



House of Commons  
Exiting the European Union  
Committee

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**The future UK-EU  
relationship**

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**Fourth Report of Session 2017–19**

*Report, together with formal minutes relating  
to the report*

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## Exiting the European Union Committee

The Exiting the European Union Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Exiting the European Union and related matters falling within the responsibilities of associated public bodies.

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The Committee is one of the departmental select committees; its powers are set out under a Temporary Standing Order of 4 July 2017.

### Publication

Committee reports are published on the Committee's website at [www.parliament.uk/execom](http://www.parliament.uk/execom) and in print by Order of the House.

Evidence relating to this report is published on the [inquiry publications page](#) of the Committee's website.

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The current staff of the Committee are James Rhys (Committee Clerk), Claire Cozens (Second Clerk), Dr Ariella Huff (Senior Committee Specialist), Shakera Ali (Committee Specialist), Duma Langton (Committee Specialist), Judy Goodall (Committee Specialist), Adrian Hitchins (Committee Specialist), Julian Mazowiecki (Committee Specialist), Eoin Martin (Committee Specialist), Leo Olivera (Senior Committee Assistant), Henry Ayi-Hyde (Committee Assistant), Estelle Currie (Senior Media Officer) and Ben Shave (Media and Communications Officer).

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# Conclusions

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## The EU's existing relationships with third countries

1. The Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada is an arrangement designed to meet the trading objectives of both Canada and the EU. It does not eliminate all tariffs and provides for market access some way short of Single Market participation. The trading relationship between the UK and the EU is very different and so a “CETA-style” agreement with the UK would need to reflect markets that are already very much more integrated. A cut and paste of CETA would not be a good deal for the UK or the EU. (Paragraph 36)
2. A more ambitious trade deal for the UK with the EU would need to accommodate anticipated regulatory divergence, from an identical starting point, rather than convergence. The Secretary of State for Exiting the EU said that the UK would start with Canada, and then “add to that the bits missing which is the services”. The ability to elevate CETA into CETA plus plus plus so that it made up for any loss in services trade consequent on leaving the Single Market would require an unprecedented development of mutual recognition agreements far more ambitious than any previously agreed by the EU with a third country. There is no precedent for any EU Member State leaving the EU or the type of new deep and special partnership that the UK is seeking. (Paragraph 37)
3. Most Favoured Nation provisions in CETA (and in other EU Free Trade Agreements) provide that, if the EU offers the UK greater benefit in cross border provision of services and financial services, then it must offer the same benefit to Canada. This would be a consideration affecting the EU’s willingness to provide the UK with generous market access in services as part of such a deal. There are exceptions that enable greater market access without triggering the MFN clause, for example mutual recognition. The Government would need to consider how it could use the available exceptions to improve on cross border services provided in CETA. MFN provisions are likely to be particularly sensitive in respect of broadcasting. (Paragraph 38)
4. Alongside CETA, the EU and Canada negotiated a Strategic Partnership Agreement. This falls a long way short of the level of co-operation that the UK would wish to maintain. However, whilst there will be linkages between the two (for example in respect of data protection provisions underpinning both security co-operation and trade), there is no reason why a more limited trade deal could not sit alongside a very close strategic partnership. (Paragraph 39)
5. The EU’s Association Agreements with Ukraine, Georgia and Moldova cover most of the Internal Market. They also provide for selective participation in many of the agencies and programmes of the EU. Furthermore, free movement of persons is not included and the financial obligations on these countries are minimal. Binding arbitration is provided for dispute resolution and referrals to the Court of Justice of the EU are limited to interpretations of EU law. (Paragraph 54)

6. We also note that the European Parliament supports the option of an Association Agreement. Although these Association Agreements have been reached with countries converging rather than diverging, these agreements do illustrate the EU's ability to think creatively and apply bespoke arrangements to form a deep and comprehensive relationship with politically important neighbours. (Paragraph 55)
7. However, the mix of rights and obligations that the EU will look to offer in an Association Agreement will depend on its assessment of its long-term strategic objectives and the priorities of the Member States. If the UK is to look to negotiate such an agreement, it needs to set out a clear vision of its future strategic relationship with the EU, and the Committee notes that such a vision has yet to be fully articulated. (Paragraph 56)
8. Relations between Switzerland and the EU are governed by a series of bilateral agreements and negotiations towards an institutional framework have been ongoing for a number of years. While we were told that the EU would not be willing to replicate such an arrangement for the UK, it is clear that Switzerland has been able to establish its own unique arrangement with the EU. (Paragraph 74)
9. Trade between the two covers some areas of the Internal Market and includes some mutual recognition, albeit of an asymmetrical nature. Switzerland accepts the free movement of persons and is part of Schengen. The management of borders is not intrusive, but there is physical infrastructure at the border and checks and controls are applied there. Switzerland does set a precedent for a country enjoying selective participation as a third-country in the EU's Internal Market, agencies and programmes. (Paragraph 75)
10. However, the Swiss arrangement has evolved out of a process through which Switzerland had seemed to be moving towards EU accession, rather than being seen by the EU as a desirable end-state in itself. (Paragraph 76)
11. Norway makes a financial contribution to the EU in areas such as European cohesion funds, a number of EU programmes relating to science, education and culture, such as Horizon 2020, and JHA matters which promote mutual security. The Prime Minister has said that the UK would like to continue to work with the EU in ways that promote the long-term economic development of Europe; in policies and programmes in science, education and culture; in areas of mutual security; and also remain party to three EU agencies, European Medicines Agency, the European Chemicals Agency, and the European Aviation Safety Agency. The UK Government has also acknowledged that this will involve a continuing role for the CJEU in the UK. While the European Chemicals and Aviation Safety Agencies include provisions for third country membership, the Medicines Agency does not. Membership of the Medicines Agency is only open to EU and EEA States. Under current rules, the UK would only be a member of the Medicines Agency from outside the EU through membership of the EEA. Whether or not participation could be secured through a future partnership arrangement has yet to be determined. In her Mansion House speech the Prime Minister said "if we agree that the UK should continue to participate in an EU agency the UK would have to respect the remit of the ECJ in that regard." (Paragraph 107)

12. The EFTA Court is not the CJEU. The opinions of the EFTA Court are not binding and it allows scope for national courts to question its interpretation of law as it relates to the EEA Agreement. Docking with the EFTA Court would provide the UK with a ready “off-the-shelf” arbitration mechanism for the ongoing UK-EU relationship. Docking was originally a solution proposed for Switzerland and the EU, so should garner support from the EU. (Paragraph 108)
13. Being a party to the EEA Agreement and not the Customs Union (nor the Common Fisheries Policy) means countries such as Norway operate an independent trade policy. It is noteworthy that Norway and the EFTA countries have chosen to negotiate free trade agreements with third countries that pre-empt or follow the free trade agreements negotiated by the EU. (Paragraph 109)
14. Norway has recognised there is a trade-off between being outside the EU Common Fisheries Policy and the Customs Union, but inside the Single Market. Norway has control over its own fishing waters, the ownership of its own fleet and retains flexibility to negotiate its trade in fish. However, this is balanced against tariffs on its exports of fish into the EU and Norway choosing to align its veterinary checks with EU rules to reduce the need for compliance checks at the EU border. (Paragraph 110)
15. The Norway-Sweden border has been held up as an example of a possible model for the Northern Ireland-Ireland border. Norway is in the Single Market but not the Customs Union. Sweden is in the Single Market and the Customs Union. Both countries are in Schengen. The two countries have been co-operating on how to manage the border for several years, but there are still checks and there is physical infrastructure. (Paragraph 111)
16. Article 112 and Article 113 of the EEA Agreement provides a safeguard measure that could be used to address “serious economic, societal or environmental difficulties of a sectorial or regional nature” if they arise. This could provide a route for the UK to operate a temporary emergency brake on free movement, and a more permanent way of dealing with freedom of movement issues through Article 28. The EEA Agreement also provides a mechanism through the EEA Joint Committee to discuss how to resolve the matter rather than immediately seek a judicial outcome. (Paragraph 112)
17. Norway’s EEA membership gives it the economic benefits of being a member of the Single Market but at the cost of having limited and informal participation in decision-making on the rules of the Single Market. It has chosen to accept the principle of freedom of movement, one of the UK Government’s red lines. There is a trade-off to this. EEA States, such as Norway, have to accept all EEA relevant EU legislation, which is estimated to account for up to 30% of all EU legislation that currently applies to the UK as an EU Member, while being informally invited to provide expert advice at an early stage of the Commission drawing up legislation. They do not have a vote. The Norwegian Parliament has a role in debating EU related legislation and voting on the financial contribution to the EU. Norway has found a balance in its relations with the EU that meets its needs. (Paragraph 113)



18. The Government has rejected applying for EEA Membership because its view is that this entails accepting both free movement and EU law. Should the negotiations on a deep and special partnership not prove successful, EFTA/EEA membership remains an alternative and would have the advantage of continuity of access for UK services. The EEA option is available off-the-shelf and could be negotiated relatively quickly. (Paragraph 114)
19. Turkey has a customs union arrangement with the EU covering industrial goods, but not agriculture (except for processed agricultural products), services or public procurement. It is bound by the EU's Common External Tariff, but it is not involved in setting the direction of the Common Commercial Policy. Nor is it able to automatically secure market access via the EU's FTAs, whereas those third countries have automatic access to Turkey's market. (Paragraph 129)
20. The incomplete nature of its customs union arrangement means checks still take place at the Turkey-EU border and there can be long delays. The examples of Jersey, Guernsey and the Isle of Man show an invisible border can be maintained through participation in a full customs union and adherence to the rules of the Single Market in respect of trade in goods. Such an arrangement could make it easier for the UK to roll-over the EU's existing FTAs. The UK would also need to negotiate a consultative role in the EU's future FTAs, as well as a legal mechanism in future FTAs which prevented them from entering into force unless the third-country in question extended market access to the UK. (Paragraph 130)
21. If the UK exited the EU without an agreement on its future trading relationship, it could do so on WTO terms. Eleven of the twelve studies in the Government's EU Exit Analysis show that trading on WTO terms would be particularly damaging to the UK economy, compared to other scenarios modelled. The UK could still look to negotiate a series of bilateral arrangements with the EU. These might include terms of co-operation with the EU in areas such as customs or aviation. It would remain to be seen how quickly they could be negotiated, or how deep and comprehensive they would be compared to the current Single Market relationship. (Paragraph 143)
22. The UK could choose to offer zero tariffs on goods between the EU and the UK, outside of a trade deal and would be able to use a ten-year exemption before offering the same tariff rates to other nations if the UK were negotiating a trade deal with the EU at that time. After this period, if the UK did so, it would have to offer the same zero tariff to all its trading partners. This would leave domestic producers exposed and remove significant negotiating leverage for the UK in respect of future trade deals. (Paragraph 144)
23. The UK and the EU have both said that they do not want to reintroduce a hard border between Ireland and Northern Ireland. If the UK wanted to trade with the EU on WTO terms, then it could choose to reduce all its tariffs to zero, or it could choose not to collect duties at the border. However, there would still be the need to check some goods crossing the border for reasons such as the safety of goods, or health of agricultural products, or for rules of origin. There are currently checks to prevent excise fraud or illegal imports of arms and drugs. (Paragraph 145)

24. The Government has modelled the impact on UK GDP of the three potential scenarios for future UK-EU trade that we have examined in the course of our work. There is near consensus that moving from trading with the EU as a Member State to trading with the EU on WTO terms would have a significant negative impact on the UK economy. According to most analyses, this negative impact would be mitigated in part by agreeing a “Canada-style” FTA, and further reduced by trading within the Single Market (but outside the Customs Union) as an EEA State. Each of the three scenarios modelled in the Government’s EU Exit analysis factored in the transitional adoption of all existing EU FTAs, and includes the effects of a bilateral UK-US trade deal, which is estimated to bring a benefit of 0.1–0.3% of GDP over the long term, but excludes any other potential FTAs, which the Analysis estimates could add a further 0.1–0.4% of GDP. (Paragraph 153)

### The UK’s future relationship with the EU

25. The EU’s different forms of relations with third countries have been driven by a range of particular circumstances and strategic interests. While there are a number of “off-the-shelf” models, the details of each vary widely. There is no precedent for Brexit and any deal reached between the UK and the EU on the UK’s future relationship will, by its nature, be bespoke. A “CETA-style” trade agreement between the UK and the EU would reflect very different trading priorities to the Canada deal and could be part of a very much deeper relationship with the EU in terms of security, academic and many other areas of co-operation than that enjoyed by Canada, however the lack of access for services in such a FTA would pose serious challenges for the UK. Even trading on WTO terms after agreeing exit terms under Article 50 would not rule out continuing close co-operation in areas of mutual benefit. (Paragraph 174)
26. Continuing security co-operation is a priority for both sides. Our predecessor Committee welcomed the Government’s commitment to continuing co-operation with the EU27 on foreign policy and defence matters. That Committee called on the Government in March 2017 to set out some detail about how such co-operation could be made to work in practice, including the institutional and decision-making frameworks that would underpin it. It is regrettable that no response has yet been provided to that report and no detail has been set out. Our predecessor Committee also welcomed the Secretary of State’s statement that the Government wants “as far as is possible to replicate what we already have” in respect of Justice and Home Affairs Co-operation and concluded that the UK’s relationship with the EU when outside should be one of partnership on the basis of shared values and co-operation. Maintaining this level of co-operation will require overcoming a number of technical challenges in respect of agreeing data protection, judicial oversight and governance provisions. The Prime Minister’s Munich speech acknowledges that the Government will be looking to find positive solutions to address these challenges (Paragraph 175)
27. Ensuring the continued free flow of data between the UK and the EU, once the UK has left will be one of the most important cross-cutting issues to be resolved in the negotiations on the future relationship. Data flows are vital for ensuring frictionless trade between the UK and the EU and they underpin co-operation in combating terrorism and organised crime. This is just one area of cross-over that illustrates the

relationship between both trade and non-trade elements of the future relationship. Our scrutiny of other third country relations with the EU indicates that imaginative solutions are possible but will require agreement over regulatory frameworks, governance and oversight arrangements. Indeed, we welcome the greater emphasis on alignment, rather than divergence, in the Prime Minister's Mansion House speech. (Paragraph 176)

28. Our study of the existing relationships between the EU and third countries shows that there are trade-offs between the rights and obligations that comprise those relationships. Michel Barnier's "staircase" diagram takes as a starting point that the UK Government's existing red lines suggest a "Canada style" trade deal. The Government is seeking a much wider CETA plus plus plus agreement. While imaginative solutions are possible in other areas of co-operation, these red lines will also affect other aspects of the relationship. Ending free movement will affect the extent of involvement in programmes of academic co-operation granted to the UK. Ending the jurisdiction of the Court of Justice of the EU and any regulatory divergence in data protection will place constraints on a range of programmes for justice and home affairs co-operation, although in her Munich speech about security and policing co-operation, the Prime Minister indicated the UK's willingness to accept the remit of the CJEU in these areas, respecting the sovereignty of both the UK and the EU's legal orders. This is a very positive approach which we encourage the Government to apply in other areas. (Paragraph 177)
29. In respect of both trade and non-trade agreements, other countries will take a close interest in the mix of rights and obligations that constitute any future relationship with the UK and may see any special deals for the UK as a precedent. Countries such as Switzerland and Norway will examine closely any agreement between the UK and the EU to see if it contains better terms than their current arrangements. This, in itself, may limit the EU's room for manoeuvre in terms of what it is prepared to offer the UK. (Paragraph 178)
30. The UK has an enormous amount to offer the EU as a third country. A deep partnership will ensure that the UK's defence, intelligence and security capabilities continue to add to the EU's resources (and vice versa), that the international financial centre for our continent stays in Europe; and that our co-operation continues across a wide number of important sectors. However, Ministers need to set out what they want to achieve overall, in much more detail, in terms of the future relationship. The absence of such detail could allow the terms of the future negotiation to be set by the EU with the "offer" to the UK determined by the EU's analysis of the implications of the UK's red lines, rather than by a proper consideration by the EU of the strategic value of a continuing close relationship with the UK. We encourage the Government to take a more proactive approach to the linkages between different areas of the future relationship, given that they will be negotiated to different timescales, so that the UK does not find that options are inadvertently closed off. (Paragraph 179)
31. A political declaration on the future partnership is expected to be agreed alongside the withdrawal agreement around October this year. The Secretary of State is confident that final agreement on the future relationship can be reached very shortly after the UK leaves the EU in March 2019, providing for most of the transition period (currently anticipated to last 21 months) to be spent "implementing" the future

relationship. In our last report, we questioned whether the transition period would be sufficient to agree the future relationship. The more bespoke and ambitious the relationship, the harder this will be to achieve in the time available. (Paragraph 180)

32. Whilst the UK will not be looking to replicate the relationships of other countries with the EU, our analysis has indicated that there are a number of key tests by which any deal agreed by October can be judged. The Prime Minister has set out her red lines for the negotiations. However, the success of the future relationship will be judged on the ground by the members of the public, businesses and agencies that travel to and from, trade with and will continue to work closely with the EU and EU Member States. The criteria by which they and we will judge the political declaration that we expect to be reached by October will be the following:

- The border between the Republic of Ireland and Northern Ireland must remain open, with no physical infrastructure or any related checks and controls, as agreed in the Phase 1 Withdrawal Agreement;
- In the fight against crime and terrorism, arrangements must replicate what currently exists in operational and practical cross-border co-operation. In particular, the UK must retain involvement with Europol and the European Arrest Warrant and continue to participate in the EU's information-sharing systems including SIS II;
- Institutional and decision-making frameworks must be identified to ensure that the UK is able fully to participate in foreign and security co-operation with the EU, to meet the challenges it shares with its neighbours in the EU-27;
- In respect of trade in goods, there must be no tariffs on trade between the UK and the EU 27;
- Trade in goods must continue to be conducted with no additional border or rules of origin checks that would delay the delivery of perishable or time-sensitive deliveries or impede the operation of cross-border supply chains;
- There must be no additional costs to businesses that trade in goods or services;
- UK providers of financial and broadcasting services must be able to continue to sell their products into EU markets as at present;
- UK providers of financial and other services should be able to retain automatically, or with minimal additional administration, their rights of establishment in the EU, and vice versa, where possible on the basis of mutual recognition of regulatory standards;
- There must be no impediments to the free flow of data between the UK and the EU;
- Any new immigration arrangements set up between the UK and the EU must not act as an impediment to the movement of workers providing services across borders or to the recognition of their qualifications and their right to practise;

- The UK must seek to maintain convergence with EU regulations in all relevant areas in order to maximise access to European markets;
- The UK must continue to participate in the European Medicines Agency, the European Aviation Safety Agency, the European Chemicals Agency and in other agencies where there is a benefit to continuing co-operation;
- The UK must continue to participate in the Horizon 2020 programme, the Erasmus+ scheme, the Galileo project and in other space and research programmes in order to support the work of our world-class academic institutions and the importance of cultural and educational exchange between the UK and the EU 27;
- The UK must continue to participate in all relevant air safety agreements and the Open Skies Agreement to ensure no disruption to the existing level of direct flights.
- The UK Government must ensure maximum access to European markets while agreeing reciprocal access to waters and a fairer allocation of fishing opportunities for the UK fishing industry. (Paragraph 181)

# 1 Introduction

1. We noted in our report on *The progress of the UK's negotiations on EU withdrawal: December 2017 to March 2018* that we have been undertaking scrutiny of the different types of trade and partnership agreements into which the EU had entered with third countries.

2. On 19 March 2018, the Draft Agreement on the withdrawal of the UK from the EU was published.<sup>1</sup> The EU and the UK will now move onto detailed scoping of future relations with a view to reaching agreement on a political declaration on the framework for this future relationship in October 2018. This will be agreed alongside the Article 50 withdrawal agreement and the agreement on the transition period. The European Council agreed its guidelines for the forthcoming negotiations at its March meeting.<sup>2</sup>

3. The Committee has held several evidence sessions to examine a number of different EU-third country relationships, including those with Canada (the Comprehensive Economic and Trade Agreement), the Association Agreements with Ukraine and Georgia, the series of bilateral agreements with Switzerland, the participation of Norway in the European Economic Area (EEA) and the European Free Trade Area (EFTA), and the partial customs union with Turkey. We outline each of these in this report.

4. The public debate has largely focussed on the trading and economic relationship between the UK and the EU, but the future relationship will also involve much broader matters. Michel Barnier, the EU Commission chief negotiator, explained to us that he envisaged a future relationship based on four pillars—trade, areas of “thematic co-operation” such as aviation and research, justice and home affairs, and security and defence policy.

5. In her speech to the Conservative Party Conference in October 2016, the Prime Minister set out a number of “red lines” for the Government’s approach to the negotiations. These represented commitments to:

- end the freedom of movement for EU citizens into the UK;
- end the jurisdiction of the Court of Justice of the EU (CJEU);
- end “vast contributions” to the EU budget.

She acknowledged that these red lines would mean the UK leaving the Single Market and the Customs Union. In her Lancaster House speech in January 2017, the Prime Minister said that “full Customs Union membership” prevents the UK from negotiating its own comprehensive trade deals, whereas she wanted Britain to be able to negotiate its own trade agreements.<sup>3</sup>

6. Mr Barnier has interpreted the UK’s red lines on trade as dictating a Canada-style Free Trade Agreement (FTA). In September 2017, he said that the UK’s future relationship with the EU will not “combine the benefits of the Norway model with the weak constraints of the Canada model.”<sup>4</sup> He has produced the following slide that demonstrates the current models of EU-third country trading relationships, and how each one matches the UK Government’s red lines.

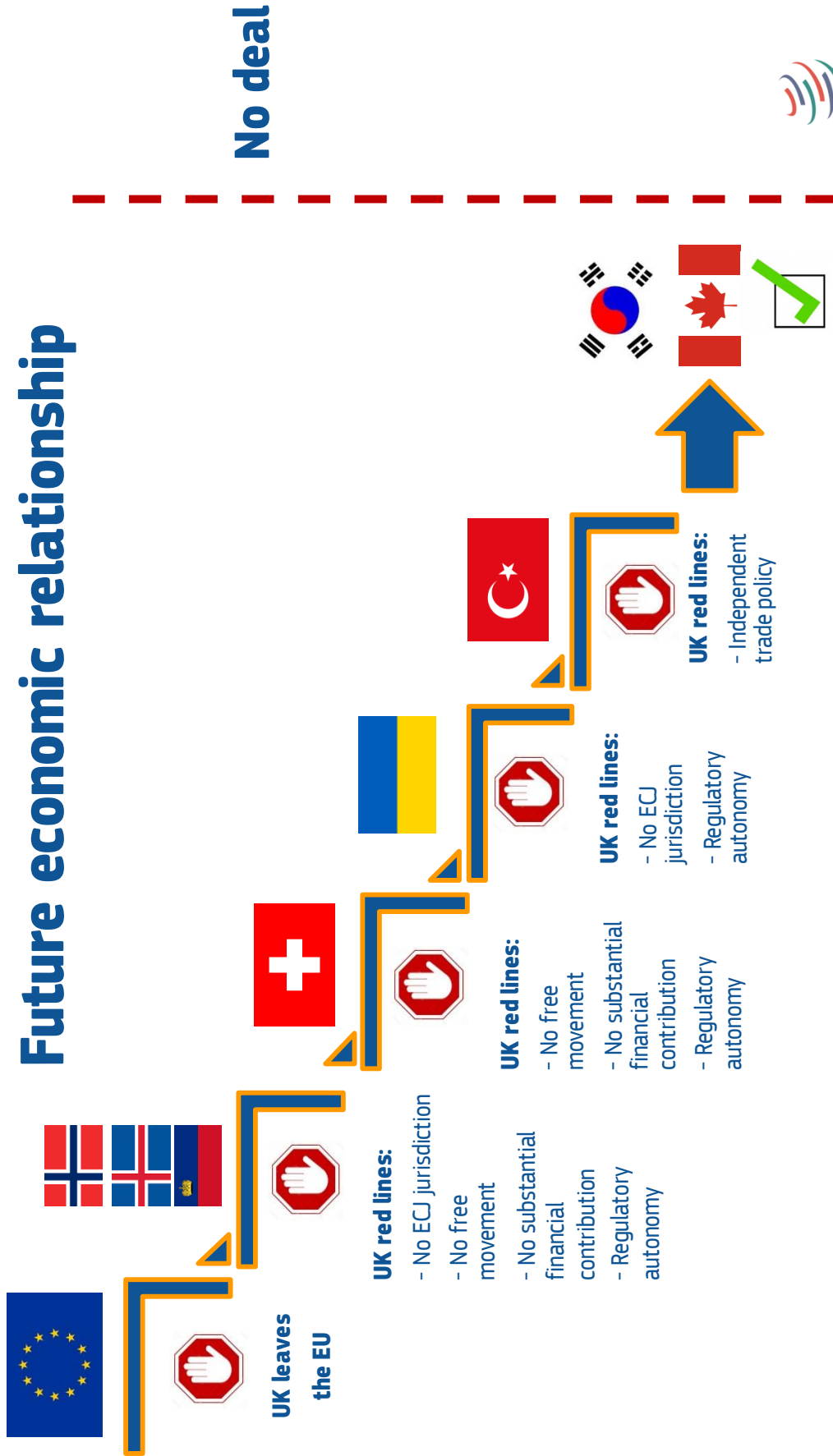
1 [Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#)

2 [European Council \(Art. 50\) - 23 March 2018 - Guidelines](#)

3 [Lancaster House speech 17 January 2017](#)

4 [Statement by Michel Barnier on the publication of the Guiding Principles for the Dialogue on Ireland and Northern Ireland, 7 September 2017](#)

# Future economic relationship



7. The Prime Minister made clear in her Lancaster House speech that she would “not seek to adopt a model already enjoyed by other countries”.<sup>5</sup> The White Paper on the United Kingdom’s exit from, and new partnership with, the EU, published in February 2017, noted that the UK would seek “a new strategic partnership with the EU, including an ambitious and comprehensive Free Trade Agreement and a new customs agreement”.<sup>6</sup> In her Florence speech, she rejected what she termed as a “stark and unimaginative choice” between the EEA model and a Canada-style relationship.<sup>7</sup> It was suggested to us in Brussels that the future relationship would be a unique arrangement.

## The UK as a Member State

8. The EU is currently the UK’s largest trading partner. In 2016, trade between the UK and the EU accounted for 48% of the UK’s total trade with all countries. In 2016, the share of UK exports of goods and services going to the EU was 43%. This comprised exported goods worth over £144 billion and services worth £90 billion.<sup>8</sup> The proportion of all UK exports that go to the EU has fallen to 43% from 54% in 2000.

9. Motor vehicles and parts is the largest [product group](#) by value of exports: the UK exported £18 billion of motor vehicles and trailers to the EU in 2016. The next largest product group exported to the EU is chemicals and chemical products, £15 billion in 2016. Meanwhile, 37% of UK service exports went to the EU in 2016, down from 40% in 2015. Financial services contributed more than a quarter of the UK’s services exports to the EU (£27 billion out of £90 billion).<sup>9</sup> In 2016, 54% of all UK’s imports were from the EU.<sup>10</sup>

10. The UK’s economy is integrated into the Single Market which allows products and services from one EU Member State to be sold in another without the need for additional checks. The Single Market aims to make trade easier between Member States, through the free movement of goods, people, services and capital, and through the introduction of rules that remove barriers to trade, and harmonise national rules at EU level. The EU Customs Union is an agreement among EU Member States under which each country has agreed to be bound by the same common external tariffs on imports from third countries, and to remove tariffs from trade in goods between countries within the Union. The common external tariff is part of the EU’s Common Commercial Policy.

11. There are other legal requirements on Member States governing their ability to trade within the EU, such as rules on data protection and common product, environmental and labour standards. There are also broader programmes of economic importance that flank the trade relationship, such as co-operation on research and innovation, and rules on competition and state aid. Outside the Single Market, the UK and the EU will have to agree the level of interaction that the UK has with these institutions and structures.

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5 [The government’s negotiating objectives for exiting the EU, Lancaster House, 17 January 2017](#)

6 [The United Kingdom’s exit from and new partnership with the European Union White Paper, CM 9417](#)

7 [Florence speech: a new era of co-operation and partnership between the UK and the EU, 22 Sept 2017](#)

8 House of Commons Library, [Statistics on UK-EU trade](#), 19 December 2017

9 [ONS, Who does the UK trade with? 2018](#)

10 House of Commons Library, [Statistics on UK-EU trade](#), 19 December 2017



## 2 The EU's existing relationships with third countries

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### Deep and Comprehensive Free Trade Agreement - Canada

12. The Secretary of State for Exiting the European Union has said that the Government is looking for a bespoke deal, that would probably start with Canada, with the best bits of the Japan and South Korea deals, and then “add to that the bits missing which is the services.”<sup>11</sup> The EU negotiator, Michel Barnier, has said that, based on the UK Government’s own red lines, the UK-EU relationship is likely to be close to the agreement signed with Canada.<sup>12</sup> Professor Richard Whitman, Head of School, Professor Politics and International Relations, University of Kent, told us that Mr Barnier’s logic should not be taken as definitive.<sup>13</sup>

13. The Comprehensive Economic and Trade Agreement, commonly known as CETA, is a trade deal between the EU and Canada. It has been described by the EU Commission as “the most ambitious trade agreement that the EU has ever concluded” and “a milestone in European trade policy”.<sup>14</sup> Christophe Bondy, former senior council to Canada on the CETA negotiations, said that the negotiations began with both sides carrying out a joint scoping exercise, which started in 2008.<sup>15</sup> Negotiations were completed in August 2014 and the Agreement was signed on 30 October 2016. The internal discussion between the national government and the provinces and territories in Canada added to the time taken.<sup>16</sup> Its signature was delayed further at the end by objections from the Walloon Parliament, and the agreement finally came into force, provisionally, in September 2017.<sup>17</sup> When asked if he thought the EU-UK negotiations would be shorter than the CETA negotiations, because the UK and EU are starting from a point of harmonisation, Mr Bondy said:

I think it is a completely distinct situation. The main issue is that you are asking of the EU something that it has never given [...] It is difficult to compare, because you are not asking for the same thing from the start.<sup>18</sup>

14. Pascal Lamy, former Director General of the World Trade Organisation, said Brexit was “like removing an egg from an omelette” and that the negotiations will take a long time:

because, simply, it is very complex. It took many, many years for the EU to move from a common market to a Single Market. [...] This process of convergence and integration, mostly through regulatory convergence, has been going on for many, many years. Moving back from that will be complex

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11 Andrew Marr Show [BBC]: [Interview with the Rt Hon. David Davis MP \[Transcript\]](#), 10 December 2017

12 [Michel Barnier warns UK: You'll get Canada-style trade deal with EU, 24 October 2017](#)

13 Q483

14 [European Commission proposes signature and conclusion of EU-Canada trade deal, 5 July 2016](#)

15 [Canada-European Union Joint Report: Towards a Comprehensive Economic Agreement](#). In October 2008, the EU and Canada released a joint study “[Assessing the Costs and Benefits of a Closer EU-Canada Economic Partnership](#)”.

16 Q493

17 Q546

18 Q593

and, in my view, for what it is worth, costly. If there were many benefits in moving to a common market and then from the common market to the Single Market, there will be costs in moving back.<sup>19</sup>

15. A Free Trade Agreement along the lines of CETA would not compromise the UK Government's red lines: it would not involve payments to the EU, it would not involve obligations along the lines of the four freedoms associated with the Single Market, it would not constrain trade policy much or involve the CJEU. While the CETA negotiations did consider the temporary entry of workers and enabling visa free access for all EU Member States to Canada, CETA does not provide for free movement.<sup>20</sup>

16. Comparing the CETA agreement to current arrangements as a Member State, Mr Bondy said that CETA was "a very high standard of free trade agreement [...] an excellent free trade agreement" but it would not achieve the regulatory participation and harmonisation of being in the EU for 45 years.<sup>21</sup> He said that "With a free trade agreement, you have regulatory autonomy and you have borders."<sup>22</sup>

### Goods

17. CETA removes all tariffs on industrial products traded between the EU and Canada. There is liberalisation of trade in some agricultural products, but not all, such as poultry and eggs,<sup>23</sup> and audiovisual services are also excluded. Fredrik Erixon, Director of the European Centre for International Political Economy, said it might be that the UK-EU FTA could provide zero-tariffs on all goods, but that the important issues would then be "all the practical administrative issues of trade" such as processes for authorising traders to trade without inspection checks and managing rules of origin.<sup>24</sup>

18. Dr Lorand Bartels, University of Cambridge and Senior Counsel, Linklaters, said that leaving the Single Market to trade on a CETA style basis would provide an opportunity for "an independent trade policy and an independent regulatory policy." This may entail divergence from the EU, and so could impact on UK-EU trade, but there would be benefits in allowing the UK to reduce tariffs on some foods lower than the EU tariffs, such as citrus fruits, to provide cheaper food for consumers.<sup>25</sup> The EU does offer duty-free and quota-free imports from least developed countries through its Everything but Arms initiative.<sup>26</sup> Dr Bartels also said that a CETA-type deal would not be compatible with an open border between Northern Ireland and the Republic of Ireland with no checks and no infrastructure.<sup>27</sup> When this was put to David Davis he said that it would depend what was added to the CETA-type deal by way of pluses.<sup>28</sup>

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19 Q1101

20 Q520, Q579

21 Q551

22 Q559

23 [Statement by President Donald Tusk on the draft guidelines on the framework for the future relationship with the UK, 7 March 2018](#)

24 Q459

25 Q574

26 Q1123, [Everything But Arms \(EBA\) – Who benefits?](#)

27 Q620

28 Q735

## Services

19. CETA does include some provision for trade in services, including access to the Canadian markets in telecoms, energy and maritime transport sectors, and enables EU companies to bid for public procurement contracts in Canada.<sup>29</sup> At the same time, the EU entered a large number of reservations on Canadian access to EU financial markets.<sup>30</sup> Whereas Canadian services' exports might be dependent on tourism and transportation, 80% of the UK economy comprises services and the UK places a higher priority on accessing markets where it can sell its services.<sup>31</sup> While Mr Bondy said he thought CETA represented a "step forward in terms of services", it did not allow a service provider to enter "a different economic space and carry on business without complying with the local laws or without having to show compliance with local laws and regulations".<sup>32</sup> David Henig, UK Trade Policy Specialist, said he would expect the EU to make an offer of its standard schedules on services to the UK, and these are "pretty similar for all trading partners in free trade agreements."<sup>33</sup>

20. Asked why there might be barriers to a FTA including services with the EU, Mr Erixon told us that there was a tendency across the world, not just in the EU, for regulation in areas such as financial services, telecommunications services and digital services, to operate in a way that made it more difficult to trade with third parties outside of that territory.<sup>34</sup> This was a key difference to the Single Market.<sup>35</sup> Pascal Lamy, former Chief of Staff to Jacques Delors, acknowledged that the Single Market is still imperfect in services.<sup>36</sup> Jessica Gladstone, Clifford Chance, said:

If you do not get a broad, sweeping commitment for services in the round, there is a challenge. If you start breaking it down and you start getting restrictions added and the commitments being less wide-ranging, you have the challenge of trying to identify which non-tariff barriers will in practice hinder the delivery of those services. You have to identify what licences will not be issued or will be difficult to be awarded. You have to identify what regulations it will be more difficult or more costly to comply with from outside than it is when they are the only set of regulations you have to comply with. When you compound it together, that is the challenge of it. You need to break it down to make sure you know what those obstacles are, you know how to write those into the legal text, and you know how in practice that is going to work for the businesses who export their services.<sup>37</sup>

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29 Qq567–568

30 Q499

31 Qq475–476. [Fredrik Erixon, The Canada-EU trade deal is no model for Brexit, 26 March 2016](#)

32 Q549

33 Q1248

34 Q479

35 Qq488–489

36 Q1124

37 Q1249

21. Mr Erixon expected that there would be an agreement on financial services, because it was in the interests of both the UK and the EU to maintain the supply of capital and financial services across Europe, not least because of UK financial services content in industrial exports from countries such as Germany.<sup>38</sup> However, while financial services might be part of the UK-EU deal, he anticipated a “material difference between being in the Single Market and having an FTA in terms of what type of access you will have.”<sup>39</sup>

### *Mutual recognition agreements*

22. CETA includes a Protocol on the mutual acceptance of conformity assessment for products such as electrical equipment, toys, some machinery and hot water boilers.<sup>40</sup> It allows for Canada’s assessment bodies to certify that goods made in Canada meet European standards, and vice versa—not the mutual recognition of the actual standards. In some areas Canada has agreed to follow EU rules without reciprocation, and with no influence in how the EU sets those rules.<sup>41</sup> In her Mansion House speech, the Prime Minister called for a “comprehensive system of mutual recognition” to “ensure that, as now, products only need to undergo one series of approvals, in one country, to show that they meet the required regulatory standards.”<sup>42</sup> In addition to the Protocol on the mutual acceptance of the results of conformity assessment, CETA includes a framework for mutual recognition of testing, providing a structure for individual agreements to be reached for individual products depending on the specific regulations for the particular product. David Henig said:

It is very difficult to get an overall framework that says, “Where the EU requires testing, it is all allowed to be carried out within the UK”. The EU has not done that for any other country, so we would have to go through a process of doing this EU regulation by EU regulation. As you can appreciate, there are an awful lot of those EU regulations.<sup>43</sup>

Not every product needs to be tested within the EU according to EU standards. David Henig said complex products, e.g. chemicals, are tested, while in some areas, such as telecommunications, the standards are international.<sup>44</sup> And for a large number of less complicated products, it may be sufficient for the supplier to declare that the product meets all known regulations and standards.<sup>45</sup> He said it would be for the UK “to go through every product, and to go through all the regulations relating to that product, to establish the way that the UK products might be affected by these regulations.”<sup>46</sup>

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38 Q515

39 Q516

40 Protocol on the mutual acceptance of the results of conformity assessment, Annex 1

41 [Beth Oppenheim and Charles Grant, UK + EU = Canada+? 1 December 2017](#)

42 [Mansion House speech, 2 March 2018](#)

43 Q1243

44 Qq1270–1271

45 Qq1268–1271

46 Q1273

23. CETA does include a Framework for Mutual Recognition on professional qualifications, where:

Each Party shall encourage its relevant authorities or professional bodies, as appropriate, to develop and provide to the Joint Committee on Mutual Recognition of Professional Qualifications [...] joint recommendations on proposed MRAs [Mutual Recognition Agreements].<sup>47</sup>

The framework does not provide for each party to recognise automatically the qualifications of individuals from the other, but for the relevant bodies, such as professional bodies in each country, to talk to each other about how to recognise each other's qualifications.<sup>48</sup> The European Council Article 50 draft negotiating guidelines, published on 7 March 2018, includes reference to "a framework for the recognition of professional qualifications."<sup>49</sup>

24. Dr Bartels told us that where the EU has agreed an MRA, it has been on an unequal basis.<sup>50</sup> Mr Bondy made a similar point with reference to the EU-Ukraine relationship:

If you are participating as, say, the Ukraine in certain aspects, it is because you are fully compliant with the EU-determined rules, not jointly determined but EU-determined.<sup>51</sup>

He added that there was a clear difference between being in the Single Market and a relationship based on a FTA:

The difference between a trade agreement and a Single Market is that, in a Single Market, there are rules that are deeply harmonised that are jointly developed for all member states. [...] With a free trade agreement, you have regulatory autonomy and you have borders.<sup>52</sup>

25. Dr Bartels noted that the UK-EU negotiations will replace "complete convergence because of the Single Market" to either "harmonised legislation or mutual recognition". He argued that:

So long as those legal regimes continue, I cannot see any reason why the EU should not be obliged to continue this type of recognition. This is something that the EU negotiators do not accept, but it follows from WTO law, with one exception to do with financial services.<sup>53</sup>

Mr Lamy's view as to whether the EU would have to continue to recognise UK standards:

No. The EU will keep, as the UK will, its total sovereignty in deciding on specifications for goods or domestic regulation for services, which is the equivalent for services.<sup>54</sup>

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47 CETA Article 11.3 Negotiation of an MRA

48 See Q468-Q473 for discussion on how MFN clause applies in general (WTO) and specifically (in a FTA), and how they relate to services and investment

49 European Council (Art. 50) (23 March 2018) - Draft Guidelines, 7 March 2018

50 Q561

51 Q559

52 Q559

53 Q561

54 Q1159

26. Dr Bartels also said that:

The only other trade agreement that I have encountered that has anything resembling the EU’s mutual recognition and to some extent harmonisation model is the agreement between Australia and New Zealand. Even that agreement has many more carve-outs than what one sees in the EU. [...] Regulatory co-operation does not really exist.<sup>55</sup>

27. Explaining the barriers to the EU-UK relationship ‘cloning’ the mutual recognition practices for services from the Single Market, Mr Erixon said there will be differences, depending on the service, and whether it is a sector with a substantial body of EU regulation or where a licence approval is necessary. He said:

We should bear in mind that the EU does not like mutual recognition agreements outside the Single Market. It has not done many of them.<sup>56</sup>

This would not, however, necessarily preclude one being done for the UK-EU Agreement, and it would be in both our interests to pursue this.

28. Mr Barnier said on 20 November 2017 that “a legal consequence of Brexit is that UK financial service providers lose their EU passport” and that the EU “will have the possibility to judge some UK rules as equivalent”.<sup>57</sup> Equivalence is a lesser form of mutual recognition, where there is recognition that the standards of another are the same, but that recognition can be unilaterally withdrawn at any time.<sup>58</sup> The Prime Minister, in her Mansion House speech on March 2018, and the Chancellor in his speech at HSBC on 7 March 2018, have made the case for more comprehensive mutual recognition for financial services.<sup>59</sup>

29. Ms Gladstone said that the drawback with equivalence was that outside the EU, the UK would no longer have influence in writing the rules, and would be a rule taker on financial services.<sup>60</sup> She explained Clifford Chance had developed a model for mutual recognition “at the regulatory level” with the aim of enabling financial services to continue to operate “in a way they have been used to”. Ms Gladstone said the Clifford Chance model would be different to passporting as “Everything is different from passporting. It is definitely a step away from that”.<sup>61</sup> Dr Stephen Woolcock, Associate Professor in International Relations, London School of Economics, told us that overcoming the barriers to mutual recognition would be an important test of whether the “plus plus plus” could be added to a Canada style agreement. Most FTAs looked to manage convergence, whereas the UK was trying to negotiate “having some kind of regulatory divergence”.<sup>62</sup> If it wanted an agreement involving regulatory divergence it would need to negotiate a solution for arbitration.<sup>63</sup>

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55 Q561

56 Q490

57 [Michel Barnier speech at ‘The future of the EU’ Conference, 20 November 2017](#)

58 The IFG Quick guide to the language of trade: mutual recognition

59 [Mansion House speech, 2 March 2018](#) and [Chancellor speech on financial services, 7 March 2018](#)

60 Q1254

61 Q1255. See also Q1276 and UK Finance, Supporting Europe’s Economies and Citizens, September 2017

62 Q503

63 Q540

### *Transatlantic Trade and Investment Partnership (TTIP)*

30. The US and the EU agreed to seek a trade agreement to encourage trade across the Atlantic. The first negotiating round was July 2013, initially frozen in January 2014 following disagreement on the investment section, and then for the US election in 2016. While the TTIP negotiations did not reach agreement, we looked at the lessons that came out of the process and how it compared to CETA.

31. Mr Lamys said that the TTIP negotiation was “precisely about regulatory convergence”<sup>64</sup> and Mr Bondy told us that “With TTIP they went a step further with attempts at regulatory co-ordination”.<sup>65</sup> In a speech on TTIP in 2013, Karel de Gucht, then European Trade Commissioner, said the EU’s proposals for the regulatory chapter of TTIP included the creation of a Regulatory Co-operation Council, which would bring together the important EU and US regulatory agencies, to consider new priorities for regulatory co-operation and ways to avoid future regulations that might create unnecessary trade barriers. He said, “Neither side will be successful if it seeks to impose its system on the other.”<sup>66</sup> Sam Lowe, Centre for European Reform, told us that TTIP did not go further than the CETA deal in its approach to services.<sup>67</sup> On what TTIP offered on financial services, he said:

Essentially, the proposal is that it would co-ordinate in regard to ongoing international discussions on financial regulation that is coming up, and also to its own—other things that individual parties have coming up, in order to avoid unnecessary barriers emerging—and then have a systemic discussion around areas where equivalence rulings could be appropriate.<sup>68</sup>

David Henig said the regulatory convergence aspect of TTIP:

[...] was intended to be ground-breaking for the EU and the US. There was going to be a huge degree of dialogue, of potentially moving towards shared regulatory solutions, with two regulatory superpowers coming together to discuss this. [...] that dialogue was never completed.<sup>69</sup>

Furthermore, he said that progress made on TTIP had been because the UK was pushing inside the EU for it to happen, but this would no longer be the case.<sup>70</sup>

### *CETA and the Most Favoured Nation Clause*

32. The Most Favoured Nation (MFN) clause in the CETA ensures that, if the EU offers a more generous deal to another party in a bilateral trade negotiation, then that benefit must be extended automatically to Canada. Similar clauses are included in the South Korea and Singapore agreements. Dr Woolcock described this as “a bit of a constraint in terms of what the EU is likely to agree to on financial services.”<sup>71</sup> MFN provisions do not cover the entire agreement but do apply in respect of investment, cross-border provision

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64 Q1108

65 Q560

66 [Karel De Gucht, Transatlantic Trade and Investment Partnership \(TTIP\) – Solving the Regulatory Puzzle, 10 October 2013](#)

67 Q1064

68 Q1079

69 Q1277

70 Q1277

71 Q461

of services and financial services.<sup>72</sup> In addition, there are three situations where the clause is not caught: endeavouring to create an internal market (e.g. Norway), the second is for an accession country, and third where there is sufficient regulatory approximation.<sup>73</sup> Ms Gladstone suggested it might be possible for the EU and the UK to have a mutual recognition agreement on financial services with an underlying requirement that the UK and EU regulators would perform in a particular way. Another nation wishing to take advantage of the MFN clause would need to conform also to the mutual recognition requirements. In this way, it would open up a renegotiation for the EU but it would not be an automatic opening up of the same benefit.<sup>74</sup>

33. Broadcasting is generally not covered in EU FTAs, a point acknowledged in the Prime Minister's Mansion House speech,<sup>75</sup> and CETA is no exception. Canada has a long tradition of supporting a national broadcaster and national television programmes.<sup>76</sup> In the EU, culture is also sensitive for many countries which wish to protect their own national broadcasting. Mr Bondy explained in respect of CETA:

There was a reservation taken in the services and investment area: “The EU reserves the right to adopt and maintain any measure with regard to broadcasting transmission services”.<sup>77</sup>

He also pointed out that the MFN clause in the CETA agreement would capture audio transmission, so any benefit offered in future to the UK would also have to be offered to Canada:

When the EU is articulating its lists of reservations, there were many things that were never in its contemplation that it would give to anyone but a member of the club. If the UK comes in now saying, “Actually, we want that benefit. We want to be able to fly from point to point in different parts of the EU. We want audio transmission services access”, or what-have-you, the MFN element of the investment and services chapter in CETA will kick in and you have to give in to Canada.<sup>78</sup>

### *CETA and the Strategic Partnership Agreement*

34. Alongside CETA, the EU and Canada agreed a Strategic Partnership Agreement (SPA). Professor Whitman told us that the SPA included areas where both parties sought political co-operation, such as in security and foreign policy, but also broader sectoral co-operation such as sustainable development and investment. We were told that the SPA is aspirational, whereas the UK agreement would have to be “nuts-and-boltsy”, looking at where the UK and EU already collaborate and working out how to maintain as much of that collaboration as possible.<sup>79</sup>

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72 Q463

73 Q1075. The witness suggested there were two aspects to understanding what sufficient regulatory approximation could mean. 1) whatever the EU says it means, and 2) the views of the third countries that have this clause, and the lawyers of businesses based in those countries.

74 Qq1256–1257

75 [Mansion House speech, 2 March 2018](#)

76 Q582

77 Q554

78 Q554

79 Q530. See also Qq1201–1202



35. Professor Whitman told us that the UK and the EU should have much more ambition than the Canadian SPA, so it would be “something like an SPA-plus-plus-plus-plus-plus”.<sup>80</sup> He characterised the objective as to achieve “something where the UK is as embedded as possible but also recognised as being a non-member state.”<sup>81</sup> He perceived a lack of thought going on in other Member State capitals as to what this future relationship might look like, and how the complexities of the “institutional plug-in and the legal issues” for involving a non-member state outside the jurisdiction of the CJEU in this way might be resolved.<sup>82</sup>

36. **The Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada is an arrangement designed to meet the trading objectives of both Canada and the EU. It does not eliminate all tariffs and provides for market access some way short of Single Market participation. The trading relationship between the UK and the EU is very different and so a “CETA-style” agreement with the UK would need to reflect markets that are already very much more integrated. A cut and paste of CETA would not be a good deal for the UK or the EU.**

37. **A more ambitious trade deal for the UK with the EU would need to accommodate anticipated regulatory divergence, from an identical starting point, rather than convergence. The Secretary of State for Exiting the EU said that the UK would start with Canada, and then “add to that the bits missing which is the services”. The ability to elevate CETA into CETA plus plus plus so that it made up for any loss in services trade consequent on leaving the Single Market would require an unprecedented development of mutual recognition agreements far more ambitious than any previously agreed by the EU with a third country. There is no precedent for any EU Member State leaving the EU or the type of new deep and special partnership that the UK is seeking.**

38. **Most Favoured Nation provisions in CETA (and in other EU Free Trade Agreements) provide that, if the EU offers the UK greater benefit in cross border provision of services and financial services, then it must offer the same benefit to Canada. This would be a consideration affecting the EU’s willingness to provide the UK with generous market access in services as part of such a deal. There are exceptions that enable greater market access without triggering the MFN clause, for example mutual recognition. The Government would need to consider how it could use the available exceptions to improve on cross border services provided in CETA. MFN provisions are likely to be particularly sensitive in respect of broadcasting.**

39. **Alongside CETA, the EU and Canada negotiated a Strategic Partnership Agreement. This falls a long way short of the level of co-operation that the UK would wish to maintain. However, whilst there will be linkages between the two (for example in respect of data protection provisions underpinning both security co-operation and trade), there is no reason why a more limited trade deal could not sit alongside a very close strategic partnership.**

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80 Q527

81 Q543

82 Q545

## Association Agreement - Ukraine

### *Association Agreements under Article 217 TFEU*

40. An association agreement is a treaty between the European Union and a non-EU country that creates a framework for co-operation between them. Its legal basis is defined in Article 217 of the Treaty on the Functioning of the EU which provides for “an association involving reciprocal rights and obligations, common action and special procedures”. The EU uses an association agreement to create “privileged links” with a non-member country. These privileged links can involve setting up a free trade area between them, or creating broader economic and political co-operation in areas of mutual interest—for example, on defence and security, migration, environmental protection and energy, science, and education. As they can cover areas beyond trade, they can be more extensive than free trade agreements.

41. The EU’s association agreements include Stabilisation and Association Agreements with Western Balkan countries and those that include a Deep and Comprehensive Free Trade Area (DCFTA), namely those with Ukraine, Georgia and Moldova. The DCFTAs in the three agreements with Ukraine, Moldova and Georgia are new to EU association agreements. They cover: market access for goods; trade remedies; technical barriers to trade, standardisation, metrology, accreditation and conformity assessment; sanitary and phytosanitary measures; customs and trade facilitation; establishment, trade in services and e-commerce; current payments and movement of capital; public procurement; intellectual property; competition; trade-related energy; transparency; trade and sustainable development; dispute settlement; mediation mechanism; approximation; rules of origin; mutual administrative assistance in customs matters; and participation in EU programmes.

42. The agreements also include selective participation in EU agencies, as Michael Emerson, Senior Research Fellow at the Centre for European Policy Studies, explained to us:

There is a list of about 30 EU agencies that are officially open to neighbouring non-member states that wish to associate with the policy in question. One could expect the British Government, sooner rather than later, to comb through this list and say what they like ... There are loads of things in there that are open. This is linked to the DCFTA question: which of the chapters of EU legislation does the UK wish to continue to relate to? If we want to carry on with that, we can take the agency with it.<sup>83</sup>

43. Access to the EU’s Internal Market in the agreements is staggered over a number of years, as Dr Tamara Kovziridze, the Georgian former Chief Negotiator of EU-Georgia Association Agreement, explained to us:

One of the key elements of this agreement is conditionality and the legal approximation process. The very logic is that the three countries are supposed to bring their legislation and implementation practice close to the European Union, and this will take about 10 years. The maximum

approximation period that is possible is 10 years, whereas it varies between two, three and five, depending on the directive and regulation, on the area and on the topic.<sup>84</sup>

44. Contrary to EU assertions that the four freedoms of the Internal Market are indivisible, free movement of persons is not included in these agreements, as the Institute for Government has pointed out:

Despite its unprecedented access to the Single Market, Ukraine is not required to accept freedom of movement, or to make any financial contribution. But given that their GDP per capita is well below the EU average and the EU has strategic political interests in Ukraine, the EU was not interested in seeking either freedom of movement or a financial contribution from Ukraine.<sup>85</sup>

45. However, in its Report on the options for trade after exit, the House of Lords cautioned that:

there are questions around the extent to which the EU Ukraine Agreement would be available to the UK. In particular, the exemption from the principle of free movement contained in the Ukraine agreement reflects the EU's reluctance to extend full free movement rights further. This is very different from the UK's position.<sup>86</sup>

46. Each of these agreements differ in content, as Dr Kovziridze told us, “What we have in place, in reality, are three association agreements that are very similar in structure and slightly different in obligations.”<sup>87</sup> and therefore show that the EU is able to adopt a creative approach to tailoring its agreements, given political will. Dr Kovziridze added that:

It is a matter of political priority to decide specifically what type of agreement it will be and when to enter into it. The dynamics and the timeline are often defined by political factors.<sup>88</sup>

47. Dmytro Tupchiienko, a Ukrainian lawyer at EY, told us that:

the only thing which could be taken off the experience of the Ukrainian association agreement for the UK would be that a bespoke future agreement between the UK and the EU is possible. That is the only answer that could be drawn now.<sup>89</sup>

48. Andrew Duff, a former MEP, has noted that, from the EU's perspective, these agreements were aimed at third-countries converging, rather than diverging with the EU:

While the Ukraine association agreement is an interesting precedent—we know how to do it—the analogy with Britain should not be pressed too far. The aim of the Ukrainian deal is to encourage convergence on the EU acquis and to enhance political co-operation. The purpose of a British deal will be to manage divergence from the acquis and to downgrade political co-operation.<sup>90</sup>

84 Q851

85 Institute for Government, [Trade after Brexit, Options for the UK's relationship with the EU](#), December 2017

86 House of Lords, [Brexit: the options for trade](#), HL 62, 16 December 2016

87 Q887

88 Q887

89 Q836

90 [Andrew Duff, Brexit: Terra Nova to explore together, 7 November 2017](#)

49. This was echoed by Dr Kovziridze who told us that:

These countries are still distant from the EU in terms of their level of regulatory approximation, so how the legislative framework as well as its implementation works is still different. The whole objective of those agreements is to bring those two regulatory frameworks closer. More specifically in this case, it means that it has to become similar to the European Union in the case of Ukraine, Georgia and Moldova.<sup>91</sup>

50. A study by Guillaume Van der Loo noted the broader political context to these agreements, as all three countries were part of the EU's Eastern Partnership (EaP) policy:

When the EaP was launched in 2009, one of the key objectives of the EU was to conclude a new generation of association agreements with the partner countries establishing an ambitious form of political association and economic integration. The latter objective was to be realised by the conclusion of "Deep and Comprehensive" Free Trade Areas (DCFTAs).<sup>92</sup>

51. Mr Emerson highlighted the geostrategic significance of the EU-Ukraine Association Agreement. He told us that the political circumstances reflected "profound underlying tensions between Russia and Ukraine, which were brought to the surface by this clear act of pro-European, pro-western orientation."<sup>93</sup>

### *European Parliament Resolution*

52. On 14 March 2018, the European Parliament adopted a Resolution on the framework of the future EU-UK relationship. The Resolution sets out an Association Agreement between the UK and the EU as the European Parliament's preferred option. The Resolution stated that the European Parliament would only endorse a framework for the future EU-UK relationship if it maintained:

protection of the integrity and correct functioning of the internal market, the customs union and the four freedoms, without allowing for a sector-by-sector approach [...]

that Internal Market participation requires full adherence to the four freedoms and incorporation of corresponding EU rules, a level playing field, including through a competition and state aid regime, binding CJEU jurisprudence and contributions to the EU budget. [...]

safeguarding of the EU legal order and the role of the Court of Justice of the European Union (CJEU) in this respect.<sup>94</sup>

91 Q836

92 Guillaume Van der Loo, [A Comparative study of the Association Agreements and DCFTAs concluded with Ukraine, Moldova and Georgia](#), 26 June 2017

93 Q844

94 [European Parliament Resolution of 14 March 2018 on the framework of the future EU-UK relationship](#)

53. The Association Agreement with Ukraine sets out the procedures for dispute resolution. Mr Tupchiienko explained that WTO arbitration was the model primarily used and the CJEU is “mentioned only in terms of it being beneficial to use the precedents as guidance in spirit and in fact, but not an obligatory issue”.<sup>95</sup> Mr Emerson added that:

The main game is arbitration: one appointed by each side and one third party; binding arbitration. The European Court of Justice comes in if there is a controversy over interpreting European Union law, in which case it is invited to deliberate on the subject.<sup>96</sup>

54. **The EU’s Association Agreements with Ukraine, Georgia and Moldova cover most of the Internal Market. They also provide for selective participation in many of the agencies and programmes of the EU. Furthermore, free movement of persons is not included and the financial obligations on these countries are minimal. Binding arbitration is provided for dispute resolution and referrals to the Court of Justice of the EU are limited to interpretations of EU law.**

55. **We also note that the European Parliament supports the option of an Association Agreement. Although these Association Agreements have been reached with countries converging rather than diverging, these agreements do illustrate the EU’s ability to think creatively and apply bespoke arrangements to form a deep and comprehensive relationship with politically important neighbours.**

56. **However, the mix of rights and obligations that the EU will look to offer in an Association Agreement will depend on its assessment of its long-term strategic objectives and the priorities of the Member States. If the UK is to look to negotiate such an agreement, it needs to set out a clear vision of its future strategic relationship with the EU, and the Committee notes that such a vision has yet to be fully articulated.**

## Switzerland

57. Relations between Switzerland and the EU are governed by over 120 bilateral agreements, stretching back over many decades. The most significant cover free trade in industrial products; insurance (excluding life insurances); customs facilitation and security; free movement of persons; technical obstacles to trade; public procurement market; agriculture; research; civil aviation; overland transport; Schengen/Dublin; taxation of savings; fight against fraud; processed agricultural products; MEDIA (Creative Europe); Environment; Statistics; pensions; education, vocational training, youth; Europol; Eurojust; co-operation with the European Defence Agency; Co-operation of competition authorities; Satellite navigation (Galileo, EGNOS); European Asylum Support Office; and company taxation.<sup>97</sup>

58. Switzerland’s bilateral agreements selectively apply parts of the EU’s *acquis* as it existed at the time, as Professor Clive Church, Emeritus Professor of European Studies at the University of Kent, drew to our attention:

95 Q850

96 Q852. Article 322 of the Ukraine Association Agreement covers dispute settlement relating to regulatory approximation, and Art.322(2) includes “The ruling of the Court of Justice of the European Union shall be binding on the arbitration panel.”.

97 Swiss Federal Department of Foreign Affairs, [Switzerland and the European Union](#)

[...] it is static. To a large extent, the agreements reflect the EU *acquis* as it was back in 1999. They have not been adjusted.<sup>98</sup>

59. According to a paper by Christa Tobler, since the most recent round of bilateral agreements, the EU has insisted on a renewed institutional framework for relations with Switzerland. It has demanded an institutional overhaul along the lines of the institutional framework of EEA law, failing which it declared it was not prepared to conclude any new market access agreements with Switzerland. Negotiations on the ‘institutional matters’, as they are commonly referred to in Switzerland, began in spring 2014 and are ongoing.<sup>99</sup>

60. At a Swiss-EU meeting in November 2017, it was reported that there was no progress on negotiations for a Swiss-EU framework agreement, although European Commission President Jean-Claude Juncker reportedly said that things were moving in the right direction and an agreement could be on the table by next spring if the last stretch of negotiations was tackled with the necessary flexibility.<sup>100</sup>

61. The selective, static, application of the EU’s *acquis* is a significant reason why the EU has officially expressed its dissatisfaction with the relationship between Switzerland and the EU, as John Springford, Deputy Director of the Centre for European Reform, told us:

the EU is not particularly happy with the institutional arrangements, which are essentially a set of bilateral committees between the EU and Switzerland, which aim to ensure that there is regulatory alignment in those sectors of the economy where there has been an agreement. Brussels is not particularly happy with this arrangement because it does not require the automatic download of EU law in the same way that we see in the European Economic Area and of course for EU members.<sup>101</sup>

62. This was reiterated by Professor René Schwok, Associate Professor at the University of Geneva. He told us that “the EU does not want this experience, model or regime any more. It wants something more difficult for Switzerland in terms of sovereignty”.<sup>102</sup> However, he questioned whether this official position was reflected at the highest levels of the EU. He told us that he had conducted research into the EU’s attitudes towards the relationship and found that:

High-level servants and legal experts within the Commission are frustrated with these agreements, because there is no institutional dimension to them. [...] But higher people in the Commission [...] including Michel Barnier—were not aware of this issue. They said, “We do not care. What are you talking about? I did not know.” [...] [Barroso] told me, “We never mentioned this in the Commission at the highest level. It was of no interest.” I talked to several politicians: Ministers in France and Italy. They told us, “We do not care so much about it.”<sup>103</sup>

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98 Q915

99 Tobler, [One of many challenges after ‘Brexit’: The Institutional Framework of an Alternative Agreement – Lessons from Switzerland and Elsewhere?](#) 2016

100 Swissinfo, [EU-Swiss ties: Happy with progress but obstacles remain](#), 23 November 2017

101 Q906

102 Q906

103 Q906

### The role of the CJEU

63. The majority of the bilateral agreements provide for a Joint Committee to oversee the functioning of the agreement in question. The Joint Committees serve as a platform for the exchange of information, for advice and for consultation. They also play a key role should differences of opinion arise. Decisions are made unanimously within the scope of the powers afforded by the respective agreement.

64. The Court of Justice of the EU does not therefore play a direct role in the relationship, as Professor Schwok told us:

First of all, nowadays in current Switzerland-EU agreements there is no mention of the ECJ. [...] Secondly, practically, Swiss tribunals apply ECJ jurisprudence if necessary.<sup>104</sup>

65. He added that the EU has been pushing for a formal role for the CJEU:

[...] in the current negotiations about the new institutional framework, the EU clearly wants the Swiss to recognise the jurisprudence of the ECJ, because until today it is practically recognised, but not officially recognised. [...] there is [also] the issue of what happens in disputes between Switzerland and the EU on, for instance, the application by Switzerland of the evolution of the EU legislation. [...] The Swiss refuse this. They say, “These are foreign judges, and William Tell created Switzerland against foreign judges, so we do not want foreign judges.”<sup>105</sup>

### Trade between Switzerland and the EU

66. Trade between Switzerland and the EU is facilitated to an extent by some mutual recognition, but this is primarily a one-way process, as Professor Schwok explained to us:

there have been some mutual recognition agreements, for example on making sure that standards testing bodies in Switzerland are able to say whether something meets EU standards, and then that good can just be shipped across the border. [...] This is largely a process whereby the EU standards and rules in goods have been adopted by Switzerland and then they can be sold in the EU.<sup>106</sup>

67. The EU’s Internal Market is governed by the *Cassis de Dijon* principle, from the European Court of Justice case of the same name. This applies to all rules in the EU/EEA which have not been harmonised—that is, replaced with supranational EU rules common to all member states. It means that any product lawfully sold in one country can automatically be sold in another even if the product does not fully comply with the technical rules of the other.<sup>107</sup>

104 Q928

105 Q929. See [Swiss soften line on foreign judges in bid to bolster EU ties, FT, 5 March 2018](#)

106 Q923

107 Institute for Government, [Mutual recognition: can the UK have its Brexit cake and eat it?](#), 1 September 2017

68. Professor Schwok explained to us that, from the Swiss perspective, the mutual recognition in the Swiss-EU agreements was akin to that provided under CETA, and therefore inferior to the *Cassis de Dijon* principle. Furthermore, mutual recognition is applied asymmetrically in the agreements:

The Swiss accept products from the EU on the *Cassis de Dijon* principle mechanism, but the EU does not recognise the *Cassis de Dijon* towards Swiss products.<sup>108</sup>

### *Relationship with Free movement and Schengen*

69. Switzerland has a bilateral agreement with the EU on the free movement of persons. It is also part of Schengen, which adds a further dimension to its border management, as Professor Schwok explained:

If you are a member of Schengen, you have removed physical barriers on movement of goods and persons. This of course makes it easier not to have controls on the border.<sup>109</sup>

### *Border co-operation with EU Member State neighbours*

70. Switzerland engages in a substantial form of border co-operation with its EU neighbours. Mr Springford described it as an “extremely sophisticated customs operation”:

The way that it works is similar to the technological solution that the Government put forward in their options paper for customs. There are cameras on pretty much every road crossing into Switzerland, where they take number plates and match those number plates to any car or lorry that has been flagged as a potential risk for smuggling or any kind of illegal activity. If that car or lorry goes over the Swiss border, it is checked.<sup>110</sup>

71. He explained that it involves a lot of “other risk-based work”:

They sometimes do what they call a “customs blitz” where for two or three hours they will stop all lorries that are going across a particular crossing. They cannot do it for any longer than that because word gets around the lorry drivers and they will avoid the crossing. [...] There is also quite strong collaboration between Swiss customs officials and German, French and Italian customs officials, to the extent that they do joint operations, go in each other’s helicopters and that kind of thing, to try to track down smugglers.<sup>111</sup>

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108 Q921

109 Q938

110 Q908

111 Q908



72. Mr Springford also drew our attention to evidence given to the Northern Ireland Affairs Committee by a senior Swiss customs official indicating they stop around 2% of lorries that are crossing the border.<sup>112</sup> There are different aspects to Switzerland's border management, as Professor Schwok explained:

For me, there are four types of barriers, frontiers or hurdles. One is the so-called customs. Those customs frontiers were removed in 1972 on industrial products, but not on agricultural products. The second type of customs is about non-tariff, technical barriers. They have been removed mostly through bilateral agreements, but not on the *Cassis de Dijon*. [...] The third type of frontier or barrier is the so-called indirect fiscality: VAT, excise duties, et cetera. There is no agreement between Switzerland and the EU on removing fiscal barriers ... The fourth one is so-called physical barriers: Schengen. You do not have to check people entering into Switzerland.<sup>113</sup>

73. Overall, although not obtrusive in general, the border between Switzerland and its EU neighbours does require checks to be undertaken and some physical infrastructure, as Mr Springford explained to us:

On infrastructure, there are border cameras. One of the issues with the UK's current strategy of leaving the customs union is that, yes, we can minimise the amount of border infrastructure that there is, but any kind of customs border requires some kind of border. It requires some checks to stop smuggling. It means that you have to have some checks to ensure that, say, animal standards are kept to. There are some Single Market-type checks that have to be kept up.<sup>114</sup>

[...] We can talk about the amount of friction, but it is clearly not zero. If you want to export a good across from Switzerland to the EU, you have to fill in quite a lot of paperwork. You have to pay tariffs if that good has significant content that has been imported to Switzerland from outside the EU. There are spot checks on lorries. There are other customs issues, like VAT. The Swiss are not part of the EU's VAT regime, which means there are spot checks to ensure that VAT has been paid. It is not a very friction-full border. It is one of the lighter-touch borders, but you cannot say it is frictionless.<sup>115</sup>

**74. Relations between Switzerland and the EU are governed by a series of bilateral agreements and negotiations towards an institutional framework have been ongoing for a number of years. While we were told that the EU would not be willing to replicate such an arrangement for the UK, it is clear that Switzerland has been able to establish its own unique arrangement with the EU.**

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112 [Q38](#)

113 [Q909](#)

114 [Q938](#)

115 [Q949](#)

75. Trade between the two covers some areas of the Internal Market and includes some mutual recognition, albeit of an asymmetrical nature. Switzerland accepts the free movement of persons and is part of Schengen. The management of borders is not intrusive, but there is physical infrastructure at the border and checks and controls are applied there. Switzerland does set a precedent for a country enjoying selective participation as a third-country in the EU's Internal Market, agencies and programmes.

76. However, the Swiss arrangement has evolved out of a process through which Switzerland had seemed to be moving towards EU accession, rather than being seen by the EU as a desirable end-state in itself.

### The EEA Agreement - Norway

77. In force since 1994, the European Economic Area Agreement (EEA) brought together the EU Member States and the three EEA EFTA States in a Single Market. Article 128 of the EEA Agreement states that when a country becomes a member of the EU, it shall also apply to become party to the EEA Agreement. Therefore, parties to the EEA Agreement include Norway, Iceland and Liechtenstein, plus the 28 EU Member States.<sup>116</sup>

78. The EEA Agreement guarantees equal rights and obligations within the internal market for individuals and economic operators in the EEA. It provides for the inclusion of EU legislation covering the four freedoms—the free movement of goods, services, persons and capital—throughout the 31 EEA States. In addition, the Agreement covers co-operation in areas such as research and development, education, social policy, the environment, consumer protection, tourism and culture, collectively known as “flanking and horizontal” policies. Apart from the main body of the Agreement, there are twenty-two Annexes.<sup>117</sup>

79. The EEA Agreement does not bind a country to the EU in the following areas: Common Agriculture and Fisheries Policies, Customs Union, Common Trade Policy, Common Foreign and Security Policy, Justice and Home Affairs, or Monetary Union. It does not have a goal of ever closer union.<sup>118</sup> In addition to the EEA Agreement, Norway has 80 agreements with the EU,<sup>119</sup> and participates in Europol, Eurojust, and Frontex, and is a member of the Schengen Agreement.

80. EEA Members are not in the Customs Union, but participate in the EU Single Market, and so are able to operate a separate trade policy, albeit within constraints. Pascal Lamy told us:

Norway, basically, is in the Single Market de facto, without being in the customs union, because Norway, for its own reasons, wants to keep an autonomous trade policy, although in reality, if you look at the difference between the Norwegian trade regime and the EU trade regime, there are not many differences.<sup>120</sup>

116 We use EFTA EEA states to describe Norway, Iceland and Liechtenstein. (Switzerland is a member of EFTA but not party to the EEA Agreement.)

117 For example, Annex I is on Veterinary and phytosanitary matters, Annex XI is on Electronic communication, Audio-visual Services, and Information Society (and includes the AVMS Directive) Annex XV is on State Aid

118 Q1037

119 [Oral evidence to the House of Lords, 15 September 2016, Q25 \[Sverdrup\]](#)

120 Q1125

EEA Members are not directly subject to the jurisdiction of the CJEU and the concept of direct effect does not exist within the EEA. The CJEU and the EFTA Court engage in judicial dialogue and the EFTA Court has established precedents, that the CJEU has later followed. Professor Baudenbacher told us:

The sovereignty issue was dear to the heart, in particular, of the Nordic EEA EFTA states, because they come from a very dualistic tradition when it comes to constitutional law. They wanted to avoid, for instance, the EEA Agreement producing direct effect. In fact, the EFTA Court has given an interpretation to protocol 35 where we said no direct effect and no primacy.<sup>121</sup>

EEA Members are able, following the precedent enshrined in Protocol 15, unilaterally to apply different controls to the free movement of people, compared to those currently operating in the UK, by applying the Article 112 emergency brake and entering into Article 113 negotiations, to agree a long-term solution. Financial contribution to the EU are linked to the level of EU Single Market access and participation in EU programmes. EEA Members only accept the rules deemed relevant by the EEA Joint Committee and all of these rules must be passed into domestic legislation by contracting parties.

81. Professor Yarrow said that the EEA Agreement is “nobody’s favourite” as a model for the UK, as he thought it did not appeal to either end of the Brexit debate. He told us, in his opinion, that “it is what most people in the country would prefer”.<sup>122</sup> Mr Sverdrup said that the EEA Agreement had been good for Norway, “primarily due to the fact that there are no other good alternatives or better alternatives that are politically feasible.”<sup>123</sup>

82. Norway makes a financial contribution to the EU in various ways:

- In 2014–2021, Norway contributed €391million annually to European cohesion efforts through various financial mechanisms.
- Norway takes part in a number of EU programmes, including Horizon 2020 and, Erasmus+, Galileo and Copernicus. In the period 2014–2020, Norway’s average annual commitment was €447million.
- Norway cooperates with the EU in JHA matters, including Schengen participation. The annual contribution in 2015 was near €6million. Apart from the internal free travel area, membership of Schengen, includes police co-operation, legal co-operation on criminal cases, visa rules and rules on checks on persons at the outer borders. It includes Eurojust, Europol and the European Borders Agency, Frontex. Norway is involved in the development of Schengen, with the right to speak, but not to vote.
- In the period 2014–2020, Norway contributed about €25million annually to be part of programmes under the European Territorial Co-operation INTERREG.

In total, Norway pays to the EU about £740 million annually, or about £140 per person. The UK pays £14 billion as a full member, or about £220 per person.<sup>124</sup>

121 Q1028

122 Q966

123 Q1000

124 [FullFact, Norway’s EU payments, August 2016](#) and [Norway and the EU: Financial contributions](#)

83. In her Lancaster House speech, in January 2017, the Prime Minister said:

And because we will no longer be members of the Single Market, we will not be required to contribute huge sums to the EU budget. There may be some specific European programmes in which we might want to participate. If so, and this will be for us to decide, it is reasonable that we should make an appropriate contribution. But the principle is clear: the days of Britain making *vast* contributions to the European Union every year will end.<sup>125</sup>

84. In her Florence speech, in September 2017, the Prime Minister said the UK wanted to continue working together in ways to “promote the long-term economic development” of Europe, continuing to take part in policies and programmes “that promote science, education and culture—and those that promote our mutual security.” She said the UK would “make an ongoing contribution to cover our fair share of the costs involved.”<sup>126</sup> In March 2018, in her Mansion House speech, the Prime Minister said the UK Government wanted to remain part of three EU agencies, and that “We would, of course, accept that this would mean abiding by the rules of those agencies and making an *appropriate* financial contribution.”<sup>127</sup> The three agencies she mentioned are the European Medicines Agency, the European Chemicals Agency, and the European Aviation Safety Agency. While the European Chemicals and Aviation Safety Agencies include provisions for third country membership, the Medicines Agency does not. Membership of the Medicines Agency is only open to EU and EEA states. Under current rules, therefore, the only way in which the UK can be a member of the Medicines Agency from outside the EU is through membership of the EEA.

### *The CJEU and the EFTA Court*

85. The EFTA Court has jurisdiction with regard to EFTA States which are parties to the EEA Agreement.<sup>128</sup> The Court is mainly competent to deal with infringement actions brought by the EFTA Surveillance Authority (ESA) against an EFTA State with regard to the implementation, application or interpretation of EEA law rules. The EFTA Court is bound to follow relevant pre-EEA Agreement CJEU case-law. The EFTA Court is furthermore required to pay “due account” to all subsequent relevant CJEU jurisprudence and, in effect, pays equal regard to post 1992 CJEU case-law. Case law on the primacy and direct effect of EU law does not apply.<sup>129</sup>

86. Professor Alla Pozdnakova, University of Oslo, said there were several differences between the EFTA Court and the CJEU, notably:

- an opinion of the EFTA Court on the interpretation of EEA law is advisory not binding;
- the EFTA Court and the EFTA Surveillance Authority only have competence with respect to the EFTA pillar of the EEA Agreement; and
- the EFTA Court can rule that an EFTA EEA state has violated EEA law and has to comply with it but cannot impose any financial penalties for that violation.<sup>130</sup>

125 [Lancaster House speech 17 January 2017](#)

126 [Florence speech 22 September 2017](#)

127 [Lancaster House speech 17 January 2017](#) and [Mansion House speech, 2 March 2018](#)

128 At present Iceland, Liechtenstein and Norway

129 Michael-James Clifton, EEA: Another Side to Europe, 17 October 2016

130 Q989. See also Q1028 [Baudenbacher]

Complainants to the EFTA Court from Norway were generally businesses unhappy with how Norway applies its EEA obligations.<sup>131</sup>

87. She told us that Norwegian courts have started to take their own view about what EEA law is and have said, “We do not really agree with how the EFTA Court understands EEA law.”<sup>132</sup> Similarly, Professor Baudenbacher said that both the Supreme Court of Iceland and of Norway have stated that they are “not only entitled but obliged under national law to assess independently whether they will follow” the opinions of the EFTA Court.<sup>133</sup> The EFTA Court has also demonstrated it does not always follow the CJEU and that, when the EFTA Court tackles a legal question first, then the CJEU may follow it. This is helped by “very intense judicial dialogue.”<sup>134</sup>

88. It has been suggested that the UK might “dock” with the EFTA Court, so it could rule on the UK pillar on the interpretation and compliance with the withdrawal agreement. Docking was originally proposed by the EU to Switzerland to try and place the Swiss-EU bilateral treaties under the jurisdiction of the EFTA Court. Professor Baudenbacher, president of the EFTA Court, explained that docking would be a partial participation in the EEA. (It is likely that the UK would need the agreement of the EU and the three EFTA EEA countries.<sup>135</sup>) It was Professor Baudenbacher’s view that the UK would be welcomed into the EFTA Court, because the Court would become more important, and he believed the EU was considering the EFTA Court as an option for the future UK-EU relationship.<sup>136</sup>

### *Norway as a rule taker*

89. In her Florence speech in September 2017, the Prime Minister drew attention to the fact that membership of the EEA would mean the UK having to adopt automatically new EU rules which the UK would have little influence over and no vote. She said that such a loss of democratic control could not work for the British people and would risk “a damaging re-opening of the nature of our relationship in the near future”.<sup>137</sup>

90. Norway has agreed to follow almost the entire Single Market acquis—a body of nearly 900 EU directives and over 3,600 regulations—and relevant CJEU case law. This acquis includes about 45% of all EU directives, which amounts to about 30% of all EU legislation that the UK currently adopts as an EU Member State. Nearly two-thirds of that acquis accounts for goods-related regulations, such as technical rules, and food safety and animal health regulations, while only 16% constitute services-related regulations.<sup>138</sup> However, the amount of EU law that applies to EEA states appears to vary. The Icelandic government, for example, considers that only 10% of EU legislation applies in Iceland.<sup>139</sup>

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131 Q998

132 Q990

133 Q1028

134 Q1029

135 Q1031

136 Qq1026–1027

137 [Florence speech 22 September 2017](#)

138 [Institute for Government, Trade after Brexit Options for the UK’s relationship with the EU, Dec 2017](#)

139 [Iceland has adopted 10% of EU laws, Iceland Monitor, 21 October 2015](#)

91. Norway is involved at an early stage in scrutiny of legislation through expert committees and through the EEA Joint Committee—which has to adopt all EU legal acts that are EEA relevant.<sup>140</sup> The law is adopted into the Norwegian legal order, either by governmental decree or by statute passed by Parliament.<sup>141</sup> The Norwegian Parliament had considered using reservation rights in a very small number of instances—18 out of near 6,000–8,000 legal Acts.<sup>142</sup> It has used them once, when it rejected the Third Postal Directive and suffered no repercussions. It later accepted the Directive because of a change in government which took a different view to its predecessors.<sup>143</sup> Ulf Sverdrup described some of the political aspects of the process:

First, it is very difficult for the Norwegian Parliament to instruct the Norwegian Government on what it should say or how it should vote in Brussels as it has no vote. Secondly, it is also difficult for the Norwegian Parliament to keep the Government accountable on what they really said, because there are no minutes from a lobbying activity. That is one fundamental weakness. When it comes to the legal aspect, the legislator, as you said—Parliament—is involved. When it comes to budgetary affairs, Parliament is involved. It allocates money, for instance, to research spending, satellite co-operation and all kinds of programmes. It approves that every year.<sup>144</sup>

However George Yarrow, gave a different view:

the incorporation of EU Directives and Regulations into EEA legislation is a decision that falls to the EEA Joint Committee, which can reject or amend proposals, for example because they are not ‘EEA relevant’ or because they require adjustment to reflect the circumstances of the EEA’s non-EU members. The decision process is consensual, implying that each party has a de facto veto in relation to incorporation decisions.<sup>145</sup>

EFTA has characterised this process as follows:

the EEA Agreement provides for the most participative procedures available to associated countries outside the EU whose simultaneous aim is to safeguard their sovereignty as far as possible, whilst at the same time benefiting from participation in the Internal Market.<sup>146</sup>

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140 Q975

141 Q978

142 Q978

143 EU facts behind the claims: Norway. 25 April 2016; [Norges hovedinnlegg på EØS-rådsmøte, Brussel, 19 November 2013](#)

144 Q979

145 [George Yarrow, Brexit and the Single Market Revisited, December 2017](#)

146 [EFTA Bulletin of July 2015](#)

### *Divergence from the EU regulatory regime*

92. If an EEA country wishes to diverge in terms of EU regulatory requirements, then it could be taken to the EFTA Court by the EFTA Surveillance Authority and found to be in breach of the Agreement.<sup>147</sup> Ulf Sverdrup explained that the insistence of the EFTA countries on maintaining sovereignty led to the creation of a separate body—the EFTA Surveillance Authority (like a mini EU Commission)—to oversee the agreement.<sup>148</sup> He said:

A fundamental factor, which is probably the biggest hurdle for you in your Brexit discussions, is that in managing your relationship with the EU you probably need to establish some kind of trust. Trust is very difficult to establish. The main way of doing that is through the institutions. We need institutions to manage that kind of trust.<sup>149</sup>

And that, despite the parts of the arrangement that might be unsatisfactory:

Norway did a big study, which ran to 1,000 pages, on the economic, political and social impacts of Norway’s agreements with the EU. [...] A short version of the conclusions is that the economic benefits outweigh the costs. [...] It is not only on the economic side but also on the political side.<sup>150</sup>

### *Independent trade policy*

93. The EFTA EEA countries are not constrained by the EU Customs Union in developing their own independent trade policy. The EFTA countries can negotiate trade agreements individually or as a bloc, although the population of the bloc is only 10million. Iceland has a free trade agreement with China while Norway is still negotiating separately.<sup>151</sup> Mr Sverdrup told us that, as the EU started negotiating trade policies with third countries, the EFTA countries started to follow the EU trade agreements and “joined in afterwards to avoid discrepancies”. He said:

During the EU negotiations on the free trade agreement with Mexico, the EFTA countries discovered that they could sign these agreements quicker than the EU, a few months in advance. So they started making them a bit more. For instance, we entered into a free trade agreement with South Korea 18 or 20 months before the EU did. In content and scope, they are not that different from the EU’s agreements.<sup>152</sup>

However, while EFTA has around 27 free trade agreements:

they have not been successful in negotiating free trade agreements with what we could call the biggest economies in the world. There is no free trade agreement with Japan, Australia and India, although it is trying to negotiate one. There is also no free trade agreement with the US or Brazil.

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147 Q993

148 Q996

149 Q997

150 Q1000

151 Q981

152 Q980

That is probably because the Norwegians do not want to bring agriculture into the discussions, but that is important for the US, Australia, Brazil and so on.<sup>153</sup>

94. Outside the Customs Union, the EFTA EEA countries can negotiate on tariffs but cannot negotiate on non-tariff barriers in EEA relevant areas of the Single Market.<sup>154</sup> Asked if this impacted on the free trade agreements with third countries, Mr Sverdrup said:

The Norwegian Government have very different interests from the British, for instance, on free trade on agriculture. We do not want free trade on agricultural products, for instance, but we want massive free trade on fish. These regulations on agricultural products, technical standards and veterinary standards are not that harmful.<sup>155</sup>

95. Being outside the Common Fisheries Policy allows Norway to control access to its waters for fishing and to control ownership of the Norwegian fishing fleet. This control is balanced against obstacles to trade in fish with the EU. There is a differential in EU tariffs between frozen fish and processed fish, which results in 10,000–12,000 people employed in Poland processing Norwegian fish. Furthermore, delays arising from EU inspections of Norwegian fish entering the EU, led to Norway joining the EU regulation on veterinary standards to avoid the need for compliance checks at the border.<sup>156</sup>

### *Border management*

96. Professor Michael Dougan, Professor of European Law at the University of Liverpool, told us that the Norway-Sweden border is about as closely integrated a border as you can get outside the Customs Union and “pretty much full regulatory alignment” and co-operation, but that there are still “checks, formalities, physical infrastructure and so on.”<sup>157</sup> Alla Pozdnakova said the biggest impact on border management in terms of people was not when Sweden joined the EU, but when Sweden joined the Schengen area. This led to Norway and Finland joining the Schengen Agreement.<sup>158</sup> Ulf Sverdrup said:

If you go to the border now, you see that the trucks are stopped. They are in a long line to declare their papers, but most trucks can pass through rather rapidly because they have done some kind of electronic declaration up front. That requires a pretty advanced electronic system, combined with a good, trust-based system, with a lot of information about the economic operators. Then, of course, you have these risk-based random checks.<sup>159</sup>

97. Dr Lars Karlsson, author of Smart Border 2.0, a report he produced for the AFCCO Committee in the European Parliament, gave evidence to this Committee on 20 March. He outlined three aspects to consider when designing a border: the laws, conventions, rules and regulations governing trade; the trade policies of the countries either side of the border, and issues around security and safety. He said: “The level you will see at the

153 Q980

154 Qq971–972

155 Q973

156 Qq1003–1005

157 [Q393](#)

158 Q984

159 Q986



border depends on the level the two partners would like to have in each of these three dimensions.”<sup>160</sup> He acknowledged that his report was commissioned and published before the Joint Report was agreed in December, and it was not the only report presented to the European Parliament.<sup>161</sup> His report was written to consider the future UK-EU border in a general sense, for example at Eurotunnel, and not only to meet the aim of avoiding physical infrastructure, checks and controls at the Northern Ireland border.<sup>162</sup> He had not been approached subsequently by the UK Government for advice in designing a border which would comply with the terms of the December 2017 agreement.

98. Dr Karlsson said the technology and processes existed that could make a frictionless border without any physical infrastructure on the border itself. The Norway-Sweden border, often held up as near as possible to a smart border, was only 60–75% smart—there is physical infrastructure and checks at the border.<sup>163</sup> He said it could be 100% smart but a decision was taken to avoid the additional investment necessary because the border functioned satisfactorily as it was. When asked about what could be in place by the end of transition in December 2020, he said this would depend on what the partners could agree in respect of the development of a trusted trader scheme, the infrastructure for checks (at some point away from the border) and the extent to which the private sector could be engaged and involved.<sup>164</sup> He acknowledged that the system would have to be designed to allow for the traders who wished to trade across the border without trusted trader status, to make sure the system captured those who wilfully or accidentally avoided compliance.<sup>165</sup> There are already low levels of physical checks for non-EU trade entering the Republic of Ireland. David Campbell Bannerman MEP pointed out that, according to the WTO, Ireland only carried out physical checks on 1% of non-EU trade and there is no reason why this low level of physical checks should be higher for trade from the UK after we leave the EU.<sup>166</sup>

99. On 5 March 2018, the Prime Minister said she was aware of the Smart Border 2.0 report and that she had asked officials to look at it very carefully.<sup>167</sup> At Departmental questions on 15 March, Suella Fernandes, the Parliamentary Under Secretary of State for Exiting the EU, was asked about the Smart Border 2.0 report produced by Dr Karlsson for the European Parliament.<sup>168</sup> She replied:

The report to which he refers is an interesting document, but it does not go as far as the commitment made by the United Kingdom. Our unwavering commitment is to not introduce any physical infrastructure at the border. We have explicitly ruled that out. The report is interesting, but it does not go all the way.<sup>169</sup>

On 21 March, at Northern Ireland Office questions, Karen Bradley, the Secretary of State for Northern Ireland, said she was not familiar with Dr Karlsson’s report.<sup>170</sup>

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160 Q1163

161 Q1170

162 Qq1167-1169

163 Q1172

164 Qq1184-1185

165 Q1183

166 Q1123–1225

167 [HC Deb 5 March 2018, col 25 Statement on the UK/EU Future Economic Partnership](#)

168 [Smart Border 2.0 Avoiding a hard border on the island of Ireland for Customs control and the free movement of persons, November 2017](#)

169 [HC Deb 15 March 2018, col 980](#)

170 [HC Deb 21 March 2018, col 263](#)

### *Free movement and the EEA Agreement*

100. Norway accepts the EU’s principle of freedom of movement: its citizens are entitled to be treated in the same way as EU nationals, which includes the right to live, work and access public services and benefits. Article 112 of the EEA Agreement allows for a EEA EFTA country to trigger a safeguard measure unilaterally if “serious economic, societal or environmental difficulties of a sectorial or regional nature” arise and are deemed liable to persist. The safeguard measures “shall be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation” and relate to the procedures laid down in Article 113, which set out a process for consultations in the EEA Joint Committee with a view to resolving the dispute.<sup>171</sup> The Joint Committee also monitors any such safeguard measures with a view to their abolition or limitation in scope. Professor Yarrow has said that the EEA Joint Committee has recognised explicitly that free movement of persons is to be interpreted differently in EU contexts than in the EEA Agreement context.<sup>172</sup> In the EEA, the four freedoms serve the Article 1 purpose of promoting “a continuous and balanced strengthening of trade and economic relations” between EEA members,<sup>173</sup> whereas for the EU the four freedoms serve the fundamental political purpose of “ever closer union”.

101. Norway has never used the safeguard measures. Iceland used the safeguard measure to control movement of capital after the financial crisis in 2008.<sup>174</sup> In 1998, the EEA joint committee agreed that Liechtenstein should be allowed to issue residence permits to Norwegian, Icelandic and EU nationals owing to its “specific geographical situation”. Liechtenstein is the only EEA member currently allowed to impose such restrictions on free movement. The Liechtenstein variant of the emergency brake applies only to physical residence and not to work—it limits residence permits—moreover, its small size and specific geographic location within Europe—with high levels of cross-border commuting—make it difficult to compare to the UK. Liechtenstein has a population of around 37,000 and a land area near 160 km<sup>2</sup>. It is substantially smaller than the Isle of Wight in population (138,000) and land area (258 km<sup>2</sup>). Nevertheless, the precedent of Liechtenstein shows some flexibility in the requirements of EEA membership in respect of free movement. Landlocked Liechtenstein has an unusually high proportion of its workforce commuting daily across its border, but this is not the case in the UK where a limit on residence permits would be difficult to distinguish from a limit on work.

102. The precedent of Liechtenstein however shows some flexibility in the requirements of EEA membership in respect of free movement. The Protocol adjusting the EEA Agreement to enable this to happen was signed in 1993 to reflect the changes made following Switzerland’s decision not to ratify the Agreement. The Adjusting Protocol deleted Switzerland from the Agreement, including from Protocol 15 on transitional periods on the free movement of persons. As Protocol 15 was originally drafted to enable

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171 The EEA Joint Committee (EEA JC) is responsible for the management of the EEA Agreement and typically meets six to eight times a year. It is a forum in which views are exchanged and decisions are taken by consensus to incorporate EU legislation into the EEA Agreement. Before the Lisbon Treaty, the EEA JC comprised the ambassadors of the EEA EFTA States and representatives of the European Commission.

172 Catherine Yarrow and George Yarrow, [The European Economic Area Agreement: A short introduction](#), March 2017

173 See [Catherine Yarrow and George Yarrow, The European Economic Area Agreement: A short introduction, March 2017](#)

174 Oral evidence to the Lords EU Committee in September 2017, Q29

Switzerland and Liechtenstein to introduce similar but not identical temporary measures to restrict free movement, it would suggest the Protocol was not drawn up solely for the specific circumstances of a microstate.

103. Ulf Sverdrup told the House of Lords EU Committee that Liechtenstein was allowed a special exemption on the free movement of persons when it entered the EEA Agreement, on the basis of its size and the high proportion of non-Liechtenstein nationals working there. The exemption from the free movement of persons was initially temporary. Mr Sverdrup explained the background to the exemption and questioned its potential applicability to the UK:

This [exemption] expired in 1998 and the EU would not extend it further. Then Liechtenstein used Article 112 to say that they needed a limitation on free movement of persons. But when the EU was enlarged in 2004, the parties made some sort of adjustment as an annex to the EEA agreement [...] basically accepting that this exception is going to be integrated permanently into the agreement. In general, I do not think the Article 112 strategy is designed for countries that want to be left out of the free movement of persons.<sup>175</sup>

He told us:

The United Kingdom is a great country with a great history. Liechtenstein is also an interesting country but a small principality. It is not comparable.<sup>176</sup>

104. Ulf Sverdrup said that, if the UK joined the EEA, it would then have to be committed to take on the obligation of free movement of persons as in the agreement, and then trigger article 112 as some kind of a security measure.<sup>177</sup> He said:

You are then back to the situation that Cameron negotiated before you had your referendum. What kind of special situation is it now where you can have some negotiations? Are there some special circumstances related to the UK labour market that enable some kind of legitimate claim to pull this security clause? [...] That being said, we have to remember that article 112 is a security clause for some kind of exceptional situation. It is not supposed to last as some kind of permanent thing, so you have to find some kind of transition arrangement and find a solution to that problem. It would be in breach of the spirit of the agreement.<sup>178</sup>

105. Others have written on the outcome of the UK's renegotiation of its relationship with the EU—the attempt by David Cameron to secure an emergency brake on migration. Professor Barnard, University of Cambridge, has pointed out that the Conclusions of the European Council from February 2016 used the language of the free movement of workers,<sup>179</sup> and that while free movement of workers is an integral part of the internal market, both differing levels of pay and the diversity of social security systems across Europe may incentivise workers to move. The Conclusions said that:

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175 Oral evidence to the Lords EU Committee, 15 September 2016

176 Q977

177 Q1018

178 Q1018

179 Professor Catherine Barnard, [Could free movement of persons be confined to free movement of workers in any Brexit deal?](#)

It is legitimate to take this situation into account and to provide, both at Union and at national level, and without creating unjustified direct or indirect discrimination, for measures limiting flows of workers of such a scale that they have negative effects both for the Member States of origin and for the Member States of destination.<sup>180</sup>

And that,

if overriding reasons of public interest make it necessary, free movement of workers may be restricted by measures proportionate to the legitimate aim pursued. Encouraging recruitment, reducing unemployment, protecting vulnerable workers and averting the risk of seriously undermining the sustainability of social security systems are reasons of public interest recognised in the jurisprudence of the Court of Justice of the European Union for this purpose, based on a case by case analysis.<sup>181</sup>

Mr Yarrow said Article 112 and 113 altered the balance to the UK in terms of control:

All these things reduce to questions of power. The EEA would give the UK, in the EFTA pillar, the unilateral right to trigger the safeguard measures, and it would also give it the unilateral right to use what I think is the more important freedom of movement provision, which is the first line of article 28(3). That is a more permanent way of dealing with freedom of movement issues.<sup>182</sup>

He said that if the UK was in the EFTA pillar then “the control and sovereignty is with the UK”.<sup>183</sup> Article 28 of the EEA Agreement allows for freedom of workers to accept offers of work actually made, to move freely for that purpose, and to stay in another territory for the purpose of work. This right is “subject to limitations justified on grounds of public policy, public security or public health”.<sup>184</sup>

106. Professor Pozdnakova pointed out that the EEA Agreement does not include provisions on EU citizenship in the EU, and that the gap between EU law and the EEA in this area, while reducing, is still developing.<sup>185</sup> She pointed out that Norway, and the EFTA EEA states, have implemented the EU Citizens’ Rights Directive even though there is an absence of provisions on EU citizenship in the EEA Agreement.<sup>186</sup> Professor Yarrow also commented on the difference between the EU and the EEA position on citizenship:

There is a difference of interpretation in the two [the EU and EEA]. There has to be, because the EEA does not cover citizenship. So, anything that involves a free movement issue where citizenship rights play any role, which, of course, the European Court of Justice does, is out of bounds for the EFTA Court. The courts are creatures of their own treaties, and the

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180 [SECTION D Social benefits and free movement](#)

181 [European Council meeting \(18 and 19 February 2016\) – Conclusions](#), 19 February 2017, Interpretation of current EU rules 1.(a)

182 Q1019.

183 Q1019

184 Article 28 of the EEA Agreement

185 Q1016

186 Q1013

treaties are different. I go back to a point earlier that was made. It is not just that the EEA is a sub-component of the European treaty; it also has some differences, and where the differences occur they are profound.<sup>187</sup>

When asked what Norway might think of the UK joining EFTA EEA, Ulf Sverdrup said:

Two things make Norwegians concerned about bringing the UK in on the EFTA side. The first is that, in EFTA, decisions on adding new legal Acts are done through unanimity. So, if the UK is brought in, it might change the dynamics slightly within EFTA. The second slight concern is that, if the UK uses the EEA as a platform for disintegrating from the EU, that is slightly different from the spirit of the EFTA countries who are using this platform as a form of continuing integration. Those are the two main concerns.<sup>188</sup>

**107. Norway makes a financial contribution to the EU in areas such as European cohesion funds, a number of EU programmes relating to science, education and culture, such as Horizon 2020, and JHA matters which promote mutual security. The Prime Minister has said that the UK would like to continue to work with the EU in ways that promote the long-term economic development of Europe; in policies and programmes in science, education and culture; in areas of mutual security; and also remain party to three EU agencies, European Medicines Agency, the European Chemicals Agency, and the European Aviation Safety Agency. The UK Government has also acknowledged that this will involve a continuing role for the CJEU in the UK. While the European Chemicals and Aviation Safety Agencies include provisions for third country membership, the Medicines Agency does not. Membership of the Medicines Agency is only open to EU and EEA States. Under current rules, the UK would only be a member of the Medicines Agency from outside the EU through membership of the EEA. Whether or not participation could be secured through a future partnership arrangement has yet to be determined. In her Mansion House speech the Prime Minister said “if we agree that the UK should continue to participate in an EU agency the UK would have to respect the remit of the ECJ in that regard.”**

**108. The EFTA Court is not the CJEU. The opinions of the EFTA Court are not binding and it allows scope for national courts to question its interpretation of law as it relates to the EEA Agreement. Docking with the EFTA Court would provide the UK with a ready “off-the-shelf” arbitration mechanism for the ongoing UK-EU relationship. Docking was originally a solution proposed for Switzerland and the EU, so should garner support from the EU.**

**109. Being a party to the EEA Agreement and not the Customs Union (nor the Common Fisheries Policy) means countries such as Norway operate an independent trade policy. It is noteworthy that Norway and the EFTA countries have chosen to negotiate free trade agreements with third countries that pre-empt or follow the free trade agreements negotiated by the EU.**

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187 Q1015

188 Q969

110. Norway has recognised there is a trade-off between being outside the EU Common Fisheries Policy and the Customs Union, but inside the Single Market. Norway has control over its own fishing waters, the ownership of its own fleet and retains flexibility to negotiate its trade in fish. However, this is balanced against tariffs on its exports of fish into the EU and Norway choosing to align its veterinary checks with EU rules to reduce the need for compliance checks at the EU border.

111. The Norway-Sweden border has been held up as an example of a possible model for the Northern Ireland-Ireland border. Norway is in the Single Market but not the Customs Union. Sweden is in the Single Market and the Customs Union. Both countries are in Schengen. The two countries have been co-operating on how to manage the border for several years, but there are still checks and there is physical infrastructure.

112. Article 112 and Article 113 of the EEA Agreement provides a safeguard measure that could be used to address “serious economic, societal or environmental difficulties of a sectorial or regional nature” if they arise. This could provide a route for the UK to operate a temporary emergency brake on free movement, and a more permanent way of dealing with freedom of movement issues through Article 28. The EEA Agreement also provides a mechanism through the EEA Joint Committee to discuss how to resolve the matter rather than immediately seek a judicial outcome.

113. Norway’s EEA membership gives it the economic benefits of being a member of the Single Market but at the cost of having limited and informal participation in decision-making on the rules of the Single Market. It has chosen to accept the principle of freedom of movement, one of the UK Government’s red lines. There is a trade-off to this. EEA States, such as Norway, have to accept all EEA relevant EU legislation, which is estimated to account for up to 30% of all EU legislation that currently applies to the UK as an EU Member, while being informally invited to provide expert advice at an early stage of the Commission drawing up legislation. They do not have a vote. The Norwegian Parliament has a role in debating EU related legislation and voting on the financial contribution to the EU. Norway has found a balance in its relations with the EU that meets its needs.

114. The Government has rejected applying for EEA Membership because its view is that this entails accepting both free movement and EU law. Should the negotiations on a deep and special partnership not prove successful, EFTA/EEA membership remains an alternative and would have the advantage of continuity of access for UK services. The EEA option is available off-the-shelf and could be negotiated relatively quickly.

## The Customs Union - Turkey

### *What is a customs union?*

115. The EU’s Customs Union is made up of EU Member States, and includes the Isle of Man and the Channel Islands. Under Articles 28, 30, 34, 35 and 36 of the Treaty on the Functioning of the EU, individual Member States are not permitted to introduce charges that have an effect equivalent to that of customs duties on goods; nor are they permitted to impose quantitative restrictions or quotas. This means Member States are obliged to allow goods that are legally produced and marketed in other Member States to be circulated and placed on their domestic markets.

116. The EU's Customs Union has a Common External Tariff, which is imposed on all goods imported from third countries. Uniform implementation of the Common External Tariff by customs authorities across the EU's external borders is ensured through the Union Customs Code. Almost 80% of the revenue generated by tariffs go directly to the EU's budget (in 2015, this made up 13.6% of the EU's total budget).

117. Goods imported into the EU need to comply with Internal Market legislation. In support of this, the EU has legislated to harmonise regulations (such as product standards and safety requirements) and to enforce the principle of mutual recognition (which requires Member States to accept each other's certification and conformity practices).

118. Goods imported into the EU need to follow rules of origin, which determine where a product and its components were produced in order to ensure that the correct customs duty is levied. If goods consist of materials from more than one country, special rules apply to determine which country will be judged to be the country of origin. These are based on the origins of the materials, the value added in the process, and where the final substantial production phase took place. Such formalities are not necessary for goods manufactured inside the Customs Union.<sup>189</sup>

### *Partial customs union*

119. Following its Association Agreement with the EU (the Ankara Agreement, signed in 1963), and the opening of accession negotiations, Turkey signed a Customs Union Agreement with the EU in 1995. This states that:

From the date of entry into force of this Decision, Turkey shall, in relation to countries which are not members of the Community, apply provisions and implementing measures which are substantially similar to those of the Community's commercial policy.<sup>190</sup>

120. Turkey's customs union with the EU covers all industrial goods, but not agriculture (except processed agricultural products), services or public procurement. It also excludes the free movement of labour. Although Turkey and the EU have negotiated to extend and deepen their Customs Union Agreement to include services and public procurement, these negotiations were suspended in 2002. The EU foresees that Turkey will align its national legislation with a number of essential Internal Market rules, notably on industrial standards.<sup>191</sup> Trade arrangements for coal and steel products result from an Agreement in 1996 between Turkey and the then European Coal and Steel Community. Those products remain outside of the scope of the Customs Union Agreement.

### *Asymmetric relationship*

121. Turkey imposes the EU's Common External Tariff on all goods imported from non-EU countries that are covered by the Customs Union Agreement. Turkey has no involvement in decisions about the Common External Tariff or setting the direction of the Common Commercial Policy. It is also not able automatically to secure additional market access via EU FTAs with third countries, but these third countries have access to Turkey's

189 House of Lords Report, [Brexit: the options for trade: Chapter 4: Membership of the EU's customs union](#)

190 Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union

191 [European Commission, DG Trade: Turkey](#)

market. Turkey is expected to align itself to EU preferential tariffs by negotiating FTAs with countries the EU has concluded FTAs with, in order to gain access to their market. Turkey has signed FTAs with EFTA, a number of Eastern European and Middle Eastern countries and South Korea.<sup>192</sup>

122. The Customs Union Agreement with Turkey reduces the need for checks, for instance on rules of origin, but does not remove them entirely. This is because although industrial goods may be exempt, checks may still take place to ensure compliance with the rules of the Internal Market, for example on phytosanitary products, as Dr Pinar Artiran, Assistant Professor and WTO Chair Holder at Bilgi University, explained to us:

Depending on the nature of the product, especially if it is a product that is related to the sanitary and phytosanitary standards, it might be checked.<sup>193</sup>

### *A partial Customs Union*

123. The Institute of Directors has called for the UK to negotiate a partial customs union with the EU based on the Turkish experience.<sup>194</sup> In practice, a partial customs union arrangement also necessitates checks for other reasons, as Dr Peter Holmes, Reader in Economics at the University of Sussex, set out to us:

[...] an incomplete customs union is a quantum leap away from a complete one. [...] the EU-Turkey border is not an open border. The stories are up to 30 hours' delay. The moment that anything is excluded—in this case, agriculture is excluded—you have to have a provision for stopping every truck just in case. Normally, they will be waved through, but unless your agreement is complete, it does not deliver you the frictionless border that you might hope for.<sup>195</sup>

124. He also told us that Turkey has the obligation under parts of the Customs Union Agreement to operate regulatory alignment, but that itself did not guarantee mutual recognition of the testing and certification in Turkey:

You still have to have goods stopped at the border, even if there are no tariffs, if there is any possibility that they may not satisfy [sanitary and phytosanitary measures] or conceivably some sort of non-food-safety standards.<sup>196</sup>

125. Dr Holmes gave us an example of when the EU put anti-dumping duties on televisions from Turkey, also requiring border checks:

Turkish manufacturers were then selling them across the border to Georgia. They got Georgian certificates of origin, and then they were trundled back across Turkey into the EU, and there was a big dispute about whether they

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192 [European Commission, DG Trade: Turkey](#)

193 Q1052

194 Institute of Directors, [Customising Brexit: a hybrid option for a UK-EU trade framework](#), 15 February 2017

195 Q1065

196 Q1067



were really Turkish. All these things have to be checked. If it is complete customs union, you do not need to have any checks. As long as there is anything that you need to stop things for, you have a potential problem.<sup>197</sup>

126. By dealing with rules of origin, a customs union arrangement like Turkey's can still be beneficial, as Sam Lowe, Research Fellow at the Centre for European Reform, pointed out to us:

There are studies that show that, if [Turkey] exited the customs union, but liberalised everywhere else and went into a deep and comprehensive free trade agreement, reducing non-tariff barriers, it still would not make up for the cost of having to deal with rules of origin after leaving. Estimates of the cost of rules of origin vary. It is usually put between 2% and 6% of the value of the product, but the real cost is that companies just find it too complicated, and do not use a free trade agreement.<sup>198</sup>

### *Jersey example*

127. Mr Lowe suggested that a customs union arrangement based on Jersey, Guernsey or the Isle of Man could provide a solution to avoid a hard border between the UK and Ireland/EU. Mr Lowe set out such a complete customs union arrangement:

There can be no exclusions, because [...] once there is an exclusion, you essentially need to have checks to differentiate between that which is excluded and that which is not. You would need a Single Market for goods [...] We would also have to stay part of the European VAT area, because otherwise VAT becomes a border tax once we have left. [...] There would still be invisible barriers, because there would still be barriers to services. We would have [...] given ourselves the freedom to negotiate on services and the like globally. Invisible borders do not lead to trucks backing up on them.<sup>199</sup>

128. Mr Lowe noted several advantages to such an arrangement:

The starting basis was how you fix the Irish border issue, for one. We think it does that. Secondly, would the European Union go for it? We are not sure. We think maybe, and the reason for that is because it is a comprehensive customs union. A customs union is an already-defined relationship that the EU has, in part, with another country, in Turkey, and it is also defined within the WTO GATT agreement. [...] The UK gets the ability to regulate its own economy in the area of services [...] It would also have the ability to negotiate agreements on services, investment, and data with other countries around the world.<sup>200</sup>

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197 Q1065

198 Q1065

199 Q1068

200 Q1069

129. Turkey has a customs union arrangement with the EU covering industrial goods, but not agriculture (except for processed agricultural products), services or public procurement. It is bound by the EU's Common External Tariff, but it is not involved in setting the direction of the Common Commercial Policy. Nor is it able to automatically secure market access via the EU's FTAs, whereas those third countries have automatic access to Turkey's market.

130. The incomplete nature of its customs union arrangement means checks still take place at the Turkey-EU border and there can be long delays. The examples of Jersey, Guernsey and the Isle of Man show an invisible border can be maintained through participation in a full customs union and adherence to the rules of the Single Market in respect of trade in goods. Such an arrangement could make it easier for the UK to roll-over the EU's existing FTAs. The UK would also need to negotiate a consultative role in the EU's future FTAs, as well as a legal mechanism in future FTAs which prevented them from entering into force unless the third-country in question extended market access to the UK.

### WTO terms

131. The UK has said it wishes to seek a negotiated outcome. At the same time, the Government maintains the position that the option of no deal is part of its negotiation strategy. In the Lancaster House speech, in January 2017, the Prime Minister said that “while I am sure a positive agreement can be reached—I am equally clear that no deal for Britain is better than a bad deal for Britain.”<sup>201</sup> In her Mansion House speech, the Prime Minister did not use the words “no deal” but said that “given the uncertainty inherent in this negotiation, [the Government was] preparing for every scenario.”<sup>202</sup>

132. On Michel Barnier's slide, trading on World Trade Organisation (WTO) terms is classified as the default in the event of exiting the EU with no agreed future trading relationship. This would satisfy some of the stated UK red lines—no free movement, no payments to the EU if the UK does not want to be involved with any aspect of the EU, such as research or EU agencies. There would be no obligation to follow the rulings of the CJEU and the UK would be free to follow an independent trade policy. However, it would fail, according to the Government's own analysis, on the Mansion House speech test that Brexit must ‘protect people's jobs and security’. Pascal Lamy, former Director-General of the WTO, told us he thought there would be no difficulty in the UK becoming an independent member of the WTO outside of the EU. There may be technical negotiations, around tariff rate quotas and governance, but Mr Lamy saw no legal impediment.<sup>203</sup> The UK would rely upon its commitments regarding tariffs on goods and the commitments made on services in the General Agreement on Trade in Services (GATS).

133. However, Pascal Lamy described the WTO regime as league three in world trade, inferior to bilateral trade agreements and the internal market. Explaining what this meant in practice, Mr Lamy said that for goods, there would be an average tariff of 4% to 5%, with 10% in the automotive sector, around 7% for footwear and textiles, and higher levels in

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201 [Lancaster House speech 17 January 2017](#)

202 [Mansion House speech, 2 March 2018](#)

203 Q1138

agriculture. He said the level of openness is “very, very low” under WTO terms compared to the internal market of the EU. The consequence of trading under the WTO regime, which is much less open than the bilateral agreement, would result in costs and controls.<sup>204</sup>

### *Failure to reach an agreement and the impact of trading on WTO terms*

134. Some of the evidence we have heard echoes the view that trading with the EU on WTO terms would have a negative effect on trade. Dr Andy Williams, AstraZeneca, told us in Cambridge:

I think if we were to just leave now or whenever it is, in March next year, we would go back to WTO rules, which would obviously affect trade. We have estimated that would cost AstraZeneca around \$30 million a year in additional trade costs. Our bigger concern to some extent is the bureaucracy associated with that, which we would be able to handle, but smaller companies may not be able to.<sup>205</sup>

135. Evidence from the automotive sector to the Business, Energy and Industrial Strategy Committee said trading on WTO terms, and the application of current WTO tariffs on the automotive sector (10% on cars, 4.5% for components) was described by the Society of Motor Manufacturers & Traders as an “incredible challenge” as it could make UK manufactured vehicles “uncompetitive”. The BEIS Committee concluded that “For the automotive sector, no deal would undoubtedly be hugely damaging. The Government should not seriously contemplate this outcome.”<sup>206</sup>

136. The British Retail Consortium (BRC) said that leaving the EU without a deal would mean tariffs on food products imported from the EU could be in the order of 22%. The BRC said that 79% of food imported by their members into the UK comes from the EU-27, and that:

Higher tariffs would impact on the price of imported goods, and diminish living standards for consumers. Our research points to potential rises in the price of cheese in the order of 6–32%, on tomatoes of 9–18%, and on beef of 5–29%. We also note other similar studies which show a similar picture, and that consumers would suffer the highest detriment.<sup>207</sup>

However, the BRC also said that “non-tariff barriers would be the most burdensome” and that this would have an effect “in relation to customs, and for meat and plant-derived products, from health or veterinary checks stemming from sanitary and phytosanitary requirements.”<sup>208</sup>

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204 Q1106

205 Q651

206 Business, Energy and Industrial Strategy Committee, *Leaving the EU: Implications for the Automotive Industry*, HC 379, para 12

207 Written evidence from the BRC, NEG0010

208 *Ibid.*

137. A joint statement between the UK Chemical Industries Association and the European Chemical Industry Council, representing chemical and pharmaceutical companies—which add £14.4 billion of value to the UK economy every year from total annual turnover of over £40 billion, said that “Brexit without a new trade agreement between the UK and the European Union would be the worst possible outcome”.<sup>209</sup>

### *Trading solely on WTO terms*

138. Very few countries trade solely on WTO terms. All large trading countries are party to other bilateral agreements facilitating relations between two countries / parties, such as customs co-operation and managing data flows. These still require negotiation and agreement. Only seven countries trade with the EU on WTO terms alone,<sup>210</sup> and research by the Institute for Government found that:

In 2016, of the top 10 trading partners with the EU by total trade, the US, China, Russia, Japan and India have a substantial number of bilateral agreements that go well beyond the terms of WTO trade. Of the top 20, there are no countries that trade on WTO rules alone with no bilateral agreements and no free trade deals.<sup>211</sup>

139. On the other hand, it is not necessary to have a specific Free Trade Agreement to enable trade. Lamy pointed out that:

The reason why we do not have a free trade agreement with the US is because we are both the most open large economies. With that we can trade relatively easily, but not as much as we theoretically could, which is why the TTIP negotiation was launched some years ago.<sup>212</sup>

### *Border management*

140. Pascal Lamy said that once the UK was no longer a Member State, and whether it had a bilateral agreement or traded on WTO terms, then this “will necessitate a border.” There need to be checks on both goods and people. If there were duties then duties would need to be paid. He said that if the UK chose to operate a unilateral zero tariff, there would still be checks, as a precaution, on the safety of products such as children’s toys or cars, and checks on food products for disease or residues.<sup>213</sup>

141. One of the WTO’s principles of trade is the Most Favoured Nation rule, whereby a preferential treatment for one trading partner has to be offered to others, unless it is as part of a free trade deal. This would, in theory, require the UK to operate the same regime at all its borders as it did at the Northern Ireland-Ireland border.<sup>214</sup> If the UK-EU negotiations end in a no deal, and the UK wanted to offer zero tariffs unilaterally to the EU, it would have to offer zero tariff to all its trading partners.<sup>215</sup>

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209 [European chemical industry unites over post-Brexit future for the continent’s manufacturing backbone, 14 November 2017](#); See also oral evidence on 18 October 2017 Q111 [Steve Elliot]

210 The Economist, *Brexiters claim that trade on WTO terms would be fine. Wrong*, 30 November 2017

211 Institute for Government, *Bilateral Agreements*, June 2017.

212 Q1108

213 Q1121, Q1112

214 Q1126

215 The economist, *Brexiters claim that trade on WTO terms would be fine. Wrong*, 30 November 2017

142. Mr Lamy said that UK customs may want to check to make sure all the products crossing the border from Ireland are of EU origin. This may depend on the tariff regime operated by the UK, and whether the UK was concerned about allowing Chinese goods into the UK market via the Irish land border. Mr Lamy agreed that the WTO rules would not stop the UK unilaterally deciding to not have checks, “but that will not mean that there is no border.”<sup>216</sup> The UK could not determine what the EU did on the other side of the border, and to what extent the EU wanted to carry out precautionary checks on products for safety reasons.<sup>217</sup> He referred to the Norway-Sweden border as the example of where it was most likely for there to be a ‘virtual border’ but “It is nothing like that.” The Sweden Norway border has “a border post and you have border control.”<sup>218</sup> When asked if there was any country in the world that has an open door to all trade with anybody, Mr Lamy said:

No, I do not think so, because the country doing this would have no leverage to gain market access in third markets, which of course is your negotiating currency. If you have totally open trade, why should others give you access to their market? They have duty-free, quota-free access to your market.<sup>219</sup>

**143. If the UK exited the EU without an agreement on its future trading relationship, it could do so on WTO terms. Eleven of the twelve studies in the Government’s EU Exit Analysis show that trading on WTO terms would be particularly damaging to the UK economy, compared to other scenarios modelled. The UK could still look to negotiate a series of bilateral arrangements with the EU. These might include terms of co-operation with the EU in areas such as customs or aviation. It would remain to be seen how quickly they could be negotiated, or how deep and comprehensive they would be compared to the current Single Market relationship.**

**144. The UK could choose to offer zero tariffs on goods between the EU and the UK, outside of a trade deal and would be able to use a ten-year exemption before offering the same tariff rates to other nations if the UK were negotiating a trade deal with the EU at that time. After this period, if the UK did so, it would have to offer the same zero tariff to all its trading partners. This would leave domestic producers exposed and remove significant negotiating leverage for the UK in respect of future trade deals.**

**145. The UK and the EU have both said that they do not want to reintroduce a hard border between Ireland and Northern Ireland. If the UK wanted to trade with the EU on WTO terms, then it could choose to reduce all its tariffs to zero, or it could choose not to collect duties at the border. However, there would still be the need to check some goods crossing the border for reasons such as the safety of goods, or health of agricultural products, or for rules of origin. There are currently checks to prevent excise fraud or illegal imports of arms and drugs.**

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216 Q1118, Q1119, Q1120

217 Q1122

218 Qq1113 and Q1116

219 Q1127

## EU Exit Analysis: Cross-Whitehall Briefing

146. The Government has conducted an analysis of the economic impact of exiting the EU under a number of specified scenarios. Following the agreement of a Humble Address in the House of Commons on 31 January, this document was provided to us; we decided to publish it, although with one Annex removed on the grounds that the Department had indicated that its content was of sensitivity to the negotiations.<sup>220</sup> The Government's EU Exit Analysis: Cross-Whitehall Briefing states that:

We need to base our exit negotiations and preparations on the best possible evidence and analysis. Analysing the potential impact of different exit scenarios is an unprecedented challenge.

The analysis sets out the factors creating uncertainty and warns that it does not seek to provide a definitive single point estimate:

There is no single model or analysis which can provide a definitive assessment of all possible outcomes, but economic analysis nevertheless provides us with the best available evidence base on which to draw a "broad" directional picture (and illustrate the importance of key uncertainties).

147. The scenarios modelled by the analysis are an EEA-type scenario (equivalent to Norway's relationship with the EU); and FTA-type scenario (analogous to the CETA deal) and trading on WTO terms. Notably, the analysis does not seek to model the impact of moving to the relationship that the Government is looking to achieve, the model set out by the Prime Minister's speeches in Florence and Mansion House. The analysis uses a range of methodologies to inform a computable general equilibrium model (CGE). DEXEU describes it as a "state of the art structural model", and emphasises that this is not the same model used before the referendum which was based on gravity modelling. The CGE model is informed by gravity modelling but also draws on other techniques. It is claimed that this analysis is much more sophisticated and also factors in the benefits of new trade deals and any gains from de-regulation. The analysis states that "non tariff barriers are the most important driver of trade impacts".<sup>221</sup>

148. The analysis indicated that, compared to indicative GDP growth, and spread over 15 years, the EEA-type scenario would result in -1.6% less growth, the FTA-type scenario would result in -4.8% less growth, and the WTO scenario would result in -7.7% less growth.<sup>222</sup> The analysis states that:

External estimates vary, reflecting uncertainties around exit. Emerging HMG estimates of the illustrative "existing" trade models sit broadly in the middle of this range, and are in line with the consensus of the relative costs incurred between the different scenarios.<sup>223</sup>

149. On 15 January the Scottish Government presented the latest analysis of the implications for Scotland's economy.<sup>224</sup> This is the only other Government analysis to be published in the UK. It concluded that Brexit will significantly weaken the Scottish economy and result

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220 [EU Exit Analysis Cross Whitehall Briefing, January 2018](#)

221 *ibid.* page 9

222 *ibid.* page 16

223 *ibid.* page 17

224 [Scotland's Place in Europe: People, Jobs and Investment](#), 15 January 2018

in lower economic growth and lower incomes in Scotland. The same three off-the-shelf options were modelled. The results showed the following negative impacts on headline macroeconomic indicators, relative to a baseline of full EU membership, to 2030:

- EEA: GDP -2.7%, real disposable income -1.4%, business investment -2.9%;
- FTA: GDP -6.1%, real disposable income -7.4%, business investment -7.7%;
- WTO: GDP -8.5%, real disposable income -9.6%, business investment -10.2%

150. Economists for Free Trade, a group of economists including Professor Patrick Minford, Dr Gerard Lyons, Julian Jessop and Roger Bootle has published its own “Alternative Exit Analysis” report which concluded:

Based on the track record of Whitehall and associated institutions, it must be questioned if the conclusions of this secret report can be trusted [...] If the Government’s policy--as declared at Lancaster House - is fed into the new Whitehall model, it produces positive outcomes for Brexit that are essentially the same as those of the models of other independent economists.

151. This Alternative Brexit Economic Analysis has, in turn, been criticised for its assumptions, such as the UK having no tariffs or non-tariff barriers with any country, and that border costs with the EU will be zero. This does not represent current Government policy.<sup>225</sup>

152. The Government’s estimates are comparable to those of the National Institute of Economic and Social Research (NIESR), the OECD and the World Bank. Several analysts - Oxford Economics, PWC/CBI, IEA and Open Europe - offer a relatively more optimistic analysis, in particular for the scenario of trading under WTO rules, but each forecast a negative impact on UK GDP arising from trade on this basis (with only the IEA and Open Europe suggesting a small positive impact from trading on an EEA basis or on the basis of an FTA). Economists for Free Trade have produced the only analysis suggesting a positive impact on GDP of moving to WTO terms.<sup>226</sup>

**153. The Government has modelled the impact on UK GDP of the three potential scenarios for future UK-EU trade that we have examined in the course of our work. There is near consensus that moving from trading with the EU as a Member State to trading with the EU on WTO terms would have a significant negative impact on the UK economy. According to most analyses, this negative impact would be mitigated in part by agreeing a “Canada-style” FTA, and further reduced by trading within the Single Market (but outside the Customs Union) as an EEA State. Each of the three scenarios modelled in the Government’s EU Exit analysis factored in the transitional adoption of all existing EU FTAs, and includes the effects of a bilateral UK-US trade deal, which is estimated to bring a benefit of 0.1–0.3% of GDP over the long term, but excludes any other potential FTAs, which the Analysis estimates could add a further 0.1–0.4% of GDP.**

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225 [The latest pro-Brexit analysis has got its sums badly wrong, Financial Times, 21 February 2018](#)

226 [Ibid.](#), page 17

## 3 The UK's future relationship with the EU

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### The broader relationship: the four pillars

154. Michel Barnier acknowledged when we met him in Brussels that his famous “staircase” slide, setting out the relationship that the UK could expect with the EU based on its “red lines” only related to the trade element of the relationship. He said that this agreement would be unique. There was nothing to prevent the UK trading with the EU on the basis of a bilateral free trade agreement or on WTO terms but enjoying close co-operation in other areas.

155. He told us that he envisaged the Future Partnership based on four pillars: Trade, Justice and Home Affairs, Common Security and Defence Policy and Foreign Affairs, and thematic ‘areas of specific co-operation in areas of shared interest’. The Future Partnership could be agreed through several agreements, some of which will be treaties.<sup>227</sup> Thematic areas could include research, university co-operation, fisheries, and aviation and we believe that services, including financial and professional business services, justify a separate pillar of co-operation. The Future Partnership will be based on a legal basis other than Article 50 and agreements would, most likely, be mixed agreements, requiring ratification by each Member state. The Article 50 withdrawal agreement will be subject to qualified majority voting in the Council and approval by the European Parliament.

156. Similarly, the UK has said it wishes to have a relationship based on broader matters than just trade. The Prime Minister’s Lancaster House speech from January 2017 listed twelve priorities for the negotiating objectives, including co-operation in the fight against crime and terrorism and future and in science and innovation.

### *Security co-operation*

157. In her Lancaster House speech, the Prime Minister said that “a Global Britain will continue to co-operate with its European partners in important areas such as crime, terrorism and foreign affairs.” The Prime Minister’s letter triggering Article 50, sent to President of the Council, Donald Tusk on 28 March 2017, said “we want to agree a deep and special partnership between the UK and the EU, taking in both economic and security co-operation.”<sup>228</sup> In her Munich speech, in February 2018, the Prime Minister said “Europe’s security is our security. And that is why I have said [...] that the United Kingdom is unconditionally committed to maintaining it.”<sup>229</sup>

158. The Prime Minister specifically referred to the UK’s future involvement in Europol and the European Arrest Warrant, maintaining alignment with EU Data Protection rules, and seeking to maintain the fast exchange of data through the Schengen Information System. On external security she referred to continued co-operation on sanctions policy, contributing UK defence capabilities for EU operations, using the UK’s foreign aid budget

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227 Northern Ireland Affairs Committee, Oral evidence: Brexit and Northern Ireland, HC 329, Oral evidence: Brexit and Northern Ireland, HC 329, [Opening statement \[Michel Barnier\]](#)

228 See also UK Future Partnership Paper, Foreign policy, defence and development, 12 September 2017

229 Munich Security Conference Speech, 17 February 2018



to contribute to EU development programmes, and co-operation on cyber, defence R&D and expanding areas such as space.<sup>230</sup> Ian Bond, of the Centre for European Reform, summarised the position as:

The UK’s overall aim appears to be to keep as much as possible of the existing foreign policy and development policy co-operation intact. But it is vague about how it should do this.<sup>231</sup>

The European Council’s draft negotiating guidelines called for a partnership that should cover trade and other areas including “the fight against terrorism and international crime, as well as security, defence and foreign policy.”<sup>232</sup>

159. There are different ways in which non-EU states interact with the EU on security and foreign policy areas. The EEA Agreement does not cover Common Foreign and Security Policy, or Justice and Home Affairs, but Norway has secured agreements with the EU in both justice and home affairs, and in security and defence. It takes part in Europol and Eurojust, and is part of Schengen and the Dublin system for asylum. Norway does not take part in the European Arrest Warrant (EAW), but has negotiated an extradition treaty with the EU, which is similar to the EAW but with two discretionary bars on extradition: an option for all parties to refuse to extradite their own nationals, and a “political offence” exception. It took thirteen years to negotiate.<sup>233</sup> Norway has formal bilateral discussions with the EU high representative and second staff to the European External Action Service.<sup>234</sup> Ulf Sverdrup told us that security was an important issue for Norway and that “Norway has a huge interest in the discussions between the UK and the EU on the future security and defence arrangements”.<sup>235</sup>

160. The Canada-EU Strategic Partnership Agreement includes a section on Justice, freedom and security, which covers a range of relevant areas, such as law enforcement and the fight against organised crime. It builds on co-operation structures already in place (but now incorporated in an international treaty) and created joint bodies to help the relationship develop.

### *Thematic areas of co-operation*

#### *Science and innovation*

161. The UK Government has said it would like to continue to collaborate with European partners on major science, research, and technology initiatives.<sup>236</sup> The Prime Minister has said the UK would like to remain part of the European Medicines Agency (although there is no provision for third states to become members or observers to the European Medicines Agency.<sup>237</sup>) The EU draft negotiating guidelines published on 7 March 2018 said the agreement could include co-operation on EU programmes “in the fields of research and innovation”. We visited Cambridge and met those who worked in the life sciences,

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230 Munich Security Conference Speech, 17 February 2018

231 Ian Bond, *Plugging in the British*, EU Foreign Policy, March 2018

232 European Council (Art. 50) guidelines on the framework for the future EU-UK relationship, 23 March 2018

233 House of Commons Library briefing, *The European Arrest Warrant*, April 2017

234 Ian Bond, *Plugging in the British*, EU Foreign Policy, March 2018

235 Q1001

236 UK Future Partnership Paper, *Collaboration on science and innovation*, 6 September 2017

237 Under Article 77, “representatives of international organisations” may participate in the EMA.

medical research and space sectors and the university.<sup>238</sup> Their priorities were looking to provide certainty for their existing EU staff and ensuring that they retained access to future talented students and staff. They were also looking to continue international collaboration, to remain in EU wide programmes (Galileo, Copernicus, Erasmus+), to continue to access EU-wide research funding, to remain within the EU regulatory sphere and retain access to the EU market, and to continue participation in EU wide clinical trials. Doubts had already arisen over future contracts because of a lack of certainty about the long-term relationship.<sup>239</sup>

162. Professor Eilís Ferran, Pro-Vice Chancellor for Institutional International Relations, Cambridge University, emphasised the importance of ensuring that the future immigration system took account of the needs of the sector, including, in particular, technicians and researchers with difficult to source skills who were below PhD level:

Simply extending the existing Tier 2 to EEA staff would not be welcomed by us or by the sector.<sup>240</sup>

Both Horizon 2020 and Erasmus+ allow some form of participation for non-EU member states. However, Switzerland’s participation was downgraded to partial associated status of Horizon2020 in 2014–2016 following its decision to limit immigration.

### Aviation

163. Another area of co-operation that Michel Barnier told us he envisaged coming into the “thematic” pillar was aviation. The EU Draft negotiating guidelines are positive about an air transport agreement and an aviation safety agreement. The UK has said it would like to explore with the EU the terms on which the UK could remain part of EU agencies such as the European Aviation Safety Agency, and accept that this would mean abiding by the rules of those agencies and making an appropriate financial contribution.

164. The European Council guidelines include reference to research.<sup>241</sup> The Canadian Strategic Partnership Agreement includes aviation co-operation.<sup>242</sup> Switzerland has a bilateral agreement with the EU on civil aviation which allows for reciprocal access to the air transport market.

### Data

165. Maintaining the free flow of data between the UK and EU is essential for the convenience of consumers and the functioning of the UK economy, and very important for the cross-border portability of data.<sup>243</sup> Jessica Gladstone described its inclusion in the final EU-UK agreement as “crucial”.<sup>244</sup> One of the CBI’s *Five Steps to Protect Services Post-Brexit* is to secure an adequacy decision for the UK’s data regime to maintain the free flow of data between the UK and EU.<sup>245</sup>

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238 Oral evidence on 19 February 2018. See also written evidence [Professor Graham Virgo, University of Cambridge NEG0017](#)

239 Oral evidence taken in Cambridge on Thursday 18 January 2018, Qq634–647

240 Q682

241 [Statement by President Donald Tusk on the draft guidelines on the framework for the future relationship with the UK, 7 March 2018](#)

242 Q531

243 Q520

244 Q1282

245 CBI, *5 steps to protect services post-Brexit*, 8 March 2018

166. An adequacy decision from the European Commission would provide the best comprehensive mechanism for the UK to share data with the EU. It would certify that the standard of data protection in the UK is “essentially equivalent” to EU data protection standards. Although the UK is currently fully aligned with EU standards, Mr Erixon told us that this would not necessarily be simple for the UK as several Governments in the EU will have concerns about data protection in the UK:

The starting point will be that the rest of the EU wants to have an adequacy recognition of the United Kingdom, but it is going to raise concerns about mass surveillance and what the Government are doing on these issues. [...] I probably would be very surprised if there were no recognition of adequacy of the UK, providing that more or less the current regulation that applies in the UK will apply after Brexit as well.<sup>246</sup>

David Henig said he thought the negotiations on data will be “extremely painful. [...] Because the EU is really not comfortable with sharing data. It is increasingly putting more conditions on it.”<sup>247</sup> Mr Erixon said the UK may be judged against higher standards of data protection outside the EU than if it remained as a Member State since, as a Member State it is able to invoke certain national security provisions allowing it a leeway not offered to third countries.<sup>248</sup>

167. Alternatives to a data adequacy decision can be cumbersome and expensive. The UK and the EU could aim for a mutual adequacy decision, with both recognising each other’s data protection regimes.<sup>249</sup> There are signs that the EU Commission is moving closer to the inclusion of data in trade agreements, and it has been included in the negotiations between Japan and the EU.<sup>250</sup> The resistance in the EU to including data in trade agreements has been attributed to differences of opinion between two EU Commission departments: Trade and Justice.<sup>251</sup>

### *Level playing field*

168. Michel Barnier told us that one of the “horizontal” issues that he would be looking to address during negotiations was maintaining a “level playing field” with the UK after its exit from the EU. The EU would not be prepared to agree special access to the Single Market or EU programmes if the UK was going to undercut EU businesses by reducing its environmental, health and safety, employment and other regulatory standards. Professor Whitman suggested that there would be some concern among Member States about whether the UK might seek to get some kind of unfair competitive advantage through the agreement.<sup>252</sup> Fredrick Erixon said he did “not read the political mood in the UK as if it is about to embark on a development that is completely different in environmental or social standards from what it has right now.”<sup>253</sup> During his speech in Vienna, the Secretary of State, acknowledged that some people in Europe feared “that Brexit could lead to an

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246 Q521

247 Qq1282–1283

248 Q522–523

249 No interruptions, Options for the future UK-EU data-sharing relationship, November 2017

250 Q524

251 Apparent Breakthrough in Commission Talks to Include Data Flows in Trade Deals, TechUK, 19 Jan 2018

252 Q518

253 Q505

Anglo-Saxon race to the bottom” in terms of standards, and that “These fears about a race to the bottom are based on nothing, not our history, not our intentions, nor our national interest.”<sup>254</sup>

169. The European Council draft guidelines said:

Given the UK’s geographic proximity and economic interdependence with the EU27, the future relationship will only deliver in a mutually satisfactory way if it includes robust guarantees which ensure a level playing field. The aim should be to prevent unfair competitive advantage that the UK could enjoy through undercutting of current levels of protection with respect to competition and state aid, tax, social, environment and regulatory measures and practices.<sup>255</sup>

It said that the Agreement will include enforcement and dispute settlement mechanisms, “as well as Union autonomous remedies”.

### *Rolling over third country trade agreements*

170. The Department for International Trade has told the Committee on International Trade that the UK has “40 plus” EU trade agreements with “70 plus” partners.<sup>256</sup> The Department was unable to provide that Committee with a precise figure of the number of trade related agreements that the UK is party to by virtue of being a Member State, but it was believed to be in the “multiple hundreds”.<sup>257</sup> Reports in the press have suggested it is over 750.<sup>258</sup> In addition to the FTAs, these agreements include the DCFTA with Ukraine, the EU’s trade agreements with the EFTA countries, the partial customs union between Turkey and the EU, and agreements such as the Open Skies aviation agreement between the EU and the US. The UK Government has said it wishes to roll over these agreements into UK-third country agreements by the time the UK leaves the EU, and the EU has asked third countries to treat the UK as a Member State during transition. This is not binding, and it is for the third country to agree.<sup>259</sup> This may result, in some cases, in a trilateral negotiation involving the UK, the third country and the EU, for example, to agree diagonal cumulation on rules of origin.<sup>260</sup>

171. David Henig did not see it as being in the interests of the EU to get involved in trilateral negotiations, and he thought it was more likely to be a bilateral negotiation where the third country may wish to reopen part of the agreement. Mr Henig said “Certainly, if I was negotiating on the other side, I would.”<sup>261</sup> He gave two examples:

The best example is with South Africa; they have long had a complaint about a certain kind of citrus fruit that is not allowed into the EU, and that is an obvious ask on their part if they were rolling over an agreement with the UK alone. For South Korea, it might be a little trickier because, for

254 David Davis [Vienna speech](#), 20 February 2018

255 [Statement by President Donald Tusk on the draft guidelines on the framework for the future relationship with the UK](#), 7 March 2018

256 [International Trade Committee, Continuing application of EU trade agreements after Brexit report](#), 7 March 2018

257 *Ibid.*

258 [After Brexit: the UK will need to renegotiate at least 759 treaties](#), Financial Times, 30 May 2017

259 Q1258

260 Qq1260–1261

261 Q1261

example, one of the things that the South Korea-EU agreement gave us was access to their legal services market. That has been a little bit controversial in South Korea, as I understand it. They may want to say, ‘Can we restrict that a little bit?’ It is a negotiation, at the end of the day; we cannot say what will actually happen as a result of that. There may also be things in there that we would be happy to lose because they were EU-specific things that do not really affect the UK. I would not want to predict how the negotiation would go, but I can predict that there should be a negotiation where most countries would have at least some things that they would ask for.<sup>262</sup>

He did not want to make generalisations about how third countries would respond to making a deal with the UK outside the EU, some may wait to see what the EU-UK relationship would look like, but also some might anticipate a better deal if they go quickly.<sup>263</sup> Some would not be straightforward to renegotiate, e.g. the customs union with Turkey or the Swiss relationship with the EU. He also questioned if the UK Government had the capacity to negotiate many such agreements at the same time, and if it actually knew what it wanted from all these agreements, what it would ask for and what it would seek to protect.”<sup>264</sup>

### *Rules of origin and diagonal cumulation*

172. Rules of Origin are used in FTAs to establish whether a product is considered sufficiently local to count as originating there, and therefore can receive the preferential tariff. Depending on the agreement between the UK and the EU, a UK exporter may need to be able to prove their goods originate in the UK to qualify for a preferential tariff. Furthermore, UK products currently count as EU origin for the purposes of EU FTAs. For the transition period, the UK and the EU have asked third countries to recognise the UK, essentially, as a Member State and therefore maintain the status quo for the purposes of Rules of Origin. When the UK leaves the EU, UK products will not qualify automatically as EU origin, which could impact upon the ability of UK businesses to take advantage of current EU FTAs with third countries.

173. Jessica Gladstone, Clifford Chance, told us that business would have to decide whether to move supply chains within the UK or within the EU, depending on factors such as where its current suppliers are, if they can be replaced locally, and if it wished to continue to rely upon a particular FTA. She said

If you want to be exporting from the EU to rely on the EU FTAs, that would encourage you to move more. That would be another swing factor to base yourself more in the EU.<sup>265</sup>

Cumulation enables goods (or inputs) from outside a country to be considered as from that country. Jessica Gladstone said diagonal cumulation—where goods (or inputs) from the UK, EU or third country could qualify as being from within an agreed cumulation zone—would be “a very critical point to include in the trade agreements to make sure those supply chains can be protected where businesses want to continue them” and that without diagonal accumulation, “there will be a lot of shifts in supply chain reorganisation”.<sup>266</sup>

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262 Q1262

263 Q1263

264 Qq1266–1267

265 Q1247

266 Q1246

## Conclusions

174. The EU's different forms of relations with third countries have been driven by a range of particular circumstances and strategic interests. While there are a number of "off-the-shelf" models, the details of each vary widely. There is no precedent for Brexit and any deal reached between the UK and the EU on the UK's future relationship will, by its nature, be bespoke. A "CETA-style" trade agreement between the UK and the EU would reflect very different trading priorities to the Canada deal and could be part of a very much deeper relationship with the EU in terms of security, academic and many other areas of co-operation than that enjoyed by Canada, however the lack of access for services in such a FTA would pose serious challenges for the UK. Even trading on WTO terms after agreeing exit terms under Article 50 would not rule out continuing close co-operation in areas of mutual benefit.

175. Continuing security co-operation is a priority for both sides. Our predecessor Committee welcomed the Government's commitment to continuing co-operation with the EU27 on foreign policy and defence matters. That Committee called on the Government in March 2017 to set out some detail about how such co-operation could be made to work in practice, including the institutional and decision-making frameworks that would underpin it. It is regrettable that no response has yet been provided to that report and no detail has been set out. Our predecessor Committee also welcomed the Secretary of State's statement that the Government wants "as far as is possible to replicate what we already have" in respect of Justice and Home Affairs Co-operation and concluded that the UK's relationship with the EU when outside should be one of partnership on the basis of shared values and co-operation. Maintaining this level of co-operation will require overcoming a number of technical challenges in respect of agreeing data protection, judicial oversight and governance provisions. The Prime Minister's Munich speech acknowledges that the Government will be looking to find positive solutions to address these challenges

176. Ensuring the continued free flow of data between the UK and the EU, once the UK has left will be one of the most important cross-cutting issues to be resolved in the negotiations on the future relationship. Data flows are vital for ensuring frictionless trade between the UK and the EU and they underpin co-operation in combating terrorism and organised crime. This is just one area of cross-over that illustrates the relationship between both trade and non-trade elements of the future relationship. Our scrutiny of other third country relations with the EU indicates that imaginative solutions are possible but will require agreement over regulatory frameworks, governance and oversight arrangements. Indeed, we welcome the greater emphasis on alignment, rather than divergence, in the Prime Minister's Mansion House speech.

177. Our study of the existing relationships between the EU and third countries shows that there are trade-offs between the rights and obligations that comprise those relationships. Michel Barnier's "staircase" diagram takes as a starting point that the UK Government's existing red lines suggest a "Canada style" trade deal. The Government is seeking a much wider CETA plus plus plus agreement. While imaginative solutions are possible in other areas of co-operation, these red lines will also affect other aspects of the relationship. Ending free movement will affect the extent of involvement in programmes of academic co-operation granted to the UK. Ending the jurisdiction of the Court of Justice of the EU and any regulatory divergence in data protection will

place constraints on a range of programmes for justice and home affairs co-operation, although in her Munich speech about security and policing co-operation, the Prime Minister indicated the UK's willingness to accept the remit of the CJEU in these areas, respecting the sovereignty of both the UK and the EU's legal orders. This is a very positive approach which we encourage the Government to apply in other areas.

178. In respect of both trade and non-trade agreements, other countries will take a close interest in the mix of rights and obligations that constitute any future relationship with the UK and may see any special deals for the UK as a precedent. Countries such as Switzerland and Norway will examine closely any agreement between the UK and the EU to see if it contains better terms than their current arrangements. This, in itself, may limit the EU's room for manoeuvre in terms of what it is prepared to offer the UK.

179. The UK has an enormous amount to offer the EU as a third country. A deep partnership will ensure that the UK's defence, intelligence and security capabilities continue to add to the EU's resources (and vice versa), that the international financial centre for our continent stays in Europe; and that our co-operation continues across a wide number of important sectors. However, Ministers need to set out what they want to achieve overall, in much more detail, in terms of the future relationship. The absence of such detail could allow the terms of the future negotiation to be set by the EU with the "offer" to the UK determined by the EU's analysis of the implications of the UK's red lines, rather than by a proper consideration by the EU of the strategic value of a continuing close relationship with the UK. We encourage the Government to take a more proactive approach to the linkages between different areas of the future relationship, given that they will be negotiated to different timescales, so that the UK does not find that options are inadvertently closed off.

180. A political declaration on the future partnership is expected to be agreed alongside the withdrawal agreement around October this year. The Secretary of State is confident that final agreement on the future relationship can be reached very shortly after the UK leaves the EU in March 2019, providing for most of the transition period (currently anticipated to last 21 months) to be spent "implementing" the future relationship. In our last report, we questioned whether the transition period would be sufficient to agree the future relationship. The more bespoke and ambitious the relationship, the harder this will be to achieve in the time available.

181. Whilst the UK will not be looking to replicate the relationships of other countries with the EU, our analysis has indicated that there are a number of key tests by which any deal agreed by October can be judged. The Prime Minister has set out her red lines for the negotiations. However, the success of the future relationship will be judged on the ground by the members of the public, businesses and agencies that travel to and from, trade with and will continue to work closely with the EU and EU Member States. The criteria by which they and we will judge the political declaration that we expect to be reached by October will be the following:

- The border between the Republic of Ireland and Northern Ireland must remain open, with no physical infrastructure or any related checks and controls, as agreed in the Phase 1 Withdrawal Agreement;
- In the fight against crime and terrorism, arrangements must replicate what currently exists in operational and practical cross-border co-operation. In

particular, the UK must retain involvement with Europol and the European Arrest Warrant and continue to participate in the EU's information-sharing systems including SIS II;

- Institutional and decision-making frameworks must be identified to ensure that the UK is able fully to participate in foreign and security co-operation with the EU, to meet the challenges it shares with its neighbours in the EU-27;
- In respect of trade in goods, there must be no tariffs on trade between the UK and the EU 27;
- Trade in goods must continue to be conducted with no additional border or rules of origin checks that would delay the delivery of perishable or time-sensitive deliveries or impede the operation of cross-border supply chains;
- There must be no additional costs to businesses that trade in goods or services;
- UK providers of financial and broadcasting services must be able to continue to sell their products into EU markets as at present;
- UK providers of financial and other services should be able to retain automatically, or with minimal additional administration, their rights of establishment in the EU, and vice versa, where possible on the basis of mutual recognition of regulatory standards;
- There must be no impediments to the free flow of data between the UK and the EU;
- Any new immigration arrangements set up between the UK and the EU must not act as an impediment to the movement of workers providing services across borders or to the recognition of their qualifications and their right to practise;
- The UK must seek to maintain convergence with EU regulations in all relevant areas in order to maximise access to European markets;
- The UK must continue to participate in the European Medicines Agency, the European Aviation Safety Agency, the European Chemicals Agency and in other agencies where there is a benefit to continuing co-operation;
- The UK must continue to participate in the Horizon 2020 programme, the Erasmus+ scheme, the Galileo project and in other space and research programmes in order to support the work of our world-class academic institutions and the importance of cultural and educational exchange between the UK and the EU 27;
- The UK must continue to participate in all relevant air safety agreements and the Open Skies Agreement to ensure no disruption to the existing level of direct flights.
- The UK Government must ensure maximum access to European markets while agreeing reciprocal access to waters and a fairer allocation of fishing opportunities for the UK fishing industry.



# Formal minutes

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**Wednesday 28 March 2018**

Members present:

Hilary Benn, in the Chair

Mr Peter Bone	Jeremy Lefroy
Joanna Cherry	Craig Mackinlay
Sir Christopher Chope	Seema Malhotra
Richard Graham	Mr Jacob Rees-Mogg
Peter Grant	Emma Reynolds
Wera Hobhouse	Stephen Timms
Andrea Jenkyns	Hywel Williams
Stephen Kinnock	Sammy Wilson

Draft Report (*The future UK-EU relationship*), proposed by the Chair, brought up and read.

Question put, That the Chair's draft Report be read a second time, paragraph by paragraph.

The Committee divided.

<b>Ayes, 10</b>	<b>Noes, 6</b>
Joanna Cherry	Mr Peter Bone
Richard Graham	Sir Christopher Chope
Peter Grant	Andrea Jenkyns
Wera Hobhouse	Craig Mackinlay
Stephen Kinnock	Mr Jacob Rees-Mogg
Jeremy Lefroy	Sammy Wilson
Seema Malhotra	
Emma Reynolds	
Stephen Timms	
Hywel Williams	

Question accordingly agreed to.

*Ordered*, That the Chair's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 100 agreed to.

Paragraph 101 read.

Amendment proposed, at end, to add

“Landlocked Liechtenstein has an unusually high percentage of its workforce commuting daily across its borders but this is not the case in the UK where a limit on residence permits would be difficult to distinguish from a limit on work.

The precedent of Liechtenstein however shows some flexibility in the requirements of EEA membership in respect of free movement. The Protocol adjusting the EEA agreement to enable this to happen was signed in 1993 to reflect the changes made following Switzerland’s decision not to ratify the Agreement. The Adjusting Protocol deleted Switzerland from the Agreement, including from Protocol 15 on transitional periods on the free movement of persons. As Protocol 15 was originally drafted to enable Switzerland and Liechtenstein to introduce temporary measures to restrict free movement, it might suggest the Protocol was not drawn up for the specific circumstances of a microstate.”—(*Stephen Kinnock*)

Question put, That the amendment be made.

The Committee divided.

**Ayes, 8**

Joanna Cherry  
Peter Grant  
Stephen Kinnock  
Jeremy Lefroy  
Seema Malhotra  
Emma Reynolds  
Stephen Timms  
Hywel Williams

**Noes, 7**

Mr Peter Bone  
Sir Christopher Chope  
Richard Graham  
Andrea Jenkyns  
Craig Mackinlay  
Mr Jacob Rees-Mogg  
Sammy Wilson

Question accordingly agreed to.

Paragraph, as amended, agreed to.

Paragraphs 102 to 106 agreed to.

Paragraph 107 read.

Amendment proposed, to leave out the words “The UK Government has also acknowledged that this will involve a continuing role for the CJEU in the UK”.—(*Mr Jacob Rees-Mogg*)

Question put, That the amendment be made.

The Committee divided.

**Ayes, 7**

Mr Peter Bone  
 Sir Christopher Chope  
 Andrea Jenkyns  
 Jeremy Lefroy  
 Craig Mackinlay  
 Mr Jacob Rees-Mogg  
 Sammy Wilson

**Noes, 9**

Joanna Cherry  
 Richard Graham  
 Peter Grant  
 Wera Hobhouse  
 Stephen Kinnock  
 Seema Malhotra  
 Emma Reynolds  
 Stephen Timms  
 Hywel Williams

Question accordingly negatived.

Paragraph agreed to.

Paragraphs 108 to 113 agreed to.

Paragraph 114 read.

Amendment proposed, to leave out from the beginning of the paragraph to “. The EEA option” and insert “The Government has rejected applying for EEA Membership because its view is that this entails accepting both free movement and EU law. Should the negotiations on a deep and special partnership not prove successful, EFTA/EEA membership remains an alternative and would have the advantage of continuity of access for UK services.”—(*Richard Graham*)

Question put, That the amendment be made.

The Committee divided.

**Ayes, 10**

Joanna Cherry  
 Richard Graham  
 Peter Grant  
 Wera Hobhouse  
 Stephen Kinnock  
 Jeremy Lefroy  
 Seema Malhotra  
 Emma Reynolds  
 Stephen Timms  
 Hywel Williams

**Noes, 6**

Mr Peter Bone  
 Sir Christopher Chope  
 Andrea Jenkyns  
 Craig Mackinlay  
 Mr Jacob Rees-Mogg  
 Sammy Wilson

Question accordingly agreed to.

Amendment proposed, at end, to add

“However, it will leave the UK as a rule-taker.”—(*Mr Jacob Rees-Mogg*)

The Committee divided.

<b>Ayes, 8</b>	<b>Noes, 8</b>
Mr Peter Bone	Joanna Cherry
Sir Christopher Chope	Peter Grant
Richard Graham	Wera Hobhouse
Andrea Jenkyns	Stephen Kinnock
Jeremy Lefroy	Seema Malhotra
Craig Mackinlay	Emma Reynolds
Mr Jacob Rees-Mogg	Stephen Timms
Sammy Wilson	Hywel Williams

Whereupon the Chair declared himself with the Noes

Question accordingly negatived.

Paragraph, as amended, agreed to.

Paragraphs 115 and 131 agreed to.

Paragraph 132 read.

Amendment proposed, after “trade policy.”, to insert “However, it would fail, according to the Government’s own analysis, on the Mansion House speech test that Brexit must “protect people’s jobs and security”.”—(*Stephen Kinnock*)

Question put, That the amendment be made.

The Committee divided.

<b>Ayes, 8</b>	<b>Noes, 8</b>
Joanna Cherry	Mr Peter Bone
Peter Grant	Sir Christopher Chope
Wera Hobhouse	Richard Graham
Stephen Kinnock	Andrea Jenkyns
Seema Malhotra	Jeremy Lefroy
Emma Reynolds	Craig Mackinlay
Stephen Timms	Mr Jacob Rees-Mogg
Hywel Williams	Sammy Wilson

Whereupon the Chair declared himself with the Ayes.

Question accordingly agreed to.

Paragraph, as amended, agreed to.

Paragraphs 133 and 152 agreed to.

Paragraph 153 read.

Amendment proposed, after “consensus”, to insert “, as there was about the short-term impact of a vote to leave the European Union.”.—(*Mr Jacob Rees-Mogg*)

Question put, That the amendment be made.

The Committee divided.

**Ayes, 7**

Mr Peter Bone  
 Sir Christopher Chope  
 Richard Graham  
 Andrea Jenkyns  
 Craig Mackinlay  
 Mr Jacob Rees-Mogg  
 Sammy Wilson

**Noes, 9**

Joanna Cherry  
 Peter Grant  
 Wera Hobhouse  
 Stephen Kinnock  
 Jeremy Lefroy  
 Seema Malhotra  
 Emma Reynolds  
 Stephen Timms  
 Hywel Williams

Question accordingly negatived.

Paragraph agreed to.

Paragraphs 154 to 180 agreed to.

Paragraph 181 read.

Motion made, and Question put, That the paragraph stand part of the Report.

The Committee divided.

**Ayes, 10**

Joanna Cherry  
Richard Graham  
Peter Grant  
Wera Hobhouse  
Stephen Kinnock  
Jeremy Lefroy  
Seema Malhotra  
Emma Reynolds  
Stephen Timms  
Hywel Williams

**Noes, 6**

Mr Peter Bone  
Sir Christopher Chope  
Andrea Jenkyns  
Craig Mackinlay  
Mr Jacob Rees-Mogg  
Sammy Wilson

Paragraph accordingly agreed to.

*Ordered*, That the Report be the Fourth Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available (Standing Order No. 134)

[Adjourned till Wednesday 18 April at 9.00am

## Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

### Wednesday 25 October 2017

Question number

**Rt Hon David Davis MP**, Secretary of State, Department for Exiting the European Union

[Q1–153](#)

### Wednesday 29 November 2017

**Peter Hardwick**, Head of Exports, Agriculture and Horticulture Development Board; **James Hookham**, Deputy Chief Executive, Freight Transport Association; **Sian Thomas**, Communications Manager, Fresh Produce Consortium; **Duncan Brock**, CIPS Group Director, Chartered Institute of Procurement and Supply

[Q154–188](#)

**Jon Thompson**, Chief Executive and Permanent Secretary, HM Revenue and Customs; **John Bourne**, Policy Director of Animal and Plant Health, Department for Environment, Food and Rural Affairs; **Richard Everitt**, Chairman, Port of Dover; **Richard Ballantyne**, Chief Executive, British Ports Association

[Q189–251](#)

### Wednesday 7 December 2017

**Simon York**, Director, HMRC Fraud Investigation Service; **Mike O'Grady**, Deputy Head, Organised Crime Operations North, HMRC Fraud Investigation Service; **Deputy Chief Constable Drew Harris**, PSNI; and **Assistant Chief Constable Stephen Martin**, Head of Crime Operations, PSNI

[Q252–301](#)

### Wednesday 13 December 2017

**Professor Alexander Türk**, Professor of Law, King's College London; **John Cassels**, Partner, Competition, Regulatory and Trade Law, Fieldfisher LLP; and **Dr Scott Steedman**, Director of Standards, BSI and Vice President (policy), International Standards Organisation

[Q302–324](#)

**Katherine Bennett**, Senior Vice President, Airbus UK; **Rod Ainsworth**, Director of Regulatory and Legal Strategy, Food Standards Agency; **Angela Hepworth**, Director of Corporate Policy and Regulation, EDF UK; and **Dr Ian Hudson**, Chief Executive, Medicines and Healthcare Products Regulatory Agency

[Q325–375](#)

### Wednesday 20 December 2017

**Professor Michael Dougan**, Professor of European Law and Jean Monnet Chair in EU Law, University of Liverpool; **Professor Anand Menon**, Director, UK in a Changing Europe; **Stephen Booth**, Director of Policy and Research, Open Europe

[Q376–454](#)

**Wednesday 10 January 2018**

**Professor Richard Whitman**, Head of School, Professor Politics and International Relations, University of Kent; **Fredrik Erixon**, Director, European Centre for International Political Economy; **Dr Stephen Woolcock**, Associate Professor in International Relations, London School of Economics

[Q455–545](#)**Wednesday 17 January 2018**

**Christophe Bondy**, Public International Lawyer at Cooley (UK) LLP and former senior counsel to Canada on the CETA negotiations; **Dr Lorand Bartels**, University of Cambridge and Senior Counsel, Linklaters; **William Swords**, President, UK-Canada Chamber of Commerce

[Q546–633](#)**Wednesday 18 January 2018**

**Professor Greg Hannon**, Director, Cancer Research UK Cambridge Institute; **Professor Eilís Ferran**, Pro-Vice Chancellor for Institutional International Relations, Cambridge University; **Dr Andy Williams**, Vice President Cambridge Strategy & Operations, AstraZeneca; and **Michael Lawrence**, Business Development Director, Deimos Space UK

[Q634–690](#)**Wednesday 24 January 2018**

**Rt Hon David Davis MP**, Secretary of State, Department for Exiting the European Union

[Q691–835](#)**Wednesday 31 January 2018**

**Dmytro Tupchiienko**, Data Protection Lawyer, EY, London; **Michael Emerson**, Associate Senior Research Fellow, Centre for European Policy Studies, Brussels; **Dr Tamara Kovziridze**, Co-founder, Reformatics, Tbilisi

[Q836–905](#)**Wednesday 6 February 2018**

**John Springford**, Deputy Director, Centre for European Reform; **Professor Clive Church**, Emeritus Professor of European Studies, University of Kent; and **Professor René Schwok**, University of Geneva

[Q906–964](#)**Wednesday 7 February 2018**

**Professor George Yarrow**, Chair of the Regulatory Policy Institute, Emeritus Fellow, Hertford College, Oxford, and visiting professor; **Ulf Sverdrup**, Director, Norwegian Institute of International Affairs; and **Professor Alla Pozdnakova**, Law Faculty, University of Oslo

[Q965–1022](#)

**Professor Carl Baudenbacher**, Judge of the EFTA Court

[Q1023–1048](#)



**Wednesday 21 February 2018**

**Emanuel Adam**, Director of Policy and Trade, BritishAmerican Business; **Dr Peter Holmes**, Reader in Economics, University of Sussex; **Dr Pinar Artiran**, Assistant Professor, Bilgi University, Istanbul; **Sam Lowe**, Research Fellow, Centre for European Reform

[Q1049–1100](#)**Wednesday 27 February 2018**

**Pascal Lamy**, former Director-General, World Trade Organization

[Q1101–1162](#)**Tuesday 20 March 2018**

**Dr Lars Karlsson**, President of KGH Border Services, former Director of World Customs Organisation, Deputy Director General of Swedish Customs

[Q1163–1197](#)**Wednesday 21 March 2018**

**David Campbell-Bannerman MEP**

[Q1198–1240](#)

**Jessica Gladstone**, Partner, Clifford Chance LLP; **David Henig**, UK Trade Policy Specialist

[Q1241–1284](#)**Thursday 22 March 2018**

**Iona Crawford**, Associate, Freshfields Bruckhaus Deringer LLP; **Sally Jones**, Director for International Trade Policy, Deloitte; **Mike Regnier**, Chief Executive, Yorkshire Building Society; and **Glynn Robinson**, Managing Director, BJSS

[Q1285–1310](#)

## Published written evidence

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Written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

## List of Reports from the Committee during the current Parliament

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All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

### Session 2017–19

First Report	European Union (Withdrawal) Bill	HC 373 (HC 771)
Second Report	The progress of the UK's negotiations on EU withdrawal	HC 372 (HC 862)
Third Report	The progress of the UK's negotiations on EU withdrawal: December 2017 to March 2018	HC 884
First Special Report	European Union (Withdrawal) Bill: Government Response to the Committee's First Report	HC 771
Second Special Report	The progress of the UK's negotiations on EU withdrawal: Government response to the Committee's Second Report	HC 862