows all products within the CU to move freely regardless of whether they were produced in the CU or imported into one of the member countries.

Common market

Customs union that also includes the free movement of labour and capital.

Customs duties

Any duty or charge of any kind imposed on, or in connection with, the import or export of a good, including any form of surtax or surcharge imposed on, or in connection with, such import or export.

Customs union (CU)

Free trade area where there is a common external tariff on third party imports covered by the union. In other words a trading area in which there are no customs duties on bilateral trade (within the CU) and a joint common external tariff (CET) has been established for imports from non-member countries.

European Economic Area (EEA)

Area that unites EU Member States and the three EEA EFTA States (Iceland, Liechtenstein, and Norway) into an Internal Market governed by the same basic rules. These rules aim to enable goods, services, capital, and persons to move freely about the EEA in an open and competitive environment, a concept referred to as the four freedoms.

European Free Trade Association (EFTA)

The intergovernmental organisation of Iceland, Liechtenstein, Norway and Switzerland. It was set up in 1960 by its then seven Member States for the promotion of free trade and economic integration between its members.

Four Freedoms

Principle underlying the Treaty of Rome with the goal of achieving free movement of produced outputs (goods and services) as well as the means of production (capital and workers).

Free-trade agreement (FTA)

Trade agreement where duty-free status is restricted to goods manufactured in FTA, while external trade relations are dictated by member countries' WTO obligations. Requires customs formalities at borders between member countries as tariff rates on imported goods may differ. The WTO categorises FTAs that do not encompass all WTO member states (e.g. the WTO's General Agreement on Tariffs and Trade) as either "regional trade agreements" (RTAs) or "preferential trade arrangements" (PTAs).

General Agreement on Tariffs and Trade (GATT)

A legal agreement between many countries with the overall purpose of promoting international trade by reducing or eliminating trade barriers. As an institutional body, GATT was signed by 23 nations in Geneva on 30 October 1947, taking effect on 1 January 1948. It was succeeded by the World Trade Organisation on 1 January 1995, but the principles of the GATT remain at the heart of the WTO.

Generalised System of Preferences (GSP)

Preferential tariff system which provides for a formal system of exemption from the WTO's MFN principle and lowers tariffs for the least developed countries only.

Geographical indications (GIs)

Sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin.

Most-favoured nation (MFN) principle

WTO principle enshrined in Article I of the General Agreement on Tariffs and Trade 1994 stating that WTO member countries cannot discriminate between other member countries with respect to trade access e.g. if a country grants a lower tariff for a given product to one of its trading partners, it must do the same for all other WTO members (though there are exceptions allowed under Article XXIV of the General Agreement on Tariffs and Trade 1994).

National treatment

The basic principle of GATT/WTO that prohibits discrimination between imported and domestically produced goods with respect to internal taxation or other government regulation. Refers to treating foreigners and locals equally by treating imported and locally-produced goods in the same way — at least after the foreign goods have entered the market.

Non-tariff barriers (NTBs)

Measures other than tariffs that have the effect of restricting trade on goods or services including:

- Regulations: Rules which dictate how a product can be manufactured, handled, or advertised
- Rules of origin: Rules which require proof of which country goods were produced in
- Quotas: Rules that limit the amount of a certain product that can be sold in a market.

Partnership and Cooperation Agreements

Agreements that involve the provision of general frameworks for bilateral economic relations but, crucially, involve no change in participant countries' tariffs.

Preferential trade arrangements (PTAs)

Unilateral trade preferences including schemes where developed countries grant preferential tariffs to imports from developing countries, as well as other non-reciprocal preferential schemes granted a waiver by the WTO. For instance under a "Generalized System of Preferences" the EU allows vulnerable developing countries to pay fewer or no duties on exports to the EU.

Quantitative restrictions (QRs)

Limit on the number of goods allowed within a particular time period (often bilateral, imposed on a country-by-country basis)

Regional Trade Agreements (RTAs)

Reciprocal trade agreements between two or more partners including free trade agreements and customs unions e.g. the European Economic Area and the EU-Turkey customs union.

Rules of origin (RoO)

Mechanisms to determine threshold for local content (i.e. produced in the FTA). Can take several forms and are subject to politicisation.

- *Change in tariff classification*

Transformation of imported item from one category of good to another within the FTA

- *Regional value content*

Percentage of value added in region, but often difficult to evaluate. May use cumulation: adding up inputs into final products, from all countries that are part of the FTA

- *Technical*

particular manufacturing or processing operation completed in the region

Single Market

Internal market in which the free movement of goods, services, capital and persons is assured and in which citizens are free to live, work, study and do business.

Tariff

A tax on imported goods but not on goods produced domestically.

Tariff-rate quota (TRQ)

Combination of the two policy instruments that nations use to restrict imports (quotas and tariffs). Essentially, the TRQ is a two-tiered tariff, where the imports entering within the quota portion of a TRQ are usually subject to a lower tariff rate (the Inside tariff quota rate or ITQR) while imports above the quota's quantitative threshold face a much higher, usually prohibitive) tariff. A prohibitive tarrif is a tax on an imported good that raises the price of the good sufficiently such that consumers choose not to buy any of it.

World Trade Organisation (WTO)

An intergovernmental organization that regulates international trade as a successor to the General Agreement on Tariffs and Trade. The WTO was established on 1 January 1995 following the signature of the Uruguay Round Agreements by 123 nations in Marrakesh on 14 April 1994.

Context

The UK's decision to leave the European Union (EU) is likely to have a major impact on the UK's future international trade policy. As a member of the EU, the UK is a member of both the Single Market and the EU Customs Union. In addition, EU Member States' trade agreements with third countries are negotiated at EU level initially by the European Commission under the guidance of member state governments. The European Commission is also responsible for representing the EU as a whole at the World Trade Organisation (WTO) and for acting on the EU's behalf in the event of trade disputes, as well as the implementation of defensive trade "remedies" allowed for under the WTO to protect the EU market.

Once the UK leaves the EU, it will need to develop its own international trade policy. Key decisions that the UK Government will be required to make shortly include exactly what kind of trade arrangement it will seek to secure with the EU, and whether it will attempt to replace or replicate the EU's trade agreements with third countries. In addition, the UK will once again be responsible for representing its own interests in the WTO.

The future direction of the UK Government's trade policy will initially be dictated by the outcome of negotiations between the EU and the UK on the terms both of any transition deal and the future relationship between the two. A key question for the transition period is whether the UK will be able to continue to benefit from the EU's trade agreements with third countries whilst the nature of the future relationship, will provide an indicator of how independent the UK's future trade policy really can be.

This briefing was prepared for the Scottish Parliament's Culture, Tourism, Europe and External Relations Committee. It begins by setting out what membership of the Single Market and Customs Union means in practice. It then sets out details of the EU's current trade agreements with third parties, including case studied providing background on the agreements with Canada and South Korea.

The briefing then:

- Discusses whether the UK will be able to continue to benefit from the EU's third country trade deals during any transition.
- Examines how the UK Government might seek to replicate the EU's current trade agreements at the end of any transition period.
- Considers how the UK's trading relationship with the EU will influence the development of its global trading relationships including issues such as how the EU's current quotas might be split between the EU and the UK, and the potential response of third countries to the UK's proposals.

Recognising that international trade is framed by WTO rules and principles, this briefing refers to these where relevant.

The UK's current trading relationship with the EU

As a member of the EU, the UK is currently a member of both the EU Customs Union and the Single Market - a territory without any internal borders or other regulatory obstacles to the free movement of goods and services. The relationship between "Customs Union" and "Single Market" can be illustrated with Norway, which is in the Single Market as a member of the European Economic Area (EEA), but not part of the EU Customs Union - it sets its own import tariffs for goods from outside the EEA. Norwegian goods (except agricultural and fish products) can enter the EU tariff-free. This means Norway has to demonstrate that the goods it exports to the EU tariff-free are eligible for this treatment. It has to prove where these goods originate from through Rules of Origin.

The EU Customs Union

The EU is a customs union in that it applies a common external tariff (CET) to all goods entering from outwith the EU and there are no tariffs between EU member states. As noted in a blog by Alex Stojanovic from the Institute for Government in July 2017: [1]

> " ... the UK's membership of the Customs Union is tied to being a member state of the EU. Leaving one automatically means leaving the other. The Customs Union is embedded in the one [sic] of the founding treaties binding member states: the Treaty on the Functioning of the European Union. The treaty comprises just three articles which establish the common external tariff and the European Commission's responsibilities in managing it. It applies to member states only; therefore, it will not apply to the UK as a non-member state."

As a result of this CET, the EU has competence for negotiating trade agreements on behalf of the Member States and individual Member States are unable to adopt their own independent trade policies.

A key aspect of the EU Customs Union is the establishment of "national treatment", a founding WTO principle which prohibits discrimination between imported and domestically produced goods with respect to internal taxation or other government regulation. Once in France for instance, Polish, French and UK goods are treated in the same way. National treatment only applies once a product, service or item of intellectual property has entered that (national, or supra-national) market or is delivered in the market. Therefore, charging customs duty on an import (such as the EU's CET) is not a violation of WTO's national treatment principle even if locally-produced products are not charged an equivalent tax. [2]

Technically, the UK cannot be in the EU Customs Union - the one embedded in the EU Treaties - without subscribing to the EU Treaties and following EU rules. However, it has scope to negotiate a separate customs union agreement with the EU, as Turkey has done for instance. This would provide it with preferential treatment for UK goods covered by the agreement entering the EU, relative to other countries that do not have a free trade agreement with the EU e.g. China. It would also mean that UK goods covered by the arrangement receive national treatment once they are in the EU, i.e. they would be treated the same as EU products.

Turkey provides a useful example to help understand the link between customs union agreements and customs checks. Turkey adopted a partial customs union relationship with the EU in December 1995 allowing it to export the goods covered by the EU-Turkey agreement, to the EU, tariff-free. The EU-Turkey agreement covers all industrial goods, but does not address agriculture (except processed agricultural products), services or public procurement. In areas where this customs union agreement applies, Turkey is required to adopt legislation to the same standards as the EU's, including standards in areas such as competition, product and environmental rules. However, Turkey has no say in the setting of this legislation.

As a result of its agreement with the EU Customs Union, Turkey is required to align its external tariffs (i.e. the tariffs it imposes on goods imported into Turkey) with those of the EU. This means that when the EU concludes a trade agreement with a third country, in areas covered by its customs union membership with the EU Customs Union, Turkey is required to provide access to its market on the same terms as those agreed by the EU, though it has no say in the EU's trade negotiations with third parties. In addition, whilst Turkey is required to provide access to its market for third countries, as it is not a member of the EU Customs Union, it does not benefit from the reciprocal access to third countries' markets which are provided under the trade agreement.

Turkey can however sign its own bilateral free trade agreements, as long as the terms do not cut across its customs union commitments with the EU.

Crucial to whether a customs union requires customs checks at the border between the two parties' is whether the union is a *regulatory* union. For instance, the House of Lords European Union Committee heard evidence in 2016 explaining that Turkey initially had a customs union agreement with the EU, but this did not include regulation. It stated: [3]

> " ... there [remain] customs checks on the border between Turkey and the EU (while within the EU internal customs checks have been abolished). Dr Holmes told us that while the 1995 agreement between Turkey and the EU removed customs duties, it was not a regulatory union and so did not abolish technical barriers to trade. This resulted in the EU inspecting Turkey's goods, because it did not recognise Turkey's conformity assessments. A series of Mutual Recognition Agreements were subsequently put in place, which had allowed more Turkish goods to enter the EU without further technical inspections. However, these agreements only applied in areas where the EU had harmonised its rules internally—in areas where Member States apply separate national rules, customs authorities retain the right to inspect Turkish goods. "

Alex Stojanovic from the Institute for Government explains: [1]

> " Where Turkey does not follow EU rules for the production, labelling, movement and storage of [the goods covered by the agreement], it still faces border checks for compliance, ranging from document checks to testing product samples."

Another example is the customs checks between Norway (an EEA member) and Sweden (an EU member) at select points of the border (no continuous border). These customs checks exist to ensure that goods are not using a member of the EEA (in this case, Norway) as a point of entry to the Single Market unlawfully. This issue was addressed in the UK Government's publication Alternatives to membership: possible models for the

United Kingdom outside the European Union which was published before the referendum and states: [4]

> “ In a Customs Union goods can be shipped across national borders without tariffs being imposed. This makes internal trade cheaper and less bureaucratic because it removes costly and time-consuming processes. These checks can be complex, for example where they require manufacturers to say where they sourced the components in their products, in order to make sure the whole product complies with all the different external trade polices (the so-called ‘Rules of Origin’). An engine made in the UK may contain parts from all over the world. Without the Customs Union, some of those parts would be liable for tariffs and have to prove their origin. The engine therefore would need to be inspected and checked, and tariffs paid as it crossed the border into another EU Member State. The Single Market means none of that expense and bureaucracy is necessary.”

The UK Government has made it clear that it wants a "customs agreement with the EU" though it is not clear what is meant by this. This has led the House of Commons International Trade Committee to state in March 2017: [5]

> “ [The Government] must be much clearer about the defining characteristics of [a customs agreement with the EU. ”

Commenting on a Brexit sub-committee meeting on 9 February 2018, David Davis stated: [6]

> “ The atmosphere is very constructive - I'm not going to give you a detailed blow-by-blow of a cabinet committee - that obviously never happens. Very constructive, a lot of things resolved. Bear in mind we've already got a very, very strong framework of what we want to achieve. That is an overarching free trade agreement and large numbers of components of what we want to achieve within that, a customs agreement and so on, and we were fleshing that out. But you'll hear more about that from the prime minister in due course, I'm sure.”

In a speech on 26 February, the Leader of the Opposition, Jeremy Corbyn said his party supported a close relationship with the EU both during the transition period and then, following that, in the form of a Customs Union: [7]

> “ Every country, whether it’s Turkey, Switzerland, or Norway that is geographically close to the EU, without being an EU member state has some sort of close relationship to the EU. Some more advantageous than others. And Britain will need a bespoke, negotiated relationship of its own. During the transition period, Labour would seek to remain in a customs union with the EU and within the single market. That means we would abide by the existing rules of both (...) We have long argued that a customs union is a viable option for the final deal. So Labour would seek to negotiate a new comprehensive UK-EU customs union to ensure that there are no tariffs with Europe and to help avoid any need for a hard border in Northern Ireland.”

Jeremy Corbyn’s speech did not make clear what would be included in the Customs Union agreement Labour would seek, for example, it is not clear if agriculture would be included (a crucial sector for Northern Ireland). In addition, customs unions do not include provisions for services.

By agreeing a Customs Union with the EU, the UK would be tied in to the obligations of the EU's future bilateral trade deals. The Labour Leader suggested that for the Customs Union relationship to work, the UK would have to have a say in future trade deals: [7]

> " "But we are also clear that the option of a new UK customs union with the EU would need to ensure the UK has a say in future trade deals. A new customs arrangement would depend on Britain being able to negotiate agreement of new trade deals in our national interest. Labour would not countenance a deal that left Britain as a passive recipient of rules decided elsewhere by others. That would mean ending up as mere rule takers.""

In sum, whether or not customs checks would be required at the border between the UK and the EU in the context of a customs agreement, would entirely depend on the nature of regulatory alignment between the UK and the EU and the need for compliance checks to ensure compliance for instance with EU sanitary and phyto-sanitary standards, rules for production, labelling, movement, storage of foods, etc. As noted by Prime Minister Theresa May on 2 March 2018: [8]

> " The next hard fact is this. If we want good access to each other's markets, it has to be on fair terms. As with any trade agreement, we must accept the need for binding commitments – for example, we may choose to commit some areas of our regulations like state aid and competition to remaining in step with the EU's."

The border issue is nowhere more prominent than in the context of the Island of Ireland. Any form of trade relationship short of continued EU membership could jeopardise the relationship between Northern Ireland, the Republic of Ireland, and the rest of the UK. In this regard, the UK has made a number of commitments. The Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom's orderly withdrawal from the European Union states (paragraph 43): [9]

> " The United Kingdom (...) recalls its commitment to the avoidance of a hard border, including any physical infrastructure or related checks and controls."

In addition, the December 2017 joint report states that, in the absence of another solution for the island of Ireland that would achieve this commitment: [9]

> " ... the United Kingdom will maintain full alignment with those rules of the Internal Market and the Customs Union which, now or in the future, support North-South cooperation, the all island economy and the protection of the 1998 Agreement. [10] "

The European Commission Draft Withdrawal Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community further clarified the EU's position on 28 February 2018:

> " A common regulatory area comprising the Union and the United Kingdom in respect of Northern Ireland is hereby established. The common regulatory area shall constitute an area without internal borders in which the free movement of goods is ensured and North-South cooperation protected (...) The territory of Northern Ireland, excluding the territorial waters of the United Kingdom (the "territory of Northern Ireland"), shall be considered to be part of the customs territory of the Union. "

While EU chief negotiator Michel Barnier stated this is simply a legally-worded assessment of what had been agreed in the negotiations so far, Prime Minister (PM) Theresa May said this solution was unacceptable. [11]

On 2 March 2018 PM Theresa May set out two potential options from the UK Government's perspective that she said would allow the UK to maintain "frictionless trade" with the EU: [8]

1. A "customs partnership" where the UK would apply the EU's CET and Rules of Origin for non-EU imports arriving in the UK that are intended for the EU thus removing the need for customs processes at the UK-EU border. The UK would apply its own tariffs and rules to goods that are intended for the UK market. This would require "the means to ensure that both sides can trust the system and a robust enforcement mechanism."
2. A "highly streamlined customs arrangement" including:
    - No entry and exit declarations for goods moving between the UK and the EU.
    - Tariff-free movement in the EU of UK goods destined to the rest of the world and tariff-free movement in the UK of EU goods destined to the rest of the world.
    - Measures to reduce the risk of delays at the border such as UK-EU “trusted traders” schemes and IT solutions the mean vehicles do not need to stop at the border.

The EU operates a "trusted trader" scheme already through Authorised Economic Operators (AEO). This is a special status for traders that allows them to clear customs more quickly. When AEO status is granted by one customs authority within the EU, it is recognised by all the others. In November 2017 however, the Financial Times reported that few UK traders had been registered as AEOs by HM Revenue & Customs. [12] In addition, AEOs are still subject to border checks - this system does not establish "frictionless trade". [13]

The Single Market

A cornerstone of the EU economy, the European Single Market, came into effect at the beginning of 1993. The European Commission website states: [14]

> “ The Single Market is at the heart of the European project. ”

The Single Market has four cornerstones laid out in the EU Treaties: [15]

- Free movement of goods: the EU is a single territory without internal tariffs. Single market membership also removes non-tariff barriers (NTBs) such as technical specifications and labelling requirements. This means Scottish businesses can effectively sell their goods to a ‘home market' of over 500 million consumers.
- Free movement of workers guarantees every EU citizen the right to move freely, to stay and to work in another member state.

- Right of establishment and freedom to provide services – the objective being to provide a genuine internal market in services. This is to be done by removing barriers (both legal and administrative) to the development of service activities between Member States.

- Free movement of capital – the aim is to remove all restrictions on movement of capital within the EU and between Members States and third countries (with some exceptions).

In addition to providing tariff free access to EU markets, a common framework of regulations means companies in countries such as the UK, France, Italy or Poland have to abide by common standards - whether they trade across the EU or not. The purpose of this is to ensure high health, safety and environmental standards in goods, and a level playing field, i.e. to stop businesses or countries having an unfair advantage based on their location.

Membership of the Single Market also places a number of other commitments on Member States. The requirement to ensure all Member States are in the Single Market on an equal basis means that the EU Treaties also include common rules on competition and taxation. These rules cover areas such as public procurement, state aid and VAT policy.

The Single Market has removed barriers and simplified existing rules to enable everyone in the EU – individuals, consumers and businesses – to make the most of the opportunities offered to them by having direct access to 28 countries and 503 million people.

The Single Market is widely regarded as having provided increased competition, benefiting consumers with a wider choice of products and lower prices. It also makes it easier, and more economical, for businesses to conduct work and trade across borders. [16]

Over time, the Single Market has led to freer trade in services within the EU, such as passporting in the financial sector, though there is still not an entirely free internal market for services as there is with goods.

The real economic issue with EU-UK trade post-EU withdrawal is not whether the UK is or is not a member of the EU. It is whether it remains part of the Single Market - as a member of the European Economic Area (EEA, or so-called 'Norway option') or otherwise. While the EU has evolved in non-economic dimensions, at its heart remain the four freedoms enshrined in the Treaty of Rome ensuring free movement of goods, capital, services, and people. The Single Market encompasses all four of these and it currently seems unlikely that the EU Commission would be willing to give the UK free access to some markets (e.g. goods and services) and not others (e.g. workers). If the UK were to become an EEA state for instance, it would retain full access to it largest trading market. In many respects, from an economic perspective, it would be business as usual. There would also be some repatriation of powers from the EU, the most significant of which might be with respect to agriculture and fisheries where the UK would no longer be part of the Common Agricultural Policy and would also regain control over its 200-mile fishing limit.

On free movement of people, the PM stated On 2 March 2018: [8]

> “ We are clear that as we leave the EU, free movement of people will come to an end and we will control the number of people who come to live in our country.”

It is worth noting that the EU Member States have a certain degree of leeway on the application of the EU's principle of the freedom of movement. Under Directive 2004/38/EC [17] for instance, for the first three months, every EU citizen has the right to reside in the territory of another EU country with no conditions or formalities other than the requirement to hold a valid identity card or passport. For longer periods, the host Member State may require a citizen to register his or her presence within a reasonable and non-discriminatory period of time. [18] However, the UK does not register its EU migrants at the border. Other EU Member States such as Belgium for instance require all migrants to register at their Town Hall within three months of entering the country.

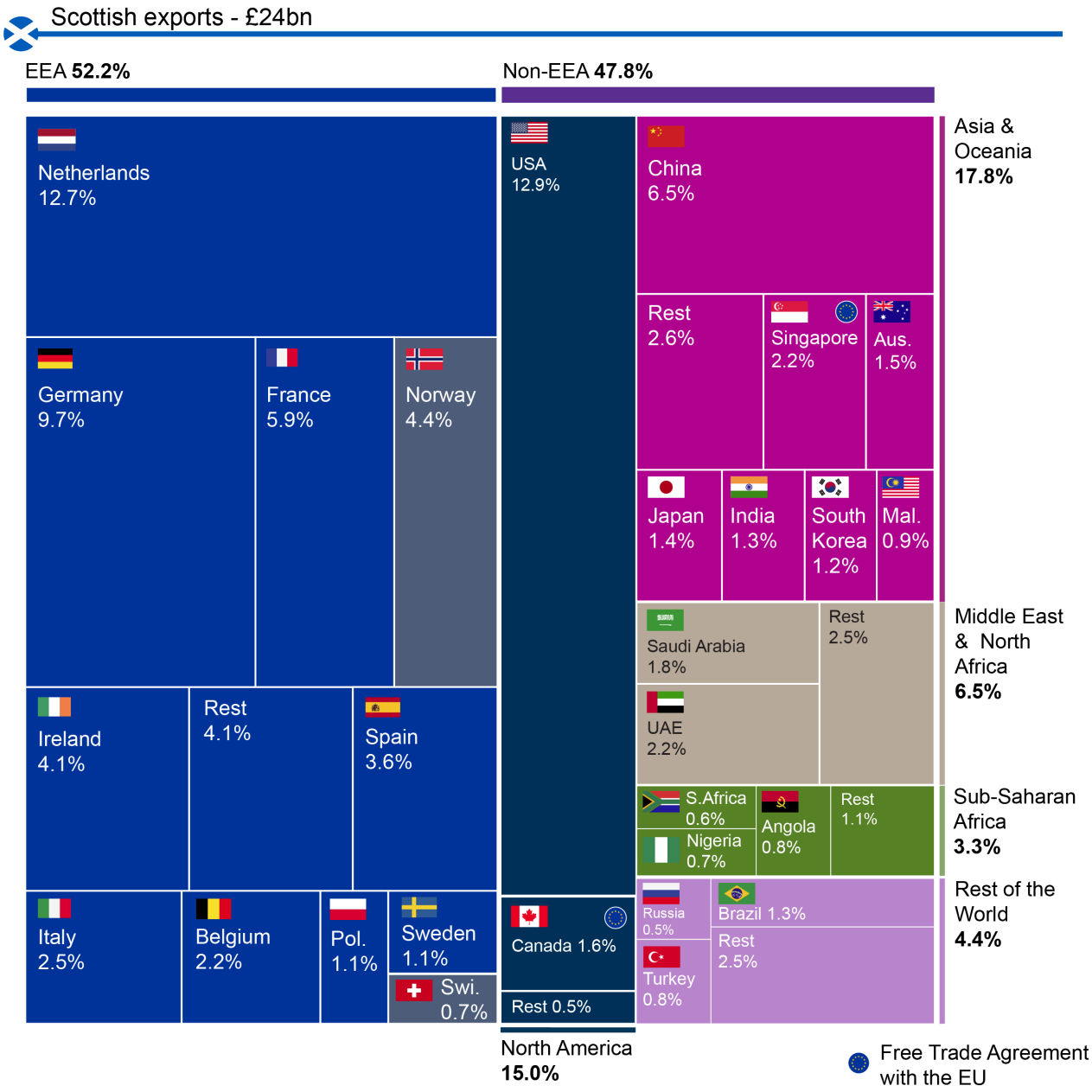
The UK and Scotland's current international trade flows

The EU is currently both the UK's and Scotland's biggest international trading partner as can be seen in Figures 1 and 2.

47.0% of Scotland's exports go to the EU. If Scotland's trade with the non-EU Single Market members, namely EEA states (Norway, Iceland, Liechtenstein and Switzerland), Scotland's exports to the Single Market made up about 52% of all Scottish exports in 2016.

The EU flags in Figures 1 and 2 highlight those main trading partners that EU has a free trade agreement with, namely Singapore, South Korea and Canada. Considering the US seems to have little political appetite for concluding free trade agreements in the near future, the scope for the UK securing entirely new trade deals with big trading partners seems limited.

Figure 1: Scottish international exports by region, 2016



In the UK, 49.2% of exports go to the EU while UK trade with the Single Market made up 53% of all the UK's exports in 2016.

Figure 2: UK international exports by region, 2016

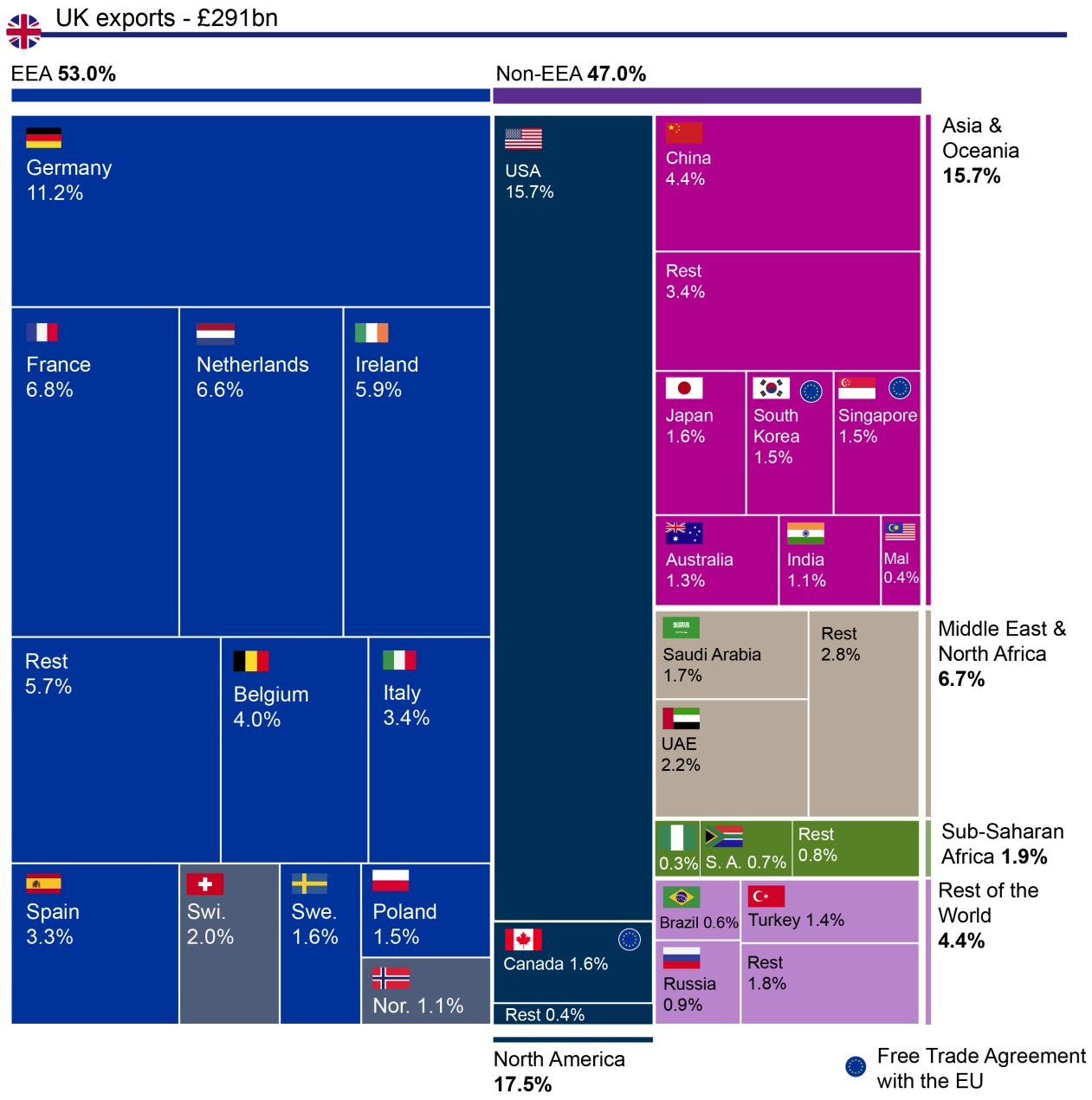
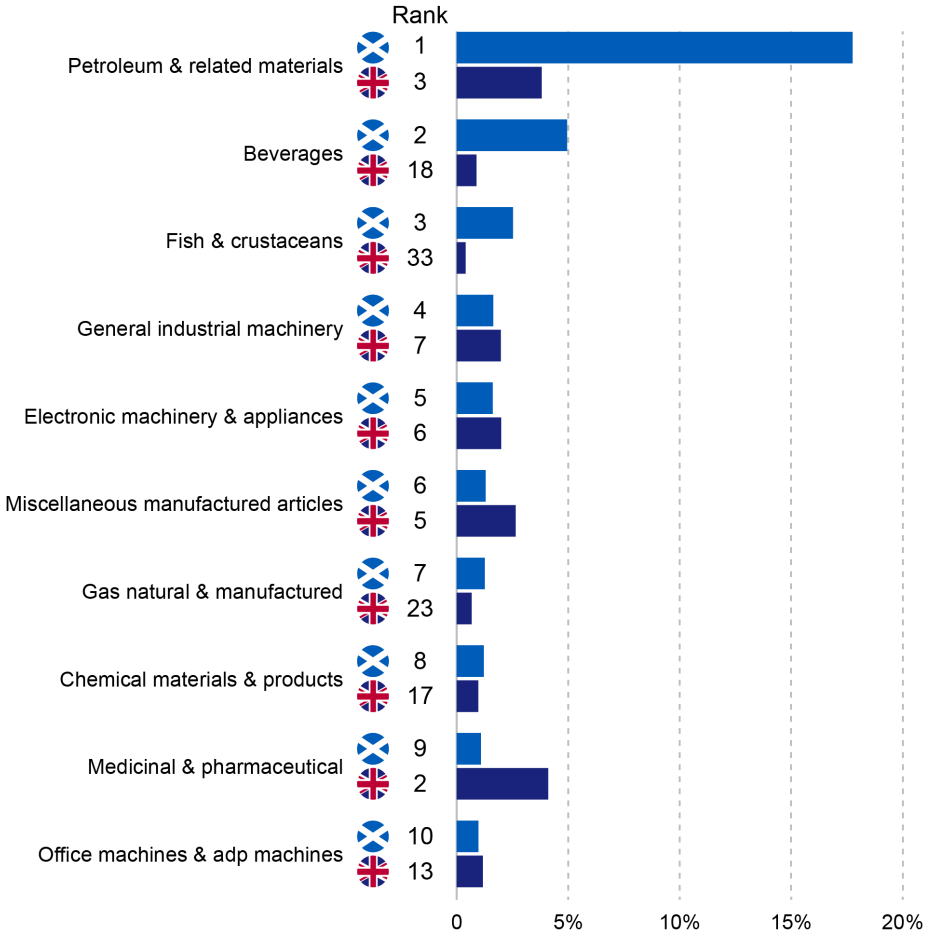


Figure 3 shows the relative importance of different export sectors for both Scotland and the UK in 2017. For example, it shows that whilst petroleum and related materials are Scotland's most important international export to the EU, representing around 17% of total exports to the EU, they are only the UK's third most important export proportionally and represent less than 5% of total UK exports. Figure 3 illustrates that there is a real possibility the Scottish Government may adopt very different views to the UK Government in relation to which sectors should be prioritized in future trade deals secured by the UK Government.

Figure 3: Relative importance of sectoral exports to the EU for both Scotland and the UK, 2016



The international trade landscape

There is some overlap between the different terms that are used to described trade agreements between countries.

The WTO promotes multilateral trade for all its members. For instance, all WTO members agree to the principles of free trade set out in the WTO's main agreements, one of the principles of which is "most favoured nation" treatment whereby countries are required to offer the same treatment to all their trading partners. However, in recognition of the growing number of trade agreements between two countries, or smaller groups of countries than all the members of the WTO (over 150 countries), it distinguishes between regional trade agreements (RTAs) and preferential trade arrangements (PTAs). It defines:

- RTAs as "reciprocal trade agreements between two or more partners." They include free trade agreements and customs unions e.g. the European Economic Area and the EU-Turkey customs union.
- PTAs as "unilateral trade preferences." They include schemes where developed countries grant preferential tariffs to imports from developing countries, as well as other non-reciprocal preferential schemes granted a waiver by the WTO. For instance under a "Generalized System of Preferences" the EU allows vulnerable developing countries to pay fewer or no duties on exports to the EU.

This terminology is ambiguous however as both RTAs and PTAs offer "preferential" trading conditions only to the signatories of these deals, at the expense of other WTO members.

Table 1 [19] [20] shows different types of RTAs by "hierarchy" - meaning each level incorporates all the provisions of the lower level of integration. For instance, a customs union is a free trade area plus a common set of policies towards imports from other countries.

Table 1: Different types of Regional trade agreements

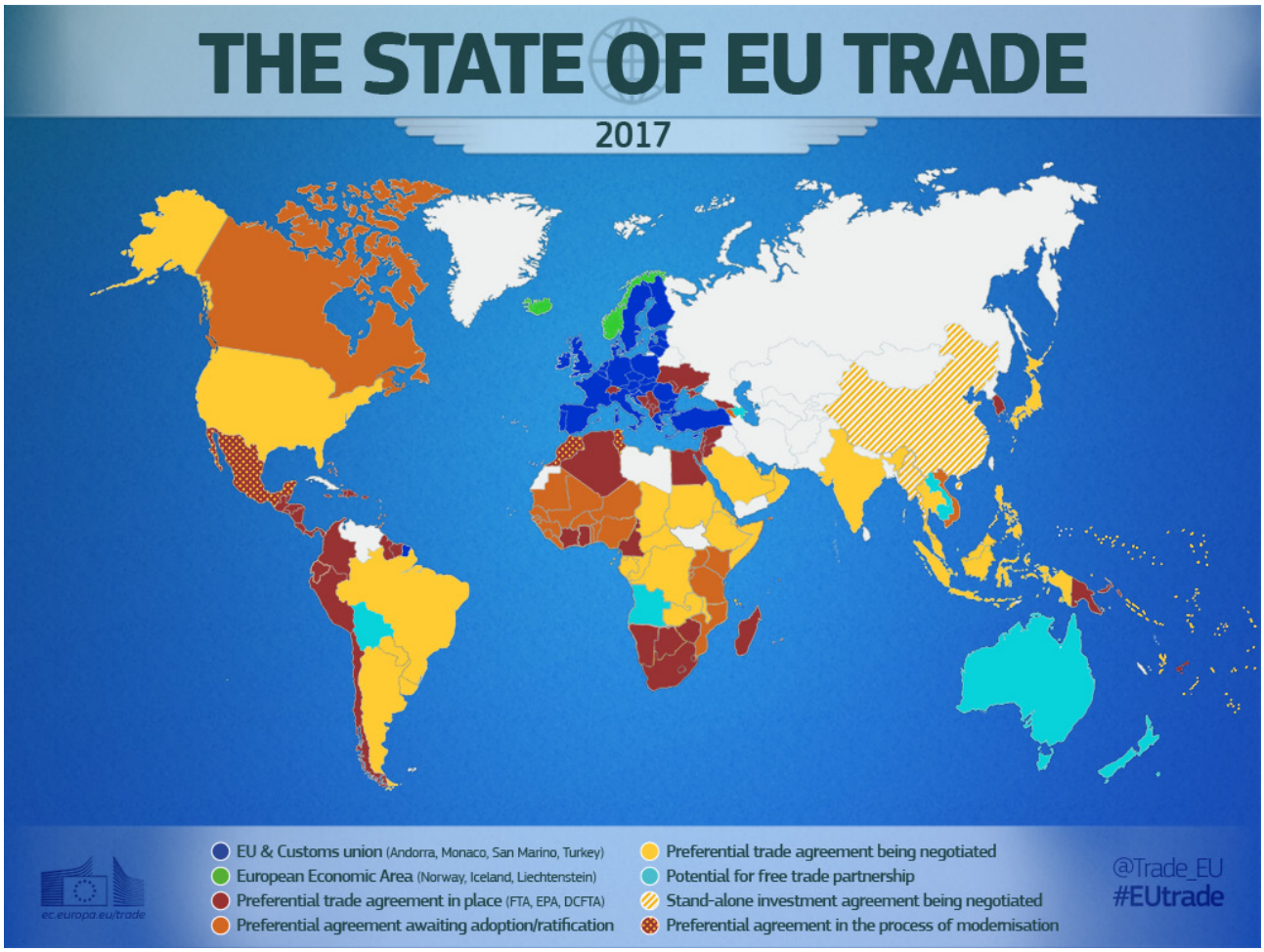
Name	Description
Free trade area	• Reduction/removal of tariffs and non-tariff barriers to the free movement of goods and potentially also services between countries. • However, there is no common external tariff i.e. countries choose how they treat goods and services imported from third parties. • Covers 90% of trade agreements in the world.
Customs union	• Free trade area + common external tariff on third party imports covered by the customs union. • There are few customs unions in the world. Examples include the EU Customs Union, the Eurasian Economic Union (EEA), the Common Market of the South (MERCOSUR), the Caribbean Community and Common Market (CARICOM) and the South.ern African Customs Union
Common market	• Customs union + free movement of labour and capital. • The European Union is the only example (known as the Single Market), though MERCOSUR and CARICOM have committed to working towards this.
Economic union	• Common market + common currency and/or the harmonization of monetary, fiscal and social policies. • The Eurozone is the only example.

The European Union's existing trade agreements

The EU (and as a consequence the UK) currently has in place trade agreements with over 50 different countries.

Figure 1 shows the EU's trade relations with countries around the world. [21]

Figure 1: The state of EU trade in 2017



EEA states are part of the Single Market. The EU has a customs union with European micro-states (Andorra and San Marino) and the city-state Monaco, as well as Turkey. The EU also has PTAs in place with a range of developing countries, and is currently negotiating a stand-alone investment agreement with China.

Of the EU's trade agreements: [22]

- 31 are currently in place (of which 4 are currently being updated).
- 48 are partly in place.
- 4 are pending (Armenia, Japan, Singapore, Vietnam).

- 18 are under negotiation.

Case studies of EU trade agreements

When considering the EU's existing free trade agreements in relation to Brexit, it is worth initially considering the length and complexity of the agreements. For example, the EU-Korea agreement is 1,432 pages long whilst the EU-Canada agreement is 1,088 pages. The EU's Association Agreement with Ukraine is over 2,000 pages long. The length of each of the agreements is then extended by the inclusion of additional protocols and annexes. [23]

The agreements with South Korea and Canada also took a number of years to complete. In the case of the Canadian agreement, the negotiating directives were agreed by the Council of Ministers in April 2009 with a final agreement signed on 30 October 2016. The agreement then provisionally entered into force on 21 September 2017. [24]

Case Study - the Free Trade Agreement with South Korea

The EU's free trade agreement with South Korea had been provisionally applied from July 2011 and was formally ratified in December 2015.

The trade agreement has eliminated all (but for a limited number of agricultural products) tariffs on industrial and agricultural goods. This was done in a progressive way with the final tariffs being lifted in July 2016 [25] .

South Korea, like the trade agreement with Canada, is seen as a traditional free trade agreement. In relation to regulatory cooperation, Erika Szyszczak from the UK Trade Policy Observatory describes the South Korea and Canada agreements as ones where: [26]

> “ "Regulatory cooperatative arrangements refer to international technical standards or international conventions in chapters dedicated to issues such as the environment or intellectual property.""

The EU-Korea agreement contains a number of general commitments on technical barriers to trade, including cooperation on standards and regulatory issues, transparency and marking/labelling, that go beyond the obligations contained in the WTO Agreement on Technical Barriers to Trade. Four sector-specific annexes, on consumer electronics, motor vehicles and parts, pharmaceutical products/medical devices and chemicals, contain specific commitments for EU-Korea trade [27] .

The trade agreement also built upon existing EU-Korea procurement links through the WTO's Government Procurement Agreement (GPA). As a result of the GPA, both parties opened up their markets for certain tenders for goods and services (including construction services) by central and (certain) sub-central entities.

The EU-Korea agreement expanded these commitments to EU public works concessions and in Korean ‘build-operate-transfer’ (BOT) contracts. According to the European Commission, this agreement opened up access to contracts for key infrastructure projects such as the construction of highways.

The EU-Korea agreement also gives a legal framework to basic rules in the EU and in Korea for the protection of intellectual property rights and enforcement of such protection. This is significant because it provides a way for EU geographical indications (GIs) to secure protection in Korea under Korean law. An example of a GI which benefits from this protection is Scotch Whisky.

Whilst traditional trade agreements don't significantly address services, the EU-Korea agreement does. According to the European Commission: [27]

> “ The EU-Korea FTA preferentially opens the Korean services market and provides the important legal certainty that EU services suppliers and investors will not be discriminated against vis-à- vis their Korean competitors (...) The Agreement covers cross-border provisions of services as well as the liberalisation of investment, in most services and nonservices sectors. Cross-border services are particularly attractive for SMEs who will not always have the means to establish themselves in Korea. The scope of the FTA includes diverse services sectors: telecommunications, environmental, transport, construction, financial, postal and express delivery, professional services such as legal, accounting, engineering and architectural services, and a large variety of other business services. Korea commits to market access liberalisation in more than 100 sectors.”

Case Study - EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area (DCFTA)

In June 2014, the EU and Ukraine signed an Association Agreement covering economic, political and cooperation matters such as foreign and security policy, migration, asylum and border management. This is a 2,135-page document, part of which sets up a Deep and Comprehensive Free Trade Area (DCFTA) which started provisionally applying on 1 January 2016. In a non-binding referendum in April 2016, 61.1% of the Netherlands voted against the approval of the Association Agreement, though the Dutch Senate approved ratification of the Agreement in May 2017. [28]

The Association Agreement makes it clear that it aims to establish conditions for enhanced economic and trade relations leading towards Ukraine's gradual integration in the EU Internal Market" and the "progressive approximation" of Ukraine's legislation to the EU's.

The Agreement covers a wide range of goods, and some services, providing for the progressive establishment of a free trade area over a transitional period of 10 years maximum. Implementation requires the reduction or removal of tariffs as well as progressive legislative regulatory alignment in Ukraine with the EU in matters relating the goods and services covered by the Agreement. Michael Emerson, Associate Senior Research Fellow at the Centre for European Policy Studies described the DCFTA as having "a high degree of single-market inclusion for three of the four freedoms (goods, services, capital, but not labour)." [29] The Agreement furthermore allows Ukraine to contribute to the EU budget in those European funds and European programmes it has an interest in.

The Agreement states:

> “ The Parties shall strengthen their cooperation in the field of technical regulations, standards, metrology, market surveillance, accreditation and conformity assessment procedures with a view to increasing mutual understanding of their respective systems and facilitating access to their respective markets. To this end, they may establish regulatory dialogues at both horizontal and sectoral levels.”

It further explains:

> “ Ukraine shall take the necessary measures in order to gradually achieve conformity with EU technical regulations and EU standardisation, metrology, accreditation, conformity assessment procedures and the market surveillance system, and undertakes to follow the principles and practices laid down in relevant EU Decisions and Regulations.”

This involves, according to a timetable set out in the Agreement, incorporating the relevant EU *acquis* into its legislation (this is the body of common rights and obligations that is binding on all the EU member states) and making the necessary changes to implement the Agreement. The Agreement states that Ukraine "shall progressively transpose the corpus of European standards (EN) as national standards, including the harmonised European standards." For instance, on sanitary and phytosanitary measures it states that the Agreement seeks to facilitate trade in commodities covered by the measures, and that one way to do so is by "approximating Ukraine's laws to those of the EU."

It also makes provision for "import checks" including documentary checks, identity checks and physical checks. For instance, all animals and animal products will require documentary, identity and physical checks. 100% of live animals will require physical checks, but only 20% of fresh meat and 50% of egg products.

Could the EU's trade agreements with third countries continue to apply to the UK during the transition period?

When the UK leaves the EU, it is possible that the trade agreements that it is currently party to as an EU member state will cease to apply. However, both the EU and the UK have made proposals to ensure that the UK will continue to participate in the EU's trade deals during any transition period.

For instance, on 8 February 2018, the UK Government published a technical note in which it proposed that during the transition period, international agreements which the UK is party to as a result of its EU membership (including trade agreements), should continue to apply. [30]

> " The UK proposes that these third country agreements which apply to the UK in its capacity as an EU Member State (as referred to at paragraph 15 of the EU's negotiating directives of 29 January) should continue to apply to the UK in the same way for the duration of the implementation period. In other words, the UK would continue to be bound by the rights and obligations flowing from the agreements for this period."

The UK Government's technical note suggests that this approach during the transition period is appropriate due to the "unique and time-limited nature of the implementation period" and will ensure continuity of effect during the transition.

The UK Government cites Article 31 of the Vienna Convention on the Law of Treaties (VCLT) as providing the legal grounds for permitting continued UK participation in the EU's trade agreements during transition. According to the UK Government, Article 31 of the VCLT: [30]

> " ... provides that a treaty is to be interpreted in its context, which can include a subsequent agreement between the parties regarding its interpretation or application."

If the UK Government hopes to continue to benefit from the EU's trade agreements during any transition period, it will require the agreement of the parties that the underlying treaty should continue to apply to the UK during the implementation period. It is possible that this could be done through a simple exchange of letters.

This approach to ensuring third country agreements continue during the transition period, despite the UK no longer being a signatory to such agreements by virtue of it having left the EU, has previously been proposed in a paper for the UK Trade Forum by George Peretz QC. In the paper, George Peretz outlined the challenge for the UK Government of no longer legally being party to the agreement but seeking its continued application to the UK in terms of obligations and benefits. Peretz cited the example of Guernsey which, whilst not formally part of the UK, is considered part of the UK under international law. According to Peretz this shows that the international law status of a territory can be different from the status it has under its own law. Applying this to the UK's position during a transition period, Peretz wrote: [31]

> “ Under the “Guernsey model”, the Withdrawal Agreement would provide that the United Kingdom would cease to be a Member State as of (say) 29 March 2019. However, there would be a further provision (the “reservation provision”) that would state that, for all purposes connected with the EU’s rights and obligations in international law as against third countries, the EU Treaties would be regarded as continuing to apply in the United Kingdom until the end of the transitional period.”

Peretz uses the EU's trade agreement with Canada, the Comprehensive Economic and Trade Agreement (CETA) to illustrate how this approach might work. Article 1.3 of CETA outlines the territories to which the agreement applies and states that for the EU, the territories are those in which the Treaty on EU and the Treaty on the Functioning of the EU are applied. In addition, in relation to the tariff treatment of goods, CETA's applicability clause states that the Agreement shall also apply to the areas of the EU customs territory not already covered by the application of the EU Treaties. As a result, according to Peretz: [31]

> “ If, as a matter of EU law (which would include the withdrawal agreement negotiated under Article 50 TEU), the United Kingdom remains, for the purposes (only) of relations with third countries “*[a] territory[ies] in which the Treaty on European Union and the Treaty on the Functioning of the European Union are applied*” it would not matter that (for other purposes under EU and UK law) it was no longer a Member State. Nor would it matter that the EU (and UK) law mechanism under which the EU Treaties were applied to the United Kingdom was the reservation provision under the withdrawal agreement (and not the normal application of the Treaties to a Member State). [31] ”

The EU's position on the continued application of third country agreements during the transition phase is set out in the negotiating guidelines for the second phase of negotiations which were published on 15 December 2017. The guidelines state that during the transition period, the UK will have to continue to comply with EU trade policy. [32] This position is repeated in the European Commission's supplementary negotiating directives published on 20 December 2017 [33] .

The EU27 position appears to refer to the continued application of the EU's trade agreements to the UK during the transition, meaning that the UK will be required to continue to observe the obligations set out in the agreements. It is less clear from the directives whether the EU27 believes the UK will be able to continue to benefit from the trade agreements during transition.

In the event that the EU and UK agree that the UK can participate in and benefit from the EU's trade agreements during the transition period, the agreement of the third party in each case will also be required. In evidence to the House of Commons International Trade Committee, Guillaume Van der Loo, a Researcher at the Ghent European Law Institute, outlined how the agreement of third countries might be sought: [34]

“ The approach can be different from country to country. If the EU and UK, as discussed before, come up with a specific solution to keep the UK on board, some countries maybe will say,“Yes, of course we want a transition and we don’t want to make life more difficult than it is,” and they do it with an exchange of letters. Other countries may have objections and say, as you mentioned, that an exchange of letters is not enough. They want to have a kind of protocol that has to go to Parliament for approval, so it could be that some countries will follow one option and some countries follow another option. That will also depend on the legal instrument that is chosen to grant transitions.”

Can the EU's trade agreements with non-EU states continue to apply to the UK following Brexit and the transition?

Whilst the EU's trade deals with the third countries may continue to apply to the UK during the transition period, their status following the UK's departure from the EU, and the end of the transition period, is less clear.

On 7 November 2017, the UK Government introduced the Trade Bill 2017-19 in the UK Parliament. The overarching aim of the Bill is to provide continuity in the trade relations the UK currently enjoys, once the UK has left the EU. From the perspective of the UK's trade policy once it has left the EU (and post transition), clause 2 of the Bill is significant. Clause 2 provides powers to UK and Devolved Ministers (in relation to devolved matters) to allow for the implementation of agreements with partner countries corresponding to the EU's trade agreements and other trade agreements in place before the UK's exit from the EU. The powers granted to Ministers refer only to making regulations to implement international trade agreements (where the EU already had a trade agreement with that country).

The Explanatory Notes to the Trade Bill state that the UK Government has: [35]

> " ... committed to providing continuity in the UK's existing trade and investment relationships with [the countries that the EU currently has a trade agreement with]. We are already discussing how best to replicate as closely as possible the effects of these trade agreements. The Government has termed this process 'transitional adoption'. This work needs to be completed before the UK leaves the EU, if there is to be continuity on the UK's existing trade and investment relationships with these partner countries when we have left the EU."

The UK Government's aim (as set out in the Trade Bill) is to ensure that, at the end of the transition period, the trade deals which the UK is part of, will continue to apply until such time as the UK Government is able to negotiate new trade agreements. In the event the UK chooses to remain part of the customs union, the UK's trade position with respect to other, non-EU countries may be unaffected by Brexit, depending on third countries' willingness to simply roll-over the EU's deals.

However, any other trade agreement with the EU that is not a customs union will likely require a renegotiation of the UK's trade relationships both with the EU and with the countries the EU currently has a trade agreement with. Any renegotiations would probably involve the third countries concerned and the EU as a result of references to issues such as rules of origin, most favoured nation clauses, the mutual recognition of standards and tariff rate quotas.

Grandfathering trade agreements

"Grandfathering" means either seeking to continue applying existing EU treaties with third countries that the UK is a party to as an EU member state *or* seamlessly signing new bilateral FTAs with effectively the same terms. [36]

If the UK Government chooses to try to "grandfather" the EU's existing trade agreements once it has left the EU, and post-transition, it is likely to face a number of challenges. Not least of these will be the attitude of third countries to the proposal to simply roll over trade deals.

A key influence in a third country's decision on whether to roll over an existing free trade agreement will no doubt relate to the importance of the UK market for their goods. Relative market strength will determine to what extent third parties can push for increased preferential access to the UK market relative to current trading arrangements which were negotiated with the EU - currently the biggest market in the world.

Other considerations include:

- On timing, third countries concerned may wish to see the nature of the UK's future trading relationship with the EU before it commits to discussing its trade arrangements with the UK. One reason for this is that the UK's future relationship with the EU may impact on the way in which third countries can get their goods into the single market due to issues such as supply chains. A further complication may exist for countries who export agricultural products to the EU, and where tariff-rate quotas apply. This means that initially both the UK and the partner countries may seek to roll the agreements over on a temporary basis for the duration of the transition. [23]

- When discussions about grandfathering current trade agreements do begin, third countries may seek to boost their negotiating strength by negotiating alongside a number of other third countries, thereby increasing their collective strength relative to the UK.

- Third countries may be motivated by a concern about the impact of grandfathering a trade agreement on "trilateral issues" such as rules of origin, most favoured nation clauses, mutual recognition of standards and tariff rate quotas. The way these trade practices are addressed in the EU's free trade agreements with third countries may impact on the ease (or otherwise) in which they can be grandfathered over into UK trade agreements following the end of the transition period: [23]

Even where the UK and a third country agree to in effect grandfather an EU free trade agreement, it is almost certain that any such roll-over will also require the agreement of the EU. The next section of the briefing examines each of the "trilateral issues" which may present obstacles to the grandfathering of trade agreements after the transition period has ended.

Rules of Origin

If the UK leaves the Customs Union but seeks to "grandfather" the EU's existing free trade agreements after the transition period, rules of origin may present a challenge to simply copying and pasting the agreement over into a new one.

Rules of Origin

Rules of Origin are the criteria needed to determine the national source of a product. They are important, for example, in free trade areas because these countries have reduced or eliminated tariffs between each other but not with non-partner states, so it is fundamental to be able to determine what the country of origin is.

Rules of Origin are in part a product of modern manufacturing. Sophisticated goods are seldom the product of a single country—most are assembled from components sourced from across the globe through sophisticated value/supply chains. This, then, makes it difficult to identify the "nationality" of a good being sold in a market as it will generally be the output of many nations. This creates a problem for goods moving within a free trade area, in that customs officials have to be able to determine whether the good is a product of the free trade area, or should be considered as foreign and consequently subject to the importing country's import tariff. Rules of Origin are used to arbitrate the country of origin. Rules of Origin are often product-specific, are reached through negotiations between member countries in the free trade area, and are subject to intense political lobbying on behalf of domestic producers in these countries.

A relevant example of Rules of Origin exists in CETA between Canada and the EU. CETA requires that Canadian companies prove that a sufficient proportion of a product is made in Canada to qualify for preferential tariff rates.

According to a 2013 report by the Centre for Economic Policy Research, implementing Rules of Origin obligations on all UK trade with the Single Market would cost just under £2.8 billion per year. [37]

In evidence to the House of Lords Select Committee on the EU as part of their inquiry on Brexit: Future Trade between the UK and the EU, Professor John Manners-Bell, the Chief Executive of Transport Intelligence Ltd explained how rules of origin work and what their potential impact on trade can be. He also suggested why he thought Rules of Origin would not be imposed on trade between the UK and the EU: [38]

> “ Any parts or components which are imported into a country would have to have some sort of certificate if they are to be re-exported to the EU. For example, if they were to come into the UK from any country around the world, such as China, then that part may need to have a certificate of origin and if the overall amount of imported goods from non-EU countries made up more than a certain proportion of that particular good, it would have a tariff imposed on it. The problem with that is that, if the system becomes very bureaucratic and administrative, it can add a large amount of costs to the overall process of the export of the good. I think that some people have estimated it as anywhere between 5% and 15%, in which case the exporter may decide that it is easier to accept a tariff rather than go through all the administrative burden of getting certificates of origin for all the different parts of these products, which are then assembled and re-exported. So in theory—this is what a lot of the literature has been warning about the impact of Brexit— that could be a major cost. However, we could look at a trade deal with South Korea. The negotiations for that started in 2007 and ended in 2009, so there were only two years of negotiation, and it then came into force two years afterwards in 2011. But rules of origin and non-tariff barriers were all integrated into that agreement. It can be done. We are always thinking about it from the UK perspective, thinking that others will insist on this burden, but to be honest it is more an issue for EU exporters to the UK because of the trade deficit. So if they insisted that we must have Rules of Origin—other non tariff barriers (NTBs) on our goods—presumably the reverse would apply as well. In which case, there would be a bigger hit for EU exporters. I cannot see that being an acceptable state of affairs for the major European manufacturers such as BMW, Mercedes and the like. ”

By way of an example of how Rules of Origin work and how Brexit might affect their operation in relation to the UK, consider the (hypothetical) case of commercial aircraft sales by Europe to South Korea. Aeroplanes are manufactured from components sourced from across the globe, not just from EU countries. It may be the case that the combined shares of production of the UK and the EU (all counted as EU value added pre-Brexit) are currently sufficient to cross the Rules of Origin threshold established under the EU-South Korea free trade agreement. Consequently, they are sold in South Korea without duty. After Brexit, the UK's contribution to the production of aircraft will not be counted towards the EU value-added of a manufactured good. If this results in the EU share of production aircraft not meeting the Rules of Origin threshold, the European manufacturer either has to accept that its exports to South Korea will be subject to tax or it will choose to source the components previously supplied by UK manufacturers from firms operating within the EU.

This example of the impact of Rules of Origin requirements will also have consequences when the UK seeks to agree new trade deals with third countries the EU already has trade deals with. If the UK Government seeks to "grandfather" over the EU's current free trade agreements with other countries, the Rules of Origin may present an obstacle. In a blog for the UK Trade Policy Observatory, Dr Peter Holmes and Dr Michael Gasiorek explained how Rules of Origin will affect the roll-over of the EU's free trade agreements: [39]

> “ In the pre-Brexit scenario as an EU member state and because the EU is a Customs Union, the UK can export those machines which use Korean inputs to the EU. In the post-Brexit world, you might think that because Korea can export the same inputs to the EU duty-free, the UK could continue to export machines which use those inputs to the EU duty-free. But that is not necessarily the case at all. Even if the same Korean inputs are exported to the UK and used in UK exports to the EU they are unlikely to count for originating status. If they do not count then UK machines cannot be exported duty-free to the EU because only 30% of the value of the product comes from domestic UK inputs, and so the EU’s tariffs will have to be paid.”

One way to address this problem is for the EU to agree that Korean inputs used by the UK producers can count for determining origin. This is known as "diagonal cumulation" with a deeper version known as "full cumulation". However, either form of cumulation would require the EU to agree to this particular element of the EU-Korea trade deal being grandfathered by the UK. This means, for the UK to grandfather the EU's current trade deals it will require both the third country's agreement along with the EU's where it relates to issues such as Rules of Origin.

At present the EU only allows for diagonal cumulation where all the countries concerned have adopted EU Rules of Origin. This means the UK would be required to adopt the EU's Rules of Origin. In addition, in most EU agreements (for example the agreement with Korea) there is no provision for diagonal cumulation. Holmes and Gasiorek conclude that:

> “ It might appear that grandfathering the EU-Korea agreement is simply a bilateral issue between the UK and Korea. However, if the UK wants to maintain the same level of access to the EU market for any goods using Korean inputs, it also needs to negotiate the cumulation of Rules of Origin with the EU.”

The example of the obstacle rules of origin might play in grandfathering the EU-Korea deal and the possibility of obtaining diagonal cumulation to address the obstacles are likely to be replicated in every one of the EU's free trade agreements if the UK tries to grandfather them.

In addition, it is clear from the Korea example that simply cutting and pasting the EU trade agreements will not be possible.

Most Favoured Nation clauses

Most favoured nation rules are commonly understood as ensuring that, under WTO rules, member countries cannot discriminate between member countries with respect to trade access. In the context of grandfathering the EU's free trade agreements however, the most favoured nation clauses mean something slightly different.

Most Favoured Nation clause in the EU's free trade agreements

The EU's more recently agreed free trade agreements (for example with South Korea and Canada) have included "most favoured nation" clauses in relation to both services and investment liberalisation. These clauses mean that if either of the two parties (the EU and the third country) offers more favourable access to any other country (in the form of terms in a trade agreement), then they must offer that degree of access to the partner as well.

The EU's existing FTA's may limit it in what it can offer the UK in terms of services and investment. If the EU-UK trade agreement after Brexit goes further on services and investment than the current EU-Canada and EU-Korea deals then the EU may be required to offer the same terms to both Canada and Korea as it has done to the UK.

Similarly, if the UK has grandfathered the Canada and Korea deals successfully, and then subsequently agreed a wider scope deal on services and investment with the EU, the UK will also need to offer better terms to Canada and Korea.

The most favoured nation clause would also continue to apply in the event the UK negotiated further trade agreements (for example with the United States) which went further on services and investment in the future.

Gasiorek and Holmes outline what this might mean for the UK in terms of the timing of negotiations: [23]

> " This trilateral dimension is likely to have implications for how much each party is willing to negotiate and the timing of those negotiations. For the UK, if it first rolls over the Korea, Canada and CARIFORUM *[the EU's trade agreement with the Caribbean countries]* agreements and then signs a Free Trade Agreement with the EU which offers a greater degree of liberalisation – it would have to also offer this to Korea, Canada and the CARIFORUM countries. However, if it first signed the agreement with the EU, and only subsequently rolled over the other agreements, then the matching offers to Korea, Canada and CARIFORUM would not have to be made. For the EU, as the agreements with Korea, Canada and with CARIFORUM are already signed and in place – so if it does agree greater liberalisation with the UK then it would have to offer the same to the other partners. This may be a constraint in the negotiations as it may limit the liberalisation the EU is prepared to offer the UK. "

In essence, the most favoured nation clause in the EU's more recently agreed free trade deals means that timing of the UK's future trade agreements becomes a factor, as does what the EU is likely to offer the UK in terms of a future arrangement. However, the EU's trade agreements with Korea and Canada include an opt-out clause with regards to the most favoured nation (MFN) clause. This would allow the EU to offer the UK a better deal on services and investment without triggering the most favoured nation clause. However, the opt-out states that where a new FTA is signed (in this case it would be between the EU and the UK) "it stipulates a significantly higher level of obligations" than those set out in the Korea and Canada deals. Significantly higher is defined in the EU-Korea deal as either the 'creation of an internal market on services and establishment', or where the agreement encompasses the right of establishment and the "alignment of the legislation of one or more of the parties to the regional economic integration agreement with the legislation of

the other party or parties to that agreement". Gasiorek and Holmes conclude that in the context of an EU-UK trade deal: [23]

> " This would therefore appear to mean that unless the UK and the EU agreed to continued single market access with regard to services or investment; or unless the UK agrees to align its legislation to that of the EU, then the MFN clauses would apply. "

Mutual recognition of standards

Modern trade deals increasingly include provisions to allow for the mutual recognition of standards between the two parties. This is an example of the way in which trade deals have moved beyond merely removing tariffs to removing what are called non-tariff barriers.

Mutual recognition of standards

The mutual recognition of standards is being increasingly used as part of the EU's trade policy approach. For example, the EU has mutual recognition agreements with Australia, Canada, Israel, Japan, New Zealand, Switzerland and the United States. According to the European Commission: [40]

> " Mutual recognition agreements lay down the conditions under which one Party (non-member country) will accept conformity assessment results (e.g. testing or certification) performed by the other's Party (the EU) designated conformity assessment bodies (CABs) to show compliance with the first Party's (non-member country) requirements and vice versa. MRAs include relevant lists of designated laboratories, inspection bodies and conformity assessment bodies in both the EU and the third country. Links to existing lists are provided on this website."

The mutual recognition agreement between the EU and Canada is incorporated within the CETA agreement. CETA sets out the sectors where mutual recognition is observed. These include:

- Electrical and electronic equipment, including electrical installations and appliances, and related components
- Radio and telecommunications terminal equipment
- Electromagnetic compatibility (EMC)
- Toys
- Construction products
- Machinery, including parts, components, including safety components, interchangeable equipment, and assemblies of machines
- Measuring instruments
- Hot-water boilers, including related appliances
- Equipment, machines, apparatus, devices, control components, protection systems, safety devices, controlling devices and regulating devices, and related instrumentation and prevention and detection systems for use in potentially explosive atmospheres (ATEX equipment)
- Equipment for use outdoors as it relates to noise emission in the environment
- Recreational craft, including their components.

As referred to earlier in the briefing, the EU-Korea FTA does include mutual recognition provisions of testing and certification for certain sectors including consumer electronics and vehicles. These provisions assume that both parties use either Korean or EU mandatory standards. This would mean that, if the UK grandfathered the EU-Korea agreement, it would effectively be agreeing to mutual recognition of conformity

assessment for consumer electronics and to the alignment of UK domestic regulations to those used by the EU.

According to Gasiorek and Holmes, the EU's requirements with regards to mutual recognition have developed since the EU-Korea deal: [23]

> " The EU has made it clear in recent policy documents that in the future for it to sign mutual recognition agreements on conformity assessment with a third country such as the UK, that country has to adopt EU rules for all its domestic production not just exports to the EU (...) This would appear to suggest that in order to agree to mutual recognition on conformity assessment the EU increasingly also demands full alignment of regulations. This implies that if the UK wanted to agree to a mutual recognition agreement with the EU, as part of a future Free Trade Agreement with the EU, it would also have to commit to EU regulations. This would apply in the context of new FTAs or in the context of grandfathering existing FTAs. The EU requirement (for mutual recognition) is that goods to be sold in the UK have to adhere to the standards that mean they could also be sold in the EU. Hence, free circulation requires both Mutual Recognition of mandatory standards and of conformity assessment."

Tariff rate quotas

A key issue that will need to be addressed during the process of transition and negotiating new trade deals is how the EU's current tariff rate quotas (TRQs) are divided as a result of Brexit.

Tariff rate quotas

Tariff rate quotas involve limited quantities of imports being allowed into a country tariff free or at a lower than normal tariff. Imports of a good beyond these limits (quotas) would normally be charged the normal higher tariff. Tariff rate quotas usually apply to products that are sensitive: typically food and other agricultural goods.

The aim of tariff rate quotas is to provide market access to other trading partners with low or zero tariffs but only for limited quantities of a good.

The EU has around 100 tariff quotas applying to produce such as cheese, butter, beef, poultry, sheep, sugar, eggs and cereal amongst other things. The EU and the UK have indicated that when the UK leaves the EU, they plan to divide the EU's current quotas between them. A number of countries have responded to the EU-UK proposal indicating they expect that countries with access rights will be left no worse off than at present as a result of the division of quotas.

On 11 October 2017, the EU and UK sent a Joint letter from the EU and the UK Permanent Representatives to the WTO to the Permanent Representatives to the WTO, proposing that the existing TRQs of the EU be shared out, based upon the historical trade flows of the products subject to TRQs. The letter included specific reference to apportioning tariff-rate quotas in relation to goods, it stated. [41]

> “ Specifically, the EU and UK intend to maintain the existing levels of market access available to other WTO Members. To this end, we intend that the future EU's (excluding the UK) and the UK's (outside the EU) quantitative commitments in the form of tariff-rate quotas be obtained through an apportionment of the EU’s existing commitments, based on trade flows under each tariff-rate quota. In doing so, we propose to follow a common approach, inter alia to data and methodology, and to engage actively with WTO Members on these. ”

Before the EU-UK letter was sent to the WTO, on 26 September 2017, a number of countries wrote to the UK and EU representatives at the WTO to express concern about media reports suggesting how TRQs would be addressed following Brexit. The letter received from Argentina, Brazil, Canada, New Zealand, Thailand, the United States of America and Uruguay expressed concern that any EU-UK proposal would be inconsistent with the principle of leaving other WTO Members not worse off, nor fully honour existing TRQ commitments. [42] These countries are major exporters of agricultural products and their concern may be that the proposed apportionment of the EU’s TRQs will reduce their market access. The letter stated: [42]

> “ We are aware of media reports suggesting the possibility of a bilateral agreement between the United Kingdom and the European Union 27 countries about splitting Tariff Rate Quotas (TRQs) based on historical averages. We would like to record that such an outcome would not be consistent with the principle of leaving other World Trade Organisation Members no worse off, nor fully honour the existing TRQ access commitments. Thus we cannot accept such an agreement... ...We expect that the United Kingdom and the European Union will act to ensure that countries entitled to those access rights will be left no worse off than they are at present, in terms of both the quantity and quality of access. We welcome, therefore the public commitment the United Kingdom has made to the important principle of ensuring no trading partner is worse off as a result of Brexit and look forward to seeing this translate into an outcome that fully honours the current WTO access arrangements to which the United Kingdom is party.”

There are two strands to the opposition to the division of the TRQs:

- The shares of the TRQs taken up by consumers in the UK and EU may vary from year to year, such that a historical average could be more restrictive in some years than in others.
- At present, imports of agricultural goods landing at any EU port of entry can be destined for consumers anywhere else in the EU. Thus historical data could be misleading, in that the products could be reported as having been imported by one country, whereas the final consumption could have taken place in another.

The simple resolution to this that could brook no objection from agriculture-exporting nations would be for the UK and the EU both to set their TRQs at the same level as the existing EU TRQs. The exporters would be guaranteed that their export volumes would not decline. If, for example, one of the products subject to a TRQ had, prior to Brexit, been consumed exclusively by residents of the UK, then the UK’s new TRQ would allow the same level of import as had taken place previously. Clearly, this solution would not appeal to the EU and the UK as it would involve a potential doubling of the imports of goods that governments had chosen to limit.

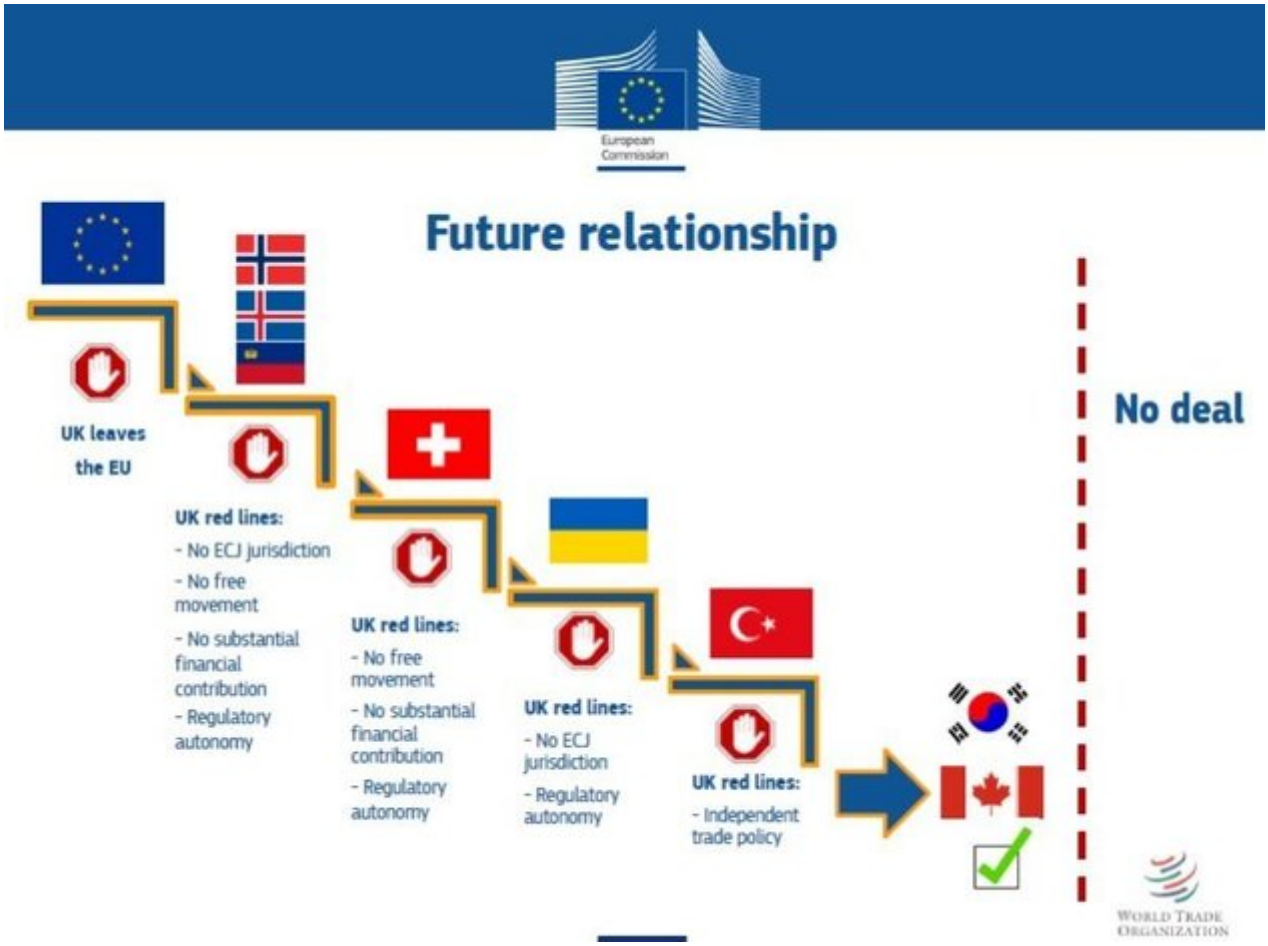
In terms of grandfathering over existing the EU's existing free trade agreements, any disagreement on the division of TRQs after Brexit may mean that third countries are less likely to agree to the rolling over of the trade agreements. As these quotas are currently EU wide, any negotiations about future TRQ access to both the EU and UK markets for third countries will need to take place between the UK, the EU and the third country concerned.

The new trade agreement with the EU

When the UK leaves the EU, and following any agreed transition period, a new trading relationship will need to be negotiated and established. Given the UK Government's apparent red lines with regards to free movement of people and the ability to negotiate its own trade agreements (i.e. not be restricted by the Customs Union's common external tariff), the most likely course seems to be the negotiation of a preferential trade agreement - possibly along the lines of the CETA agreement (cross reference to the case study).

This likely outcome was highlighted in a slide prepared by Michel Barnier, the European Commission's Chief Brexit negotiator. The slide neatly summarises the balance between the likely relationship and the UK Government's negotiating red lines showing that, without movement from either side, the UK's options for the relationship with the EU after Brexit are likely to focus on a Canada style deal (Figure 2). [43]

Figure 2: Future relationship between the EU and the UK after Brexit



Writing in the Financial Times, Martin Wolf explained why, based on the UK Government's current negotiating position, only a trade agreement similar to CETA was the likely outcome in terms of the future EU-UK relationship: [44]

> “ As Mr Barnier notes, the UK's "red lines" - no jurisdiction by the European Court of Justice, no free movement, no substantial ongoing financial contribution, and regulatory and trade policy autonomy - preclude membership of the EEA. These red lines also rule out an agreement similar to that with Switzerland. The UK's opposition to ECJ jurisdiction and the demand for regulatory autonomy precludes an association agreement like Ukraine's. The demand for an independent trade policy preclude even a customs union agreement, such as the one with Turkey. When everything impossible is ruled out, what is left is an agreement like that with Canada.”

Swapping EU membership for a Canadian style deal is likely to involve new barriers to trade being introduced. These barriers would include customs and standards checks at the border between the UK and the EU.

"WTO rules" scenario

World Trade Organisation (WTO) rules apply to all of its Members. Each Member makes specific commitments known as “schedules of concessions” based on these rules. These set out a WTO member’s list of commitments on market access, for instance:

- Maximum tariff rates that will be applied (known as bound tariffs).
- Tariff Rate Quotas.
- Schedules of specific commitments which can include commitments on agricultural subsidies and domestic support.

WTO Members are allowed to modify or withdraw concessions from their Schedules through negotiation and agreement with other WTO Members. WTO members' schedules must be agreed with all 163 other WTO members. Once a WTO schedule has been accepted by other WTO members, it has to be "certified". If separate UK Schedules have not been established by the point of Brexit, it is still unclear what tariffs, TRQs and Aggregate Measure of Support would apply to the UK at that point.

Although the UK is a member of the WTO, as a member of the European Union (EU), it is represented by the EU in trade negotiations and its schedules. As trade is an EU competency, the rules under which the UK currently trades internationally are set out in the terms of the EU’s “schedules of concessions”. The schedule for each WTO member can run to many pages with individual tariffs needing to be agreed for hundreds of items.

The last UK Schedules date from 1995 when the WTO succeeded the General Agreement on Tariffs and Trade.

When the UK leaves the EU, it will need to agree its own WTO schedules as it will no longer be covered by the EU’s schedules. Note the EU's schedules are consistently out of date, for instance, they were only updated to take into account in EU accessions of 2004 (expansion to EU25) in December 2016.

If a) the UK fails to secure a trade deal with the EU, b) if the EU's trade agreements with third countries no longer apply to the UK when it leaves the EU, and c) before the UK agreed new trade deals with other unions/countries, the UK may be able to rely during that time only on the rules and principles of the WTO. UK exports to the EU would face EU MFN tariffs for instance, which are low by international standards (except for the automotive industry, agriculture and textiles).

World Trade Organisation and the Most Favoured Nation principle

Under Article 1 of the General Agreement on Tariffs and Trade (GATT), WTO members are bound to follow the "most favoured nation" principle, whereby they must give each other the same trading terms as those they have granted to their "most-favoured" trading partner. Thus member countries negotiate MFN tariffs which differ across products but not across the sources of their imports. In practice however, all RTAs break this rule by definition as they offer preferential trade arrangements for their members.

In recognition of the growing number of RTAs and the idiosyncratic need to go beyond MFN, the WTO allows countries to apply lower-than-MFN tariffs in the case of:

- Membership of an RTA - the EU's Single Market is an example of a particularly deep free trade agreement.
- The granting by a developed country of unilateral (non-reciprocal) trade preferences to developing countries.
- A specific waiver agreed by all WTO members. The are known as "trade defence instruments", or trade remedies, and allow countries to put in place remedial action against imports that are seen as damaging to domestic industry. The following instruments are allowed under WTO rules:
    - Anti-dumping measures (against imports being "dumped" on the domestic market at a cost considered too low).
    - Anti-subsidy measures (against imports underpinned by government subsidies)
    - Safeguard measures (against imports that have increased sharply or suddenly).

The Department for Trade is currently holding a call for evidence to identify UK interest in existing EU trade remedy measures. This call aims to identify which UK businesses produce goods currently subject to anti-dumping or anti-subsidy measures, or to an on-going investigation related to these.

New trade deals

Being able to strike new trade deals is a keystone of the UK Government's Brexit strategy. There are, in principle, two ways the UK can do this:

- On a multilateral basis through the WTO i.e. affecting all WTO members. However, given the current stalemate in WTO rounds, it seems totally implausible that the UK could push forward its agenda on a multilateral level in the foreseeable future.

- Through RTAs with other trading blocks. However, it is worth noting that, by definition, this would exclude at least some members of the WTO and therefore could prove to be a roadblock in the approval of the UK's tariff schedules under the WTO given that all WTO members can challenge the UK's proposed schedules.

RTAs notoriously take a long time to negotiate and are very resource intensive. As a result, the UK will have to prioritise its choice of potential partners. Its choice will be influenced clearly by the willingness of other countries to enter into negotiations (as they too will face a costly procedure). The best choice of partner for preferential trade is one with which a country has significant trade on a non-discriminatory basis. Thus, in looking at trade deals beyond the EU, the UK should consider its major trade destinations/origins as its first choice of partners.

The single largest trading nation for the UK is the United States, accounting for 16% of all UK exports. Although the US Government has signalled its desire to maintain a close relationship with the UK, it has otherwise carried out an overtly protectionist trade policy since the US presidential election in 2016, pulling out from the Trans-Pacific Partnership in November 2016 for instance. In addition, domestic opposition to an agreement similar to the Transatlantic Trade and Investment Partnership between the US and the EU, which has been all but abandoned, can be expected given issues around procurement, for instance.

Otherwise, and apart from China, the UK's second-largest trading nation after the US, all of the UK's trading partners individually account for less than 5% of the UK's exports, though this share is likely to continue rising sharply, having already risen by about 60% since 2010. China has signalled its interest in securing a free trade arrangement with the UK post-Brexit. For instance Chinese ambassador to the UK Liu Xiaoming wrote an article in the Telegraph The UK-China 'Golden Era' can bear new fruit in advance of PM Theresa May's visit to China in January 2018.

For several of the UK's larger trading partners, there are existing trade agreements with the EU. This is the case for Canada, Russia, Singapore, South Korea, and Turkey. In contrast to the process of matching existing EU tariff schedules for the WTO, the UK would have to initiate entirely new negotiations with these countries. Some of the EU's trading partners may not wish to have a standalone agreement with the UK and the UK's exclusion from the existing agreements, post-Brexit, could have serious consequences for British industry.

Unilateral free trade?

The most straightforward exercise of an independent trade policy once the UK has left the EU would be for the UK to reduce its applied tariffs unilaterally. This would not need the approval of any other country as the UK's commitment is with respect to its bound tariffs and it could implement a lower tariff on any product (on a non-discriminatory basis) if it wanted. UK exporters would still have to pay the tariffs imposed by other countries.

The benefit of unilateral free trade would be a likely decrease in the cost of imports as exporters to the UK pass on savings to consumers in a competitive market. However, this could have a negative effect on some parts of the economy. Dr Anamaria Nicolae and Michael Nower of Durham University explained to the International Trade Committee: [5]

> " [It] would be desirable for the UK to adopt a unilateral free-trade, low-tariff or uniform-tariff approach if [...] [the Government] are prioritizing maximising UK productivity growth, consumption, or wages, and minimising UK price growth. However, if the UK government is prioritizing maximizing the number of firms (and hence employment), then adopting such an approach would not be desirable."

Beyond the direct negative impact it could have on the UK economy, a further disadvantage of a unilateral free trade policy is that it removes any leveraging capacity the UK might have as other countries would have no incentive to reduce their import tariffs for UK goods and services. Improved market access for British products could only arise from reciprocal tariff reduction taking place through international negotiations.

Singapore is an example of a country that has removed its tariffs. More than 99% of all imports into Singapore enter the country duty-free, though Singapore levies high excise taxes on distilled spirits and wine, tobacco products, motor vehicles and petroleum products. [45] Singapore levies a 7% Goods and Services Tax (GST). For dutiable goods, the taxable value for GST is calculated based on the CIF (Cost, Insurance, and Freight) value, plus all duties and other charges. In the case of non-dutiable goods, GST will be based on the CIF value plus any commission and other incidental charges whether or not shown on the invoice. If the goods are dutiable, the GST will be collected simultaneously with the duties. Special provisions pertain to goods stored in licensed warehouses and free trade zones.

Bibliography

1 Stojanovic, A. (2017). Five things to know about a customs union. Retrieved from https://www.instituteforgovernment.org.uk/blog/five-things-know-about-customs-union [accessed 26 February 2018]

2 World Trade Organisation. (2018). Principles of the trading system. Retrieved from https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm [accessed 26 February 2018]

3 UK Parliament. (2016). Brexit: the options for trade. House of Lords European Union Committee. Retrieved from https://publications.parliament.uk/pa/ld201617/ldselect/ldeucom/72/72.pdf [accessed 26 February 2018]

4 HM Government. (2016). Alternatives to membership: possible models for the United Kingdom outside the European Union. Retrieved from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/504604/Alternatives_to_membership_-_possible_models_for_the_UK_outside_the_EU.pdf [accessed 19 February 2018]

5 UK Parliament. (2017). UK trade options beyond 2019. Retrieved from https://publications.parliament.uk/pa/cm201617/cmselect/cmintrade/817/817.pdf [accessed 9 February 2018]

6 The Guardian. (2018). David Davis accuses EU of discourtesy and bad faith over proposed Brexit transition conditions - Politics live. Retrieved from https://www.theguardian.com/politics/blog/live/2018/feb/08/ministers-condemned-for-leaving-city-in-chronic-state-of-uncertainty-over-brexit-politics-live [accessed 10 February 2018]

7 Labour Party. (2018, February 26). Jeremy Corbyn full speech on Britain after Brexit. Retrieved from https://labour.org.uk/press/jeremy-corbyn-full-speech-britain-brexit/ [accessed 27 February 2018]

8 UK Government. (2018). PM speech on our future economic partnership with the European Union. Retrieved from https://www.gov.uk/government/speeches/pm-speech-on-our-future-economic-partnership-with-the-european-union [accessed 3 March 2018]

9 European Commission. (2017). Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom's orderly withdrawal from the European Union. Retrieved from https://ec.europa.eu/commission/sites/beta-political/files/joint_report.pdf [accessed 28 February 2018]

10 European Commission. (2018). https://ec.europa.eu/commission/sites/beta-political/files/draft_withdrawal_agreement.pdf. Retrieved from https://ec.europa.eu/commission/sites/beta-political/files/draft_withdrawal_agreement.pdf [accessed 1 March 2018]

11 BBC. (2018). Theresa May rejects EU's draft option for Northern Ireland. Retrieved from http://www.bbc.co.uk/news/uk-politics-43224785 [accessed 1 March 2018]

12 Financial Times. (2017). UK groups slow to sign up for fast customs clearance after Brexit. Retrieved from https://www.ft.com/content/da949166-caf8-11e7-ab18-7a9fb7d6163e [accessed 5 March 2018]

13 Financial Times. (2018). Border clearance won't be simpler for AEO traders. Retrieved from https://www.ft.com/content/41fa94f0-df52-11e7-8f9f-de1c2175f5ce [accessed 5 March 2018]

14 European Commission. (2018). The European Single Market. Retrieved from https://ec.europa.eu/growth/single-market_en [accessed 26 February 2018]

15 European Commission. (2017). Official Journal of the European Union. Retrieved from http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2016:202:FULL&from=EN [accessed 19 February 2018]

16 European Commission. (2018). The European Single Market. Retrieved from https://ec.europa.eu/growth/single-market_en [accessed 19 February 2018]

17 European Parliament. (2004). Directive 2004/38/EC of the European Parliament and the Council of 29 April 2004. Retrieved from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:en:PDF [accessed 5 March 2018]

18 European Parliament. (2018). Free movement of workers. Retrieved from http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_2.1.5.html [accessed 5 March 2018]

19 Ravenhill, J. (2014). *Global Political Economy (4th edition)*. (n.p.): Oxford University Press.

20 Ravenhill, J. (2017). *Global Political Economy (5th edition)*. (n.p.): Oxford University Press.

21 European Council. (2017, November 8). EU trade map. Retrieved from http://www.consilium.europa.eu/en/infographics/eu-trade-map-2017/ [accessed 21 February 2018]

22 European Commission. (2018, February 20). Negotiations and agreements. Retrieved from http://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/#_being-negotiated [accessed 21 February 2018]

23 Gasiorek, M., & Holmes, P. (2017, December). Grandfathering: What appears bilateral is trilateral. Retrieved from http://blogs.sussex.ac.uk/uktpo/files/2017/12/PBriefing_13.pdf [accessed 20 February 2018]

24 European Commission. (2018, January). Overview of FTA and other trade negotiations. Retrieved from http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_118238.pdf [accessed 27 February 2018]

25 European Commission. (2017, November 10). South Korea. Retrieved from http://ec.europa.eu/trade/policy/countries-and-regions/countries/south-korea/index_en.htm [accessed 27 February 2018]

26 UK Trade Policy Observatory. (2017, November). A UK Brexit Transition: to the Ukraine Model?. Retrieved from http://blogs.sussex.ac.uk/uktpo/files/2017/11/Briefing-Paper-11.pdf [accessed 27 February 2018]

27 European Commission. (2011, October). The EU-Korea Free Trade Agreement in practice. Retrieved from http://trade.ec.europa.eu/doclib/docs/2011/october/tradoc_148303.pdf [accessed 27 February 2018]

28 EU Oberserver. (2017). Netherlands ratifies EU-Ukraine treaty. Retrieved from https://euobserver.com/foreign/138060 [accessed 26 February 2018]

29 Emerson, M. (2016). Which model for Brexit?. Retrieved from https://www.ceps.eu/system/files/SR147%20ME%20Which%20model%20for%20Brexit.pdf [accessed 26 February 2018]

30 UK Government. (2018, February 8). Technical Note: International Agreements during the Implementation Period. Retrieved from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/680366/Technical_Note_-_International_Agreements_in_the_Implementation_Period_-_CLEAN.pdf [accessed 15 February 2018]

31 Peretz, G. (2017, December 15). How to roll over EU and third country FTAs during the Brexit transition. Retrieved from https://uktradeforum.net/2017/12/15/a-suggestion-for-rolling-over-eu-third-country-ftas-during-the-transition-period/ [accessed 15 February 2018]

32 European Council. (2017, undefined). European Council (Art. 50) meeting (15 December 2017) - Guidelines. Retrieved from http://www.consilium.europa.eu/media/32236/15-euco-art50-guidelines-en.pdf [accessed 15 February 2018]

33 European Commission. (2017, December 20). Recommendation for a COUNCIL DECISION supplementing the Council Decision of 22 May 2017 authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for an agreement setting out the arrangements for its withdrawal from the European Union. Retrieved from https://ec.europa.eu/commission/sites/beta-political/files/annex_commissions_recommendation_20-12-2017.pdf [accessed 15 February 2018]

34 UK Parliament. (2018, January 24). House of Commons International Trade Committee - Continuing application of EU trade agreements - oral evidence. Retrieved from http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/international-trade-committee/continuing-application-of-eu-trade-agreements/oral/77638.html [accessed 15 February 2018]

35 UK Parliament. (2017). Trade Bill. Explanatory Notes. Retrieved from https://publications.parliament.uk/pa/bills/cbill/2017-2019/0122/en/18122ennew.pdf [accessed 8 February 2018]

36 Holmes, P., & Gasiorek, M. (2017). Grandfathering Free Trade Agreements and Rules of Origin: What might appear bilateral is in fact trilateral!. Retrieved from https://blogs.sussex.ac.uk/uktpo/2017/09/27/grandfathering-ftas-and-roos/

37 Centre for Economic Policy Research. (2013, November). Trade and Investment Balance of Competence Review. Retrieved from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/271784/bis-14-512-trade-and-investment-balance-of-competence-review-project-report.pdf [accessed 27 February 2018]

38 House of Lords. (2016, September 15). The Select Committee on the European Union External Affairs Sub-Committee and Internal Market Sub-Committee Corrected oral evidence: Brexit: Future trade between the UK and the EU. Retrieved from http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-internal-market-subcommittee/brexit-future-trade-between-the-uk-and-the-eu/oral/38492.html [accessed 27 February 2018]

39 Holmes, P., & Gasiorek, M. (2017, September 27). Grandfathering Free Trade Agreements and Rules of Origin: What might appear bilateral is in fact trilateral!. Retrieved from https://blogs.sussex.ac.uk/uktpo/2017/09/27/grandfathering-ftas-and-roos/ [accessed 19 February 2018]

40 European Commission. (2018, February 20). Mutual Recognition Agreements. Retrieved from http://ec.europa.eu/growth/single-market/goods/international-aspects/mutual-recognition-agreements_en [accessed 20 February 2018]

41 European Commission. (2017). Joint letter from the EU and the UK Permanent Representatives to the WTO. Retrieved from https://ec.europa.eu/commission/publications/joint-letter-eu-and-uk-permanent-representatives-wto_en [accessed 9 February 2018]

42 World Trade Organisations. (n.d.) Response from the WTO to the EU and the UK. Retrieved from http://im.ft-static.com/content/images/ec0a64b2-a95f-11e7-ab55-27219df83c97.pdf [accessed 9 February 2018]

43 European Commission. (2017, December 19). Future relationship between the EU and the UK after Brexit. Retrieved from https://ec.europa.eu/commission/sites/beta-political/files/slide_presented_by_barnier_at_euco_15-12-2017.pdf [accessed 21 February 2018]

44 Wolf, M. (2018, February 21). Britain's road to becoming the EU's Canada. Retrieved from https://www.ft.com/content/e72bf154-1566-11e8-9376-4a6390addb44 [accessed 21 February 2018]

45 export.gov. (2018). Singapore - import tariffs. Retrieved from https://www.export.gov/article?id=Singapore-Import-Tariffs [accessed 10 February 2018]

SPICe The Information Centre
An t-Ionad Fiosrachaidh

Scottish Parliament Information Centre (SPICe) Briefings are compiled for the benefit of the Members of the Parliament and their personal staff. Authors are available to discuss the contents of these papers with MSPs and their staff who should contact Anouk Berthier on telephone number 85380 or Anouk.Berthier@scottish.parliament.uk, Iain McIver on telephone number 85294 or Iain.McIver@scottish.parliament.uk.

Members of the public or external organisations may comment on this briefing by emailing us at SPICe@parliament.scot. However, researchers are unable to enter into personal discussion in relation to SPICe Briefing Papers. If you have any general questions about the work of the Parliament you can email the Parliament's Public Information Service at sp.info@parliament.scot.

Every effort is made to ensure that the information contained in SPICe briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.