

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

**POLICY DEPARTMENT**  
STRUCTURAL AND COHESION POLICIES **B**

**Agriculture and Rural Development**

Culture and Education

Fisheries

Regional Development

Transport and Tourism

**Research for AGRI Committee -  
Possible transitional arrangements  
related to agriculture in the light of  
the future EU - UK relationship:  
institutional issues**

**STUDY**





**DIRECTORATE-GENERAL FOR INTERNAL POLICIES**  
**Policy Department for Structural and Cohesion Policies**

**AGRICULTURE AND RURAL DEVELOPMENT**

***Workshop on***  
***'Implications of 'Brexit' for the EU agri-food***  
***sector and the CAP: budgetary, trade and***  
***institutional issues'***

**Research for AGRI Committee -**  
**Possible transitional arrangements**  
**related to agriculture in the light of the**  
**future EU - UK relationship:**  
**institutional issues**

**STUDY**

This document was requested by the European Parliament's Committee on Agriculture and Rural Development.

## **AUTHOR**

Alan Matthews

Research manager: Albert Massot  
Project and publication assistance: Virginija Kelmelytė  
Policy Department for Structural and Cohesion Policies, European Parliament

## **LINGUISTIC VERSIONS**

Original: EN

## **ABOUT THE PUBLISHER**

To contact the Policy Department or to subscribe to updates on our work for the AGRI Committee please write to: [Poldep-cohesion@ep.europa.eu](mailto:Poldep-cohesion@ep.europa.eu)

Manuscript completed in October 2017  
© European Union, 2017

Print	ISBN 978-92-846-1989-4	doi:10.2861/783664	QA-06-17-162-EN-C
PDF	ISBN 978-92-846-1990-0	doi:10.2861/987958	QA-06-17-162-EN-N

This document is available on the internet at:  
[http://www.europarl.europa.eu/RegData/etudes/STUD/2017/602009/IPOL\\_STU\(2017\)602009\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/602009/IPOL_STU(2017)602009_EN.pdf)

### **Please use the following reference to cite this study:**

Matthews, A., 2017, Research for AGRI Committee – Possible transitional arrangements related to agriculture in the light of the future EU - UK relationship: institutional issues, European Parliament, Policy Department for Structural and Cohesion Policies, Brussels

### **Please use the following reference for in-text citations:**

Matthews, A. (2017)

## **DISCLAIMER**

The opinions expressed in this document are the sole responsibility of the author and do not necessarily represent the official position of the European Parliament.

Reproduction and translation for non-commercial purposes are authorized, provided the source is acknowledged and the publisher is given prior notice and sent a copy.

**DIRECTORATE-GENERAL FOR INTERNAL POLICIES**  
**Policy Department for Structural and Cohesion Policies**

**AGRICULTURE AND RURAL DEVELOPMENT**

# **Research for AGRI Committee - Possible transitional arrangements related to agriculture in the light of the future EU - UK relationship: institutional issues**

## **STUDY**

### **Abstract**

There is the potential for severe disruption of agri-food trade between the UK and the EU27 as the UK prepares to leave the EU. This study reviews the additional trade costs that might arise and how they might be avoided under alternative future trade arrangements. The role of a transitional period in order to avoid a 'cliff-edge' for trade is examined. Options under the Common Agricultural Policy to address the negative consequences of Brexit for agricultural markets are discussed.

## **BRIEF PROFESSIONAL DESCRIPTION**

Alan Matthews is Professor Emeritus of European Agricultural Policy at Trinity College, Dublin, Ireland. His research interests include the areas of agricultural policy and modelling, applied trade policy and WTO rules affecting agriculture and food security. He has published widely and has undertaken commissioned studies for the European Commission, the European Parliament, the Food and Agricultural Organisation of the United Nations and the OECD in these areas. He is a past-President of the European Association of Agricultural Economists and is currently a member of Ireland's Climate Change Advisory Council. He is a regular contributor to the blog *capreform.eu* on issues relating to the EU's Common Agricultural Policy.

# CONTENTS

<b>LIST OF ABBREVIATIONS</b>	<b>5</b>
<b>LIST OF TABLES</b>	<b>7</b>
<b>LIST OF FIGURES</b>	<b>7</b>
<b>EXECUTIVE SUMMARY</b>	<b>9</b>
<b>1. INTRODUCTION</b>	<b>13</b>
1.1. Purpose of the study	13
1.2. Article 50	16
1.3. The UK position on the long-term trade relationship	16
1.4. The EU27 position on the long-term trade relationship	19
<b>2. THE ISSUES AT STAKE FOR AGRI-FOOD TRADE</b>	<b>23</b>
2.1. Trade terms in the 'no deal' scenario	24
2.2. Specific issues facing Ireland	32
2.3. Trade arrangements to avoid or mitigate trade costs	33
2.4. Models of the future relationship	43
2.5. The WTO dimension of UK withdrawal	50
<b>3. AVOIDING A 'CLIFF EDGE' FOR AGRI-FOOD TRADE</b>	<b>55</b>
3.1. The need for transition arrangements	56
3.2. Views of the parties on transition	59
3.3. Extending the date for Brexit beyond 29 March 2019	66
3.4. Extending the EU acquis to a non-member	67
3.5. EFTA/EEA membership as an interim arrangement	69
3.6. A temporary customs union as an interim arrangement	71
3.7. A free trade agreement as an interim arrangement	73
3.8. Rescheduling the phasing of Article 50 negotiations	73
<b>4. PROTECTING AGRICULTURAL INTERESTS FOLLOWING BREXIT</b>	<b>77</b>
4.1. Support in the case of market disturbance	78
4.2. Support for adjustment	80
4.3. Strengthened promotion policy	81
4.4. Improved access to third country markets	83
4.5. TRQs for UK-EU27 trade	84

<b>REFERENCES</b>	<b>87</b>
<b>ANNEX 1. EXAMPLES OF CUSTOMS CLEARANCE COSTS</b>	<b>89</b>



## LIST OF ABBREVIATIONS

<b>ACAA</b>	Agreement on Conformity Assessment and Acceptance of Industrial Products
<b>AEO</b>	Authorised Economic Operator
<b>AEOC</b>	Authorised Economic Operator for customs simplification
<b>AEOS</b>	Authorised Economic Operator for security and safety
<b>AGRI</b>	Agriculture and Rural Development Committee
<b>AGRIFISH</b>	Agricultural and Fisheries Council
<b>AVE</b>	Ad Valorem Equivalent
<b>BCP</b>	Border Control Point
<b>BIP</b>	Border Inspection Point
<b>BTAMS</b>	Bound Total Aggregate Measurement of Support
<b>CAP</b>	Common Agricultural Policy
<b>CDS</b>	Customs Declaration Service
<b>CET</b>	Common External Tariff
<b>CFP</b>	Common Fisheries Policy
<b>CHED</b>	Common Health Entry Document
<b>CITES</b>	Convention on International Trade in Endangered Species of Wild Fauna and Flora
<b>CJEU</b>	Court of Justice of the European Union
<b>DPE</b>	Designated Point of Entry
<b>CETA</b>	EU-Canada Comprehensive Economic and Trade Agreement
<b>CVED</b>	Common Veterinary Entry Document
<b>DCFTA</b>	Deep and Comprehensive Free Trade Area
<b>EAFRD</b>	European Fund for Rural Development
<b>ECMT</b>	European Conference of Ministers for Transport
<b>EEA</b>	European Economic Area
<b>EGF</b>	European Globalisation Fund
<b>EIB</b>	European Investment Bank
<b>EU</b>	European Union
<b>FTA</b>	Free Trade Area
<b>GATT</b>	General Agreement on Tariffs and Trade
<b>HACCP</b>	Hazard Analysis and Critical Control Point
<b>HGV</b>	Heavy Goods Vehicle

<b>HMRC</b>	Her Majesty's Revenue and Customs
<b>IMSOC</b>	Integrated Management System for Official Controls
<b>MFF</b>	Multi-annual Financial Framework
<b>MFN</b>	Most Favoured Nation
<b>MRA</b>	Mutual Recognition Agreement
<b>NAO</b>	National Audit Office
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>PEM</b>	Pan-Euro-Mediterranean preferential rules of origin
<b>PSE</b>	Producer Support Estimate
<b>RDP</b>	Rural Development Programme
<b>ROOs</b>	Rules of Origin
<b>SAD</b>	Single Administrative Document
<b>SPS</b>	Sanitary and Phytosanitary Standards
<b>TARIC</b>	Integrated Tariff of the European Union
<b>TEU</b>	Treaty of the European Union
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>TIR</b>	Transports Internationaux Routiers, International Road Transport
<b>TRQ</b>	Tariff Rate Quota
<b>UCC</b>	Union Customs Code
<b>UK</b>	United Kingdom
<b>WTO</b>	World Trade Organisation

## LIST OF TABLES

<b>Table 1</b>	
Timeline of events around the UK withdrawal from the EU	<b>22</b>
<b>Table 2</b>	
EU's applied MFN tariff summary, 2016	<b>25</b>
<b>Table 3</b>	
Examples of customs and other controls in international trade	<b>28</b>
<b>Table 4</b>	
Topics and actions for support in the 2017 Work Programme for information and promotion measures for agricultural products	<b>82</b>

## LIST OF FIGURES

<b>Figure 1</b>	
Impact of UK referendum result on value of sterling	<b>15</b>
<b>Figure 2</b>	
Gap between EU and world market prices	<b>27</b>
<b>Figure 3</b>	
Alternative post-Brexit trade scenarios beyond WTO terms	<b>34</b>
<b>Figure 4</b>	
Main elements of different EU trade arrangements	<b>43</b>
<b>Figure 5</b>	
Annual lorry traffic and EU share of trade for selected major UK ports in 2015	<b>58</b>



## **EXECUTIVE SUMMARY**

### **Introduction**

On 29 March 2017 the United Kingdom (UK) notified the President of the European Council of its intention to withdraw from the European Union (EU). Article 50 of the Treaty of the European Union sets out the procedures to be followed when a Member State wishes to leave the EU.

The UK has set out its ambition for a bold and ambitious free trade agreement with the EU, while respecting its four 'red lines' of ending the jurisdiction of the European Court of Justice, controlling immigration from the EU, ending most contributions to the EU budget, and being able to strike trade deals with third countries.

The EU has set out its position through the European Council (Art. 50) guidelines, the Council's negotiating directives and resolutions of the European Parliament, emphasising that a non-member of the Union, that does not live up to the same obligations as a member, cannot have the same rights and enjoy the same benefits as a member. It also set out a phased approach to the withdrawal negotiations in which progress must be made on three key withdrawal issues before it will give a mandate to move to the second phase of negotiations on the future relationship.

Withdrawal negotiations began on 22 June 2017 but the European Council (Art. 50) decided on 20 October 2017 that insufficient progress had been made in the first phase of the negotiations to justify preparing a mandate for the second phase. However, it invited the Council (Art. 50) and the Union negotiator to start internal preparatory discussions in relation to the framework for the future relationship and on transitional arrangements, with a view to being able to move to the second phase of the negotiations in December 2017.

### **The issues at stake for agri-food trade**

In the absence of a future trade agreement tariffs would be re-imposed on bilateral UK-EU27 trade. The tariffs applicable to UK exports would be those in the EU's Common External Tariff (CET). The tariffs applicable to EU exports are not yet known, but at least initially may be kept at the CET level.

Even apart from the imposition of tariffs, the UK would be a less attractive market for EU exporters because exporters would lose the preferential trade transfers they currently earn on sales to the UK market. These represent the difference between the price paid by UK consumers for EU27 exports behind the EU tariff wall and the price EU exporters would receive if the products were sold instead at world market prices.

Customs clearance costs would be an additional cost for firms exporting or importing from the UK. These costs would be increased for certain agricultural and food products because of the need for additional border checks to ensure compliance with EU27 food safety, plant and animal health regulations.

In the absence of an agreement covering road transport services, hauliers travelling between the UK and EU27 could face additional costs because of the need to secure licences with individual Member States.

Ireland faces particular issues in the event of a 'hard' Brexit because of the importance of the UK land bridge for the transport of agri-food products to and from the EU27, and because transport from one location in Ireland to another may in some instances need to travel through Northern Ireland.

A range of potential trade arrangements are available which address one or more of these potential trade costs. However, the current ability to trade frictionlessly between the UK and the EU27 is due to the UK's EU membership and can only be maintained if the UK were to remain a member of the EU.

There are a number of 'models' for the future long-term trade relationship between the UK and the EU27. These include the 'Canada', 'Turkey', 'Ukraine', 'Swiss' and 'Norway' models. The UK government has ruled out the Canada, Turkey and Norway models, but it has not defined where it might like to end up between the Ukraine and Swiss models. The EU27, for its part, is unlikely to make the Swiss model available because of its institutional deficiencies, though its attitude to the Ukraine model has not been clarified. The Ukraine model is implemented through an Association Agreement with the EU which has been specifically endorsed by the European Parliament.

### **Avoiding a 'cliff-edge' for agri-food trade**

Even if the UK and the EU27 were to conclude an agreement on the withdrawal conditions and on the nature of their future relationship by 29 March 2019, traders face a 'cliff-edge' situation because of the lack of preparedness of customs administrations and other relevant authorities on both sides to manage border controls; the lack of knowledge on the part of the large number of new businesses that will face the need to seek customs clearance for their exports and imports; and the almost certain congestion at major ports of entry and exit because of the extra time required for these controls.

Both parties have indicated a willingness to consider a transition period. In this study, the purpose of a transitional period would be to maintain the trade *status quo* between the UK and the EU27 until the arrangements for the future trade relationship were put in place. Both parties have indicated their 'red lines' regarding matters on which they would insist during a transition period. There is little clarity, however, as to how extensive such a transition arrangement might be and what laws and regulations it would have to cover to ensure that trade, including trade in agri-food products, would continue on the same basis as it does today.

One option is that the UK would remain a Member State of the EU for a further time-limited period, either by including a withdrawal date later than 29 March 2019 in the withdrawal agreement or by unanimously agreeing to extend the Art.50 TEU deadline for the negotiations.

Another option is that the UK would agree to bind itself to following the relevant Union *acquis* as a non-Member State for a time-limited period after 29 March 2019 while also joining a temporary customs union for this period. Negotiating what would effectively be a complete if temporary trade agreement at the same time as the parties are negotiating a withdrawal agreement and the framework for their future relations may be more than can be achieved in the remaining time available.

Fall-back positions which would avoid some but not all of the additional trade costs, such as a temporary customs union on its own or just a free trade agreement in goods, should be considered if it proves impossible to reach an agreement in which the UK remains bound by the relevant Union *acquis* in the time available.

Following the mandate at the October 2017 meeting of the European Council (Art.50), the General Council (Art. 50) and the Union negotiator should seek to rapidly progress preparatory work particularly on models of transitional arrangements. This should help to clarify what might be the minimum requirements to ensure that trade can continue to take place with the UK as it does today for the duration of the transition period, and what the appropriate balance of rights and obligations might be during this period. Specific issues for consideration will

include whether UK membership of the CAP and the Common Fisheries Policy (CFP) will be deemed necessary as a prerequisite for continued free trade in agricultural and fishery products during the transition period, as well as arrangements to ensure the continued protection of Geographical Indications in the UK.

### **Protecting agricultural interests following Brexit**

The EU has gained considerable experience in recent years in the management of adverse shocks to agricultural markets which can be drawn upon in designing possible responses to a negative Brexit shock. They include the use of safety-net intervention; targeted aid; mobilisation of the crisis reserve; advancing direct payments; making use of the income stabilisation tool; permitting flexibility in state aids; and facilitating supply management.

Farmers and food businesses in the EU27 will need such support to adjust to the structural consequences of a 'hard' Brexit. This might include the provision of adjustment assistance; greater use of financial instruments; a strengthened promotion policy; and improved access to third country markets.

A specific market access concern is how UK TRQs will make provision for traditional EU27 export flows, and vice versa for EU27 TRQs. Merely splitting the EU TRQs does not go far enough to protect the interests of EU producers to access the UK market in the event of a 'hard' Brexit.





# 1. INTRODUCTION

## KEY FINDINGS

- On 29 March 2017 **the UK notified the President of the European Council of its intention to withdraw from the European Union (EU).**
- Article 50 of the Treaty of the European Union sets out the procedures to be followed when a Member State wishes to leave the EU.
- The UK has set out **its ambition for a bold and ambitious free trade agreement** with the EU, while respecting **its four 'red lines'** of ending the jurisdiction of the European Court of Justice, controlling immigration from the EU, ending most contributions to the EU budget, and being able to strike trade deals with third countries.
- The EU has set out its position through the European Council (Art. 50) guidelines, the Council's negotiating directives and resolutions of the European Parliament, **emphasising that a non-member of the Union, that does not live up to the same obligations as a member, cannot have the same rights and enjoy the same benefits as a member.** It also set out a **phased approach** to the withdrawal negotiations in which progress must be made on three key withdrawal issues before it will give a mandate to move to the second phase of negotiations on the future relationship.
- Withdrawal negotiations began on 22 June 2017 but the European Council (Art. 50) decided on 20 October 2017 that **insufficient progress had been made** in the first phase of the negotiations to justify preparing a mandate for the second phase. However, it invited the Council (Art. 50) and the Union negotiator **to start internal preparatory discussions** in relation to the framework for the future relationship and on transitional arrangements, with a view to being able to move to the second phase of the negotiations in December 2017.

The United Kingdom (UK) Prime Minister announced in a letter to the European Council President Donald Tusk dated 29 March 2017 that **the UK intended to withdraw from the European Union (EU)** in accordance with Article 50(2) of the Treaty on European Union (TEU) (May 2017b).<sup>1</sup> This letter followed a referendum among the UK electorate on 23 June 2016 on the question "Should the United Kingdom remain a member of the European Union or leave the European Union?" with the possible responses being either "Remain a member of the European Union" or "Leave the European Union". The Leave response was supported by a narrow majority of 52% compared to 48% for Remain. The Prime Minister's letter did not specify a specific date for this withdrawal. However, in her speech delivered in Florence on 22 September 2017 she made clear that "*The United Kingdom will cease to be a member of the European Union on 29th March 2019*" (May 2017c).

## 1.1. Purpose of the study

This decision of the UK to exit the EU (Brexit) threatens to unwind over four decades of increasing inter-dependence, including trade inter-dependence, within the framework of the EU. The extent of the possible disruption to existing trade flows will depend, in part, on the nature of any future trade relationship that the UK and the EU27 may agree. Negotiating this relationship is likely to take time and may not be in place before 29 March 2019 which is the

<sup>1</sup> Throughout this report, the term European Union or EU is used to refer to the existing Union of 28 Member States. The term EU27 is used to refer to the Union following the departure of the United Kingdom.

end of the two-year time limit specified in Art 50 TEU when withdrawal must take place if there is no agreement on an alternative date.<sup>2</sup> This has **given rise to discussion about a possible transition period, or implementation period, which would preserve much of the existing Union rules which govern internal trade** while applying them to a non-EU state until the future relationship is ready to take effect. Various legal scholars have put forward ideas on how this might be achieved.

There remains the possibility that the UK and the EU27 will fail to conclude a withdrawal agreement within the two-year time limit specified in Article 50 TEU. The result would be a **disorderly withdrawal in which future trade relations can best be described as a 'hard' Brexit**. The withdrawal of the UK from the EU without a trade arrangement in place would lead to huge disruption to UK-EU27 agri-food trade. In 2016, the EU27 exported agri-food products worth €40.3 billion to the UK, while the EU27 imported agri-food products to the value of €16.8 billion from the UK.<sup>3</sup> Within the single market and Customs Union,<sup>4</sup> this trade takes place seamlessly and without frictions; for example, it allows just-in-time deliveries to supermarkets or to plants for further processing in either party from suppliers in the other party. This trade would be utterly disrupted by a 'hard' Brexit, for three reasons.

The first reason is that **additional trade costs** would apply under a 'hard' Brexit scenario which are described in detail in Chapter 2. They include the levying of tariffs, the costs of customs clearance, and the costs of demonstrating compliance with the other party's regulatory standards. These costs would bear particularly heavily on the agri-food sector because of the generally higher level of agricultural tariffs and the greater need for physical checks when food, and particularly animal products, cross frontiers.

The second reason is **the lack of preparedness and the potential for huge disruption** on both sides of the UK and EU27 border in a 'hard' Brexit scenario. This scenario would require the updating of customs computer systems, the provision of parking space at ports to accommodate the additional delays expected when clearing customs, expansion of the laboratory and other facilities needed at entry points to check goods for compliance with regulatory standards, the recruitment of additional staff to cope with the expected dramatic increase in the workload of border control officials once UK-EU27 trade became 'external' trade, and considerable investment in training the hundreds of thousands of new businesses which would now be involved in extra-EU trade. While businesses would learn in time to cope with many of the additional trade costs that would follow from UK exit from the EU, the requirement to adapt to sudden changes as well as the lack of readiness of the official infrastructure in the event of a 'hard' Brexit would add to short-run disruption. Both sides will lose in this outcome, although the largest costs on the EU27 side will be borne by those Member States with the greatest exposure to UK trade.

The third reason is that the economic disruption that would result from a 'hard' Brexit would be likely to lead to **a further significant depreciation of the pound sterling relative to the euro and other currencies used in the EU27**. When the UK referendum result was announced on 23 June 2016, it led to an immediate 10% drop in the value of sterling which has not been reversed since then (Figure 1). There would be a strong possibility that markets would react in the same way faced with the disruptive impact of a 'hard' Brexit. A further drop in the value of sterling would make EU27 exporters to the UK market even less competitive, on top of the additional trade costs including tariffs they would face. A lower value of sterling

---

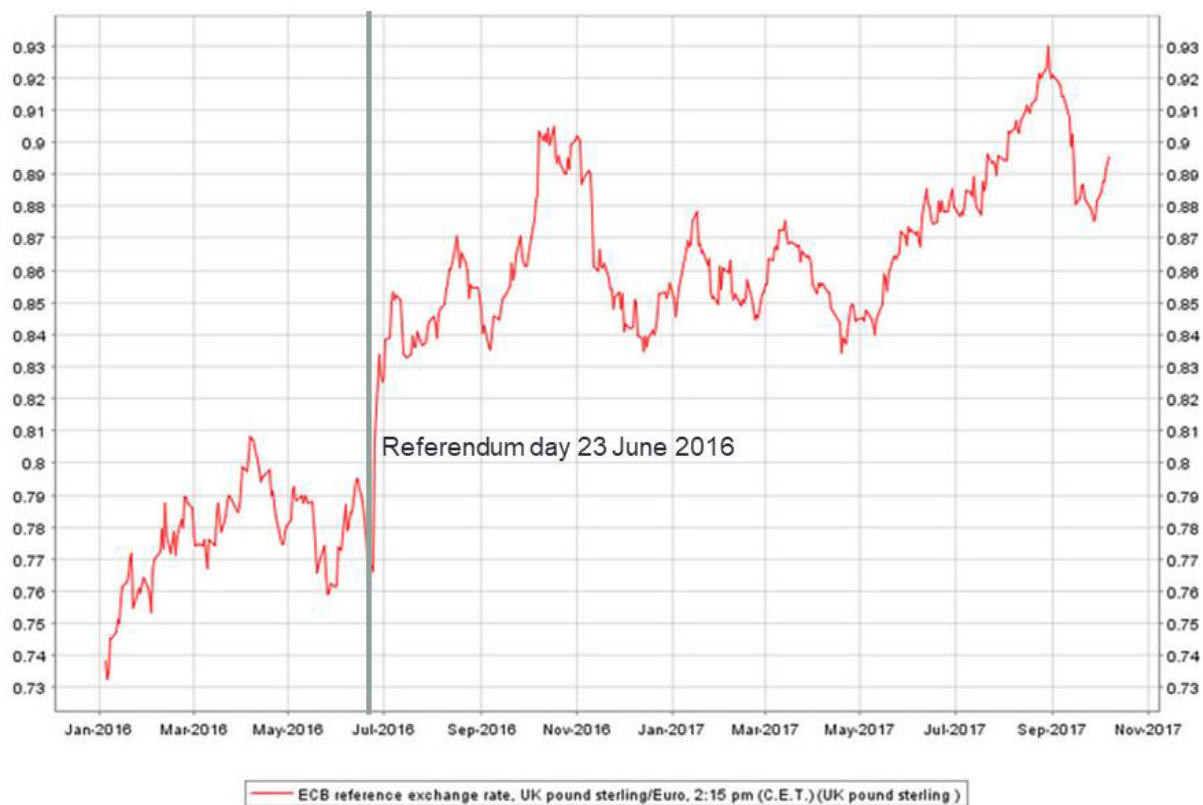
<sup>2</sup> The Council negotiating directives specify the withdrawal date as at the latest 30 March 2019 at 00:00 (Brussels time). The withdrawal date is sometimes referred to as Brexit Day in this study.

<sup>3</sup> Agri-food trade is defined as trade in the Harmonised System Chapters 01-24, source Eurostat with the EU27 as reporter.

<sup>4</sup> For clarity, we refer to the EU Customs Union throughout this paper with initial capital letters, and customs unions generally in lower case.

would reduce the price of UK-sourced food for EU27 importers, but this would only partly offset the higher trade costs they would pay including tariffs in the event of a 'hard' Brexit.

**Figure 1: Impact of UK referendum result on value of sterling**



**Source:** European Central Bank

Against this background, this study has three objectives which are developed in the following three chapters. **The overall aim is to provide AGRI Committee members with an overview of the institutional choices that could help to avoid the negative outcomes of a 'hard' Brexit for the agri-food sector, while also exploring the instruments available under the Common Agricultural Policy (CAP) to mitigate the adverse impacts that may occur as a result of Brexit.**

**Chapter 2 surveys the trade costs that agri-food traders selling into or importing from the UK might face in the event of a 'hard' Brexit.** It emphasises how these additional trade costs would bear most heavily on agri-food trade. It also highlights the likelihood of disruption if the UK leaves the EU by 29 March 2019 without an arrangement which largely replicates the existing rules for internal market EU trade. It investigates how different 'ideal types' of trade arrangements might help to avoid some or all of these trade costs. It compares these trade arrangements with examples of current EU trade agreements with third countries.

What is increasingly clear is that, even if the withdrawal agreement is successfully concluded prior to 29 March 2019 and depending on the nature of the future trade relationship, not all systems will be in place to facilitate the transition from the current rules applying to UK-EU27 trade to the rules that will apply under the future trade relationship. Again, this is particularly the case for agri-food trade. **Chapter 3 sets out the views of both parties on transition arrangements and examines how agri-food trade could be affected by different types of transition arrangement.**

Any future trade relationship will introduce additional frictions and costs affecting trade flows between the UK and the EU27 compared to the current situation under the Union *acquis*. There is also the possibility that the withdrawal negotiations will not be successfully concluded, leading to a disorderly Brexit on 29 March 2019. Because the agri-food sector is uniquely exposed to these higher trade costs and to the negative shock of a disorderly Brexit, it is prudent to consider how ready the Union is to protect farmers from the immediate impacts of disruption and to assist them to adjust to the new market conditions that will prevail after Brexit. **Chapter 4 examines the CAP measures able to support EU farmers and to strengthen agri-export incentives after a 'hard' Brexit.**

## 1.2. Article 50

The procedure for a Member State to leave the European Union is governed by Article 50 in the Treaty of European Union. Relevant extracts include:

*"2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.*

*3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period."*

There are three things to note about this Article:

- It sets a **time limit of two years** following the receipt of the notification to withdraw following which the Treaties would no longer apply to the withdrawing state in the absence of a withdrawal agreement. This period could be shorter if the withdrawal agreement entered into force earlier, or it could be longer if the withdrawal agreement entered into force later, or if there were unanimous agreement by the European Council and the Member State concerned to extend this time limit.
- The withdrawal agreement is **approved by a qualified majority** in the European Council (at least 72% of participating Member States (20 out of 27) representing at least 65% of the population of the 27 remaining Member States voting in favour), **having first received the consent of the European Parliament.**
- The withdrawal agreement sets out the arrangements for withdrawal of the Member State concerned, taking account of **the framework for its future relationship** with the Union.

## 1.3. The UK position on the long-term trade relationship

The UK proposal for its future relationship with the EU27 was first set out in the Prime Minister's Lancaster House speech on 17 January 2017 (May 2017a). Its broad outline has remained consistent over time, although critics on the EU side complain that it remains incomplete and imprecise.

In her **Lancaster House speech**, the Prime Minister set out broad long-term objectives, twelve principles for the negotiations, and four red lines. These were elaborated and, in some

cases repeated verbatim, in the UK White Paper *The United Kingdom's exit from and new partnership with the European Union* published in February 2017 (HM Government 2017d).

The UK's broad objectives were defined in the Lancaster House speech as:

*"We will pursue a bold and ambitious free trade agreement with the European Union. This agreement should allow for the freest possible trade in goods and services between Britain and the EU's member states. It should give British companies the maximum freedom to trade with and operate within European markets – and let European businesses do the same in Britain.*

*But I want to be clear. What I am proposing cannot mean membership of the single market. European leaders have said many times that membership means accepting the '4 freedoms' of goods, capital, services and people. And being out of the EU but a member of the single market would mean complying with the EU's rules and regulations that implement those freedoms, without having a vote on what those rules and regulations are. It would mean accepting a role for the European Court of Justice that would see it still having direct legal authority in our country.*

*That agreement may take in elements of current single market arrangements in certain areas – on the export of cars and lorries for example, or the freedom to provide financial services across national borders – as it makes no sense to start again from scratch when Britain and the remaining Member States have adhered to the same rules for so many years.*

...

*A Global Britain must be free to strike trade agreements with countries from outside the European Union too.*

*That means I do not want Britain to be part of the Common Commercial Policy and I do not want us to be bound by the Common External Tariff. These are the elements of the Customs Union that prevent us from striking our own comprehensive trade agreements with other countries. But I do want us to have a customs agreement with the EU.*

*Whether that means we must reach a completely new customs agreement, become an associate member of the Customs Union in some way, or remain a signatory to some elements of it, I hold no preconceived position. I have an open mind on how we do it. It is not the means that matter, but the ends.*

The key messages in this speech were that the UK would leave the single market, it would leave the Custom Union, but it wished to pursue a "*bold and ambitious*" free trade agreement and it held open the possibility that the UK might opt into specific elements of the EU single market. Any such agreement would have to observe the four 'red lines' mentioned in the speech:

- .. we will **take back control of our laws** and **bring an end to the jurisdiction of the European Court of Justice** in Britain.
- .. we will ensure **we can control immigration to Britain from Europe**. We will design our immigration system to ensure that we are able to control the numbers of people who come here from the EU. In future, therefore, the Free Movement Directive will no longer apply and the migration of EU nationals will be subject to UK law.
- .. **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.

- .. **[we] must be free to strike trade agreements with countries from outside the European Union** too.

Also of relevance to future trade arrangements is the **UK's position on the border between Northern Ireland and Ireland**. This would be the only land border between the UK and the EU27 after Brexit, as the Prime Minister recalled in her Article 50 letter. This letter contained the following commitment:

*"We want to avoid a return to a hard border between our two countries, to be able to maintain the Common Travel Area between us, and to make sure that the UK's withdrawal from the EU does not harm the Republic of Ireland. We also have an important responsibility to make sure that nothing is done to jeopardise the peace process in Northern Ireland, and to continue to uphold the Belfast Agreement."*

In her **Florence speech**, the Prime Minister reiterated that the UK will no longer be a member of the EU single market or its Customs Union. She recognised that *"the single market is built on a balance of rights and obligations"* and identified as a joint task the need *"to find a new framework that allows for a close economic partnership but holds those rights and obligations in a new and different balance"*.

She expounded on the nature of the future trade relationship in the following terms:

*"One way of approaching this question is to put forward a stark and unimaginative choice between two models: either something based on European Economic Area membership; or a traditional Free Trade Agreement, such as that the EU has recently negotiated with Canada.*

*I don't believe either of these options would be best for the UK or best for the European Union.*

*European Economic Area membership would mean the UK having to adopt at home - automatically and in their entirety - new EU rules. Rules over which, in future, we will have little influence and no vote.*

*Such a loss of democratic control could not work for the British people. I fear it would inevitably lead to friction and then a damaging re-opening of the nature of our relationship in the near future: the very last thing that anyone on either side of the Channel wants.*

*As for a Canadian style free trade agreement, we should recognise that this is the most advanced free trade agreement the EU has yet concluded and a breakthrough in trade between Canada and the EU.*

*But compared with what exists between Britain and the EU today, it would nevertheless represent such a restriction on our mutual market access that it would benefit neither of our economies.*

*Not only that, it would start from the false premise that there is no pre-existing regulatory relationship between us. And precedent suggests that it could take years to negotiate."*



On the crucial issue of **how to settle disputes**, for example, over regulatory issues, the Prime Minister commented:

*"To make this partnership work, because disagreements inevitably arise, we will need a strong and appropriate dispute resolution mechanism.*

*It is, of course, vital that any agreement reached – its specific terms and the principles on which it is based – are interpreted in the same way by the European Union and the United Kingdom and we want to discuss how we do that.*

*This could not mean the European Court of Justice – or indeed UK courts – being the arbiter of disputes about the implementation of the agreement between the UK and the EU however.*

*It wouldn't be right for one party's court to have jurisdiction over the other. But I am confident we can find an appropriate mechanism for resolving disputes."*

The speech was more notable for what it ruled out than what it proposed. The Prime Minister ruled out both a model based on the European Economic Area (EEA) and a comprehensive free trade agreement such as the recent agreement with Canada. This implies the UK would like a deal somewhere in between these models. But where in between? She also noted that any trade agreement should implement the joint commitment *"that we will not accept any physical infrastructure at the border"* between Northern Ireland and Ireland. However, **there remains a lack of precision with regard to the nature of the long-term trade relationship with the EU27 that the UK would like**, and how it would avoid physical controls at the border on the island of Ireland.

#### **1.4. The EU27 position on the long-term trade relationship**

The **European Parliament adopted a resolution on 5 April 2017** on negotiations with the United Kingdom following its notification that it intended to withdraw from the European Union. It noted that the UK Prime Minister's letter triggering the Article 50 withdrawal process indicated that the UK's future relationship with the EU *"will not include membership of the internal market or membership of the customs union"* (European Parliament 2017).

*"Whereas, nevertheless, continued membership of the United Kingdom of the internal market, the European Economic Area and/or the customs union would have been the optimal solution for both the United Kingdom and the EU-27; whereas this is not possible as long as the United Kingdom Government maintains its objections to the four freedoms and to the jurisdiction of the Court of Justice of the European Union, refuses to make a general contribution to the Union budget, and wants to conduct its own trade policy."*

The Parliament resolution called for the Article 50 negotiations to begin as soon as possible, and addressed fair treatment for EU27 and UK citizens who will find themselves living in the other party after Brexit, a full settlement of financial obligations, and the need to mitigate the effects of the United Kingdom's withdrawal on the border between Ireland and Northern Ireland. It also set down **some conditions of its own regarding the nature of the future relationship**:

*"Hopes that under these conditions the European Union and the United Kingdom will establish a future relationship that is fair, as close as possible and balanced in terms of rights and obligations; regrets the decision by the United Kingdom Government not to participate in the internal market, the European Economic Area or the customs union; considers that a state withdrawing from the Union cannot enjoy similar benefits to those*

*enjoyed by a Union Member State, and therefore announces that it will not consent to any agreement that would contradict this;*

*Believes that the future relationship between the European Union and the United Kingdom should be balanced and comprehensive and should serve the interests of the citizens of both parties, and will therefore need sufficient time to be negotiated; stresses that it should cover areas of common interest while respecting the integrity of the European Union's legal order and the fundamental principles and values of the Union, including the integrity of the internal market as well as the decision-making capacity and autonomy of the Union; notes that Article 8 of the Treaty on European Union, as well as Article 217 of the Treaty on the Functioning of the European Union, which provides for 'establishing an association involving reciprocal rights and obligations, common action and special procedures', could provide an appropriate framework for such a future relationship;*

*Stresses that any future agreement between the European Union and the United Kingdom is conditional on the United Kingdom's continued adherence to the standards provided by international obligations, including human rights, and the Union's legislation and policies, in, among others, the fields of the environment, climate change, the fight against tax evasion and avoidance, fair competition, trade and social rights, especially safeguards against social dumping;*

*Opposes any future agreement between the European Union and the United Kingdom that would contain piecemeal or sectorial provisions, including with respect to financial services, providing United Kingdom-based undertakings with preferential access to the internal market and/or the customs union; underlines that after its withdrawal the United Kingdom will fall under the third-country regime provided for in Union legislation."*

There are four messages which can be taken from these paragraphs including three which might be interpreted as the Parliament's red lines:

- Points to an **association agreement** (under Article 217 of the Treaty on the Functioning of the European Union, TFEU) as an appropriate framework for the future relationship.
- Underlines that a state withdrawing from the Union **cannot enjoy similar benefits to those enjoyed by a Union Member State**.<sup>5</sup>
- Wants any future trade agreement **to bind the UK to respecting international norms and standards** in a range of non-trade policy areas such as environment, climate change, the fight against tax evasion and avoidance, fair competition, and trade and social rights.
- **Opposes piecemeal or sectorial provisions** that would give UK businesses preferential access to the single market or customs union.

The **European Council (Art. 50)** issued its guidelines for the negotiations on 29 April 2017 emphasising the need for a **phased approach** "giving priority to an orderly

---

<sup>5</sup> Note that this phrase goes back to the Interlaken Principles which were announced on May 20, 1987 by Willy de Clercq, then EC Commissioner for External Relations, at a ministerial meeting between the then European Communities (EC) and the European Free Trade Association. They set the principles which the EC would follow in its trade and economic relations with third countries. The Interlaken Principles make clear that the EU will a) prioritise internal integration over relations with non-member states and b) the EU will always safeguard its own decision-making autonomy. The Principles declare that any relationship with the EU must be based on a balance of benefits and obligations. Non-member states will not be able to choose what aspects of EU integration they particularly favour. See Phinnemore, D., "[Why the UK can't just pick and choose from the EU menu after Brexit](#)", The Conversation, 14 September 2016.



*withdrawal*".<sup>6</sup> The guidelines were intended to define the framework for negotiations under Article 50 TEU and set out the overall positions and principles that the Union will pursue throughout the negotiation. It recognised that the guidelines would need to be updated over time. The first phase of negotiations would settle the disentanglement of the UK from the EU and from all the rights and obligations the UK derives from commitments undertaken as a Member State. The withdrawal agreement would address, in particular, the UK's long-term financial commitments to the EU as well as reciprocal rights for British and EU citizens.

It reiterated its wish to have the UK as a close partner in the future, and noted that Article 50 TEU requires taking account of the framework for its future relationship with the Union in the arrangements for withdrawal. It therefore proposed a second phase of negotiations which would identify an overall understanding of the framework for this future relationship. *"We stand ready to engage in preliminary and preparatory discussions to this end in the context of negotiations under Article 50 TEU, as soon as the European Council decides that sufficient progress has been made in the first phase towards reaching a satisfactory agreement on the arrangements for an orderly withdrawal"*.

The European Council (Art. 50) guidelines also set down some markers for this future relationship which closely resemble those identified by the European Parliament in its resolution of 5 April 2017. In summary:

- Preserving the integrity of the Single Market excludes participation based on a sector-by-sector approach.
- A non-member of the Union, that does not live up to the same obligations as a member, cannot have the same rights and enjoy the same benefits as a member.
- [A future trade agreement] must ensure a level playing field, notably in terms of competition and state aid, and in this regard encompass safeguards against unfair competitive advantages through, inter alia, tax, social, environmental and regulatory measures and practices.
- In view of the unique circumstances on the island of Ireland, flexible and imaginative solutions will be required, including with the aim of avoiding a hard border, while respecting the integrity of the Union legal order.

**On 22 May 2017 the Council adopted a set of negotiating directives** (Council of the European Union 2017). These cover only the first phase of the negotiations and subsequent sets of negotiating directives are envisaged to address other issues in the negotiations.

On 20 October 2017, the European Council (Art.50) met to discuss the progress of the negotiations. It had been anticipated that, if sufficient progress had been achieved in the negotiations to that date, that European Council meeting might agree to move to the second phase, keeping in mind the principle that nothing is agreed until everything is agreed. The European Council noted that progress had been made on some of the issues in the first phase of the negotiations but concluded that, at this time, **insufficient progress had been made in the first phase of the negotiations to move on to the second**.<sup>7</sup> Building on the progress made, it called for:

*"... work to continue with a view to consolidating the convergence achieved and pursuing negotiations in order to be able to move to the second phase of the negotiations as soon as possible."*

---

<sup>6</sup> ["European Council \(Article 50\) guidelines on Brexit negotiations"](#), 29 April 2017.

<sup>7</sup> ["European Council \(Art. 50\) conclusions"](#), 20 October 2017.

*At its next session in December, the European Council will reassess the state of progress in the negotiations with a view to determining whether sufficient progress has been achieved on each of the three above issues. If so, it will adopt additional guidelines in relation to the framework for the future relationship and on possible transitional arrangements which are in the interest of the Union and comply with the conditions and core principles of the guidelines of 29 April 2017. Against this background, the European Council invites the Council (Art. 50) together with the Union negotiator to start internal preparatory discussions”.*

In reporting on the European Council outcome, President Donald Tusk noted that:<sup>8</sup>

*“Today the Council has agreed to start internal preparatory discussions in relation to the framework for the future relationship and on transitional arrangements. It is clear that this would not be possible without the new momentum given by the Florence speech of Prime Minister May. I would like to reassure our British friends that in our internal work we will take account of proposals presented there. So the negotiations go on, and we will continue to approach them positively and constructively. And as we are all working actively on a deal, I hope we will be able to move to the second phase of our talks in December”.*

**Table 1: Timeline of events around the UK withdrawal from the EU**

DATE	EVENT
23 June 2016	The UK votes to leave the EU
29 March 2017	UK invokes Article 50
5 April 2017	European Parliament adopts resolution on the UK’s withdrawal from the EU
29 April 2017	European Council adopts its guidelines for the Brexit negotiations
22 May 2017	EU General Affairs Council authorises opening of negotiations with the UK
8 June 2017	UK General Election
19 June 2017	Negotiations between the UK and the EU begin
20 Oct 2017	European Council (Article 50) Summit
14-15 Dec 2017	European Council Summit
22-23 Mar 2018	European Council Summit
28-29 June 2018	European Council Summit
Oct 2018	European Council Summit
Dec 2018	European Council Summit
29 Mar 2019	Deadline for UK withdrawal unless an alternative date is agreed
May 2019	European Parliament elections
October 2019	New Commission takes up office

<sup>8</sup> [“Remarks by President Donald Tusk on the European Council meetings and the Leaders' Agenda”](#), 20 October 2017

## 2. THE ISSUES AT STAKE FOR AGRI-FOOD TRADE

### KEY FINDINGS

- In the absence of a trade agreement **tariffs would be re-imposed on bilateral UK-EU27 trade**. The tariffs applicable to UK exports would be those in the EU's Common External Tariff (CET). The tariffs applicable to EU exports to the UK are not yet known, but at least initially may be kept at the CET level.
- Even apart from the imposition of tariffs, **the UK would be a less attractive market for EU agri-food exporters**, because intra-EU trade gives exporters higher prices than sales to the rest of the world, described as a preferential trade transfer.
- **Customs clearance costs would be an additional cost for firms exporting to or importing from the UK**. These costs are increased for certain agricultural and food products because of the need for additional border checks to ensure compliance with EU food safety, plant and animal health regulations.
- In the absence of an agreement covering road transport services, **hauliers travelling between the UK and EU27 could face additional costs** if there is a need to secure licences with individual Member States.
- **Ireland faces particular issues in the event of a 'hard' Brexit** because of the importance of the UK land bridge for the transport of agri-food products to and from the EU27, and because transport from one location in Ireland to another may in some instances need to travel through Northern Ireland.
- **A range of potential trade arrangements are available which address one or more of these potential trade costs**. However, the current ability to trade frictionlessly between the UK and the EU27 is due to the UK's EU membership and can only be maintained if the UK were to remain a member of the EU.
- There are a number of 'models' for the future long-term trade relationship between the UK and the EU27. These include the 'Canada', 'Turkey', 'Ukraine', 'Swiss' and 'Norway' models. **The UK government has ruled out the Canada, Turkey and Norway models, but it has not defined where it might like to end up between the Ukraine and Swiss models**. The EU27, for its part, is unlikely to make the Swiss model available because of its unsatisfactory institutional nature, though its attitude to the Ukraine model as a template for a future UK partnership has not been clarified. The Ukraine model is implemented through an Association Agreement with the EU which is an arrangement that has been specifically endorsed by the European Parliament.

This chapter defines the meaning of a 'hard' Brexit by examining the way agri-food trade takes place with countries that the EU does not have a trade agreement with but operates under WTO rules. It identifies the additional costs which food traders in the UK and EU27 would face compared to the way trade takes place today. These include tariffs, customs clearance costs, the loss of preferential trade transfers, costs to show compliance with regulatory standards, and higher costs for transport services. It then discusses how different 'ideal types' of trade arrangement might address these costs. The discussion covers customs agreements, free trade areas, customs unions, regulatory cooperation and regulatory unions. The EU has a wide variety of trade agreements with non-member countries which differ in scope and ambition. The extent to which these actual trade agreements deliver the promised reductions in trade costs is evaluated.

## 2.1. Trade terms in the 'no deal' scenario

### 2.1.1. Tariffs

The most obvious consequence of a 'hard' Brexit would be the re-introduction of tariffs on agri-food trade between the UK and the EU27. The EU's tariffs including on agri-food products would be those set out in the Common External Tariff (CET) which can be accessed via TARIC.<sup>9</sup> The UK's tariffs which would apply in the event of a 'hard' Brexit are not yet known. The tariffs the UK could impose ('applied tariffs') would be limited under WTO rules in two ways: (a) they cannot exceed the maximum tariff levels (called 'bound tariffs') contained in the UK's Schedule of Concessions in Goods which has yet to be notified to the WTO, and (b) they cannot discriminate between different import sources (for this reason, these applied tariffs are often referred to as Most Favoured Nation (MFN) tariffs). This means that **the UK would have to apply the same tariffs on products imported from the EU27 as from other countries**, with the important exception of countries with which it has signed a WTO-compatible preferential trade agreement, preferences granted to developing countries under the WTO Enabling Clause or where a specific waiver has been granted.

The UK is a member of the WTO in its own right but its Schedule is currently that notified by the EU. The UK has indicated that it will seek to replicate the bound tariffs in the EU's Schedule of Concessions in Goods when it extracts its own Schedule after Brexit.<sup>10</sup> Under a 'hard Brexit' scenario, it would be at liberty to decide what level of applied tariffs it would wish to apply to EU27 imports, provided these met the two WTO restrictions in the previous paragraph. As mentioned, in the EU27's case, the tariffs that would apply to the UK once it ceased to be an EU member are those set out in the EU's TARIC.

**The UK has not yet clarified what approach it intends to take to its applied tariffs after Brexit.** In its White Paper on future UK trade policy, it stated that *"The Government ... intends to introduce legislation that would allow the UK to operate standalone customs and indirect tax regimes as we withdraw from the EU. This will include the power to set customs duties, tariff rate quotas and preferences, as well as wider tariff-related provisions"* (HM Department of International Trade 2017). However, no indication is given in the White Paper whether the UK intends to change its current tariffs. In the White Paper on the future Customs Bill, the UK government notes that under the new UK standalone customs regime *"The level of this duty would be decided by the government, and set out in secondary legislation before the UK leaves the EU"* (HM Treasury 2017). Again, there is neither a commitment to maintaining current tariffs nor any specific proposal to alter them.

**There have been suggestions that applied tariffs might be reduced** on products not produced in the UK (e.g. citrus fruit) or where imported products are an important raw material for a domestic processing industry (e.g. sugar). The UK might also be tempted to simplify some of the highly complex elements of the current EU applied tariff schedule, such as the Meursing formula which sets tariffs for processed foods and the entry price system for certain fruits and vegetables. Other voices outside government have argued in favour of a more wholesale reduction in applied tariffs as part of the move towards a 'Global Britain' strategy. A reduction in applied tariffs might also be seen as a way to mitigate some of the effects of higher food prices on UK consumers due to the additional trade costs and any further depreciation of sterling in the run-up to Brexit Day (alternatively, it would be open to the UK to unilaterally introduce *erga omnes* tariff rate quotas based on current import quantities to achieve the same objective). In the Trade Policy White Paper, the UK government invited the views of businesses and other stakeholders on, *inter alia*, *"an inclusive and transparent trade policy"* to be

---

<sup>9</sup> TARIC is the integrated [Tariff of the European Union](#), which is a multilingual database in which are integrated all measures relating to EU customs tariff, commercial and agricultural legislation.

<sup>10</sup> UK Department for International Trade, *Preparing for our Future UK Trade Policy*, HMSO, 2017, p. 25.

submitted by early November 2017. At this point in time, **there remains uncertainty about the level of applied tariffs that would face EU27 exporters in the event of a 'hard Brexit' scenario, but it may be reasonable to assume that, at least initially, the UK will apply the same MFN tariffs as it does today under the EU's CET.**

**Table 2: EU's applied MFN tariff summary, 2016**

	Number of lines	Simple average (%)	Tariff range (%)	Standard deviation	Share of duty-free lines (%)	Share of non-ad valorem tariffs (%)
Total	9,414	6.3	0-695.5 <sup>a</sup>	12.1	26.1	10.6
HS 01-24	2,456	14.2	0-695.5 <sup>a</sup>	21.7	15.3	38.3
By WTO category						
WTO agricultural products	2,075	14.1	0-695.5 <sup>a</sup>	23.7	19.1	46.4
Animals and products thereof	351	19.4	0-132.5	21.3	15.1	68.7
Dairy products	151	35.6	2.8-695.5 <sup>a</sup>	65	0	100
Fruit, vegetables, and plants	508	13	0-169.9	13.9	11.8	16.9
Coffee, tea, and cocoa and cocoa preparations	47	11.3	0-18.7	6.7	14.9	51.1
Cereals and preparations	230	14.9	0-76.9	11.9	8.7	80
Oilseeds, fats, oil and their products	174	6	0-103.5	10.4	35.6	6.9
Sugars and confectionery	44	26.8	0-172.7	37.5	4.5	88.6
Beverages, spirits and tobacco	305	12.8	0-76.8	15.9	18	55.4
Cotton	6	0	0-0	0	100	0
Other agricultural products, n.e.s.	259	5.8	0-168.7	16	51	22

**Notes:** <sup>a</sup> The tariff peak was calculated on a tariff line for which imports in 2015 were 0.1 tonnes. The next tariff peak in the dairy sector was 187.2%.

Calculations for averages are based on the national tariff line level (8-digit), excluding in-quota rates. Tariff schedule is based on HS2012. Ad Valorem Equivalents (AVEs) for specific tariffs were estimated based on 2015 import data at the 8-digit tariff from the Eurostat database. If unavailable, the *ad valorem* part is used for compound and mixed rates.

**Source:** WTO, 2017

The scale of tariffs that would apply if the UK were to adopt the current EU CET is shown in Table 2. The highest average tariffs would be faced by EU27 exports of dairy products, sugars and confectionery, and animal products. The highest peak tariffs are also found in these sectors but also in the category 'Other agricultural products n.e.s.'. In defining a 'hard' Brexit, we assume that the UK will continue to apply the EU MFN tariff schedule after Brexit on trade with third countries with which it does not have a Free Trade Agreement (FTA).

### 2.1.2. Loss of preferential trade transfers

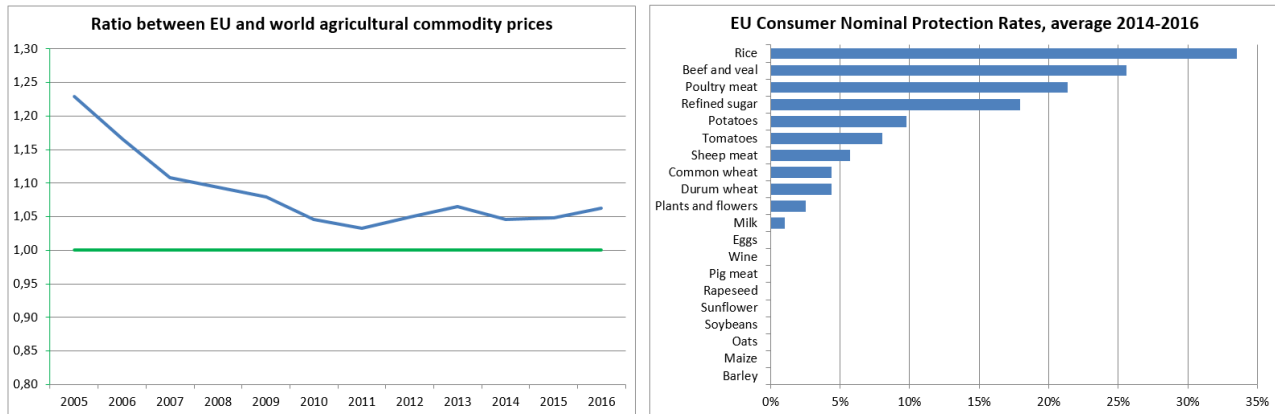
**The loss of preferential trade transfers on EU27 agri-food exports to the UK is not, strictly, a trade cost but it is a consequence of a 'hard' Brexit.** Preferential trade transfers arise on agri-food exports to the UK because the UK currently applies the EU's Common External Tariff. This means that UK consumers pay a (somewhat) higher price for foodstuffs imported from the EU27 than they would have to pay if these products were imported from third countries at world market prices. The Customs Union effectively gives a preference to EU exporters in supplying the UK market which is why this trade transfer is called a preferential one. The difference between the price paid by UK consumers behind the EU tariff wall for EU27 exports and the price EU exporters would receive if the products were sold at world market prices is the measure of the preferential trade transfer accruing to EU27 exporters.

**This preferential trade transfer on exports to the UK market might be eroded in two ways in a 'hard' Brexit.** One way would be if the UK decided to lower or eliminate its MFN tariffs on foodstuffs. In the situation of full elimination, EU27 exporters would not face tariffs on exporting to the UK market, but the UK market would be a less attractive one because the price exporters would receive would be lower than they currently earn on these exports. Maintaining tariff-free trade between the UK and the EU27 after Brexit would not avoid the loss of this preferential trade transfer if the UK decided to lower the level of its tariff protection.

It would also be possible for EU27 exporters to face both higher tariffs *and* the loss of the preferential trade transfer. This would occur if the UK applied MFN tariffs to EU27 exports but entered into free trade agreements with third country competitive agricultural exporters which effectively drove down domestic UK food prices to world market levels. This 'double whammy' would be the consequence of the additional discrimination against EU27 exporters in a situation where the UK raised tariffs against EU27 exporters but lowered them against third country competitive agricultural exporters as a result of free trade agreements with these countries.

**The preferential trade transfer on intra-EU trade has fallen significantly in recent years as EU producer prices have converged on world market prices,** in part due to successive CAP reforms, and in part due to the rise in world market prices over the past decade. The left-hand panel in Figure 2 shows that the average difference between EU producer and world market prices has steadily declined but remains positive in recent years. The right-hand panel shows that the remaining gap is largely the result of continued EU protection for a handful of commodities, in particular beef, sugar, poultrymeat and some vegetables. These are the products where EU27 exports to the UK market continue to earn a preferential trade transfer. A corollary of the fall in the preferential trade transfer earned on exports to the UK in recent years is that the potential fall in UK food prices if it were to lower or eliminate its applied tariffs on imported foodstuffs is now much smaller than might have been estimated based on figures from a decade ago.



**Figure 2: Gap between EU and world market prices**

**Source:** Own calculations based on the OECD Producer Support Estimate (PSE) database. The left-hand panel shows the trend in the producer Nominal Protection Coefficient, the right-hand panel uses the consumer Nominal Protection Coefficient. Note that DG AGRI's Key Performance Indicator 2 suggests that the fall in the ratio between EU and world agricultural commodity prices has been even steeper than shown in the OECD database, from almost 40% in 2005 to 6% in 2016 (DG AGRI 2017). There are several world market reference prices in the meat sector. In calculating the EU PSE, the OECD uses the average price of fresh and chilled imports from Australia. If Brazil's export price were used, the Nominal Protection Coefficient shown for beef would be higher.

### 2.1.3. Customs clearance

Since the Single Market was established on 1 January 1993, goods leaving the UK for elsewhere in the EU, and vice versa, have not been subject to customs checks at frontiers. In the event of a 'hard' Brexit, there will be a requirement for customs clearance. **Customs clearance gives rise to two sources of additional costs: the costs of clearance as such, and the time costs of delay while goods are being cleared.** While it is possible to minimise these costs (a process called 'trade facilitation'), it is not possible to avoid them. We consider each of these costs in turn in the context of UK-EU27 agri-food trade in the event of a 'hard' Brexit.

Customs processes have a number of different objectives (Table 3).

- **Tariffs.** Ensure that any customs duties are paid when goods arrive from third countries and the goods are released either at the border or subsequently (suspended duty), including the administration of tariff preferences, tariff quotas, tariff suspensions, and anti-dumping duties at importation.
- **Tax.** Collect import VAT and any excises when goods are released.
- **Documentation.** Ensure businesses correctly declare goods for import or export and provide the required documentation, including customs declarations, safety and security information and any licenses required or supporting documentation (such as that required to demonstrate the origin of goods, as may be required under a future free trade agreement between the UK and the EU27);
- **Standards.** Ensure that the goods entering comply with relevant safety and environmental standards, with special attention paid to products such as food products, chemicals and electrical equipment.
- **Supply chain security.** Security aspects were first introduced in customs legislation in the aftermath of the terrorist attacks in September 2001 in the United States. In 2005 the World Customs Organisation adopted the SAFE Framework of Standards that introduced security measures for supply chains, including the requirement for advanced cargo data notification, security risk assessment and an industry partnership (Authorised Economic Operator) programme.

**Table 3: Examples of customs and other controls in international trade**

CONTROLS	EXAMPLES OF RELATED ACTIVITY
Revenue collection	Collection of customs duties, excise duties and other indirect taxes; payment of duties and fees; management of bonds and other financial securities
Safety and security	Security and anti-smuggling controls; dangerous goods; vehicle checks; immigration and visa formalities; export licences
Environment and health	Phytosanitary, veterinary and hygiene controls; health and safety measures; CITES controls; ships' waste
Consumer protection	Product testing; labelling; conformity checks with marketing standards (e.g. fruits and vegetables)
Trade policy	Administration and enforcement of quotas, surveillance measures and quantitative restrictions

**Source:** Grainger, 2015

Under the EU Customs Union, customs policy is the exclusive competence of the EU. The EU Customs Union comprises the 28 EU Member States, with Turkey, San Marino and Andorra also having their own customs unions with the EU. All EU Member States are required to operate customs procedures in accordance with EU legislation (the key legislation being the Union Customs Code).

In October 2013, the EU introduced a new Union Customs Code (UCC) (Regulation 952/2013) and Delegated and Implementing Regulations (as amended). This changed a number of the rules and procedures governing the way that customs duties are levied, calculated and collected by EU Member States. Part of these changes is to require that all communications between customs authorities and economic operators must be electronic by December 2020. These changes came into force in 2016, with some transition arrangements operating until the end of 2020.

### HOW CUSTOMS CONTROLS WORK IN THE EU

Carriers must submit an Entry Summary Declaration via an electronic information system before the arrival of the goods in the EU which is a pre-arrival declaration for risk analysis. A similar declaration (Exit Summary Declaration) is required before the departure of goods out of the EU again to facilitate risk analysis.

Traders must lodge a customs declaration form (known as the Single Administrative Document/SAD) for goods imported from and exported to countries outside the EU which requires 54 boxes of information from details of the consignor to the consignee, the product details and tariff details, values, country of origin information, weights and packaging information and terms of trade. Some trusted traders (AEOs) can make simplified declarations at the border and provide a supplementary declaration later.

Traders pay any tax and duty which is due on imports. Payment is due on clearance at the border, unless the trader is part of the duty deferment scheme and pays a single sum each month (this facility is subject to provision of a bank guarantee).

Importers and exporters can be subject to post clearance audit checks by Customs at any time within the following three or four years. Businesses have to keep customs paperwork for this period.

Most goods are cleared for import/export instantly. However, a small sample must be subject to documentary checks by customs (of the order 2-3%) and a smaller sample undergo physical checks as required by the harmonised risk management rules under the UCC (the proportions for certain agri-food products are significantly higher as discussed in the text).



**The level of import checks required at borders can be reduced as the result of pre-authorisation of traders, advance lodgement of declarations and an extensive system of post-clearance checks, including customs audit, which are carried out at traders' premises.** Authorised Economic Operators (AEOs) have a special status in the system and under agreed protocols are allowed to operate greatly simplified customs procedures.<sup>11</sup> While currently AEOs tend to be large firms (which tend to account for the bulk of international trade), the new EU UCC opens the possibility for smaller traders to receive this authorisation. This is scheduled to happen regardless of Brexit, but has obvious implications for how customs procedures might operate with the UK after Brexit.

#### **2.1.4. Regulatory checks on food products**

Specific rules apply to the import of food and especially animal products. According to the General Food Law (Regulation 178/2002), food and feed imported into the EU must comply with food law or conditions recognised as equivalent or, where a specific agreement exists, with requirements contained therein (Article 11 - Imports). The regulations differentiate between food of non-animal origin, food of animal origin, and food containing both processed ingredients of animal origin and ingredients of plant origin (composite foods). Depending on the product and where appropriate, imports are required to meet food hygiene standards; other health requirements (e.g. maximum residue levels for pesticides, the use of food additives, flavourings and enzymes, contaminants); product specific requirements (e.g. concerning quick frozen foodstuffs, foodstuffs for particular nutritional purposes, genetically modified organisms or approved residue control plans); plant health requirements; and animal health requirements.

**Food of non-animal origin.** The EU rules on food hygiene require that all food businesses in third countries after primary production wishing to export to the EU must put in place, implement and maintain a procedure based on HACCP principles.<sup>12</sup> The competent authorities in the Member States must ensure that foodstuffs imported into the EU are submitted to official controls for the purpose of ensuring that the relevant provisions of the food hygiene rules, including the requirement of putting in place, implementing and maintaining HACCP-based procedures, are observed.

Most food of non-animal origin can enter the EU through any entry point and is not subject to specific import conditions, a pre-notification requirement nor certification by the competent authorities of the third country of dispatch. When importing food into the EU responsibility rests with the importer to ensure compliance with the relevant requirements of EU food law or with conditions recognised as 'equivalent' by the EU. Nonetheless, **some food of non-animal origin may be submitted to controls in accordance with a control plan drawn up by the Commission in the light of potential risks.** Such controls may be at the point of entry, the point of release for free circulation, the importer's premises, retail outlets etc. The Commission has established a list of food of non-animal origin that, on the basis of known or emerging risks, must be subjected to an increased level of official controls when entering the EU.

---

<sup>11</sup> The EU Authorised Economic Operator (AEO) system permits qualifying companies to undergo streamlined customs procedures under the Union Customs Code. It applies to companies authorised for customs simplification (AEOC) or security or safety (AEOS) or a combination of the two. This is a version of the 'trusted trader' scheme used in other countries and allows importers to 'fast track' customs, reducing the burden of checks, security and taxation requirements for regular importers. SEE DG TAXUD "[Authorised Economic Operator](#)" for more detail.

<sup>12</sup> HACCP stands for Hazard Analysis Critical Control Point and is a systematic approach to the identification, evaluation, and control of food safety hazards.

Under the currently applicable legislation on trade in plants and plant products (Directive 2000/29/EC),<sup>13</sup> a phytosanitary certificate from the competent authority in the exporting country is required for plants for planting, cut flowers, and some fruits, vegetables and seeds ('controlled plants'). For non-controlled plants, imports into the EU do not require prior approval or notification, although they are subject to rules on food safety and customs procedures and inspection.<sup>14</sup> Under the new Regulation (EU) 2016/2031 which will come into force in December 2019, all living plant material (namely entire plants, fruits, vegetables, cut flowers, seeds, etc.) will require a phytosanitary certificate confirming their compliance with the EU legislation if they are to be imported into the EU. The Commission will adopt within two years a list of plant materials that can be exempted from that certification if they are deemed safe for the EU territory.

**Once the UK becomes a third country, movement of controlled plants and plant products from the UK to the EU27 (and, under the UK European Union (Withdrawal) Bill, from the EU27 to the UK) will have to be accompanied by a phytosanitary certificate issued by the plant health authority of the country of origin rather than a plant passport.** This will involve additional costs for those moving plants and plant materials between the UK and the EU27. Whereas a plant passport can be issued by a private grower or merchant sending material to another Member State (the only proviso is that the issuing business is licensed to do so by the competent authority in the Member State and is subject to regular quality control checks), a phytosanitary certificate has to be issued by the competent authority of the exporting state. Importers of controlled plants and plant products will have to register as an importer and will have to give advance notice of the arrival of consignments. When the consignment arrives at the EU27 (or UK) border, it will have to be inspected to check that it is accompanied by all the required documents, that it contains the plants claimed, and that it is free of pests and diseases. Consignments can only enter through Designated Points of Entry (DPEs).

**Products of animal origin. Products of animal origin must be presented at an EU approved Border Inspection Post for submission to an import control.** Prior notification of the physical arrival of the products in the EU must be provided to the border inspection post of arrival using the Common Veterinary Entry Document (CVED). Consignments will only be accepted if the products are derived from approved third countries, regions thereof and establishments as appropriate and if veterinary checks had favourable results. Health certificates must accompany all animal products when introduced into the EU. These documents must be signed by an official veterinarian of the competent authority of the exporting third country guaranteeing that the conditions for import into the EU have been met. Further random checks may be carried out on the imported product at the final destination.

The Official Controls Regulation (Regulation (EC) No 882/2004) provides national authorities and the Commission with the necessary powers to ensure effective enforcement of regulatory requirements, including audit and control powers in the Member States and third countries. It lays down specific rules for official controls on imported products. All products of animal origin are subjected to a documentary check. Most consignments are also subject to an identity check which involves verification that the product, health marks, stamps and other necessary product and or package information conform to the declaration on the health certificates and EU legislation. **A percentage of consignments must also be physically checked to see**

---

<sup>13</sup> A new plant health Regulation (EU) 2016/2031 on protective measures against pests of plants was adopted on 13 December 2016 but its provisions will not come into force until 13 December 2019 in order to allow sufficient time for the necessary delegated and implementing acts to be adopted and to give time to businesses to prepare for the new rules. For a summary of the changes brought in by the new Regulation, see European Commission Fact Sheet, "[New Plant Health Regulation: stringent rules for a better protection from plant pests](#)", 13 Dec 2016.

<sup>14</sup> Details of the EU regulations governing imports of plants & plant products from non-EU countries can be found on the DG SANTE web page "[Trade in plants & plant products from non-EU countries](#)".

**that it is fit for its intended purpose.** The physical check may include sampling the product to look for pathogenic micro-organisms or illegal contaminants such as veterinary drugs residues or heavy metals. Commission Decision 94/360/EC prescribes the level of physical checks for certain products. In general, the minimum number of consignments to be subjected to a physical check are 20% for meat, meat products, fish, fishery products, 50% for poultry meat, honey, dairy products and shellfish, and at between 1% and 10% for most products of animal origin that are not intended for human consumption. For certain products where there is a known health risk the Commission may prescribe a higher level of checking which may include compulsory sampling. The EU has negotiated equivalence agreements with New Zealand and Canada and imports from these countries are subject to lower physical checks and in the case of New Zealand the charges levied for imports are at a reduced level.

A new Official Controls Regulation (Regulation (EU) 2017/625) which replaces the 2004 legislation entered into force on 27 April 2017. The new rules will gradually become applicable with the main application date being 14 December 2019.<sup>15</sup> The regulation establishes an integrated approach to import controls by eliminating the current fragmentation of requirements. Common rules will apply to controls carried out at borders on animals, products of animal origin, plants and other products and goods that must be checked before they enter the EU. The import control system will be more risk-based and targeted. Border Control Posts (BCPs) will replace the different Border Inspection Posts (BIPs) and Designated Points of Entry (DPEs) which currently carry out border control tasks. All consignments to be presented at the border control posts will undergo documentary checks. Identity and physical checks will be carried out at a frequency depending on the risk linked to the specific animals or goods. A single standard document, the Common Health Entry Document (CHED), will be used by operators for the prior notification of consignments. It will be transmitted to the border control post through a new integrated computerised system for official controls (Integrated Management System for Official Controls, IMSOC).

In dealing with customs, a company can employ a clearance agent or freight forwarder to act as their representative (which is an additional cost), or they can request authorisation to lodge these declarations themselves. In either case, these are additional direct costs of customs clearance. Examples of charges in force are given in Annex 1 of this study.

### 2.1.5. Road transport services

The importance of haulage services for the transport of goods across customs borders should not be underestimated. One of the main reasons for the often choking congestion that Turkish hauliers face on the Turkey-Bulgaria border is because Turkey does not have an agreement in transport services with the EU. **There is a risk of further border delays in the absence of a UK-EU27 deal on the movement of trucks or lorries, vehicle registration, and the ability of drivers who are EU nationals to drive vehicles into the UK and vice versa if a customs border is established after 29 March 2019.**

Bilateral traffic-sharing agreements are the predominant mode of organisation of international road transport. These split the traffic between the two parties to the exclusion of all others and provide a quantitative framework by annually establishing quotas for the number of authorised journeys. One estimate suggests that there are around 1,400 bilateral agreements for the 43 states participating in the European Conference of Ministers for Transport (ECMT), that is some 20 agreements per EU Member State and 30 to 35 agreements for the other member countries (WTO 2010). Under the ECMT model agreement, which is considered broadly representative of existing road transport agreements in Europe, permits are required for many types of traffic (although with exceptions, such as transport of live animals). Quotas are agreed on the number of individual journeys or the number of permits issued (though with

<sup>15</sup> The rules for official controls on imported food and feed products are described on this [DG SANTE web page](#).

the important exception that quotas do not generally apply to traffic with perishable goods). Bilateral quotas are always fixed at the same level for both parties. Accordingly, it often happens that, when the two countries are not equally competitive, the quota allocated to the more competitive country is exhausted before the end of the year. In these circumstances, the country that has exhausted its quota tries to obtain an additional quota from its partner. If it is unable to do so or if the additional quota is exhausted in its turn, the goods can still be carried but with additional costs and journey times, either by the less competitive country or by carriers of a third country that has not yet exhausted its quota.

**International road haulage with HGVs within the EU is authorised by the EU-wide 'community licence' system. Hauliers with a community licence established in any EU Member State are permitted to undertake any international road haulage in the EU - the international road haulage market in the EU is fully liberalised.** However, road transport between EU and non-EU countries (third countries) is still largely based on bilateral agreements between individual Member States and third countries. The EU has only agreed open-access road transport deals with those neighbouring EU countries that have committed to observing the rules of the single market including free movement of persons (these are the EEA agreement with Norway, Iceland and Liechtenstein and the agreement on land transport between the EU and Switzerland). In a worst-case scenario, the UK could be required to negotiate lorry quotas with individual EU27 countries and presumably would retaliate with similar quota restrictions on the number of EU27 hauliers that could operate to the UK.<sup>16</sup>

## 2.2. Specific issues facing Ireland

The particular problems facing Ireland in the event of a 'hard' Brexit have been highlighted in the European Council (Art.50) guidelines, the Council's negotiating directives, the European Parliament resolutions on Brexit, and in the UK government's position and future partnership papers.

**It is estimated that, in the space of one month 177,000 lorries, 205,000 vans and over 1.8 million cars cross the border between Ireland and Northern Ireland.** Each day it is estimated that 30,000 people make the cross-border commute to work.<sup>17</sup> Cross-border flows of agricultural products are particularly important. The shared land border between Ireland and Northern Ireland has resulted in the development of a highly integrated agri-food sector, with large volumes of trade annually in live animals, finished products and products requiring further processing. Over 400,000 pigs are exported live from Ireland to Northern Ireland for processing annually, with almost 400,000 lambs imported from Northern Ireland for processing. Over 800m litres of milk are imported from Northern Ireland annually, much of which is processed and exported from Ireland. Overall, in 2015, exports of agricultural products from Ireland to Northern Ireland (including food, drink, forestry and animal by-products) were €750m, with imports from Northern Ireland of €567m (IFA 2016). A future border between Ireland and Northern Ireland would be most similar to the border with Germany or France and Switzerland in terms of the intensity of traffic across this border. However, while movement of persons across these frontiers takes place without restrictions as all countries are parties to the Schengen Agreement (although where there is a suspicion of irregularities, controls are allowed in all Schengen countries and at the border as well), the movement of goods requires customs clearance and there are dozens of customs posts along the Swiss border with its EU neighbours.<sup>18</sup>

---

<sup>16</sup> For this reason, the UK road haulage industry proposes that the UK and the EU27 would enter into a Land Transport Agreement for international road haulage that maintains the basic structure of the community licence system. See Road Haulage Association, "[Proposal for a UK-EU Land Transport Agreement](#)", 4 May 2017.

<sup>17</sup> Gough, A. "[Plan, act and engage for a better Brexit](#)", InterTrade Ireland.

<sup>18</sup> For details see the [Swiss Customs Administration web site](#).

**Both the UK and the EU27 have made clear that they do not wish to see a return to a hard border on the island of Ireland.** The European Council (Art. 50) guidelines state *"In view of the unique circumstances on the island of Ireland, flexible and imaginative solutions will be required, including with the aim of avoiding a hard border, while respecting the integrity of the Union legal order"*. This was repeated in the Council negotiating directives for the first phase of the withdrawal negotiations which stated that *"Negotiations should in particular aim to avoid the creation of a hard border on the island of Ireland, while respecting the integrity of the Union legal order"*. The UK has also stated its intention to avoid a hard border in Ireland, most recently in its White Paper on a future Customs Bill (HM Treasury, 2017), and specifically stating its aim *"to avoid any physical border infrastructure."* Whether this objective is possible and how it might be achieved is discussed later in this chapter.

Although the ambition to avoid a hard border on the island of Ireland has received most attention, **in terms of the volume and value of trade involved a more important issue concerns the implications of Brexit for the Irish 'land bridge' to continental EU markets.** After Brexit Ireland will be the only EU country which must access other EU countries in the single market using road freight by passing through a non-EU country.<sup>19</sup> At present, it is estimated that around two-thirds of Irish exports to the continent move via the UK.<sup>20</sup> This involves two ferry crossings (one over the Irish Sea and the other over the Channel between the UK and France, Belgium or the Netherlands) as well as using the UK as a land bridge. Once the UK leaves the EU, there is the possibility that Irish hauliers would be stopped four times for customs clearance on the way to service customers in the rest of the EU (and vice versa for EU hauliers transporting goods from the rest of the EU27 to Ireland). Movements could take place using sealed TIR trucks provided the UK joins the Common Transit Convention as it has indicated it wants to, but international TIR movements provide much less flexibility to hauliers than they currently enjoy under single market rules (see further discussion later in this chapter). The alternative of direct ferry movements between Ireland and France is much less attractive and would be much more costly. A truck takes 10.5 hours to travel between Dublin and Zeebrugge over the UK land bridge: the same journey via Cherbourg would take three times as long.<sup>21</sup> This problem has been recognised in the Council's negotiating directives which noted that: *"The [withdrawal] Agreement should also address issues arising from Ireland's unique geographic situation, including transit of goods (to and from Ireland via the United Kingdom)"*. Transit issues will also arise in moving goods from one part of Ireland to another when the shortest route may be through Northern Ireland.

### 2.3. Trade arrangements to avoid or mitigate trade costs

If the UK leaves the EU without a trade agreement (a 'hard' Brexit), traders would be required to absorb all the additional trade costs identified in Section 2.1: customs clearance costs, tariffs, and the costs of complying with and demonstrating that regulatory standards had been met. **A trade agreement between the UK and the EU after Brexit would allow some, or even most, of these costs to be avoided. The catch is that avoiding these costs would come with the trade-off of less policy autonomy for the UK.** One of the promises

<sup>19</sup> There is significant goods traffic from Northern Europe to Italy which passes through Switzerland. Swiss borders are more manageable because of the bilateral agreements between Switzerland and the EU which mean that effectively, if not legally, it is part of the European Economic Area for goods. Greece has a land border with Bulgaria but the majority of its goods exports to the rest of the EU use RoRo services to Italy. This would not be feasible in the case of Ireland for reasons discussed later.

<sup>20</sup> The Independent, ["Majority of exporters travel through Britain to ship goods overseas"](#), 10 March 2017. The figure of 80% is quoted in Posaner, J. and Livingstone, E. ["Brexit burns Ireland's British bridge to EU markets"](#), *Politico (Europe edition)*, 20 July 2017. The Irish Department of Transport, Tourism and Sport has commissioned a study into the use of the UK land bridge by Irish importers and exporters. The research is intended to establish the volume of traffic using the UK land bridge at present, the likely consequences that Brexit will have on land bridge usage and the various options to minimise the likely consequences. See Minister's [reply to a Dail question](#), 11 September 2017.

<sup>21</sup> Posaner and Livingstone, op. cit.



of those campaigning for the UK to leave the EU was 'to take back control'. At the time of writing, the UK government seems undecided as to how much policy autonomy it is prepared to cede in order to achieve 'almost frictionless' trade between the two parties. The choices it faces are discussed in this section and summarised in Figure 3. Trade facilitation refers to steps that the customs and health authorities can take to minimise the checks and the time required to clear goods through customs, while the other scenarios refer to trade agreements with different levels of ambition.

**Figure 3: Alternative post-Brexit trade scenarios beyond WTO terms**

Barrier	Customs agreement	Free Trade Area (FTA)	FTA+	Customs Union (CU)	CU+	Single market (Regulatory Union)
Trade facilitation	Yes	Yes	Yes	Yes	Yes	Yes
Tariffs	Not affected	Removed	Removed	Removed	Removed	Removed
Preferential rent		Lost	Lost	Retained	Retained	Lost
Rules of origin		Yes	Yes	No	No	Yes
Customs clearance		Yes	Yes	Yes	Yes	Yes
Regulatory controls		Yes	Reduced	Yes	Reduced	No

**Source:** Own presentation. Note that the single market scenario is assumed not to include a customs union.

It should be absolutely clear that the current ability to trade frictionlessly between the UK and the EU27 is due to the UK's membership of the EU and can only be maintained if the UK were to remain a member. As the UK customs future partnership paper admits, any alternatives will increase the burden for business — whether by requiring companies to declare goods traded with the EU27 in the case of a streamlined system or by obliging them to track their final destination in a deeper customs partnership with the bloc.

**If the option of continued UK membership of the EU is off the table, it remains the case that a lot *can* be done to reduce the additional trade costs that businesses will face through a future long-term trade agreement.** Many of the proposals put forward in the UK policy papers are sensible proposals, once it is accepted that they are second-best proposals compared to avoiding the consequences of having to deal with Brexit in the first place, and that they cannot fully replicate the frictionless trade within the single market and the Customs Union. The choice for the EU27 is how far it is ready to go to embrace these proposals, given the red lines set down by the European Council (Art. 50) and the European Parliament, particularly the refusal to extend participation in the single market on a sector-by-sector approach.<sup>22</sup> If one objective of the UK in withdrawing from the EU is to gain the ability to lower or remove regulatory standards, the EU27 will want to ensure that any proposals to facilitate trade will not undermine EU27 standards.

<sup>22</sup> If Canada had approached the EU during the negotiations on the EU-Canada Comprehensive Economic and Trade Agreement (CETA) and offered to align its food safety and animal health regulations precisely with those of the EU in order to facilitate an agreement on regulatory equivalence which would avoid the need for regulatory checks on trade between the two countries, it is interesting to speculate how the EU might have responded to that offer. The United States and Canada signed such an agreement recognising each other's food safety systems as comparable to each other in May 2016 even though there is not full alignment.

### 2.3.1. Customs agreement

**The UK has proposed a customs arrangement with the EU27** *“that facilitates the freest and most frictionless trade in goods possible, and which, crucially, avoids a hard border and any physical border infrastructure on the island of Ireland”* (HM Government 2017a).

The UK published a future partnership paper on customs arrangements in June 2017 in which it put forward two possible models for future customs co-operation to minimise the costs and delays of clearing customs as discussed previously: the streamlined and the partnership models (HM Government 2017b).

The **highly streamlined customs arrangement** between the UK and the EU27 would involve:

*“streamlining and simplifying requirements, leaving as few additional requirements on EU trade as possible. This would aim to: continue some of the existing arrangements between the UK and the EU; put in place new negotiated and potentially unilateral facilitations to reduce and remove barriers to trade; and implement technology-based solutions to make it easier to comply with customs procedures. This approach involves utilising the UK’s existing tried and trusted third country processes for UK-EU trade, building on EU and international precedents, and developing new innovative facilitations to deliver as frictionless a customs border as possible”.*

Four examples of simplification are given in the UK customs paper **to illustrate how the streamlining model** might work.

- Simplifying requirements to move goods across frontiers, by negotiating a waiver from the requirement to submit Entry and Exit Summary Declarations and by joining the Common Transit Convention which simplifies border crossing for goods in transit.
- Reducing delays at ports and airports by negotiating mutual recognition of Authorised Economic Operators (AEOs) and implementing bilateral technology-based solutions for roll-on roll-off ports linked to customs declarations and vehicle registration numbers so that vehicles are not required to stop at the border.
- Addressing the safety and security agenda through replicating existing levels of customs cooperation and data-sharing.
- Reducing administrative burdens primarily when importing through unilateral measures of simplification and speeding up authorisations.

**Some of these proposals are already in place for EU trade with other third countries.**

With Switzerland and Norway the EU concluded bilateral agreements which entered into force on 1 July 2009 that waive the obligation of traders to provide customs with the Summary Declarations prior to import and export in bilateral trade which were introduced to improve safety and security procedures. The EU has also signed agreements on supply chain security with main partner countries that provide the legal basis for mutual recognition of AEOs. Most of those agreements, e.g. with US, China, Japan or Canada, go beyond mutual recognition; they focus on improving supply chain security, joint risk rules, creating joint standards regarding security controls etc.

Looking at Norway in greater detail, Norway is not part of the EU’s Customs Union and does not apply the EU’s common customs rules and tariffs. **Norway is, however, involved in the EU’s customs cooperation through Protocol 10 of the EEA Agreement.** Norway has signed a separate agreement with the EU in order to ensure that customs rules do not hamper trade flows between Norway and the EU. The agreement waives the obligation to provide information for security purposes prior to the import or export of goods to the EU and requires

Norway to apply customs security measures that are equivalent to those applied by the EU in its trade with third countries. This has involved mutual recognition of the Authorised Economic Operator (AEO) certification scheme and of systems of risk analysis and management. As a result of the agreement with the EU, Norway is invited to participate as an observer in several of the comitology committees under the EU's Customs Policy Group.

**The new customs partnership model with the EU** would align the UK's approach to the customs border in a way that removes the need for a UK-EU27 customs border.

*"One potential approach would involve the UK mirroring the EU's requirements for imports from the rest of the world where their final destination is the EU. This is of course unprecedented as an approach and could be challenging to implement and we will look to explore the principles of this with business and the EU."*

The customs partnership model would involve the UK operating an import regime that aligns precisely with the EU27's external customs border, for goods that will be consumed in the EU27 market, even if they are part of a supply chain in the UK first. The UK would need to apply the same tariffs as the EU27, and provide the same treatment for rules of origin for those goods arriving in the UK and destined for the EU27. The customs paper admits the need for:

*"...a robust enforcement mechanism that ensured goods which had not complied with the EU's trade policy stayed in the UK. This could involve, for instance, a tracking mechanism, where imports to the UK were tracked until they reached an end user, or a repayment mechanism, where imports to the UK paid whichever was the higher of the UK's or the EU's tariff rates and traders claimed a refund for the difference between the two rates when the goods were sold to an end user in the country charging lower tariffs. Businesses in supply chains would need to be able to track goods or pass the ability to claim a repayment along their supply chain in order to benefit".*

Much of the early comment on the customs partnership model focused on the higher administrative costs it would imply. Manufacturers and traders would be required to follow imported goods through to the final consumer. In the case of integrated supply chains, it would not only be UK firms that would be required to do this. Indeed, it is striking that the customs position paper only discusses the UK perspective.

**The biggest weakness of this proposal is that no one is sure how it might work.** The paper itself notes:

*"We acknowledge this is an innovative and untested approach that would take time to develop and implement. The Government is keen to explore this approach with businesses and other stakeholders to understand the practical complexities involved in making it work and assess which other approaches could have a similar effect, how they would work in practice and whether they could achieve the Government's objectives".*

As Mr Jon Thompson, Chief Executive and Permanent Secretary, HM Revenue and Customs, put it in oral evidence to the House of Commons Treasury Select Committee on 14 September 2017:<sup>23</sup>

*"Let us make this real. You bring something to Felixstowe where the contents need to be split between those that are going to remain in the United Kingdom and those that are*

---

<sup>23</sup> House of Commons Treasury Committee, "[Oral evidence: Her Majesty's Revenue and Customs Annual Report and Accounts](#)", HC 314.



*going on onward transfer to the European Union. At that point you begin to have dual systems for everything, whereas at the moment you have a single system. Therefore, that requires not only us but everyone who is involved in that supply chain to run multiple systems at the same time, because there may be different tariff regimes. Essentially, the new customs partnership means we are running the EU tariff system at the UK border. That is why it is quite innovative and different, and it requires new technology.”*

In summary, trade facilitation measures can do a lot to reduce the time required to cross borders and to make it as easy as possible for traders to manage the necessary paper work (Grainger 2017; Owen, Shephard, and Stojanovic 2017). However, only in the context of the EU single market and Customs Union can they be fully removed.

### 2.3.2. Free trade agreement

**A free trade agreement (FTA) is the simplest possible improvement on WTO terms.**

An FTA would reduce or eliminate tariffs on trade in goods between the two parties. It would be notified to the WTO under GATT Article XXIV which permits discriminatory trade arrangements in the case of FTAs and customs unions which cover substantially all trade. Both parties would maintain their autonomy with respect to their trade policy vis a vis third countries, i.e. their applied MFN tariff schedule, the administration of tariff rate quota (TRQ) preferences for agricultural products, the use of trade defence measures such as anti-dumping and countervailing duties, and the ability to enter into separate FTAs with third countries.<sup>24</sup>

**Although FTAs remove one of the additional trade costs that trade on WTO terms would incur, this is at the cost of introducing a further additional cost**, namely, the need to check that a traded product seeking to enter the importing country with a preferential duty has actually originated in the exporting country and is not simply a third country’s export transhipped through the exporting country in order to benefit from the tariff preference. **Rules of origin** (ROOs) determine whether a particular import consignment should be treated as originating in the exporting country (and thus eligible for the preferential duty) or originates in some third country and is simply using the exporting country as a country of transit. This requires the product either to be wholly obtained from the territory of the exporting country or to have undergone ‘sufficient working or processing’ to qualify as originating.

The EU tariff schedule uses four different criteria to determine whether ‘sufficient processing’ has taken place. These are: i) a change of tariff heading (e.g. chocolate spread will originate in the UK if it is made from imported materials of any other heading); ii) a minimum value added (e.g. for passenger cars, the value of all the non-originating materials used to manufacture the car may not exceed 40% of the total value of the product); iii) specific processing or working requirements or iv) a combination of the first three requirements (e.g. in the case of chocolate spreads, an additional requirement is that no more than 30% of the ex-works value of the product can be accounted for by the value of sugar).<sup>25</sup>

**Cumulation is the term used to describe a system that allows originating products of country A to be further processed or added to products originating in country B, just as if they had originated in country B.** The resulting product would have the origin of country B. It can only be applied between countries operating with identical origin rules. A UK-EU27 FTA could allow bilateral cumulation, meaning that when a UK car producer imports intermediate parts from the EU to manufacture a car, those intermediate parts will be considered as originating in the UK when calculating the maximum threshold for non-originating materials (i.e. 40%, as explained above).

<sup>24</sup> However, parties to an FTA can agree to jointly negotiate FTAs with third countries, as in the case of the European Free Trade Association (EFTA). Today, [EFTA has 27 FTAs covering 38 countries and territories](#) outside the EU.

<sup>25</sup> The EU rules on preferential origin arrangements are summarised on the DG TRADE website “[Common provisions](#)”.

**The UK could join the Regional Convention on Pan-Euro-Mediterranean preferential rules of origin (PEM).** As the Convention is based on a network of FTAs with identical origin protocols, joining it allows parties to apply a principle of diagonal cumulation when determining the country of origin of goods. Diagonal cumulation would go further than bilateral cumulation in that originating materials from any party to the Convention would be deemed to originate in the UK for the purpose of calculating the origin of a product exported from the UK to the EU27 (or vice versa). Currently, the parties of the Convention include 42 countries: the EU, EFTA states, Faroe Islands, the Republic of Moldova, participants in the Barcelona Process (Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine, Syria, Tunisia and Turkey), and participants in the EU's Stabilisation and Association Process (Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and Kosovo).

**Under EU rules, to claim preferential treatment under an FTA, importers must present a movement certificate known as EUR.1 or, in certain cases, an invoice declaration.** A movement certificate EUR.1 will be issued by the customs authorities of the exporting country following requests by exporters, while an invoice declaration can be made by an approved exporter, or by any exporter with a shipment consisting of originating products whose value does not exceed a certain amount. The customs authorities can grant the status of approved exporter to any frequent exporter subject to conditions they consider appropriate; and withdraw it at any time.

**For goods with low preferential margins or which are parts of complex supply chains, the costs of showing compliance with rules of origin and requesting the tariff preference are often seen as too high to make it worthwhile.** The EU is anyway trying to reduce the costs of complying with ROOs by moving away from the use of paper certificates to certify origin to a system of self-certification by exporters. It is phasing in the REX (Registered Exporter) system from 1 January 2017, initially for exporters in developing countries benefiting from the Generalised System of Preferences and later for other FTAs. Exporters in beneficiary countries will be invited to become registered for REX with the national authority of the country in which they are established. Once registered they will be entitled to issue 'Statements on Origin' on their commercial documents such as invoice declarations without any limit on the value of the goods covered. Presumably, REX would be the basis for any system of self-certification for UK exporters following an eventual UK-EU27 FTA (the Canadian CETA is the first FTA to which the REX procedures will apply).

There are other drawbacks of FTAs. **FTAs only cover goods but not services, and even for goods not all goods may benefit from a preferential duty, and not all preferential duties may be zero.** In the case of sensitive products, such as agricultural products, preferential access may be limited to specific volumes of imports under a TRQ (meaning that exports above this volume are required to pay the full MFN applied duty) and may be subject to safeguard clauses permitting the withdrawal of the concession if there is a surge in import volumes.

**For EU27 agricultural producers, a particular concern with an FTA which gave tariff-free access under all agricultural tariff lines would be the potential for trade displacement.** This could occur if the UK were to open up its market to third country produce (e.g. lamb) either by lowering its MFN applied tariffs or by entering into FTAs with third country competitive agricultural exporters. While this third country produce would not receive the benefit of the preferential duty because it does not originate in the UK, the UK could increase its imports from third countries to meet its domestic demand while diverting more of its own production to the higher-priced EU27 market, hence the notion of trade displacement.<sup>26</sup> If the

---

<sup>26</sup> Trade displacement would be perfectly legitimate and can be distinguished from trade deflection, which would be the attempt by third country exporters to use the UK as a 'back door' into the higher-priced EU market.

UK did not enter a customs union with the EU27 which would avoid this problem, this could lead to pressure from producer groups within the EU27 to limit imports from the UK to the volumes currently imported using TRQs. If this happened, the UK would be likely to insist on limiting EU exports to its market in return.

**FTAs also require the maintenance of customs posts at borders even if there is 100% coverage of tariff lines.** This is not only because of the need to check rules of origin, but also because of the many other checks that need to be performed at the border, including the payment of appropriate taxes and excises, security and safety checks and compliance with regulatory standards. A customs agreement can help to minimise some of these costs and the time required to cross borders, as discussed above, but they cannot be completely avoided even in an FTA scenario. Avoiding regulatory checks requires a deeper level of integration and is discussed in the next section.

### 2.3.3. FTA+ arrangement with regulatory cooperation

**An FTA could be combined with various forms of regulatory co-operation.** Regulatory co-operation is a way of minimising or eliminating regulatory checks at borders. There are different levels of co-operation depending on the degree of integration the trading partners wish to achieve. Regulatory co-operation is usually implemented through Mutual Recognition Agreements (MRAs).<sup>27</sup>

- **Harmonisation of regulations means that both parties agree to use the same regulatory standards.** This is the approach used in the EU's Association Agreements with the three eastern neighbours Ukraine, Georgia and Moldova with respect to technical standards for industrial products. Agreements on Conformity Assessment and Acceptance of Industrial Products (ACAAs) are a specific type of MRA based on the full alignment of the legislative system, including standards, and implementing infrastructure of the country concerned with those of the EU.
- **Recognition of the equivalence of regulations is based on the fact that regulatory goals, e.g., in relation to health and food quality, in practice may be fulfilled by the use of different kinds of measures.** This allows trade barriers to be removed and imported products can be accepted on the basis that they fulfil the relevant regulatory objectives – even though regulatory differences persist. Equivalence assessment is an obligation since 1995 under the WTO Agreement on Sanitary and Phytosanitary Standards (SPS) (Article 4) which requires that “*Members shall accept ...measures of other Members as equivalent, even if these measures differ from their own ...if the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member's appropriate level of sanitary or phytosanitary protection. Members shall, upon request, enter into consultations with the aim of achieving ...agreements on recognition of the equivalence*”. The EU has negotiated only a small number of MRAs which recognise other countries' standards as equivalent. Food trade across the US-Canadian border is facilitated because the U.S. Food and Drug Administration signed an MRA with the Canadian Food Inspection Agency and the Department of Health Canada recognizing each other's food safety systems as comparable to each other.<sup>28</sup>
- **Mutual recognition can simply mean that two or more parties mutually accept each other's conformity assessment procedures,** i.e., the process by which products are evaluated for compliance with the rules. Traditional MRAs enable the

<sup>27</sup> Mutual recognition agreements that facilitate access to markets between the EU and non-EU countries should not be confused with the principle of mutual recognition in the EU single market which ensures market access for products that are not subject to EU harmonisation.

<sup>28</sup> U.S. Food and Drug Administration, “[FDA Recognizes Canada as Having a Comparable Food Safety System to the U.S.](#)”, May 4 2016.

competent authority nominated by one party to certify products for access to the other party's market, according to the other party's standards and legislation. No regulatory convergence is implied by a traditional MRA. In other words, there is no implication that the regulations imposed on products by the parties are to be brought into alignment at any stage. The EU has many MRAs in the SPS area under which it agrees to recognise the validity of certificates issued by the competent authority in the exporting country stating compliance with EU standards, in return for the exporting country agreeing to regular auditing of its practices and procedures.

- **The most limited form of regulatory co-operation would be to agree to exchange information on regulatory standards** and to provide the opportunity for stakeholders and regulatory authorities in one country to comment on proposed new or revised standards in the other country. Provisions for information exchange and joint activities between regulatory authorities are increasingly included in FTAs.

**The UK has proposed that the UK and the EU27 should aim at regulatory equivalence on agri-food measures after Brexit** (HM Government 2017c). Although this proposal was put forward in the context of avoiding a hard border on the island of Ireland, it would apply to all UK-EU27 trade after Brexit.

*"One option for achieving our objectives could be regulatory equivalence on agri-food measures, where the UK and the EU agree to achieve the same outcome and high standards, with scope for flexibility in relation to the method for achieving this. An agreement on regulatory equivalence for agri-food, including regulatory cooperation and dispute resolution mechanisms, would allow the UK and the EU to manage the process of ensuring ongoing equivalence in regulatory outcomes following the UK's withdrawal from the EU. Providing the UK and the EU could reach a sufficiently deep agreement, this approach could ensure that there would be no requirement for any SPS or related checks for agri-food products at the border between Northern Ireland and Ireland."*

Regulatory co-operation including the recognition of regulatory equivalence is a useful and effective way of minimising trade barriers due to differences in regulatory standards. The EU has signed MRAs for organic farming standards with a number of countries, as well as MRAs covering SPS measures.<sup>29</sup> These agreements often require lengthy negotiations, and demonstrating the equivalence of different standards can be difficult. **Achieving the degree of regulatory equivalence sought by the UK while still allowing the UK regulatory autonomy in the SPS area would be a difficult balancing act.**

#### 2.3.4. Customs union

**A customs union represents a higher level of economic integration because, in this arrangement, the parties agree to maintain a common external trade policy vis á vis third countries.** Thus, both parties agree to apply the same tariffs, to share the same agricultural TRQs, and to jointly conclude FTAs with third countries. This option further reduces the costs of customs clearance because checks on the origin of goods are no longer necessary – imported goods entering either of the parties will have paid the same tariff so there is no danger of transshipment to avoid the payment of a higher duty in one of the partners. However, border checks would still need to be undertaken for regulatory compliance because there is no presumption in a pure customs union model that the participating countries have the same regulatory standards. VAT payments and excise duties would also need to be paid on crossing the frontier. If there were any exceptions of any kind, customs checks would also be required for those goods.

<sup>29</sup> In addition to SPS provisions in FTAs, DG SANTE has this list of stand-alone [Sanitary and Phytosanitary Agreements](#).

**Another advantage of a customs union for EU agri-food exporters is that it would retain the residual preferential trade transfers on exports to the UK**, to the extent that prices paid by consumers within the customs union are higher than world market prices because of the Common External Tariff. This advantage of a customs union to EU exporters would, of course, be seen as a disadvantage by the UK because it would represent a deadweight cost for the UK economy. It would also keep food prices higher in the UK than they might otherwise be if the UK were able to import at world market prices. We have previously noted that the size of this preferential trade transfer is now much smaller than it was in the past.

Under the current rules for EU own resources, tariff revenue on imported goods is considered an EU own resource and is paid directly to the EU budget (less an amount equivalent to 25% of the revenue collected which can be retained by the importing country to offset administrative costs). **Under a stand-alone customs union between the UK and the EU27, it would be open to each party to decide that tariff revenue collected should remain with the importing country** (as is the case with the EU-Turkey customs union) or be divided up in some other proportion. Allowing the UK to keep the tariff revenue collected on imports from outside the EU27 would eliminate the transfer that the UK currently makes when this revenue is transferred to the EU budget. However, the UK would still make a transfer through the preferential trade transfers on imports from the EU27 itself.

#### **2.3.5. Customs union with regulatory cooperation**

As with a free trade agreement, it is possible to envisage a customs union combined with elements of regulatory cooperation. From an agri-food perspective, this would again require harmonisation or close equivalence between the food, sanitary and phytosanitary standards in the UK and the EU27. The same concerns as previously discussed would arise: on the UK side, the possible loss of regulatory autonomy; on the EU27 side, the possible dangers of 'cherry-picking' if the UK were to opt for regulatory coherence in some sectors but not in others.

#### **2.3.6. A regulatory union**

**A regulatory union is one in which both parties agree to align their regulations on a set of common standards.** As the EU single market demonstrates, this does not require agreement on a set of harmonised standards. In the single market, there is agreement on a set of high minimum standards and after that the principle of mutual recognition applies. Any product lawfully marketed in one Member State can be sold in another Member State. Member States can introduce higher standards for their own producers, but they cannot exclude the products of other Member States which do not meet those standards provided they are lawfully marketed in the other Member State. Crucial to the operation of a regulatory union is a high level of protection in the basic standards that are common to all, a high degree of trust and confidence in the competence of the other partners to ensure compliance with the rules, as well as a dispute settlement mechanism which ensures consistent policing of those rules.

**A customs union with full and consistent adoption of the EU regulatory *acquis* (a regulatory union) would replicate the status quo with respect to trading conditions.** However, because the UK would no longer be an EU Member State, it would have lost its ability to influence the shape of EU regulations through its voice in the Council or Ministers and through its MEPs in the European Parliament. Although this option would be very attractive to EU exporters, for obvious reasons, it has no attractions for the UK as it would imply no extension of its regulatory or trade policy autonomy despite the fact that it had exited the EU.



### 2.3.7. Northern Ireland

Both the UK and the EU27 recognise that avoiding a hard border on the island of Ireland will require flexible and imaginative solutions. **The UK government has set out some ideas to avoid a hard border** in its Northern Ireland-Ireland position paper ((HM Government 2017c). This outlines nine principles on which to base a future customs arrangement at the Northern Ireland-Ireland land border. These include aiming to avoid any physical border infrastructure on either side of the border between Northern Ireland and Ireland, but also preventing new barriers to doing business within the UK, including between Northern Ireland and Great Britain. The UK Government insists that the answer to avoiding a hard border between Northern Ireland and Ireland cannot be to impose a new customs border between Northern Ireland and Great Britain. Instead, it points to a number of examples where the EU has set aside its normal regulations and codes set out in EU law in order to recognise the circumstances of certain border areas. Its view is that devising a way forward on the Irish side of the land border will require similar derogations that go beyond current EU frameworks to maintain the absence of a hard border after Brexit.

In addition to the trade facilitation measures it proposed under its highly streamlined customs arrangement in its customs position paper, the UK believes it would be necessary to go still further to agree specific facilitations for the Northern Ireland-Ireland land border. **The UK has proposed a cross-border trade exemption that acknowledges that many of the movements of goods across the land border are by smaller traders operating in a local economy.** They cannot be properly categorised or treated as economically significant international trade. The cross-border trade exemption would ensure that smaller traders could continue to move goods with no new requirements in relation to customs processes at the land border. It estimates that, in 2015, over 80% of north to south trade was carried out by micro, small and medium-sized businesses. For businesses not eligible for an exemption, the UK proposes that administrative processes could be very significantly streamlined, including for 'trusted traders' on either side of the border, which could allow for simplified customs procedures.

There has been no formal response as yet to this suggestion from the EU27 side. Guy Verhofstadt, the European Parliament's Brexit coordinator and chair of its Brexit Steering Group, in an address to the Irish Oireachtas noted that **most of the people he met along the Irish border believed that the unique solution involved the UK staying in both the single market and the customs union.** Acknowledging that the UK has ruled out that option, he observed that *"the resolution of this border issue is entirely the responsibility of the United Kingdom. It is for them to come up with a workable solution.. [that] doesn't compromise the Irish membership and the integrity of the single market and the customs union."*<sup>30</sup>

### 2.3.8. Facilitating the UK land bridge

**The UK proposes to address the transit of goods to and from Ireland to the rest of the EU via the UK land bridge by joining the Common Transit Convention.** This would allow Irish exporters to use the land bridge across the UK to access continental EU markets without having to 'enter' the UK for customs purposes. It could also facilitate the movement of goods from one part of Ireland to another when the quickest route goes through Northern Ireland. In turn, it would allow exports from Northern Ireland to cross through Ireland for onward delivery to markets outside the EU without having first to 'enter' the EU for customs purposes. The Transit Convention also permits the use of the SAD as a transit document to cover movement of goods between the EU and the other signatories and between these signatories themselves.

---

<sup>30</sup> Verhofstadt, G., "[Speech to Members of the Houses of Oireachtas](#)." Dublin, 21 September 2017.

**But using the Common Transit Convention is far from frictionless trade.** Making use of the transit system incurs administrative and financial costs as well as restrictions on movements.<sup>31</sup> Transit movements must be declared, accepted and registered before the movement takes place. This includes a deadline for delivering the goods at destination as well as prescribing the route that will be followed by the haulier. The requirement to use sealed trucks would rule out the possibility of 'groupage' which means logistics firms can off-load pallets or part-loads on their way through the UK which may help to increase capacity utilisation of lorries and thus keep freight rates low. The Transit Convention approach would also not seem appropriate for the movement of goods from one part of Ireland to another where the shortest route was through Northern Ireland and where in most cases the transit journey would be less than one hour.

## 2.4. Models of the future relationship

Different trade arrangements can potentially reduce some or all of the trade frictions that would arise under a 'hard' Brexit with trade on MFN terms. The EU has entered into a wide range of trade arrangements with different countries which differ in their scope and ambition, and which might provide a template for the future trade relationship between the UK and the EU27. Reference is made to different models which are conveniently summarised by association with a country which exemplifies that relationship. A number of possible models are set out in Figure 4. It is suggested that the overall level of integration increases as we move from left to right across the table, but this is not necessarily the case in all dimensions. The discussion highlights in particular the treatment of agri-food trade in these different agreements.

It must be stressed that the UK government has explicitly ruled out the Canadian, Turkey and Norway models but they are discussed here for the sake of completeness. Mrs May, in her Florence speech, indicated that no existing EU trade arrangement would suit the UK. This is because (a) of the size and significance of the economic and trade relationships between the two parties (b) the fact that the UK would be negotiating a trade agreement on the basis that it had exactly the same regulatory standards (although this argument overlooks the fact that the argument for withdrawal is that the UK wishes to have the ability to change these standards in the future). **The UK's preferred option is a bilateral FTA which gives it most if not all of the benefits of the single market yet which meets the UK's four red lines.** The EU's chief negotiator Michel Barnier **has ruled out this option on the grounds that third countries cannot have the same rights and benefits, since they are not subject to the same obligations.**<sup>32</sup>

---

<sup>31</sup> DG TAXUD has a [674-page document](#) which describes transit procedures in greater detail.

<sup>32</sup> "[Introductory comments by Michel Barnier](#)", European Commission website, 6 December 2016.

**Figure 4: Main elements of different EU trade arrangements**

Element	'Canada'	'Turkey'	'Ukraine'	'Swiss'	'Norway'
< Less .....Degree of integration.....More >					
Non-agricultural trade with EU	Liberalised for goods plus services commitments	Liberalised for goods	On way to being liberalised for goods and services	Goods and some services liberalised	Goods and services liberalised
Agricultural trade with EU	Partial liberalisation	Partial liberalisation	Partial liberalisation	Partial liberalisation	Partial liberalisation
Trade with third countries	No impact	Turkey must apply EU FTAs	No impact	No impact	No impact
Regulatory coherence	Limited	Aspiration	Aspiration	High	Complete
Agricultural policy	Unilateral	CAP aspiration	CAP aspiration*	Unilateral	Unilateral
Freedom of movement	No	No	No	Yes	Yes
Budget contributions	No	No	No	Yes	Yes
Dispute settlement	WTO-like	Limited	WTO-like	Limited	Effective

**Source:** Own presentation. \* The Georgian DCFTA has no aspiration that Georgia will adopt CAP regulations.

#### 2.4.1. Canada

Traditionally, EU trade agreements were mainly about reducing tariffs on trade in goods. With changes in production processes leading to the emergence of global supply chains, the growth in the importance of services trade and the emergence of new platforms such as the digital economy, other barriers to trade have become more important. As a result, the EU now seeks deeper trade agreements (called Deep and Comprehensive Free Trade Agreements) which address a wider range of issues. The objectives were set out in the Commission's Communication *Trade, Growth and World Affairs* as follows: *"Cutting tariffs on industrial and agricultural goods is still important, but the brunt of the challenge lies elsewhere. What will make a bigger difference is market access for services and investment, opening public procurement, better agreements on and enforcement of protection of IPR, unrestricted supply of raw materials and energy, and, not in the least, overcoming regulatory barriers including via the promotion of international standards. Through trade, we should also promote the greening of the world economy and decent work"* (DG TRADE 2010). The Comprehensive Economic and Trade Agreement (CETA) with Canada is a representative example of this type of agreement.<sup>33</sup>

The tariff reduction package is one of the most comprehensive the EU has achieved in the context of an FTA; overall, tariffs for 98.6% of all Canadian tariff lines and 98.7% of all EU tariff lines will ultimately be fully eliminated. **For a few sensitive agricultural products, there will be a special treatment based on TRQs or an exclusion from any tariff reduction.** This preferential access is without any prejudice to the rules and regulations that the products in question need to satisfy on the respective import market (technical, sanitary or phytosanitary rules for the security and the protection of the consumer, the user or the environment, including food safety and labelling requirements). These rules remain untouched by CETA.

<sup>33</sup> This description of CETA provisions is based on DG TRADE, ["CETA – Summary of the final negotiating results"](#), 2016.



On technical barriers to trade, both sides agreed to further strengthen the links and cooperation between their standard setting bodies as well as their testing, certification and accreditation organisations. A separate protocol improves the recognition of conformity assessment between the parties. It provides for a mechanism by which EU certification bodies will be allowed to certify for the Canadian market according to Canadian technical regulations and vice-versa.

**There is a limited extension of the rights and obligations of the EU and of Canada under the WTO SPS Agreement.** As regards meats and meat products, the existing EU-Canada Veterinary Agreement was integrated into CETA. As additional elements of trade facilitation, the parties agreed to simplify the approval process for exporting establishments and work on further elements aimed at minimising trade restrictions in the event of a disease outbreak. In the area of plant health, CETA sets up new procedures that will facilitate the approval process of plants, fruit and vegetables by Canada. Overall, CETA will streamline approval processes and improve predictability of trade in animal and plant products but it does not amend either the European or the Canadian SPS rules. All products need to fully comply with applicable sanitary and phytosanitary standards of the importing Party.

CETA represents a minimalist model for future UK-EU27 trade relations. It would enable the elimination of tariffs and mutual recognition for conformity assessment with each other's standards, but many of the additional trade costs identified in a 'hard' Brexit scenario would remain. Dispute settlement is limited to a state-to-state dispute settlement mechanism very similar to the WTO panel procedure.

#### **2.4.2. Turkey**

**An incomplete customs union between the EU and Turkey was created on 1 January 1996, guaranteeing free circulation of industrial goods and processed agricultural products.** Tariffs are eliminated on these covered goods and Turkey agreed to adopt the Union's Common External Tariff. However, both sides can introduce anti-dumping duties on each other and on third countries. The customs union does not deal with agriculture or services and also has some gaps in its coverage of manufactures. It also has a very limited mechanism for dealing with disputes.

**There is a key asymmetry in the design of the customs union** in that the EU is permitted to negotiate FTAs with third countries, but Turkey is not permitted a seat at the negotiations because it is not an EU member. This situation is exacerbated by the fact that Turkey has been unable to obtain the same agreement from trading partners in parallel negotiations. This means that Turkey has to apply external tariffs at the level negotiated by the EU but does not gain reciprocal access to the third country's market in return. This asymmetry is potentially very costly for both parties as it risks the introduction of origin controls, the absence of which is a key source of the benefits from the customs union (World Bank 2014).

**Although Turkey is not an EU member state, it has the obligation to adopt the EU *acquis* in areas related to the customs union.** This includes rules and regulations in areas such as intellectual and industrial property rights, competition rules, state aid, the custom code and administrative cooperation. The EU agreed to accept without additional conformity assessment checks Turkish goods for which relevant EU legislation had been incorporated, although this did not happen until 2006.<sup>34</sup> However, the transposition of new regulations suffers from outdated procedures. The commitment to approximation of laws under the customs union agreement should be seen as part of the more general alignment process as part of Turkey's application for EU membership. Although Turkey has made considerable strides in implementing the EU food safety, veterinary and plant health *acquis*, Turkish food

---

<sup>34</sup> Holmes, P., "[Staying in the Customs Union: Neither Soft Nor Simple](#)", 11 July 2017.

exports are not exempt from EU border checks. However, for some products (e.g. fruits and vegetables, dairy) the EU has begun to recognise certificates issued by the Turkish authorities that export produce complies with EU standards on the same basis as for other third countries.

**Trade in agricultural products is addressed through a bilateral agriculture and fisheries agreement which entered into force in 1998**, and which provided for a 22-year period for Turkey to “*adjust its agricultural policy with a view to adopting, at the end of that period, those measures of the common agricultural policy which must be applied in Turkey if free movement of agricultural products between it and the Community is to be achieved.*” Pending the fulfilment of these conditions, the EU and Turkey grant each other preferential treatment in agricultural goods and fishery products.

**The customs union does not cover services, and particularly road transport services.** In the EU, bilateral road transport agreements including quota negotiation remain the responsibility of the individual EU Member States. By limiting the number of Turkish-registered vehicles that can carry goods in their territory, EU Member States set limits on Turkish goods that can be transported to the EU by Turkish road transport operators (although they can still be carried by EU road transport operators). This raises costs if the most efficient transport operator can no longer be used.

The customs union with Turkey is the only example where the EU has entered into a customs union arrangement with a third country of significant size (the customs unions with Andorra and San Marino are discounted in this respect). It would have limited attractions as a model for UK-EU27 trade relations in the future. The asymmetries in Turkish participation in decisions stem from the initial expectation that the customs union would be a transitional arrangement while Turkey moved towards full EU membership. The agreement goes further than CETA in that it foresees the movement of goods between the two parties not on the basis of originating status but on the fact that they comply with provisions on free circulation. In the case of agri-food products, the requirement for this is that Turkey aligns its food safety, veterinary and plant health legislation with the Union *acquis*, and that it adopts those elements of the CAP which are necessary to ensure free movement can be achieved. As these requirements are not yet in place, trade liberalisation in agriculture is limited to some preferential concessions. Agri-food products traded between the EU and Turkey must comply with the standard rules for third countries.

### 2.4.3. Ukraine

The European Parliament in its Brexit resolution of 5 April 2016 specifically noted that an association agreement could be an appropriate model for the future UK-EU27 trade relationship. Provision for Association Agreements is set out in Article 217 TFEU which ordains that the Union “*shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation*”. In 2014 the EU concluded an association agreement with the Ukraine (along with similar agreements with Georgia and Moldova) which some observers believe could be a useful template for a future UK-EU27 agreement (Duff 2016; Emerson 2017).

The Ukraine’s association agreement goes beyond a trade agreement only as it provides for future political cooperation in the field of justice and home affairs, foreign, security and defence policies as well as specifying an elaborate institutional architecture. However, at its heart is a Deep and Comprehensive Free Trade Agreement in which three of the four principles of freedom of movement are respected. There is mostly tariff free access for goods, passports for services, and customs cooperation. The movement of labour is subject to work permits against the backdrop of visa liberalisation (Duff, 2016).

Trade in agricultural goods has been liberalised, but for sensitive commodities the tariff preferences are limited by TRQs. The agreement also covers agricultural policy, where the parties “*shall cooperate to promote agricultural and rural policies, in particular through progressive convergence of policies and legislation*”. The parties agree to support “*gradual approximation to relevant EU laws and standards*”, and a list of EU regulations which broadly govern the EU’s Common Agricultural Policy is attached. However, no timetables are stipulated for approximation. The view of Emerson and Movchan (2016) is that “*the overall message is that Ukraine retains much flexibility over how far or how fast to replicate elements of EU farm policy*”. The companion DCFTA signed with Georgia does not require approximation of EU agricultural policy yet notably provides for full liberalisation of agricultural trade between the two parties.

Ukraine will progressively adapt its technical regulations and standards to those of the EU. Future negotiation of an Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA) will provide that, in the specific sectors, covered trade between the parties will take place under the same conditions as between EU Member States. The main treaty text of each chapter is accompanied by an annex that lists the EU regulations and directives with which Ukraine agrees to comply, mostly taking these laws in their entirety, but in some cases identifying only those articles that apply, or may be excluded (Emerson 2017). DG TRADE estimates that harmonisation and/or mutual recognition of technical standards should cut existing non-tariff barriers in the agri-food sector by half compared to 2004 (DG TRADE 2013).

**Ukraine is also committed to aligning its SPS and animal welfare legislation with that of the EU.** The SPS chapter deals with verification procedures, listing of establishments, levels of checks, and settlement of trade problems. The Agreement did not itself define the list of laws to be approximated, but instead required Ukraine to submit a Comprehensive Strategy for the implementation of EU SPS standards within three months of its entry into force. In February 2016 agreement was reached between Ukraine and the European Commission on the contents of the Comprehensive Strategy, which is a list of roughly 255 EU regulations and directives (Emerson and Movchan 2016). Rules are established for recognising the equivalence of measures taken by Ukraine with those of the EU. The process should be launched by the exporting party based on the “*objective demonstration of equivalence*” and the “*objective assessment of this demonstration*” by the importing party. Where equivalence is recognised there will be a reduction of physical checks at frontiers and simplified procedures.

Dispute settlement follows the state-to-state WTO panel approach but with faster procedures. There is a procedure that obliges the arbitration panel to ask the Court of Justice of the European Union (CJEU) for a binding preliminary ruling when there is a dispute concerning the interpretation and application of EU law (i.e. EU legislation annexed to the Agreement). This procedure aims to ensure a uniform interpretation and application of the Agreement’s annexed EU legislation without jeopardising the exclusive jurisdiction of the CJEU to interpret EU law.

The ‘Ukraine model’ presupposes a high degree of integration, yet allows for flexibility in deciding the areas where common standards would apply, it does not require acceptance of free movement and CJEU rulings do not have direct effect. Unlike the Turkish model, there is no presumption that Ukraine is a candidate country for EU membership. **Advocates of this model believe it could be developed as a template for a future UK-EU27 agreement in ways that meet both the UK’s and EU27’s red lines.** The EU, of course, might look very differently at extending the provisions of the Ukraine DCFTA to a much more developed economy.

#### 2.4.4. Switzerland

Relations between the EU and Switzerland are based on more than 120 bilateral agreements,<sup>35</sup> including a free trade agreement in 1972 and two major series of sectoral bilateral agreements that aligned a large portion of Swiss law with that of the EU at the time of signing.<sup>36</sup> The first set of sectoral agreements (known as Bilaterals I) was signed in 1999 and entered into force in 2002. These seven agreements cover the issues of free movement and mutual market opening including in agriculture. These agreements are linked by a 'guillotine clause' meaning that the suspension, denunciation or non-renewal of one agreement causes the whole package to lapse. This became important following the Swiss referendum vote in 2014 to restrict the free movement of persons from the EU. A further set of sectoral agreements (Bilaterals II) was signed in 2004 and entered into force in 2005. These agreements extended cooperation on asylum and free travel within the Schengen borders as well as to new areas such as environment and taxation. These agreements give Switzerland effective membership of the EU single market for goods.<sup>37</sup> In contrast to the EEA Agreement, the sectoral agreements between Switzerland and the EU do not cover the free movement of services (except for some aspects such as civil aviation and overland transport or direct insurance for damage). In return, the Swiss have agreed to make budgetary transfers to the less prosperous EU Member States as a contribution to the economic and social cohesion of the single market.

The bilateral Agreement on Agriculture between Switzerland and the EU, which regulates trade of basic agricultural products, entered into force in 2002. Contrary to the FTA for industrial products, this bilateral agreement does not create a free trade area; instead mutual market access is improved by reducing tariffs and non-tariff barriers to trade for products of particular interest to the EU and Switzerland (mainly fruits and vegetables, cheese, and meat specialities).<sup>38</sup>

Switzerland maintains its own trade policy and its ability to enter into FTAs with third countries. Goods passing between Switzerland and the EU must still pass through customs clearance to check that documentation is in order and that the goods are what they say they are. However, **the bilateral Agreement on Agriculture simplifies trade in the agricultural sector by reducing or even eliminating non-tariff barriers to trade.** Since 2009, Switzerland and the EU have formed a common veterinary area without veterinary controls on animals and products of animal origin (extended in 2012 to Norway and Iceland). Switzerland applies the same controls at its borders as does the EU. Certain technical regulations in the areas of plant health, animal feed, seeds, organic farming, wine and spirits as well as quality norms for fruit and vegetables are mutually recognized as being equivalent. Switzerland has introduced a new General Food Law Revision which came into force on 1 May 2017 and which aligns the majority of Swiss food law with EU food law.

From the EU perspective, this arrangement based on a network of bilateral agreements has a number of disadvantages. Unlike the EEA Agreement, the nature of the bilateral agreements with Switzerland is static, given that there are no proper mechanisms to adapt the agreements to evolving EU legislation. EU law is adopted by Switzerland based on the dates of signature of the agreements; although in some cases adaptations can be made by Joint Committees. There is also an absence of surveillance and an efficient dispute settlement mechanism. For

<sup>35</sup> For the full list of agreements, see Swiss Confederation, Department for European Affairs, "[Liste der Abkommen Schweiz - Europäische Union, in Kraft am 1. Januar 2017](#)".

<sup>36</sup> For a review, see European Parliament, Fact Sheet "[The European Economic Area \(EEA\), Switzerland and the North](#)", June 2017.

<sup>37</sup> Strictly, only EU Member States can be members of the single market. However, the EFTA members of the European Economic Area are also often regarded as members, since they have a level of access to the single market similar to that enjoyed by EU members. Similarly, Switzerland has a high degree of access to the single market in goods without being an EU member (House of Commons International Trade Committee, 2017).

<sup>38</sup> Swiss Confederation Federal Office for Agriculture, "[Agreement on Agriculture](#)".

some agreements, the case law of the CJEU is treated as binding until the date of signature, but not beyond. **The EU has therefore insisted that it will not allow Switzerland any further single market access (e.g. as regards electricity) without a framework institutional agreement to resolve these problems.** EU-Swiss negotiations for a framework institutional agreement were launched on 22 May 2014.<sup>39</sup> Switzerland is resisting EU pressure to agree a framework agreement emphasising that the bilateral path allows the country to prosper while maintaining its independence.<sup>40</sup> Negotiations on the framework agreement are continuing. Because of these institutional deficiencies, it is unlikely that the EU would be prepared to govern its future trade relations with the UK under a similar network of bilateral agreements.

#### 2.4.5. Norway

In this family of five models of EU trade relations with non-EU countries, **the 'Norway' model represents the model with the greatest degree of integration, although still less than the single market within the EU Customs Union.** Norway is an EFTA Member State and a signatory to the European Economic Area agreement with the EU. EEA membership means that there is free trade in goods and services between Norway and the EU with the exception of agricultural trade. However, some liberalisation of agricultural trade has taken place under a separate bilateral agreement between Norway and the EU which was updated and extended in 2011.

**The EEA agreement gives Norway membership of the single market by ensuring that Norway adopts the EU's regulatory *acquis*.** It also incorporates the four freedoms of the internal market (free movement of goods, people, services and capital) and related policies (competition, transport, energy, and economic and monetary cooperation). The agreement includes horizontal policies strictly related to the four freedoms: social policies (including health and safety at work, labour law and the equal treatment of men and women); policies on consumer protection, the environment, statistics and company law; and a number of flanking policies, such as those relating to research and technological development, which are not based on the EU *acquis* or legally binding acts, but are implemented through cooperation activities.<sup>41</sup> Norway also makes a budget contribution to economic and social cohesion in the single market through the EEA Financial Mechanism (referred to as EEA Grants and Norway Grants).

**Apart from excluding agricultural trade liberalisation with the EU, there are a number of EU policy areas which the EEA Agreement does not cover.** Norway continues to have its own agricultural and fisheries policies. It is not a member of the EU customs area so it has an independent trade policy (as a member of EFTA, Norway jointly negotiates free trade agreements with third countries with the other EFTA Member States). The EEA agreement does not cover broader co-operation in the areas of foreign and security policy, nor justice and home affairs (although Norway like the other EFTA countries is part of the Schengen area).

There are provisions specifying that the EFTA-EEA countries should be involved in preparing EU acts but, although they can make representations, they do not participate in EU decision-making. The EEA Joint Committee, composed of representatives of the EU and the three EFTA-EEA states, meets monthly to decide which pieces of EU legislation should be incorporated into the EEA. Legislation is formally incorporated by including the relevant acts in lists of protocols and annexes to the EEA Agreement. Several thousand acts have been incorporated into the EEA Agreement in this way. Once an EU act has been incorporated into the EEA Agreement,

---

<sup>39</sup> The Council mandate for these negotiations is [here](#).

<sup>40</sup> Swiss Confederation, "[Switzerland's European policy – state of play](#)", accessed 20 October 2017.

<sup>41</sup> European Parliament, Fact Sheet "[The European Economic Area \(EEA\), Switzerland and the North](#)", June 2017.



it must be transposed into the national legislation of the EFTA-EEA countries (if this is required under their national legislation). This may simply require a governmental decision, or it may require parliamentary approval. Transposition and application are monitored by the EFTA Surveillance Authority and the EFTA Court.

**The EFTA Court is a key part of the institutional structure.** It plays the same role in enforcing the laws regulating the single market for the three EFTA-EEA states as the CJEU does for the EU Member States. The EFTA Court judges are appointed by the EFTA-EEA states. Because the relevant EU laws are transposed into national legislation, individuals and businesses can defend their rights under these laws in national courts. The EFTA Court has a particular role in adjudicating on cases brought by the EFTA Surveillance Authority against a Member State, and actions concerning the settlement of disputes between two or more EFTA states regarding the interpretation or application of the EEA Agreement. It can also issue advisory opinions interpreting the EEA Agreement on the request of a national court of an EFTA-EEA state.

The Norway model has the great advantage that it would keep the UK as a member of the single market and thus avoid border controls for regulatory purposes. However, unless at the same time the UK also entered into a customs union with the EU27, border controls would still be required (as they are between Norway and Sweden, and between Germany/France and Switzerland) even if their practical effect could be minimised through a far-reaching customs agreement. The UK government has to date ruled out an EEA-type trade arrangement on the grounds that it would require the UK to transpose EU legislation in which it had no say in deciding into UK law. This would run counter to the objective of Brexit of 'taking back control'.

## 2.5. The WTO dimension of UK withdrawal

Paragraph 13 of the European Council's negotiating guidelines deals broadly with honouring international commitments.

*"Following the withdrawal, the United Kingdom will no longer be covered by agreements concluded by the Union or by Member States acting on its behalf or by the Union and its Member States acting jointly. The Union will continue to have its rights and obligations in relation to international agreements. In this respect, the European Council expects the United Kingdom to honour its share of all international commitments contracted in the context of its EU membership. In such instances, a constructive dialogue with the United Kingdom on a possible common approach towards third country partners, international organisations and conventions concerned should be engaged."*

From an agri-food perspective, the most significant sharing of international commitments will be the division of the EU's World Trade Organisation (WTO) commitments. The EU's commitments are listed in documents called 'schedules of concessions', which reflect the specific tariff concessions and other commitments that it has given in the context of WTO negotiations on trade liberalisation. For trade in goods in general, these usually consist of maximum tariff levels which are often referred to as 'bound tariffs' or 'tariff bindings'. In the case of agricultural products, these concessions and commitments also relate to tariff rate quotas, limits on export subsidies, and some kinds of domestic support. The content of the EU schedules has changed over time to take account of successive enlargements as well as different modifications, such as GATT Article XXVIII negotiations or rectification procedures.

**The UK is a member of the WTO in its own right, as are all other EU Member States as well as the EU itself.** At the moment, the UK's commitments on maximum tariffs, tariff rate quotas, domestic agricultural subsidies and agricultural export subsidies are bundled with the EU's schedule of concessions. Following Brexit, the UK will need to agree its own schedule

of concessions with other WTO members.<sup>42</sup> This should not be contentious in the case of its commitments on bound tariffs where the general assumption is that the UK will inherit the commitments in the EU schedule (although there will still be issues around the exchange rate to use in converting EU tariffs in euro to UK tariffs in sterling). However, where the EU's commitments consist of quantitative bindings (for example, to import specific amounts of third country lamb under preferential tariffs, or to limit non-exempt domestic support<sup>43</sup> to a specific ceiling), the question arises how this shared commitment will be allocated between the UK and the EU27 after Brexit.

**Two sets of quantitative bindings are scheduled under the WTO Agreement on Agriculture.** These are the EU's commitments on limits on agricultural export subsidies and on non-exempt domestic agricultural support.

Under the WTO Ministerial Decision on Export Competition adopted at the Nairobi WTO Ministerial Council in December 2015, developed countries including the EU agreed to immediately eliminate their remaining scheduled export subsidy entitlements as of the date of adoption of that Decision. A delay was agreed for processed products, dairy products and pigmeat until the end of 2020 for developed countries that had provided export subsidies for these products in a recent period, provided that the quantities subsidised did not exceed the quantities exported with subsidy in the years 2003-2005 and that no export subsidies would be applied either to new products or new markets. The UK might be interested to acquire a share of the EU entitlements to be able to use export subsidies for these products but in any case they would lapse for both the UK and the EU27 by the end of 2020.<sup>44</sup> In any case, the EU has already made a voluntary commitment that it will not make further use of agricultural export subsidies, so agreement on an allocation of the EU remaining entitlements should not be difficult. The UK would not be able to make use of any entitlement to export subsidies on the exempted products to subsidise exports of these products to the EU because no subsidies were paid on exports to this market during the base years 2003-05. As any agreement with the UK to share entitlements would reduce the EU27 entitlements by a corresponding amount, an allocation formula based on relative shares of usage in a base period would not likely be opposed by WTO members.

**Somewhat similar considerations apply in the case of the EU commitments on non-exempt domestic support.** The amount of non-exempt support notified by the EU in its latest notification to the WTO for the year 2013-2014 amounted to €5.97 billion compared to its non-exempt domestic support ceiling (BTAMS) of €72.38 billion.<sup>45</sup> Because the EU is only using a fraction of its entitlement to non-exempt domestic support, agreement with the UK on sharing the EU entitlement based on relative use in a base period should not be difficult (although there will be knotty technical problems to resolve in deciding on these shares).<sup>46</sup> Any proposed allocation is also not likely to meet with opposition from other WTO Members because any scheduled commitment by the UK would lead to a corresponding reduction in the EU's entitlement to provide trade-distorting support in the future (although those countries

<sup>42</sup> These issues are also discussed in House of Commons International Trade Committee, 2017, Chapter 2.

<sup>43</sup> Not all domestic support is disciplined under the WTO Agreement on Agriculture. Support which is covered by Annex 2 (Green Box), Article 6.5 (Blue Box) and *de minimis* support is exempted from the limit on a developed country's domestic support (called the Bound Total Aggregate Measurement of Support, BTAMS). All other types of support are deemed trade-distorting and must be limited to the country's BTAMS ceiling in its schedule of concessions. Domestic support for WTO notifications is calculated according to procedures set out in Annexes 3 and 4 of the WTO Agreement on Agriculture.

<sup>44</sup> The EU Mission to the WTO [announced on 6 October 2017](#) that the EU had just submitted a revised goods schedule to the WTO which includes both the outcome of recent negotiations linked to EU enlargement as well as implementation of the Nairobi Decision. The revised schedule, which is awaiting certification, incorporates the full Nairobi Decision including the exemptions until 2020 into the EU schedule.

<sup>45</sup> WTO Notification by the European Union G/AG/N/EU/34, 8 February 2017.

<sup>46</sup> Brink, L., "[UK Brexit and WTO farm support limits](#)", capreform.eu, 13 July 2016.

that were unable to establish a BTAMS ceiling at the time of their accession might object to the UK being able to do so now). Unlike in the case of export subsidies, where all entitlements will anyway lapse less than two years after Brexit, the EU27 should be conscious that the ceiling agreed for the UK will determine its margin for manoeuvre with respect to its future use of trade-distorting support (e.g. its future use of coupled payments). The higher the ceiling allocated to the UK, the greater the potential damage to EU27 producers if the UK were to make full use of its entitlement at some point in the future.

**The most controversial area in the division of the EU's quantitative WTO commitments concerns its scheduled tariff rate quotas (TRQs)** (Downes 2017). These scheduled TRQs arose at the end of the Uruguay Round as a way of preserving and ensuring some minimum access for third countries in the face of tariffication.<sup>47</sup> Tariffication was the obligation on WTO Members to replace all forms of import barriers (including quotas, import licenses, voluntary export restraints, variable import levies and many others) by tariffs which could then be bound and reduced over time. The fear was that the resulting tariffs might be set so high that very little trade liberalisation might occur. As a result, two types of TRQs were created under the WTO Agreement on Agriculture: minimum access and current access TRQs.<sup>48</sup> Where there were no significant imports, minimum access TRQs equal to 5% of domestic consumption in the base period 1986-88 had to be established. Where an importer had current imports greater than these minimum amounts, current access TRQs had to be introduced in order to maintain these export opportunities and allow them to increase. Further TRQs have been created subsequently by the EU, for example, to compensate third countries for the loss of market access arising from successive enlargements of the EU, or as part of the resolution of a WTO dispute brought by a third country against the EU.

There were 85 TRQs in the EU's initial schedule resulting from the Uruguay Round and this number increased to 93 in 2006, 112 in 2009 and to 119 in 2013 covering meat, cereals, dairy products, fruits and vegetables and more (Matthews, Salvatici, and Scoppola 2016).<sup>49</sup> The quotas vary considerably in both size and form. Some provide a zero duty in-quota tariff rate, others have tariffs below the MFN rate. The administration of these TRQs is further complicated because some are pre-allocated to specific exporters (country-specific TRQs) while others are open to any exporter (global TRQs), and often further restricted by elaborate conditions.

**The UK and EU27 have jointly written a letter to other WTO Members saying that they will propose a methodology for splitting these TRQs based on relative consumption shares of the TRQ imports over a recent period.**<sup>50</sup> However, a bilateral agreement on sharing out TRQ quantities has a different impact on other WTO Members compared to sharing out export subsidy or domestic support entitlements. TRQs provide market access opportunities to other WTO Members. A letter signed by a number of agricultural exporters in response claims that a division of the existing EU TRQs between the UK and the EU27 would diminish their export opportunities in both quantity and quality terms.<sup>51</sup> While currently the full volume of a given TRQ can be imported into any Member State, under the proposed approach those volumes would be reduced. Further, any product

<sup>47</sup> Scheduled TRQs at the WTO should be distinguished from TRQs introduced as part of the EU's FTAs with third countries. TRQs are often used to provide some concessions to the FTA partner in the case of sensitive products.

<sup>48</sup> These provisions are found in the *Modalities for the establishment of specific binding commitments under the reform programme* circulated by the Chairman of the Market Access Group, WTO MTN.GNG/MA/W/24, 20 December 1993.

<sup>49</sup> The full list is contained in the EU's Schedule CLXXIII of which the latest version available on the WTO website is dated 1 December 2016. See also the latest EU notification of imports under TRQs WTO G/AG/N/EU/37 dated 17 March 2017 which lists each scheduled TRQ, the quota quantity, actual imports and the actual fill rate. The actual use of many of the EU's TRQs as shown by the fill rate varies widely.

<sup>50</sup> UK Department of International Trade, "[UK and EU set out proposals to WTO members for trade post-Brexit](#)", 11 October 2017.

<sup>51</sup> The letter is available on the [Financial Times website](#).



sent into the UK or EU27 currently enjoys effectively 'frictionless' onward trade into the other party, thanks to EU Customs Union and single market rules. If there are additional trade costs following Brexit, these countries claim this would further diminish the 'quality' of access provided. They also raise the technical problem that using import shares to mirror consumption can give biased results given that product may be imported into a particular country for technical reasons but then sent on to other EU Member States for consumption. These other WTO Members therefore imply that the overall size of the combined TRQs after Brexit should be increased to reflect this diminution of their export opportunities.<sup>52</sup> In the extreme, the suggestion has been made that the EU27 should maintain the full value of current TRQs and that the UK should, in turn, also schedule TRQs of equal value. Such an outcome would be opposed by UK and EU27 farmers because it would represent additional competition from third country exporters on these markets.

This study is not the place to discuss the rights and wrongs of these positions on future scheduled TRQ commitments,<sup>53</sup> but there are implications for possible transition arrangements particularly in the event of a 'hard' Brexit. In particular, **splitting the EU TRQs would mean that the UK TRQs would make no specific provision for existing UK-EU27 trade, and vice versa**. This might not have any practical implications if the UK and the EU27 create a bilateral free trade agreement covering agricultural products on Brexit Day. However, this omission has huge implications if tariff barriers are erected. These implications are further explored in Chapter 4. There may also be a need to split TRQs specifically allocated to the EU by other WTO members as part of their commitments, although the number and importance of these TRQs has not been clarified.

---

<sup>52</sup> To meet this criticism, the UK and the EU27 could enter into their schedules that their TRQs represent a joint obligation to meet their commitments to other WTO Members.

<sup>53</sup> See Ungphakorn, P., "EU joins UK in post-Brexit WTO talks as data emerges as first major hurdle", *Agra Europe*, 23 Oct 2017 for the most recent account of the TRQ discussions in Geneva at the time of writing this study.



### 3. AVOIDING A 'CLIFF EDGE' FOR AGRI-FOOD TRADE

#### KEY FINDINGS

- Even if the UK and the EU27 conclude an agreement on the withdrawal conditions and on the nature of their future relationship by 29 March 2019, **traders face a 'cliff-edge' situation** because of the lack of preparedness of the customs administrations and other relevant authorities on both sides to manage border controls; the lack of knowledge on the part of the large number of new businesses that will face the need to seek customs clearance for their exports and imports; and the almost certain congestion at major ports of entry and exit because of the extra time required for these controls.
- Both parties have indicated a willingness to consider a transition period. Both parties have also indicated their 'red lines' regarding matters on which they would insist during a transition period. **There is little clarity, however, about how extensive such a transition arrangement might be and what laws and regulations it would have to cover** to ensure that trade, including trade in agri-food products, would continue on the same basis as it does today.
- **One option is that the UK would remain a Member State of the EU for a further time-limited period**, either by including a withdrawal date later than 29 March 2019 in the withdrawal agreement or by unanimously agreeing to extend the Art.50 TEU deadline for the negotiations.
- **Another option is that the UK would agree to bind itself to following the relevant Union *acquis* as a non-Member State for a time-limited period after 29 March 2019** while also joining a temporary customs union for this period. Negotiating what would effectively be a complete if temporary trade agreement at the same time as the parties are negotiating a withdrawal agreement and the framework for their future relations may be more than can be achieved in the remaining time available.
- **Fall-back positions** which would avoid some but not all of the additional trade costs, such as a temporary customs union on its own or just a free trade agreement in goods, should be considered if it proves impossible to reach an agreement in which the UK remains bound by the relevant Union *acquis* in the time available.
- **Following the mandate at the October 2017 meeting of the European Council (Art.50), the General Council (Art. 50) and the Union negotiator should seek to rapidly progress preparatory work particularly on models of transitional arrangements.** This should help to clarify what might be the minimum requirements to ensure that trade can continue to take place with the UK as it does today for the duration of the transition period, and what an appropriate balance of rights and obligations might be during this period.
- **Specific issues for consideration** will include whether UK membership of the CAP and the Common Fisheries Policy (CFP) will be deemed necessary as a prerequisite for continued free trade in agricultural and fishery products during the transition period, as well as arrangements to ensure the continued protection of Geographical Indications in the UK

The previous chapter discussed the nature of the additional trade costs that would face EU agri-food traders in the event that the UK withdrew from the EU in a 'hard' Brexit, and possible long-term trade arrangements between the UK and the EU27 which would help to mitigate some or all of these trade costs.

In this chapter, **we assume that the Article 50 TEU negotiations proceed fruitfully and there is an agreement both on the withdrawal conditions and on the nature of the future relationship which is ratified by both parties before March 29 2019. However, if the UK insists that this should be the date of its departure from the EU, it will result in the 'cliff edge' problem that traders would be likely to face considerable disruption immediately after Brexit Day.** One reason is that both parties are highly likely not to have agreed and ratified a fully-fledged trade agreement by this date, even if they have reached agreement on an outline or a future framework. A second reason is that market access under the future trade arrangement will inevitably be more restricted than is the case at present. This implies increased administrative formalities when goods cross the UK-EU27 border, as well as the possibility of increased physical checks and associated time delays, and time will be needed to make these arrangements possible. For these reasons, both the EU27 and the UK have recognised the need for a transitional or interim arrangement although there is disagreement about what this might entail and how long it would last. This chapter examines how agri-food trade could be affected by different transition arrangements.

**There is also the possibility that, after 29 March 2019, trade between the UK and the EU27 could reflect a 'hard' Brexit situation because the withdrawal negotiations break down and the UK exits without a withdrawal agreement.** Trade would then take place on MFN terms and, given the likely bad blood between the parties in this outcome, the prospect of a trade agreement would be postponed to some future date. In this situation, the question of negotiating a transitional arrangement does not arise. A transitional arrangement to avoid a 'hard' Brexit is only relevant when the parties either have ratified or are continuing to negotiate their future relationship.

### **3.1. The need for transition arrangements**

**A key concern for EU27-UK agri-food trade in the event of a 'hard' Brexit, especially for perishable food products, is the prospect of delays at the key cross-Channel crossings.** The UK, Ireland, France, Belgium and the Netherlands will have to make big investments in customs systems and lorry parks at their ports to cope with the post-Brexit surge of customs declarations and consignment checks. There are three main concerns: the ability of customs systems to cope with the dramatic increase in consignments requiring clearance, the huge increase in the number of firms with no previous experience that will now need to access customs clearance procedures, and the prospect of logistical bottlenecks because of the inability of the key cross-Channel entry points to cope with the extra time that would be required for customs and health checks.

**Lack of customs readiness.** The specific challenges facing the UK have been well documented, particularly in a recent National Audit Office (NAO) report on implementation of the new UK Customs Declaration Service (CDS) by Her Majesty's Revenue and Customs (HMRC) (National Audit Office 2017). This replacement for the software currently handling customs clearance in the UK was initiated partly in response to the need to upgrade UK customs systems to meet the requirements of the new EU Union Customs Code. It is scheduled to come into force in January 2019 so as to be ready to meet the EU deadline for all customs procedures to be handled electronically after 2020, but the Brexit date at end March 2019 makes delivery of the new system even more time-sensitive.

**All experience with the introduction of large and complex software systems suggests there will be inevitable teething problems.** The NAO report found that HMRC has made progress in designing and developing the new software but that there is still a significant amount of work to complete, and there is a risk that HMRC will not have the full functionality and scope of CDS in place by March 2019 when the UK plans to leave the EU.

Also, **the addition of customs clearance requirements for current intra-EU trade would make demands on the CDS system above its design capacity.** Currently, there are 141,000 UK traders who make customs declarations for trade outside the EU. HMRC estimate that a further 180,000 traders will make declarations for the first time under the new system, assuming that the UK leaves the customs union. Currently, there are around 55 million declarations per year; this is expected to rise nearly five-fold to 255 million after March 2019 based on current levels of UK/EU27 trade. The current design capacity for the new CDS is to handle 150 million declarations each year, rather than the estimated 255 million.

**While these are the potential problems that the UK would face, similar challenges face EU27 Member State customs administrations,** many of which are also upgrading systems to meet the new UCC requirements. There is virtually no information available on the EU side on its preparedness to deal with exports to the UK or imports from the UK in the event of a 'hard' Brexit.<sup>54</sup> However, Ireland is expecting the number of customs transactions to increase by a factor of ten.<sup>55</sup>

It is not only customs administrations that will be challenged to cope with UK-EU27 trade after Brexit. Many plant and animal products are only able to enter through designated entry points where physical inspections including laboratory tests can take place. There is very limited capacity to handle all of the additional inspections that would be required if trade between the UK and the EU27 also had to be inspected. For example, neither Calais nor Coquelles, the two main points of entry into France, has a Border Inspection Post for animal products.

**Lack of business readiness.** It is not only the public authorities that need to prepare for a 'hard' Brexit but also private businesses. New systems would have to be installed, and staff would have to be trained. This will be especially important for the many businesses now exporting within the single market that have no experience with customs clearance procedures. As Joe Owen of the Institute for Government in the UK explained:<sup>56</sup>

*"Again, the best way to understand timelines for customs is to look at past changes. The EU's Union Customs Code was designed in 2013, introduced across the EU in 2016 and businesses have until 2020 to become compliant. While that seven-year planning horizon could be reduced in the case of Brexit, could you really cut it back to just two years? That is a heroic timeline."*

**Logistical difficulties.** Access to the UK market requires goods to be moved through UK ports (including the Channel Tunnel in this designation) and UK access to the EU27 market means moving goods through EU27 ports. The only exception is lorries crossing the only land border between the UK and the EU27 between Northern Ireland and Ireland. As can be seen from Figure 5, **there are two main corridors which will be affected by a 'hard' Brexit, the Dover Strait corridor across the Channel and the Dublin corridor across the Irish Sea.** Dover is the key artery for UK trade with continental Europe, with over 2.5 million heavy goods vehicles (HGVs) passing through the port each year (10,000 per day) in either direction, and a further 1.6 million freight movements through the Channel Tunnel.

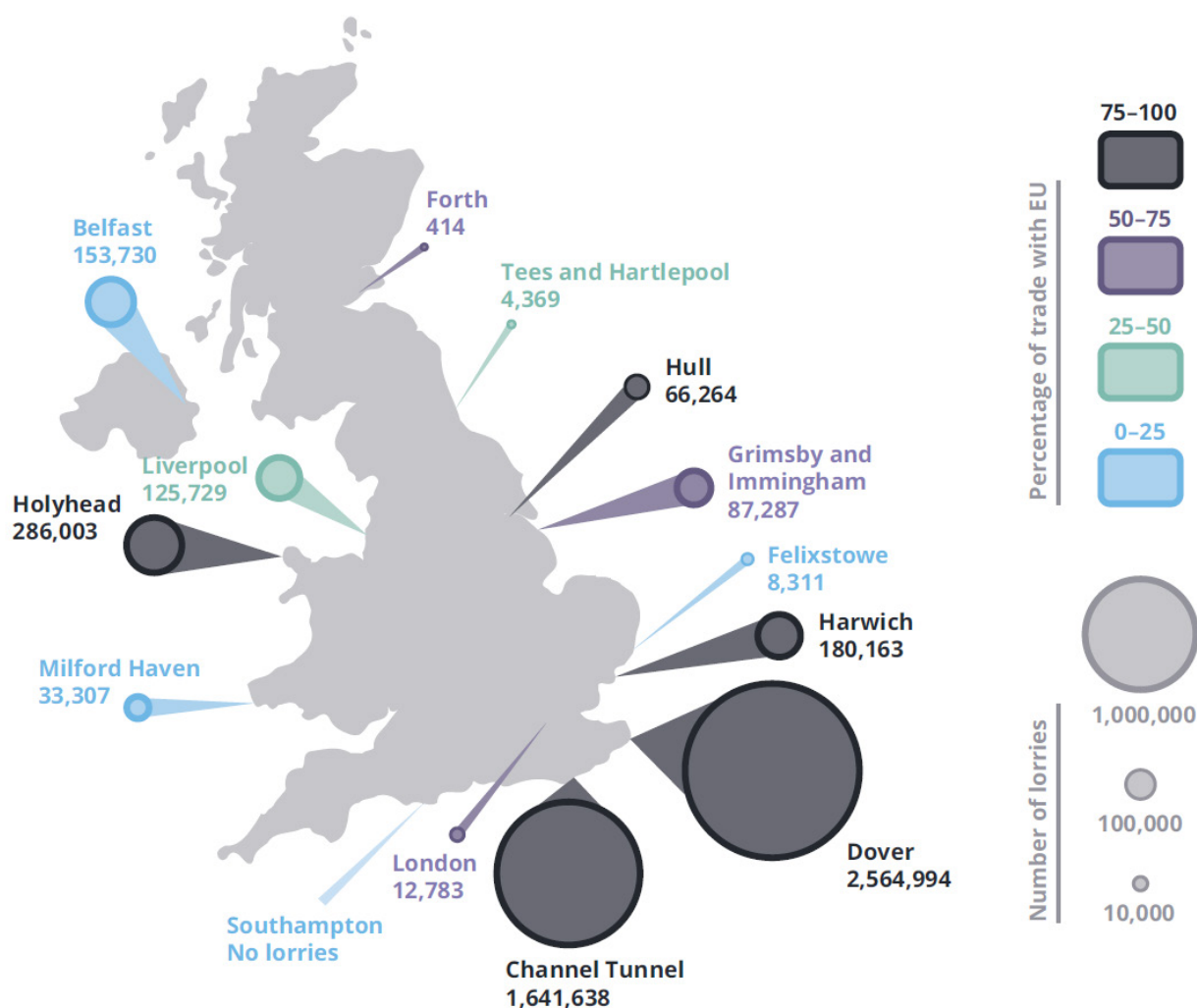
<sup>54</sup> Mr Jim Harra, Director General, Customer Strategy and Tax Design, HM Revenue and Customs, "[Oral evidence: Her Majesty's Revenue and Customs Annual Report and Accounts, HC 314](#)", UK House of Commons Treasury Select Committee, 14 September 2017 stated: "But when it comes to post-Brexit arrangements, other member states have been clear that that is a matter for the Commission and the Commission's negotiating team to deal with. So we are not having significant discussions with other customs authorities in the EU about what their arrangements will be post-Brexit, but clearly, just as there is a task for the UK to deliver, there will be a task for them as well. *More insight into their preparedness for that will be very useful to us, but we don't currently have it* (italics added)".

<sup>55</sup> "[Brexit - Recent Developments and Future Negotiations: Discussion](#)", Evidence by Liam Irwin of the Office of the Revenue Commissioners to the Oireachtas Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach, 16 May 2017.

<sup>56</sup> "[Britain's 'heroic timeline' to introduce new customs regime](#)", Financial Times, October 10, 2017.

Both Dover and the Channel Tunnel crossings are designed for RoRo traffic (where goods remain on the back of a lorry and are driven on to a ferry or the train for the Channel Tunnel or, in the case of Dover, also for trailer transport (where the trailers are dropped off and picked up on the other side by another haulier). Lorries account for 45% of all non-bulk goods traffic with the EU and trailers for a further 24% (Owen, Shephard, and Stojanovic 2017). A lorry driver arriving at the port of entry will stop briefly only to show passport and boarding information, and on arrival will be on the motorway within minutes. This compares to lorry loads of goods entering Dover from outside the EU (around 3% of the total) which are subject to checks that take 45 minutes on average (Meaney 2017). Currently, the Channel ports do not have the parking facilities to cope with delays of this magnitude, leading to fears of massive congestion for traffic on the cross-Channel and Irish Sea routes.

**Figure 5: Annual lorry traffic and EU share of trade for selected major UK ports in 2015**



**Source:** Owen et al, 2017, reproduced with permission.

## 3.2. Views of the parties on transition

### 3.2.1. Article 50 on transition

Article 50(3) TFEU provides for the following arrangements for withdrawal:

*"3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period."*

**This Article provides for two possible withdrawal dates but makes no explicit reference to a transition period.** If there is a date agreed in the withdrawal agreement, then the UK would remain a full member to that alternative date, and would then cease to be a member altogether (as a *curiosum*, the exit date could also be before 29 March 2019 if this were agreed as part of the withdrawal agreement). The withdrawal agreement needs only a qualified majority of the EU27 Member States, as well as the approval of the European Parliament. The two-year deadline which expires on 29 March 2019 is a default in the event there is no such agreed date.

The second way envisaged by Article 50 TEU of extending the two-year period is for the period to be extended without a withdrawal agreement in order to allow negotiations to continue. This extension would require unanimous support of the EU27 and the UK. Again, the UK would remain a full member of the EU. The new date could be a specific one, or it could be an open extension 'until further notice'.<sup>57</sup>

In the UK Prime Minister's Florence speech in September 2017, Mrs May appeared to close off these options. In her speech she stated:

*"The United Kingdom will cease to be a member of the European Union on 29th March 2019. We will no longer sit at the European Council table or in the Council of Ministers, and we will no longer have Members of the European Parliament".*

**At face value, this implies that the UK is not interested in pursuing a withdrawal agreement that sets a withdrawal date later than 29 March 2019.** Nor is it interested in trying to persuade the EU to unanimously extend the negotiating period. The speech states that the UK intention is to leave the EU on 29 March 2019. EU traders should therefore prepare for a change in trading conditions from that date.

### 3.2.2. The EU position on a transition period

The European Parliament expressed its view on transition arrangements in its Brexit resolution of 5 April 2017:

*"Believes that transitional arrangements ensuring legal certainty and continuity can only be agreed between the European Union and the United Kingdom if they contain the right balance of rights and obligations for both parties and preserve the integrity of the European Union's legal order, with the Court of Justice of the European Union responsible for settling any legal challenges; believes, moreover, that any such arrangements must also be strictly limited both in time – not exceeding three years – and in scope, as they can never be a substitute for European Union membership."*

---

<sup>57</sup> David Allen Green, "[The problems of the Brexit transition](#)", Financial Times, 26 September 2017-



**The European Council (Art. 50) in its guidelines in April 2017 accepted that transition arrangements could be part of the withdrawal agreement.** Having defined what it felt were core principles in the negotiations, it emphasised that *"The core principles set out above should apply equally to the negotiations on an orderly withdrawal, to any preliminary and preparatory discussions on the framework for a future relationship, and to any form of transitional arrangements"*. The core principles, in turn, are defined as follows:

- The desire to have the United Kingdom as a close partner in the future.
- Any agreement with the United Kingdom will have to be based on a balance of rights and obligations, and ensure a level playing field.
- Preserving the integrity of the Single Market excludes participation based on a sector-by-sector approach.
- A non-member of the Union, that does not live up to the same obligations as a member, cannot have the same rights and enjoy the same benefits as a member.
- The Union will preserve its autonomy as regards its decision-making as well as the role of the Court of Justice of the European Union.
- In accordance with the principle that nothing is agreed until everything is agreed, individual items cannot be settled separately.
- The Union will approach the negotiations with unified positions, and will engage with the United Kingdom exclusively through the channels set out in these guidelines and in the negotiating directives.

The guidelines went on to specify the following conditions around any transition arrangements.

*"To the extent necessary and legally possible, the negotiations may also seek to determine transition arrangements which are in the interest of the Union and, as appropriate, to provide for bridges towards the foreseeable framework for the future relationship in the light of the progress made. Any such transition arrangements must be clearly defined, limited in time, and subject to effective enforcement mechanisms. Should a time-limited prolongation of Union acquis be considered, this would require existing Union regulatory, budgetary, supervisory, judiciary and enforcement instruments and structures to apply."*

Based on the guidelines, any transition arrangements would need to fulfil three conditions: they must (a) be clearly defined, (b) limited in time, and (c) subject to effective enforcement mechanisms. Furthermore, a transition which involves *"a time-limited prolongation of Union acquis"* would also require *"existing Union regulatory, budgetary, supervisory, judiciary and enforcement instruments and structures to apply"*. These conditions were repeated verbatim in the Council's negotiating directives to the EU negotiator Michel Barnier.

**The European Parliament in its resolution on the state of play of negotiations with the United Kingdom in October 2017 was even more explicit on the conditions that should apply during a transition period:**

*"Notes, in line with its resolution of 5 April 2017, that the Prime Minister of the United Kingdom proposed in her speech of 22 September 2017 a time-limited transitional period; such a transition can only happen on the basis of the existing European Union regulatory, budgetary, supervisory, judiciary, enforcement instruments and structures; underlines that such a transitional period, when the United Kingdom is no longer a Member State, can only be the continuation of the whole of the acquis communautaire which entails the full application of the four freedoms (free movement of citizens, capital, services and goods), and that this must take place without any limitation on the free movement of persons by imposing any new conditions; stresses that such a transitional period can only be envisaged"*

*under the full jurisdiction of the Court of Justice of the European Union ('ECJ'); insists that such a transition period can only be agreed provided that a fully-fledged withdrawal agreement covering all the issues pertaining to the United Kingdom's withdrawal is concluded."*

### **3.2.3. The UK position on a transition period**

**The British government has been clear from the outset that some form of transition period would be desirable if not essential.**<sup>58</sup> The UK Prime Minister, Mrs May, in her Lancaster House speech in January 2017, under the rubric *Smooth orderly Brexit*, set out the objectives for the transition period. These were repeated verbatim in the subsequent UK White Paper on exit from and new partnership with the European Union published in February 2017.

*"But there is one further objective we are setting. For as I have said before – it is in no one's interests for there to be a cliff-edge for business or a threat to stability, as we change from our existing relationship to a new partnership with the EU.*

*By this, I do not mean that we will seek some form of unlimited transitional status, in which we find ourselves stuck forever in some kind of permanent political purgatory. That would not be good for Britain, but nor do I believe it would be good for the EU.*

*Instead, I want us to have reached an agreement about our future partnership by the time the 2-year Article 50 process has concluded. From that point onwards, we believe a phased process of implementation, in which both Britain and the EU institutions and member states prepare for the new arrangements that will exist between us will be in our mutual self-interest. This will give businesses enough time to plan and prepare for those new arrangements.*

*This might be about our immigration controls, customs systems or the way in which we co-operate on criminal justice matters. Or it might be about the future legal and regulatory framework for financial services. For each issue, the time we need to phase-in the new arrangements may differ. Some might be introduced very quickly, some might take longer. And the interim arrangements we rely upon are likely to be a matter of negotiation.*

*But the purpose is clear: we will seek to avoid a disruptive cliff-edge, and we will do everything we can to phase in the new arrangements we require as Britain and the EU move towards our new partnership".*

In her Article 50 letter to European Council President Donald Tusk on 29 March 2017, the UK Prime Minister wrote:

*"We should work together to minimise disruption and give as much certainty as possible. Investors, businesses and citizens in both the UK and across the remaining 27 member states - and those from third countries around the world - want to be able to plan. In order to avoid any cliff-edge as we move from our current relationship to our future partnership, people and businesses in both the UK and the EU would benefit from implementation periods to adjust in a smooth and orderly way to new arrangements. It would help both sides to minimise unnecessary disruption if we agree this principle early in the process."*

---

<sup>58</sup> The UK side has made reference to an 'implementation period'. This assumes that agreement has been reached on the details of the future trade agreement and it is just a question of phasing in these arrangements. It reflects the early belief expressed by UK Government Ministers that it would be a simple matter to agree both the withdrawal arrangements and a future trade agreement and that all of this could be wrapped up within the two-year period specified in Article 50. Events suggest that these expectations have proved over-optimistic, to put it mildly.

**The UK view on an interim arrangement was further developed in the context of future customs arrangements in its position paper on future customs arrangements (HM Government 2017b).**

*"However, under either approach [to future customs arrangements], both the UK and EU Member States would benefit from time to fully implement the new customs arrangements, in order to avoid a cliff-edge for businesses and individuals on both sides. The Government believes a model of close association with the EU Customs Union for a time-limited interim period could achieve this. It would help both sides to minimise unnecessary disruption and provide certainty for businesses and individuals if this principle were agreed early in the process. The Government would need to explore the terms of such an interim arrangement with the EU across a number of dimensions. The UK would intend to pursue new trade negotiations with others once we leave the EU, though it would not bring into effect any new arrangements with third countries which were not consistent with the terms of the interim agreement".*

While the previous references to transition arrangements had simply made the case that such arrangements would be in the mutual interest of both parties, this was the first reference to the concrete form that a transitional arrangement might take. The UK Prime Minister was still hedging her bets (talking about an unspecified *"model of close association with the EU Customs Union"* rather than the more straightforward idea of a temporary customs union between the two parties). She also laid down a marker that the UK would intend to enter into negotiations with third countries on possible free trade agreements, although she recognised that these could not be implemented if they were *"not consistent with the terms of the interim agreement"*. That the customs paper put emphasis on maintaining a close association with the EU Customs Union but made no reference to regulatory coherence could simply reflect the fact that the paper was focused on customs arrangements.

**The UK Prime Minister went much further in outlining her views on a transition period in her Florence speech in September 2017:**

*"But the fact is that, at that point [i.e. 29 March 2019], neither the UK - nor the EU and its Members States - will be in a position to implement smoothly many of the detailed arrangements that will underpin this new relationship we seek.*

*Neither is the European Union legally able to conclude an agreement with the UK as an external partner while it is itself still part of the European Union.*

*And such an agreement on the future partnership will require the appropriate legal ratification, which would take time.*

*It is also the case that people and businesses – both in the UK and in the EU – would benefit from a period to adjust to the new arrangements in a smooth and orderly way.*

*As I said in my speech at Lancaster House a period of implementation would be in our mutual interest. That is why I am proposing that there should be such a period after the UK leaves the EU.*

*Clearly people, businesses and public services should only have to plan for one set of changes in the relationship between the UK and the EU.*

*So during the implementation period access to one another's markets should continue on current terms and Britain also should continue to take part in existing security measures. And I know businesses, in particular, would welcome the certainty this would provide.*

*The framework for this strictly time-limited period, which can be agreed under Article 50, would be the existing structure of EU rules and regulations.*

*How long the period is should be determined simply by how long it will take to prepare and implement the new processes and new systems that will underpin that future partnership.*

*For example, it will take time to put in place the new immigration system required to re-take control of the UK's borders.*

*So during the implementation period, people will continue to be able to come and live and work in the UK; but there will be a registration system – an essential preparation for the new regime.*

*As of today, these considerations point to an implementation period of around two years.*

*But because I don't believe that either the EU or the British people will want the UK to stay longer in the existing structures than is necessary, we could also agree to bring forward aspects of that future framework such as new dispute resolution mechanisms more quickly if this can be done smoothly.*

*It is clear that what would be most helpful to people and businesses on both sides, who want this process to be smooth and orderly, is for us to agree the detailed arrangements for this implementation period as early as possible. Although we recognise that the EU institutions will need to adopt a formal position.*

*And at the heart of these arrangements, there should be a clear double lock: a guarantee that there will be a period of implementation giving businesses and people alike the certainty that they will be able to prepare for the change; and a guarantee that this implementation period will be time-limited, giving everyone the certainty that this will not go on for ever.*

*These arrangements will create valuable certainty."*

This speech goes much further in spelling out how the transition/implementation period might work by proposing a time-limited implementation period "*based on current terms*". For the first time the UK has indicated that the transition period should cover rules as well as the customs union. **Nonetheless, there is evidence of different views within the UK Conservative Party on some of the details of this transition.** In the run up to the Conservative Party conference in October 2017 the UK Foreign Secretary Boris Johnson gave an interview to The Sun newspaper in which he set out four 'red lines' which expanded on the Florence speech.<sup>59</sup> These were:

- The transition period post-Brexit must be a maximum of 2 years and not a second more.
- UK must refuse to accept new EU or European Court of Justice (ECJ) rulings during transition.
- No payments for single market access when transition ends.
- UK must not agree to shadow EU rules to gain access to market.

On the one hand, the Foreign Secretary appeared to want a stricter time limit for the transition period where the Prime Minister had suggested a period of 'around two years' but in any case based on the length of time needed to put new processes and systems in place. Where the

---

<sup>59</sup> Newton Dunn,, T., "[Brexit beast: Boris Johnson reveals his four Brexit 'red lines' for Theresa May](#)", The Sun, 29 September 2017.

Prime Minister had talked about “*new dispute settlement mechanisms*”, the Foreign Secretary was explicit that these should not require acceptance by the UK of CJEU rulings. Where the Prime Minister had talked about accepting EU rules and regulations during the transition, the Foreign Secretary was explicit that the UK should not be required to implement new EU rules and regulations during transition. Many will agree with his position given that the UK will not have any representation on EU decision-making bodies during this period. On the other hand, the Foreign Secretary was clear that the UK should not make payments for single market access when transition ends, leaving open whether he would support budgetary contributions for single market access during the transition.

**Further details on the UK view of the transition period were provided in the Prime Minister’s statement to and in answers to questions in the House of Commons on the Brexit negotiations on 9 October 2017.**<sup>60</sup> In response to a question to explain how the arrangements she was seeking for the transition differ from being a member of the single market and the Customs Union for the period of the transition the Prime Minister replied:

*“I have to say to the right hon. Gentleman that, as we leave the European Union in March 2019, we will leave full membership of the customs union and full membership of the single market. What we then want is a period of time when practical changes can be made, as we move towards the end state—the trade agreement—that we will have agreed with the European Union. We have to negotiate for the implementation period what the arrangements would be. We have suggested that that should be a new agreement—an agreement that we should be able to operate on the same basis and on the same rules and regulations.”*

The Prime Minister did not make clear in what way a new agreement might differ from membership of the Customs Union and single market while permitting trade to continue on the same basis as when the UK was a member of the Customs Union and single market.

In response to a further question to clarify the consistency between being out of the Customs Union and the single market while still trading on the same basis as firms do at the moment, the Prime Minister replied:

*“As of 29 March 2019, we leave the European Union. That means we leave full membership of the customs union and full membership of the single market. ... during that [implementation] period what we are proposing is that it is in the interests of individuals and businesses on all sides to be able to continue to operate on the same basis as they do today”.*

When asked specifically whether she agreed with the views of the European Parliament in its Brexit resolution of 3 October 2017 that a transition period can happen only on the basis of the existing EU regulatory, budgetary, supervisory, judiciary and enforcement instruments, her response was:

*“That is the view of the European Parliament in its resolution. In my statement and my Florence speech, I put out that we expect that the implementation period will be based on the current rules and regulations, but of course this is part of the negotiation”.*

In responding to an invitation to confirm that the rulings of the CJEU would no longer apply in the UK after 29 March 2019, and that any new laws introduced by the EU27 after that date would have no effect until agreed specifically the UK Parliament, the Prime Minister clarified that “*We will have to negotiate what will operate during the implementation period. Yes, that*

---

<sup>60</sup> May, T., “[UK plans for leaving the EU](#)”, Statement to the UK House of Commons, 9 October 2017.



may mean that we start off with the ECJ still governing the rules we are part of for that period, but we are also clear that we can bring forward discussions and agreements on issues such as a dispute resolution mechanism. If we can bring that forward at an earlier stage, we would wish to do so". **This was the first time the UK indicated that it would be willing to accept a role for the CJEU during the transition.**

On the question regarding the status of legislation that might come into effect during the transition period, the Prime Minister distinguished between legislation which has already been introduced and new legislation that might be proposed during the transition period. With respect to legislative proposals which were brought forward before Brexit Day, she pointed out that the UK would be in a position to make clear in the withdrawal agreement whether that was a regulation it would be willing to sign up to or not. With respect to legislative proposals introduced after Brexit Day but during the transition period, her view was that the EU legislative process moves so slowly that, in practice, this would not be an issue.

**The UK Prime Minister's Florence speech and statement and replies to the House of Commons gives much more substance to how the UK envisages the transition period and the conditions it is prepared to accept during that period.** The following four points can be highlighted as underlying the UK position:

- During the implementation period access to one another's markets should continue "*on current terms*". The framework during this period would be "*the existing structure of EU rules and regulations*". On the other hand, the Prime Minister is saying that "*the UK will leave full membership of the customs union and full membership of the single market*". **It is hard to see these positions as consistent.** The customs union case might be reconciled as follows. By joining a temporary customs union with the EU27 for the transition period, the UK would continue to apply the Common Commercial Policy including the CET. But it would use its position as a non-EU Member State to open free trade negotiations with third countries, something it could not do while an EU Member State, while accepting that any agreements could not be implemented until the end of the transition period. The desire to retain the benefits of the single market while leaving the single market is, at face value, more difficult to reconcile. One interpretation might be that the UK would like to 'take back control' immediately of those aspects of the Union *acquis* which are not essential to the operation of the single market, while being willing to observe the Union *acquis* which underpins the single market. However, the Florence speech puts down a marker that, while EU27 citizens will continue to be able to come and live and work in the UK, the UK would want to introduce a registration system.
- **While the length of the transition period should be strictly time-limited, the Florence speech leaves open to further negotiations what this length might be.** The length "*should be determined by how long it will take to prepare and implement the new processes and new systems that will underpin the future partnership*" and the suggestion is made that these considerations "*point to an implementation period of around two years*". The speech also suggests that different aspects of the new arrangements might be phased in at different times, and that some aspects could be introduced earlier than others. New dispute mechanism procedures are specifically highlighted in this context.
- **The UK has accepted that it would be under the jurisdiction of the CJEU during a transition arrangement,** something which should facilitate an agreement which would bind the UK to implementing the relevant Union *acquis* during this period.
- While the Florence speech states that the UK would be prepared to accept the EU's rules and regulations during the transition period, it makes no reference to a **willingness to make budgetary contributions towards economic and social cohesion** in the single market during this period (which would be separate to any financial settlement agreed as part of the withdrawal negotiations).

### 3.3. Extending the date for Brexit beyond 29 March 2019

Although the UK government appears to have ruled this out, it is worth considering further the implications of this option given that it is by far the easiest and most obvious way of maintaining the existing trade relationship during the transition period.<sup>61</sup> It does this by avoiding the need for a transition period, because **the UK would remain a full member of the EU**, with the attendant rights and obligations of membership, until a future agreement was ready to be put in place. The UK would continue to accept the four freedoms, decisions of the CJEU would continue to have direct effect in the UK (while also protecting the rights of UK nationals and businesses in other parts of the EU), the UK would continue to have a say on proposed new regulations during this period, and the UK would continue to make budgetary contributions to the EU. In return, trade would continue exactly as it does today. This solution has the great merit that it would avoid Governments and businesses, both in the EU and the UK, having to change processes twice: once to reflect the terms of the transition and again to reflect the terms of the new relationship. It would also avoid the need for any border checks on the Northern Ireland border during the transition period.

**The first major obstacle to this solution is on the British side.** The government would be open to the charge that it had not delivered Brexit. This criticism could be countered if a firm date for Brexit were agreed even if later than 29 March 2019. This could be achieved either by concluding a withdrawal agreement before 29 March 2019 which specified an alternative, later, date (which would have to be agreed by a qualified majority of the EU27 Member States and gain the consent of the European Parliament), or by unanimous agreement of the EU27 to extend the period for the withdrawal negotiations to a specific future date. It could be further guaranteed on the UK side by specifying a withdrawal date in the European Union (Withdrawal) Bill or through another Act of Parliament.

The next UK general election is scheduled to be held on 5 May 2022 under the Fixed-term Parliaments Act 2011 (an election may be held at an earlier date in the event of an early election motion being passed by a super-majority of two-thirds in the House of Commons, a vote of no confidence in the government or other exceptional circumstances). Thus, the date for UK withdrawal from the EU could be extended by three years beyond 29 March 2019 while still ensuring that the next UK general election would be held when the UK was no longer an EU Member State. The UK Conservative Party would still be able to fight that election on the basis that it had delivered Brexit. From a British perspective, opposition to this solution is more likely to emerge from the internal politics of the UK Conservative Party where one wing seems determined on exit regardless of the economic consequences.

**Accepting that the UK would remain an EU Member State for, say, a further three years after 29 March 2019 would likely cause equal complications on the EU side.** In May 2019 there will be elections to the European Parliament for a five-year period. If the UK were still a Member State it would be entitled to elect MEPs in those elections. The EU is about to embark on the negotiations for its next Multi-Annual Financial Framework (MFF). Indeed, the Commission proposal for the next MFF which was due to be presented before the end of 2017 has already been delayed to the first half of 2018 because of the uncertainty around the extent of future UK contributions to the EU budget. Agreeing the MFF is always contentious because there are net contributors to and net beneficiaries from the EU budget. Thus, agreement on both its size and composition involves decisions on the distribution of resources between Member States. The UK is the second largest net contributor to the UK budget so whether it is a Member State or not when the MFF negotiations take place will have a determining impact on the outcome. Nonetheless, a time-limited extension of UK membership would be manageable. The objections from the EU side are more likely to be political rather than practical.

<sup>61</sup> See Winters, A., Holmes, P. and Szyszczak, E. "[Transition made easy](#)", UK Trade Policy Observatory, 26 September 2017.



### 3.4. Extending the EU acquis to a non-member

The second option is that when the UK leaves the EU there is agreement to maintain current rules and regulations during a transition period. Some object to the suggestion that one can discuss a transition or implementation period without knowing the final destination.<sup>62</sup> This criticism may be valid with respect to the concept of an implementation period, which is premised on the idea that the terms of the future relationship will be fully negotiated by 29 March 2019. However, **there is no ambiguity around the concept of a transition period which simply aims to maintain trade on the same basis as at present; the only issue is how to achieve this.**

The UK would no longer be an EU Member State but it would agree to be bound to apply the Union's rules to ensure the continuation of trade on current terms during this period. The EU has opened this option by saying that the Union *acquis* must apply to the UK during the transition period. The UK has accepted that EU rules and regulations should apply during this period, although with considerable ambiguity around how that would be achieved if the UK were at the same time to leave the single market and the Customs Union.

**From the perspective of agri-food trade, an extension of the EU *acquis*, which would also have to include the UK entering into a temporary customs union with the EU, would ensure the continuation of the trade *status quo* for the duration of the transition period.** This solution would also avoid Governments and businesses, both in the EU and the UK, having to change processes twice: once to reflect the terms of the transition and again to reflect the terms of the new relationship. It would also avoid the need for any border checks on the Northern Ireland border during the transition period.

**There would need to be clarity** around how to interpret the meaning of phrases such as “a time-limited prolongation of Union *acquis*” (European Council), “the continuation of the whole of the *acquis communautaire* which entails the full application of the four freedoms” (European Parliament) and “continued access to one another’s markets on current terms” (UK Prime Minister). For example, does the position of the European Council and European Parliament imply that the UK must continue to operate its agricultural policy under the rules of the Common Agricultural Policy during the transition period? Would the UK have to continue to apply the rules of the Common Fisheries Policy? There are a wide number of Union policies, including energy, climate, science and research, and environment, which are not directly linked to trade.<sup>63</sup> While the UK, under its European Union (Withdrawal) Bill, intends to replicate these policies into British law on Brexit Day, would the UK be able to make changes to regulations in these areas during the transition period?

The European Parliament has already resolved that any future trade agreement should bind the UK to respecting international norms and standards in a range of non-trade policy areas such as environment, climate change, the fight against tax evasion and avoidance, fair competition, and trade and social rights. Presumably this requirement would also attach to a transition agreement. The UK might argue that, as a non-Member State at that point, it should

---

<sup>62</sup> In response to a question following her statement to the House of Commons reporting on the outcome of the European Council meeting 20-21 October 2017, the Prime Minister stated: “... the point of the implementation period is to put in place the practical changes necessary to move to the future partnership, and in order to have that you need to know what that future partnership is going to be” (Hansard, “[European Council](#)”, 23 October 2017). At face value, this seems to differ from the concept of a transition period put forward by the Prime Minister previously which is intended to maintain trade “on current terms”. Because it seems more appropriate to put more weight on the message in the considered statements that the Prime Minister has made, and because it is unlikely that the details of the future trade relationship can be agreed by summer of 2018, the transition period concept used in this chapter is that it is intended to maintain the *status quo* in trade as far as possible.

<sup>63</sup> The distinction is essentially between Union legislation which has relevance to the European Economic Area and legislation which does not, though it must be recognised that the line is not always easy to draw.

not be restricted in the policies it adopts which are not directly related to trade. At a minimum, it would be necessary to ensure that giving the UK policy autonomy in these areas does not risk that UK producers could be advantaged relative to EU27 producers within the single market during the transition period.

As a hypothetical example, if the UK were free to determine its own agricultural policy during the transition period, it could opt to re-introduce a form of the deficiency payments support mechanism that it used prior to its accession to the EU. Deficiency payments are a form of counter-cyclical coupled payments and would not likely be constrained by any Bound Total Aggregate Measurement of Support ceiling that the UK may include in its schedule of WTO concessions. Coupled payments are permitted in the EU under the CAP although they are a voluntary option for Member States and are subject to conditions including a total expenditure ceiling. If UK farmers were able to receive more generous coupled payments during the transition period, EU farmers might view this as unfair competition. Norway is a member of the single market through its EEA membership, and provides support to its farmers at a much higher level than in the EU, but does not enjoy duty-free access for its agricultural exports to the EU. Any greater policy autonomy for the UK during the transition period may need to be accompanied by some agreement on state aid rules including agricultural support policies.

However, this option begs the question how the UK can be both outside the EU, as it will be after 29 March 2019 according to the Prime Minister's Florence speech, and also adhere to the *Union acquis*?<sup>64</sup>

It would not be sufficient just to 'extend' EU law to the UK after Brexit because, after that date, the UK will no longer be an EU member. To take an obvious point, if the UK leaves the EU on 29 March 2019, it will no longer be a member of the Customs Union. Article 28(1) TFEU reads: "*The Union shall comprise a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries*". The UK, as a third country, would clearly not be a member of this EU Customs Union. To remain in a customs union with the EU would require a separate (even if temporary) customs union agreement.<sup>65</sup>

**Any transitional agreement would have to be a trade or association agreement between the UK and the EU27 because the UK, at that point, would be a third country.**

A mandate would have to be given to allow the Article 50 TEU negotiations to negotiate a transitional trade agreement under Article 207 or a transitional association agreement under Article 217 TFEU (the EEA agreement was negotiated as an association agreement under Article 217 although it might be hard to justify this route in the case of a transitional agreement). Some legal scholars debate whether such a mandate would be legal until the UK had actually left the EU and become a third country. Negotiating a transitional trade agreement that effectively replicated the *Union acquis* would in itself be a mammoth task, it could hardly be just cut and paste. "*The UK and EU will need to design an agreement whereby all EU Regulations and Directives continued to apply in the UK with complete certainty. This includes all the mutual recognition of testing and certification elements of the Single Market and the free mobility of labour*".<sup>66</sup>

---

<sup>64</sup> See Frantziou and Łazowski (2017) on the complications of the transition period although they do not seem to recognise that the UK would be a non-EU third country during this period.

<sup>65</sup> See Holmes, P., "[Staying in the Customs Union: Neither Soft Nor Simple](#)", Scottish Centre on European Relations", 11 July 2017 and Stojanovic, A., "[Five things to know about a customs union](#)", Institute for Government, 5 July 2017.

<sup>66</sup> Winters, Holms and Szyszczak, op. cit.

**There is also an international dimension.** This option assumes that during the transition period the UK is no longer an EU Member State but would be part of a (temporary) customs union with the EU27. As a part of a customs agreement the UK would be required to adhere to the FTAs entered into by the EU with third countries. While the UK might be very happy to do this, it presumably would require individual negotiations with each FTA partner to revise the agreements to recognise the non-EU status of the UK after 29 March 2019.

Even if Article 207/217 TFEU negotiations could be managed, the status of such an agreement under EU law is not certain. Because it might cover issues on which EU member states retain competence, national parliaments may have to be involved in ratification of the transition deal on the EU side.<sup>67</sup> The Commission might provisionally apply those aspects that fell within its sole competence from Brexit Day, but the whole architecture of this construction has a very uncertain feel.

**For these reasons, there are doubts whether this option (a new transitional trade arrangement to come into effect immediately after March 29 2019) is indeed feasible.** The UK and the EU27 would be negotiating both a highly complex international agreement and their future relationship at the same time. As Frantziou and Łazowski (2017) observe: *"A good transitional arrangement would have to resolve so many of the sticking points in the negotiations that it would be almost as difficult to achieve as a permanent arrangement"*. They conclude that, if most features of membership are maintained in that transition, it would make more sense to extend the two-year period laid down in Article 50 TEU to a more workable timeline for finding a durable solution.

### 3.5. EFTA/EEA membership as an interim arrangement

One possible way in which the UK might be bound by the EU *acquis* during the transition period would be if it sought temporary membership of EFTA and the EEA. The main argument for this solution is that the EEA is an already existing trade agreement with non-EU countries and thus can provide the appropriate text. It would be similar to the 'Norway' model discussed in Chapter 2, but with the proviso that it would be intended as a temporary solution for the transition period. However, there are formidable scoping, legal and practical problems to adopting this solution.

Joining the EEA agreement would maintain tariff-free trade on non-agricultural goods between the UK and the EU27. It would allow continued time-limited membership of the EU single market. But significant adaptation would still be necessary. EEA membership does not involve a customs union with the EU. The EEA states are free to establish their own trade policies with third countries. Border checks are still necessary to check on origin and for tax purposes. Significantly, **the EEA does not cover agri-food trade and EEA countries are free to adopt their own agricultural and fisheries policies.** If the UK and the EU27 wished to maintain essentially the same trade relations in the transition period as now, it would be necessary to extend the EEA agreement by adding a temporary customs union as well as a bilateral agricultural agreement maintaining tariff-free trade.

Objections to the EEA model as the long-term framework for UK-EU27 trade relations were outlined in the previous chapter. They include the fact that the UK would be required to implement EU rules and regulations over which it had no say, that it requires continued UK budgetary payments to cohesion countries for single market membership, and that it requires acceptance of the four freedoms, including freedom of movement of labour. When viewing the EEA model as a way forward for the transition period, these implications might be – possibly

---

<sup>67</sup> "Furthermore, any international agreement between the EU and the state which has withdrawn defining their future relationship would require ratification in the remaining Member States, unless the agreement were only to cover matters falling within the exclusive competence of the European Union" (Carmona et al, 2017, p. 7).

– acceptable to the UK. But there are other, legal as well as practical, difficulties in the way of this approach.

One set of legal arguments revolves around the issue whether the UK would, in fact, remain a member of the EEA even though it had left the EU. The basis for this argument is that the UK (along with all other EU Member States) has separately ratified the EEA agreement. Thus, it would remain a member and remain within the single market unless it formally withdraws from the EEA using the mechanism laid down in Article 127 of the agreement. Litigation was brought in the UK courts to test that very point, but the application for judicial review was considered to be premature.<sup>68</sup> Critics of this argument point out that Article 126 of the EEA agreement limits the territorial application of the agreement to the EU and to the participating EFTA states. *"In short, once the UK leaves the EU – and absent any other agreement – any attempt to enforce the agreement would encounter significant legal objections in terms of its material and territorial scope".*<sup>69</sup>

However, it is argued that it would still be open to the UK to join the EEA which, given Article 126 of the EEA Agreement, would also require it to seek admission first to EFTA. First, note the considerable practical difficulties in this scenario. It would involve the UK (a) seeking membership of EFTA (b) applying to accede to the EEA under the terms laid out in Article 128 of the EEA Agreement (which requires an agreement between the contracting parties and the state joining the agreement and for the agreement to be ratified by the contracting states in accordance with their own procedures). Moreover, to replicate current market access conditions, it would be necessary in addition for the UK (c) to negotiate additional bilateral agreements with the EU to create a temporary customs union as well as continued free trade in agricultural products, all to avoid additional trade costs during a transitional period which one side says would not last longer than two years.

The various negotiations leading up to these agreements would all involve points of substance and disagreement which may not simply be resolved by cutting and pasting existing text, for examples, issues around the UK's budget contribution to the EEA Financial Mechanism, whether the UK would be allowed to invoke some of the EEA limits on freedom of movement, increasing the size of the EFTA Court to include a UK judge, etc. As a result, observers such as Jean-Claude Piris, former Director General of the Legal Service to the Council of the EU, have argued that the time this will take and the procedural obstacles to be overcome do not make the EFTA/EEA option a suitable vehicle for a transitional arrangement.<sup>70</sup>

This view would appear to be shared by the UK. In response to a question whether continuing membership of the single market might be worse than membership of the EU, the Secretary of State for Exiting the EU, David Davis, replied:<sup>71</sup>

*"The simple truth is that membership of the European Free Trade Association, for example, which would be one way to retain EEA [European Economic Area] membership, would do exactly that: it would keep us within the acquis, and it would keep us within the requirements of free movement, albeit with some limitations, but none of those have worked so far. In many ways, it is the worst of all outcomes. We did consider it—I gave it **some considerable thought, maybe as an interim measure**—but it seemed to me to be more complicated, more difficult and less beneficial than other options"* (bolding added).

<sup>68</sup> Monckton Chambers, "[Single market challenge: Adrian Yalland and Peter Wilding v SSEU \(Article 127 EEA\)](#)", 23 January 2017.

<sup>69</sup> Armstrong, K., "[Staying in the Single Market: Not so EEAsy?](#)", Brexit Time, 8 September 2017.

<sup>70</sup> Piris, J.-C., "[Why the UK will not become an EEA member after Brexit](#)", E!Sharp, September 2017.

<sup>71</sup> Davis, D., "[Membership of the European Economic Area](#)", House of Commons Hansard, 7 September 2017.

Some legal scholars have tried to identify a possible legal pathway using the EFTA/EAA route which, even if convoluted, might be feasible. Armstrong has pointed out that *"there is nothing in principle to prevent the EFTA Council preparing a decision unanimously approving UK membership of EFTA that would come into force simultaneously with the UK's withdrawal from the EU. At the same time, the UK's accession to the EEA Agreement could be agreed by the EEA Council and signed by the contracting parties ready for formal ratification. Pending ratification, an exchange of letters could secure its provisional application without the hiatus that Piris anticipated"*.<sup>72</sup>

However, it may not be possible for the UK both to join EFTA (in order to accede to the EEA agreement), and to be in a customs union with the EU.<sup>73</sup> Article 56 of the EFTA Convention deals with accession and association. Under Article 56(3), there is an obligation on an acceding state to apply *"to become a party to the free trade agreements between the Member States on the one hand and third states, unions of states or international organisations on the other"*. This would mean that the UK would need to apply to join the 27 FTAs that EFTA countries currently have with 38 countries.<sup>74</sup> But the UK could not apply to join these FTAs if it were at the same time in a customs union with the EU; a customs union with the EU would oblige it instead to be a party to the EU's FTAs with third countries. The conclusion is that, in principle, **it is not possible for an EFTA state to also be in a customs union with the EU**, unless the EFTA countries were prepared to waive this requirement for a temporary period to facilitate the UK transition out of the EU.

### 3.6. A temporary customs union as an interim arrangement

As noted earlier, the UK proposed in its future customs arrangements partnership paper to assist in transition *"a new and time-limited customs union between the UK and the EU Customs Union, based on a shared external tariff and without customs processes and duties between the UK and the EU"* (HM Government 2017b). This temporary customs union would be limited in time, and could be one among a number of interim arrangements. If agreement on an extension of the full Union *acquis* seems neither feasible nor practical during the Article 50 negotiations, this is a possible fall-back position on which both sides could agree.

**The benefit of a temporary customs union is that it would avoid the requirement for rules of origin checks on goods traded between the two parties.** From the UK's perspective, it might be a way to give it continued market access to the EU's FTA agreements in the absence of 'grandfathering'. From the EU's perspective, EU farmers would continue to benefit from the preferential trade transfer on exports to the UK market.

**However, a customs union on its own would not avoid the need for border controls.** They would need to be re-introduced to implement phytosanitary checks, check tax compliance and enforce transport restrictions. A customs union would not cover trade in services. It would also prevent the UK from implementing its own trade agreements with third countries, although whether it would be able to negotiate these during the transition period would be a matter for the Article 50 negotiations.

Whether such a temporary customs union would be inconsistent with WTO rules on customs unions and free trade areas (set out in GATT Article XXIV and its interpretative note and attached Understanding) has been debated.<sup>75</sup> Article XXIV makes provision for *"interim*

<sup>72</sup> Armstrong, K., ["Staying in the Single Market: Not so EEAsy?"](#), Brexit Time, 8 September 2017.

<sup>73</sup> Hughes, K., ["Scotland's EU Single Market Options: Some challenges from the trade side"](#), Centre on Constitutional Change, 15 January 2017.

<sup>74</sup> EFTA, ["Global trade relations"](#).

<sup>75</sup> This view was expressed in *The Economist* [in its commentary](#) on the customs position paper: *"Furthermore, the idea of a temporary tariff-free deal is unconvincing: once Britain leaves the EU, non-discrimination rules mean that the two can avoid bilateral tariffs only by scrapping them for all members of the World Trade Organisation."*



*agreements leading to the formation of a customs union or a free trade area” and specifies that approval of such interim agreements is dependent on including a plan and schedule for the formation of such customs union or free trade area within a reasonable length of time. The idea here is to cater for agreements which might initially only cover a portion of total trade between the partners, but which to be consistent with WTO rules should eventually cover substantially all trade.*

A temporary UK-EU customs union would not be an interim agreement in this sense, although it would be intended as a temporary arrangement. It would presumably cover 100% of trade from day 1 (the day after Brexit Day). The fact that the parties intended to replace it with a free trade agreement within a short period of time is irrelevant to its compatibility with WTO rules. One precedent is the customs union entered into by the Czech and Slovak Republics in 1993 following the breakup of Czechoslovakia. The EU made the customs union a condition for transferring Czechoslovakia’s associated status with the EU to the successor states, and the customs union was dissolved when both countries acceded to the EU (and the EU Customs Union) in 2004.

**From the agricultural point of view, the main drawback of a temporary customs union is that it would not address regulatory barriers to trade arising from food safety, veterinary and plant health checks.** Here the UK has proposed a separate agreement on *“regulatory equivalence on agri-food measures, where the UK and the EU agree to achieve the same outcome and high standards, with scope for flexibility in relation to the method for achieving this....Providing the UK and the EU could reach a sufficiently deep agreement, this approach could ensure that there would be no requirement for any SPS or related checks for agri-food products at the border between Northern Ireland and Ireland”*. This proposal was put forward as a way of avoiding a hard border on the island of Ireland as part of the long-term relationship. It could equally well be brought forward and included as a part of a transition agreement. However, this solution would seem to be ruled out by the insistence by the European Council in its guidelines and by the European Parliament that the UK would be required to accept the entire Union *acquis* during the transition period.<sup>76</sup>

Although an agreement on regulatory equivalence on agri-food measures would avoid the need for a high proportion of customs checks, there would continue to be a need for checks on other products, including sensitive products such as chemicals, electronic goods, toys and cosmetics. Therefore, in the context of avoiding a hard border on the island of Ireland, it has been argued that, as well as a customs union with the EU, it would be beneficial if the UK were to remain in the single market at least for goods alone.<sup>77</sup> This solution would avoid borders not only on the island of Ireland but for UK-EU27 trade generally, and would enable existing supply chain arrangements linking companies in both the UK and the EU27 to continue unaffected. While the UK might not be happy with this as a long-term solution (it would not give it access to the single market for capital and services), it might be more attractive in the transition period than a simple tariffs-only free trade agreement which would be the likely alternative. While the UK would remain under the jurisdiction of the CJEU as regards trade in goods and would likely be required to make a financial contribution towards economic and social cohesion in the single market, it would be in a position to control immigration and it would avoid the ‘cliff-edge’ scenario of full border controls after 29 March 2019 which it is highly unlikely to be able to manage.

---

<sup>76</sup> Recall the European Council guidelines that “preserving the integrity of the Single Market is an absolute priority. That excludes participation in any agreement with the UK on a sector-by-sector approach”.

<sup>77</sup> This suggestion has been made by Kevin O’Rourke, [“What if it was the Europeans picking the cherries?”](#), The Irish Economy, 7 October 2017.

### 3.7. A free trade agreement as an interim arrangement

**The most minimal step to avoid a 'hard' Brexit outcome after Brexit Day would be for the UK and the EU27 to agree to establish a tariffs-only FTA**, with the proviso that the two sides would continue to discuss how to deepen and extend that FTA in the future to include elements of regulatory cooperation at a later stage. A bilateral FTA could avoid the re-introduction of MFN tariffs on UK-EU27 trade, but it would not avoid the need for extensive customs clearance and health checks and the introduction of rules of origin. While a bilateral FTA with 100% coverage of tariff lines might seem straightforward, given that the UK and the EU27 start from the position where there are no tariffs, no other EU FTA (apart from the Economic Partnership Agreements with developing countries) provides 100% tariff-free access to the EU market for the agricultural sector. Instead, preferences are provided for limited quantities of trade at reduced duties. The more that either party tried to 'fine-tune' a bilateral FTA in this way, the longer the time it would take to negotiate and the greater the risk that it might not be in place on Brexit Day. However, a tariffs-only FTA could be agreed by the Council and Parliament alone, without the need for Member State ratification, because tariff policy is exclusively a Union competence.

### 3.8. Rescheduling the phasing of Article 50 negotiations

Unless agreement to implement a transitional arrangement were reached (or agreement for the UK to remain an EU Member State until the final trade agreement were concluded as in the previous option) at the latest by early 2018 during the Article 50 TEU negotiations, traders would be forced to undertake contingency planning and to invest in new systems and personnel to cope with the increased possibility of a 'cliff-edge' Brexit. The additional uncertainty arising from any further delay would impact negatively on trade flows, including the possibility of adverse exchange rate movements from the perspective of EU exporters. Traders will hesitate to enter into longer-term contracts with customers as long as there continues to be uncertainty about future trade conditions after 29 March 2019.

**The longer the time that it takes to start discussing and to reach agreement on the nature of any transitional period, the less valuable it will be to businesses on either side of the future UK-EU27 border.** Uncertainty about the trade arrangements which might be in place following Brexit Day is already having a negative impact on the decision-making of businesses and firms that depend on the UK market, including food firms and farmers, not least because of the depreciation of sterling and subsequent exchange rate volatility.<sup>78</sup> Note, however, that even quickly reaching an agreement on transitional arrangements would not provide full legal certainty given the EU position that nothing is agreed until everything is agreed. So traders entering commitments in 2018 on the assumption that the terms of any transitional arrangement would apply after 29 March 2019 are making a bet on the successful conclusion of the entire set of negotiations.

Under the European Council guidelines, discussions on the next set of negotiating directives cannot start until satisfactory progress has been made on the three issues - citizens' rights, the financial settlement, and the Irish border - which make up the first phase of the negotiations. It had been hoped that the European Council meeting in October 2017 might be in a position to confirm that sufficient progress had been made and to issue a new negotiating mandate. The European Council noted that progress had been made on some of the issues in the first phase of the negotiations but concluded that, at this time, **insufficient progress had been made in the first phase of the negotiations to move on to the second.**

---

<sup>78</sup> "[Industry Groups Call for a Clear and Predictable Transitional Arrangement in the Brexit Process](#)", press release from a group of industry associations representing global companies operating in both the UK and the EU27, 11 October 2017. It noted that "*they are increasingly challenged by the regulatory and operational complexities as well as the economic risk associated with Brexit*".



Some argue that the current uncertainty works to the benefit of the EU27. The longer it takes for the outlines of a deal to become clear, the greater the uncertainty, and the more likely that UK firms will respond to the possibility of no deal or a bad deal by planning a redirection of investment or even a relocation. For some governments, the prospect of attracting financial firms currently headquartered in London may make this an acceptable risk. Others argue that, because the UK has in relative terms more to lose from a disorderly Brexit than does the EU27, the economic pressure created by the current phasing make it more likely that the UK will come forward with acceptable offers on the three preliminary issues, most notably the financial settlement.

If indeed these motives influence the EU negotiating position, they are extremely short-sighted and have the potential to build up much more serious problems in the future. Even though the UK has decided to leave the EU, cooperation between the two parties will be essential in meeting many of the future challenges facing Europe, including security threats, terrorism, migration, climate change and financial stability. Poisoning this relationship in the longer-term by refusing to negotiate in good faith would make a very poor bargain.

There are other arguments in favour of a more pro-active negotiating stance by the EU.<sup>79</sup> The sequencing of the negotiations is not a legal obligation. Nothing in the text of Article 50 TEU forbids discussing the withdrawal arrangement and the future framework simultaneously. The sequencing is a tactical choice of the EU, which suggests it should be assessed on the basis of its benefits and costs.

There are costs associated with maintaining the current phasing of the negotiations. In the first phase, the UK is being pressed to make commitments, but it is getting nothing in return. Negotiating the two phases in parallel would allow trade-offs and linkages between issues to be made which would make it easier for the parties to reach a compromise agreement, not least on the question of the Irish border. The European Council itself in its guidelines has said that nothing is agreed until everything is agreed, so it is not the case that the UK could pocket concessions made, for example, on the transition period without fully meeting the EU27's expectations on citizens' rights and the financial settlement.

Newspaper reports suggest that the EU's negotiator, Michel Barnier, did ask the EU27 to give him a new mandate to discuss transition arrangements at the October summit. In the event, there was at least a blocking minority of countries that were opposed to this.<sup>80</sup> However, the Council has agreed that internal preparatory discussions in relation to the framework for the future relationship and on transitional arrangements should be started. This is an important signal which should be fully exploited.

This study makes the strong recommendation that the European Parliament should use its influence to encourage the Council with the Union negotiator to **rapidly bring forward specific proposals for the transition with a view to clarifying what it believes would be the minimum requirements to ensure that trade can continue to take place with the UK as it does today in the single market** for the duration of the transition period, and what it sees as the appropriate balance of rights and obligations during this period. Not all of the Union *acquis* is necessary in this regard.

**A critical issue here is whether UK membership of the CAP and the Common Fisheries Policy (CFP) will be deemed necessary as a prerequisite for continued free trade in agricultural and fishery products during the transition period.** With respect to an

---

<sup>79</sup> These arguments were put forward in Delhouse, F., "[Why the sequencing of the Brexit negotiations should be abandoned](#)", Egmont, 28 September 2017.

<sup>80</sup> "[Brexit: stop the 'games' over the bill and get on with EU deal, says Denmark](#)", The Guardian 8 October 2017. "[Brexit talks stutter, but EU leaders might give May break](#)", Reuters, 9 October 2017.

obligation to respect CAP legislation, the EU's previous trade agreements are ambiguous. Norway and Switzerland do not respect CAP legislation and do not enjoy fully-liberalised trade in basic agricultural products with the EU. With Turkey and Ukraine there is some presumption that these countries will align their agricultural policies with the CAP and that this will facilitate if not be an actual prerequisite for fully liberal agricultural trade. However, Georgia has fully tariff-free agricultural trade with the EU despite having no intention of adopting the CAP legislation. Even though the FTA agreement with Canada did not fully liberalise agricultural trade, the reason for excluding certain tariff lines was due to the economic sensitivity of the sectors concerned and not because of a demand that Canada should align its agricultural policy with that of the CAP. On the basis of these precedents, an obligation to base its agricultural policy on CAP legislation would not appear to be a requirement either for a future trade arrangement with the UK or for a transition agreement. However, some agreement on state aid rules including agricultural support would be necessary. On the fisheries side, Sobrino Heredia (2017) note that acceptance of the CFP has not been a feature of the EU's FTAs but point out that fisheries governance would require a bilateral fisheries agreement to enable preferential access to waters and resources.

**Another issue which would require clarification, both in any future trade agreement and in the transition, would be the status of the legal protection for EU27 Geographical Indications (GIs) in the UK (and vice versa).** The UK, under the European Union (Withdrawal) Bill, will implement the same legislative framework for GIs as the EU one, but there will still be a need to ensure mutual recognition of protected GIs in each other's jurisdiction. One way to achieve this would be if the UK were to join the *Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications* (Matthews, 2015).

The preparatory work should also clarify whether these minimum requirements are likely to include areas which fall within the competence of Member States, and thus whether a transition agreement would also have to be ratified by Member States as well as the Council and Parliament. These steps are in the interests of EU27 businesses and consumers as much as they are in the interest of the UK.

**Ultimately, the terms of a withdrawal agreement under Article 50, including any provisions it might contain with respect to transitional trade arrangements, must be ratified by both sides.** The EU procedure for ratification requires a qualified majority in the Council and the consent of the European Parliament. In the UK, the Government will bring forward a motion on the final agreement to be voted on by both Houses of Parliament before it is concluded. Any new treaty that the UK would agree with the EU would also be subject to the provisions of the Constitutional Reform and Governance Act 2010 before ratification. However, the European Union (Withdrawal) Bill provides the UK Government with a further limited power to implement the contents of any withdrawal agreement reached with the EU into UK domestic law without delay, where this is necessary to ensure that the UK is ready to begin the new arrangements from the date of exit (UK DExEU 2017). Some legal scholars argue that a further referendum would be required under UK law to approve the agreement if it provides that a EU body or institution can impose a requirement or obligation on the United Kingdom (Kouroutakis 2017).

What would happen in the event of a failure to ratify by either side is uncertain, but it would certainly increase the chances that the UK would leave the EU without an agreement and thus a 'hard' Brexit.



## 4. PROTECTING AGRICULTURAL INTERESTS FOLLOWING BREXIT

### KEY FINDINGS

- The EU has gained considerable **experience in recent years in the management of adverse shocks to agricultural markets which can be drawn upon** in designing possible responses to a negative Brexit shock. They include the use of safety-net intervention; targeted aid; mobilisation of the crisis reserve; advancing direct payments; making use of the income stabilisation tool; permitting flexibility in state aids; and facilitating supply management.
- Farmers and food businesses in the EU27 **will need support to adjust to the structural consequences of a 'hard' Brexit**. This might include the provision of adjustment assistance; greater use of financial instruments; a strengthened promotion policy; and improved access to third country markets.
- A specific market access concern is how UK TRQs will make provision for traditional EU27 export flows, and vice versa for EU27 TRQs. **Merely splitting the EU TRQs does not go far enough to protect the interests of EU producers to access the UK market** in the event of a 'hard' Brexit.

The focus in this chapter is on possible responses to the negative impacts of a 'hard' Brexit for the EU27 agricultural sector. These negative impacts were described in Chapter 2. They include the re-introduction of tariffs on UK-EU27 agri-food trade, the loss of the preferential trade transfer on sales to the UK market, the additional costs including indirect costs of customs and regulatory checks at borders, the likelihood of immediate supply chain disruptions because the necessary systems will not be up and running, and the potential for a further sharp depreciation in the value of the UK currency. Responses to these negative impacts can take two forms. The first consists of attempts to avoid the worst costs of a 'hard' Brexit by shaping the Article 50 negotiations themselves; this response was examined in Chapter 3. The second response examines the use that might be made of existing or new CAP instruments to help offset the adverse consequences for the EU27 farming sector that might follow from the outcome of the Article 50 TEU negotiations or from a failure to bring these to an agreed conclusion. This is the focus of this chapter.

At the time of writing, there is no guarantee that the negotiating outcomes discussed in Chapter 3, which would allow agri-food trade to continue in the same way as now and would avoid the adverse consequences of a 'cliff-edge' Brexit, will be agreed. There is still the possibility that the negotiations could fail to reach agreement, and that the UK would cease to be an EU Member State without any agreement – a 'disorderly' Brexit, with all of the disruption to trade that would imply. It is therefore also appropriate to examine the possibilities to use instruments under the CAP to cushion producers from these adverse impacts.

As a general point, **the relevant instruments to address an adverse shock would be expected to differ depending on the nature of the shock and whether it is expected to be temporary or represents a structural shift in external trading relations**. In the case of a temporary shock (such as a drop in market prices due to specific market conditions), the primary focus will be on the safeguarding of producer incomes. For a structural shift, it is more important to emphasise instruments which help farmers to adjust to this change rather than to offset the impact of the change (which has the danger that it fossilises existing production and marketing structures rather than encouraging farmers, processors and traders to begin the necessary adjustments). A 'hard' Brexit is likely to involve both elements. The re-introduction of additional trade costs, a further depreciation of sterling and reduced attractiveness of the UK market (due to unilateral decisions by the UK to reduce applied tariffs

or to enter into free trade agreements with third countries which strongly liberalise agricultural trade) represent a structural change in trading relations which will require adjustment by EU producers. The initial lack of preparedness will, in addition, cause temporary but potentially severe disruption to trade flows and hence producer incomes.

Although the displacement of EU27 exports destined for the UK market in the event of a 'hard' Brexit is likely to have a negative effect on prices within the EU27 common market as a whole, some Member States will be more exposed to disruption than others, particularly in the event of a further depreciation of sterling, because a higher share of their agricultural exports and agricultural output is currently sold on the UK market. **The uneven distribution of the negative price impacts suggests that general market support instruments may need to be accompanied by more targeted measures in the immediate aftermath of a 'hard' Brexit.**

#### 4.1. Support in the case of market disturbance

The EU has gained considerable experience in recent years in the management of adverse shocks to agricultural markets, specifically in the context of the response to the Russian embargo on exports of certain EU foods to Russia and to the drop in milk prices in 2014-2016.

**Use of safety-net intervention.** The EU has the possibility to acquire stocks into intervention, or to pay firms for private storage, in order to withhold product from the market and to strengthen producer prices. This **instrument is most effective when dealing with temporary or cyclical market disruptions when there is a reasonable expectation that market prices will recover within a short period of time.** The difficulty with the use of intervention is that the build-up of intervention stocks can act to depress market sentiment and to delay the recovery in market prices, as arguably has been the case following the build-up in skim milk powder intervention stocks in the past few years. It also acts to delay adjustments in production where the shock is likely to be permanent (as would be the case of a 'hard' Brexit) and where there is a need to facilitate and assist farmers to take advantage of alternative opportunities.

**Targeted aid.** During the milk crisis the Commission made available national envelopes to Member States to support the dairy sector, having particular regard to those Member States which had been most affected by market developments. It later introduced a scheme of conditional adjustment aid to be defined and implemented at Member State level using a menu of measures proposed by the Commission (amounting to €350 million that Member States were allowed to match with national funds, thus potentially doubling the level of support being provided to farmers). **The principles behind this arrangement – targeting of funds to Member States most adversely affected, co-financing between the Union and Member States, and flexibility of Member States to choose from a menu of measures proposed by the Commission - would seem very suited to deal with post-Brexit disruption.**

**Mobilisation of the crisis reserve.** One of the innovations in the 2013 CAP reform was the creation of a €400 million (in 2011 prices) crisis reserve, which is replenished annually by withholding a fixed percentage of direct payments to farmers in receipt of payments above a certain level. If the reserve is not used in any particular year, that money is added to the direct payments that the affected farmers receive in the following year. To date, it has not been necessary to make use of the crisis reserve because other sources of funding were available within the CAP budget to fund the crisis measures implemented in recent years. There is also reluctance among Agriculture Ministers to trigger payments from the reserve because it effectively represents a redistribution of payments from one group of farmers to another. Nonetheless, **the instrument exists and its use could be justified if there were**

**clear evidence that some groups of farmers in the EU27 are more adversely affected by a 'hard' Brexit than others.**

**Advancing direct payments.** The first instalment of direct payments is paid to farmers on 1 December in each year, although under existing rules Member States can pay up to 50% of their direct payments envelope to farmers from 16 October, provided that the necessary controls have been carried out. During the dairy crisis this percentage was increased to 70%. The payment date for area and animal-related payments for rural development (such as agri-environment, organic farming, areas of natural constraints, animal welfare) can also be brought forward and during the milk crisis a higher percentage of the total payment was allowed to be made in the first payment. **These measures can provide some relatively swift, but temporary, relief to farmers' cash flow and could be considered again as a possible response to the negative short-term fall-out from a 'hard' Brexit.**

**Income stabilisation tool.** Member States/regions already have the option to include an income stabilisation tool in their Rural Development Programmes. This risk management tool supports farmers facing a severe drop in income (minimum 30% loss compared to the three previous years). Only a few Member States have programmed this tool, but it could be introduced by others with the next modification of Rural Development Programmes. Agreement has been reached in the trilogues on the Omnibus Regulation to make the income stabilisation tool a more attractive option. **More widespread adoption could provide an additional safety net for farmers in the event of a 'hard' Brexit.**

**Flexibility in state aid rules.** Member States have the possibility of providing national funding under the *de minimis* rules (below €15.000 for agricultural primary production or €200.000 for marketing and processing activities over three years). For farm aid, there is a national cap that total *de minimis* aid cannot exceed 1% of annual output. These rules were relaxed during the milk crisis in two ways. Member States could give aids to farmers voluntarily freezing or reducing production (compared to a reference period) up to €15.000 per farm per year (without national ceiling) in the form of a grant, loan or guarantee (for the dairy, pig meat and fruit and vegetable sectors). Member States could also introduce a state aid scheme for access to finance to bridge a liquidity gap in the form of loans or guarantees (for the dairy, pig meat and fruit and vegetable sectors). **Temporary derogations could again be considered in the context of a 'hard' Brexit, although it would be important to avoid that aids to farmers in one Member State would be at the expense of farmers in another.** Both of the recent derogations were justified under Article 107(3) TFEU which permits aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

**Member States also have the possibility to provide national aids which meet the criteria set out in the Agricultural Block Exemption Regulation.** These generally cover measures which are available within Rural Development Programmes (RDPs) and are co-financed by the EAFRD (for example, aid for investments, for agri-environment-climate schemes, for organic farming, or for the participation in quality schemes) which can also be nationally financed. Under certain conditions, state aids can also cover promotion, the closure of production capacity and, under strict conditions, rescue and restructuring aid for companies in severe financial difficulties, etc.

**Supply management.** In an early response to the Russian embargo which had a particularly adverse impact on perishable crops such as fruit and vegetables, the Commission provided support for the withdrawal of surplus volumes from the market with a view to providing short-term relief. Depending on the market situation immediately after Brexit, the introduction of similar measures could be justified on a temporary basis.



## 4.2. Support for adjustment

**Provision of adjustment assistance.** The EU created in 2007 the European Globalisation Adjustment Fund (EGF) as a flexibility instrument in the EU budget for interventions in case of mass redundancies caused by major changes in global trade. It aims to help dismissed workers find new jobs through a package of tailor-made services. Eligible actions include: tailor-made training; job-search assistance; entrepreneurship promotion; and measures addressing the needs of disadvantaged or older workers. The EGF cannot be used for passive social protection measures such as unemployment allowances or retirement pensions. Nor can it fund the restructuring of a company or a sector. From May 2009 to December 2011, the EGF was also able to support workers who had lost their jobs as a result of the financial and economic crisis.

In proposing the continuation of the EGF for the period 2014-2020, the Commission proposed that, under specific conditions, Member States would be able to request funding for agricultural sectors, products or regions significantly affected by new trade agreements to help farmers adapt to a different market situation. The objective would be to assist them to become structurally more competitive or to facilitate their transition to non-agricultural activities. Up to five sixths of the proposed budget could be used to this end.

This proposal was rejected by both the Council and the European Parliament. One major objection was the linkage of assistance to the conclusion of trade agreements which could have adverse effects for EU farmers. It was argued that the resources available were totally inadequate relative to the potential costs of trade liberalisation, and that it could act as a fig-leaf to encourage the Commission to negotiate trade agreements at the expense of the agricultural sector. There was also criticism from workers' representatives that the high amount to be reserved for the agricultural sector would reduce the funds available for its original purpose.<sup>81</sup>

Whether the EGF is the right institutional framework or not, **making available personalised advice, mentoring and coaching to farmers on their options in the event of a severe drop in market prices due to a loss of access to the UK market, as well as training in entrepreneurship and business creation, could be a useful addition to the policy toolkit to address the impact of a 'hard' Brexit.** Already, some farm advisory services provide services of this nature. It could be valuable to extend the remit of the Farm Advisory Service foreseen under the CAP Horizontal Regulation from its current focus on meeting cross-compliance and greening standards to also include socio-economic advice.

**Greater use of financial instruments.** Adjustment measures on farms will require access to capital. Financial instruments aim to create incentives for economic operators to provide finance to final recipients such as farmers. They are intended to address an identified market gap, i.e. areas where banks are unwilling to lend and/or where the private sector is unwilling to invest, for instance in small farms or new agricultural businesses without sufficient credit history or assets as collateral. Their main attraction is that they can leverage additional private resources for investment projects when public funds are limited. The constraint on their use is that the money is expected to be repaid, so they are only suitable for financially viable projects, i.e. those which are expected to generate enough income or savings to pay back the support received. Financial instruments can take the form of loans, guarantees or equity, and may be managed by national or regional banks, international bodies such as the European Investment Bank or the European Investment Fund, by financial intermediaries, and (for loans and guarantees only) by RDP managing authorities.

---

<sup>81</sup> Matthews, A. "[Farmers and the European Globalisation Adjustment Fund](#)", October 25, 2011.



Loans supported by financial instruments can make finance available to farmers where none is offered commercially (e.g. from banks), or on better terms commercially (e.g. with lower interest rates, longer repayment periods, or with less collateral required). **Following the disruption caused by a 'hard' Brexit, there is likely to be an increased demand for this type of finance as farmers seek alternative opportunities and traders seek alternative markets.** Additional flexibility in the state aid guidelines may be needed to ensure that financial instruments can be made fully operative for farmers.

### 4.3. Strengthened promotion policy

**Information and promotion schemes.** Support is available under the CAP through a range of instruments towards the provision of information and promotional actions for agricultural products. Following a debate initiated by a Commission Green Paper in July 2011 and a Commission Communication in March 2012, a new Regulation (EU) No 1144/2014 was adopted and became applicable from 1 December 2015.<sup>82</sup> This legislation greatly enhanced the scope of the CAP's promotion policy by expanding the scope of measures, beneficiaries and eligible products that could be funded and by significantly increasing the aid for information and promotional activities from a budget of €61 million in 2013 to €111 million for 2016 and up to €200 million in 2019. Among the objectives of this legislation is to help restore normal market conditions in the event of serious market disturbance, loss of consumer confidence or other specific problems. Each year, the Commission defines the strategic priorities for promoting EU farm products and funding criteria in an annual work programme outlining the thematic priorities for support including products and possible markets. Proposals submitted for funding are examined by independent experts, following the award criteria defined in the annual work programme.

Following a 'hard' Brexit, **there would be a case to target support for promotional activities outside the EU on those products and countries most adversely affected.** This might be done by reviewing the thematic priorities for support or by revising the award criteria. Targeting on products is already a feature of the thematic priorities. For example, around nine topics were identified for support in the 2017 Work Programme of which two focused on products that were particularly affected by the Russian embargo (Table 4). The value of this scheme was underlined by the response to the specific priority for milk and pig meat products following the 2016 call, where the budget requested was four times higher than the indicated budget in the annual work programme.

The award criteria stated for the 2017 Work Programme covered four elements unequally weighted: Union dimension, technical quality, management quality, and budget and cost-effectiveness. It could be decided to add criteria in future Programmes which in some way take account of the vulnerability of different Member States to the adverse impacts of a 'hard' Brexit.

---

<sup>82</sup> More information is provided in the European Parliamentary Research Service Briefing *EU agricultural promotion measures*, June 2016.

**Table 4: Topics and actions for support in the 2017 Work Programme for information and promotion measures for agricultural products**

NO.	TOPIC
1	Information provision and promotion programmes aiming at increasing the awareness and recognition of certain Union quality schemes
2	Information provision and promotion programmes aiming at highlighting the specific features of agricultural methods in the Union and the characteristics of European agricultural and food products, and other quality schemes
3	Information provision and promotion programmes targeting one or more of the following countries: China (including Hong-Kong and Macao), Japan, South Korea, Taiwan, south-east Asian region or India
4	Information provision and promotion programmes targeting one or more of the following countries: USA, Canada or Mexico
5	Information provision and promotion programmes targeting one or more of the following countries: USA, Canada or Mexico
6	Information provision and promotion programmes targeting geographical areas other than those included under Topics 3, 4 and 5.
7	Information provision and promotion programmes on milk products, pigmeat products or a combination of those two targeting any third country
8	Information provision and promotion programmes on beef products targeting any third country.
A	Programmes increasing the awareness of Union sustainable agriculture and the role of the agri-food sector for climate action and the environment

**Source:** Commission Implementing Decision of 9.11.2016 on the adoption of the work programme for 2017 of information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries, C(2016) 7100.

**Export market credit guarantees.** Promoting EU products in overseas markets can help to create a demand, but taking advantage of new outlets and entering new markets takes time and causes great uncertainty and risks. Strengthening promotion policy under the CAP only provides a partial solution to this problem, as it does not cover commercial risks. Often, the private banking sector does not provide coverage of this kind of risk either. Certain Member States have set up export credit insurance systems to support agri-food businesses, but there are no export credit, export credit guarantee or insurance programmes operated at the EU level. An Export Credit Group under the Council reviews the export credit support schemes of Member States to ensure that under the EU's common commercial policy, Member States do not undercut each other internationally and create unfair competition.

The Commission, together with the European Investment Bank, have been examining the possible benefit and feasibility of setting-up an export credit guarantee facility at the EIB for agricultural exports to new or risky markets. Commissioner Hogan made reference to the conclusions of their study when reporting to the June 2016 AGRIFISH Council meeting.<sup>83</sup> It concluded that an export credit guarantee tool does not offer short term relief to supply in crisis situations. It could possibly support the internationalisation of the EU agri-food sector for those companies and export destinations for which access to trade finance is difficult. However, Member States have been slow in providing a clear economic case to introduce such a tool for agriculture at the EU level. At a meeting of the Special Committee for Agriculture on

<sup>83</sup> Hogan, P., "[Speaking note to AGRIFISH Council \(June 27, 2016\) in Luxembourg](#)", 27 June 2016.

20 June 2016, Member States were asked to reply to two questions, on the value added of an EU credit guarantee scheme, and on its operational management.<sup>84</sup> To date, it does not appear that the Committee has returned to address this issue. **One way to advance this file could be to establish European guidelines on the use of export credits to encourage Member States to provide this kind of tool.**

**Promotion on the internal market.** While promoting the export of EU products outside the EU is an obvious response to the loss of access to the UK market in the event of a 'hard' Brexit, the potential to stimulate domestic consumption should not be overlooked. **This could be particularly useful in the case of fruit and vegetables** where average intake in the EU appears to be below recommended nutritional levels. There may be scope under the School Scheme for Milk, Fruit and Vegetables to increase the offtake of these products under this Scheme.

#### 4.4. Improved access to third country markets

Some may draw the conclusion from the experience of the Russian embargo and a 'hard' Brexit, if it occurs, that relying on third country markets is too risky and that the appropriate policy response should be to reduce the dependence of EU producers on third country markets and to concentrate on domestic, or even local, markets. **Reducing exports to third country markets would be very counter-productive and would further impoverish the farming community.** As it is, the vast majority of farm and food products supplied on the EU market (mostly from domestic production but also from imports) are consumed within the EU. Only 4.2% of agricultural products were exported outside of the EU in 2011, and only 6.9% of food, beverages and tobacco products.<sup>85</sup> These are either high value products which are sold at premium prices (e.g. products with a quality mark) or lower-valued products for which there is limited consumer demand within the EU and where overseas markets yield a higher return (e.g. certain poultry parts). If farmers were unable or discouraged from producing these products, and instead had to substitute alternative products which could only be sold on the EU market, the net impact would be lower returns to their labour, capital and land inputs. Indeed, the only way to entirely remove the risk of depending on others is to return to self-sufficient households. Even if this were deemed a practical option, that approach magnifies the risks of depending on own production. Instead, the way to address risk on third country markets is to strengthen the rules governing international trade and to diversify markets to reduce the risks of over-dependence on any one buyer.

**Free trade agreements.** The EU is a strong supporter of the multilateral rules-based system under the governance of WTO rules. The rules governing agricultural trade were strengthened in the WTO Agreement on Agriculture signed at the conclusion of the Uruguay Round of trade negotiations in 1994. Although another round of negotiations to further liberalise agricultural trade, *inter alia*, was launched in Doha in 2001, these negotiations are bogged down and are not likely to result in an agreement to further liberalise market access in the near future.

Instead, **the EU has sought to open additional market access through bilateral free trade agreements with countries willing to go further in liberalising trade.** Notable FTAs recently concluded include those with Korea, Vietnam, Singapore and Canada, while FTAs are under negotiation with the US, Mercosur, Japan and India and are scheduled to start with Australia and New Zealand. Trade agreements only open up market opportunities, these must then be realised by the relevant business actors. Assistance can be provided, and

<sup>84</sup> [Summary Record of the 1530th meeting of the Special Committee on Agriculture \(SCA\) held in Brussels on 20th June 2016.](#)

<sup>85</sup> Calculated from Eurostat, Input-output tables at current prices, 60 branches, EU aggregates, domain [naio\_17\_agg\_60\_r2].

Commissioner Hogan has scheduled a number of promotion visits to third countries where important opportunities exist for EU agriculture and to help open doors for new exports.

In many markets, the major barrier to access is not the level of tariffs imposed but non-tariff barriers and, in the case of agricultural and food products, particularly SPS measures. The Commission (DG SANTE, DG AGRI, DG TRADE) has been working for some time to resolve a number of SPS issues with third country partners, with some success. **More focus could be brought to this work by drawing up an annual priority list of the trade barriers that the EU hopes to remove.**

While these efforts should continue, the negotiation of trade agreements and the removal of SPS barriers are lengthy and arduous processes and so these are not a relevant response to the immediate problems likely to be caused by a 'hard' Brexit.

#### 4.5. TRQs for UK-EU27 trade

It was argued in Chapter 2 that splitting the EU TRQs between the UK and the EU27 would mean that the UK TRQs would make no specific provision for existing UK-EU27 trade, and vice versa. While this might not have any practical implications if the UK and the EU27 create a bilateral free trade agreement covering agricultural products on Brexit Day, this omission has significant implications for EU producers if tariff barriers are erected.

In the case of beef TRQs, for example, virtually all EU TRQ amounts are allocated to specific countries with the small exception of a 1,500t TRQ for frozen edible offal of which 700t is allocated to Argentina and the remaining 800t is available to other countries. There is a pigmeat TRQ of 10,159t with a reduced rate of duty of which 4,624t are allocated to Canada but the EU27 could compete with other countries for the remaining *erga omnes* quota of 5,535t. Other pigmeat TRQs remain open to any exporter. In the case of the major sheepmeat TRQ of 283,715t, almost all of this is allocated to specific countries (with New Zealand being the largest beneficiary with a quota of 227,854t), leaving only an MFN quota of 200t for which all EU27 exporters would have to compete after a 'hard' Brexit. New Zealand also has a butter TRQ of 74,693t with a very favourable in-quota tariff, while the EU27 would have to compete for the MFN quota of 11,360t with a higher in-quota tariff in the event of a 'hard' Brexit. Two Cheddar cheese quotas allocate 14,711t TRQs to Australia, New Zealand and Canada while the EU27 would have to compete with all other countries for a share of the MFN TRQ of 15,005t.

Various EU27 countries have been traditional exporters to the UK market for decades if not longer. When schedules of concessions were being drawn up at the formation of the WTO in 1994, there was no need to create current access TRQs for these exports because, at that time, they had completely unrestricted access to the UK market under EU rules. It would seem odd that the UK would now seek to introduce TRQs in its own schedule of concessions at the WTO to maintain the market access of what were previously third countries, but not to provide TRQs to maintain the access of existing exporters that happen to be now EU27 members. Of course, the UK could make the same argument for EU TRQs for its current exports but, given the balance of agricultural trade between the two parties, an exchange of TRQ concessions of this kind should be welcomed by EU producers.

Is there a case for pursuing such an exchange of TRQ concessions? This is a matter for legal scholars to determine, and the answer may not be straightforward (Downes, 2017 reviews some of the arguments). In principle, the established practice under GATT Article XIII, which deals with quantitative restrictions, is to extrapolate quota shares from a representative period (typically three years) of import data. The relevant requirement in Article XIII(2) is to ensure, in applying import restrictions to any product, that WTO Members "*shall aim at a distribution*

*of trade in such product approaching as closely as possible the shares which the various contracting parties **might be expected to obtain in the absence of such restrictions**".* As Downes explains, basing new TRQs on existing levels of trade might not be deemed to comply with this requirement given that exports from non-EU exporters were restricted by TRQs while EU suppliers had preferential access.

Representing countries with substantial supplying interests within the meaning of Article XIII, the EU27 has the right to make its claims heard when the UK is determining the size and allocation of its agricultural TRQs. Of course, this right cannot be enforced at the expense of the holders of existing TRQ quotas. It would be up to the UK, in consultation with other WTO Members, to reconcile the EU demands as substantial suppliers with those of other third countries (Downes, 2017). The political acceptability to other WTO Members of allowing EU27 access to the UK would probably be dependent on any TRQ access offer by the EU27. **While the balance of advantages to the EU27 would need to be further explored, the current bilateral negotiations in Geneva to merely 'split' the EU TRQs do not go far enough to protect the interests of EU producers to access the UK market in the event of a 'hard' Brexit.**



## REFERENCES

- BRC, 2017. *A Fair Brexit for Consumers: The Customs Roadmap*, London: British Retail Consortium.
- Council of the European Union. 2017. "Directives for the Negotiation of an Agreement with the United Kingdom of Great Britain and Northern Ireland Setting out the Arrangements for Its Withdrawal from the European Union", Annex to the Council Decision Authorising the Opening of Negotiations with the United Kingdom of Great Britain and Northern Ireland for an Agreement Setting out the Arrangements for Its Withdrawal from the European Union", Brussels.
- DG AGRI. 2017. *Annual Activity Report 2016*. Brussels: European Commission.
- DG TRADE. 2010. *Trade, Growth and World Affairs. Trade Policy as a Core Component of the EU's 2020 Strategy*. COM(2010)612. Brussels: European Commission.
- ———. 2013. *EU-Ukraine Deep and Comprehensive Free Trade Area*. Brussels: European Commission.
- Downes, C. 2017. "The Post-Brexit Management of EU Agricultural Tariff Rate Quotas", [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2874371](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2874371).
- Duff, A. 2016. *After Brexit: Learning to Be Good Neighbours*. Commentary 18 November 2016. Brussels: European Policy Centre.
- Emerson, M. 2017. *Stocktaking after Theresa May's Brexit Speech in Florence: Key Point – the Transition, Key Omission – the Future Relationship*. CEPS Policy Insights No. 2017-34. Brussels: Centre for European Policy Studies.
- Emerson, M., and V. Movchan. 2016. *Deepening EU-Ukrainian Relations: What, Why and How?* London: Rowman & Littlefield International, Ltd.
- European Parliament. 2017. *Resolution of 5 April 2017 on Negotiations with the United Kingdom Following Its Notification That It Intends to Withdraw from the European Union*. (2017/2593(RSP)). Brussels.
- Frantziou, E., and A. Łazowski. 2017. "Brexit Transitional Period: The Solution Is Article 50." Brussels: Centre for European Policy Studies.
- Grainger, A. 2017. "The Role of Border Management in Implementing Trade Policy Goals." In *Workshop - Facilitating External Trade via Border Management*, by A. Grainger and J. Hintsa. Brussels: European Parliament Policy Department, Directorate-General for External Policies.
- HM Department of International Trade. 2017. *Preparing for Our Future UK Trade Policy*. London: Her Majesty's Stationery Office.
- HM Government. 2017a. *Customs Bill: Legislating for the UK's Future Customs, VAT and Excise Regimes*. Cm 9502. London: Her Majesty's Stationery Office.
- ———. 2017b. *Future Customs Arrangements: A Future Partnership Paper*. London.
- ———. 2017c. *Northern Ireland and Ireland: Position Paper*. London.
- ———. 2017d. *The United Kingdom's Exit from and New Partnership with the European Union White Paper*. Cm 9417. London: Her Majesty's Stationery Office.
- HM Treasury. 2017. *Customs Bill: Legislating for the UK's Future Customs, VAT and Excise Regimes*. Cm 9502. London: Her Majesty's Stationery Office.
- House of Commons International Trade Committee. 2017. *UK Trade Options beyond 2019*. First Report of Session 2016–17. London: House of Commons. <https://publications.parliament.uk/pa/cm201617/cmselect/cmintrade/817/817.pdf>.
- IFA. 2016. *Brexit: The Imperatives for Irish Farmers & the Agri-Food Sector*. Dublin: Irish Farmers' Association.



- Kouroutakis, A. 2017. "Legal Uncertainty Surrounding the Approval of the Brexit Agreement." *I-CONect, Blog of the International Journal of Constitutional Law and ConstitutionMaking.Org*. June 28. <http://www.iconnectblog.com/2017/06/legal-uncertainty-surrounding-the-approval-of-the-brex-it-agreement/>.
- Matthews, A. 2015. "What outcome to expect on Geographical Indications in the TTIP free trade agreement negotiations with the United States?", Paper prepared for the 145th EAAE Seminar "Intellectual Property Rights for Geographical Indications: What is at Stake in the TTIP?" April 14-15, 2015, Parma, Italy.
- Matthews, A., L. Salvatici, and M. Scoppola. 2016. *Trade Impacts of the Common Agricultural Policy*. IATRC Commissioned Paper 19. Minneapolis: International Agricultural Trade Research Consortium.
- May, T. 2017a. "The Government's Negotiating Objectives for Exiting the EU." Lancaster House, London, January 17. <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>.
- ———. 2017b. "Prime Minister's Letter to Donald Tusk Triggering Article 50," March 29. <https://www.gov.uk/government/publications/prime-ministers-letter-to-donald-tusk-triggering-article-50>.
- ———. 2017c. "Florence Speech: A New Era of Cooperation and Partnership between the UK and the EU." Florence, September 22. <https://www.gov.uk/government/speeches/pms-florence-speech-a-new-era-of-cooperation-and-partnership-between-the-uk-and-the-eu>.
- Meaney, A. 2017. "Brexit: The Implications for Ports." [www.oxera.com](http://www.oxera.com).
- National Audit Office. 2017. *The Customs Declaration Service*. Report by the Comptroller and Auditor General. London: National Audit Office.
- Owen, J., M. Shepherd, and A. Stojanovic. 2017. *Implementing Brexit: Customs*. London: Institute for Government.
- Sobrino Heredia, J M, 2017, *Research for PECH Committee – Common Fisheries Policy and BREXIT - Legal framework for governance*, European Parliament, Policy Department for Structural and Cohesion Policies, Brussels.
- UK DExEU. 2017. *Legislating for the United Kingdom's Withdrawal from the European Union*. London: Department for Exiting the European Union.
- World Bank. 2014. *Evaluation of the EU-Turkey Customs Union*. Report No. 85830-TR. Washington, D.C.: World Bank.
- WTO. 2010. *Road Freight Transport Services: Background Note by the Secretariat*. S/C/W/324. Geneva: World Trade Organisation.

## ANNEX 1. EXAMPLES OF CUSTOMS CLEARANCE COSTS

Many of the published examples of customs clearance costs refer to clearing sea containers at ports. This is the normal way for food products to arrive from non-EU countries into the EU. Food transport between the UK and the EU27 is more likely to take the form of roll on – roll off (RoRo) traffic, and the figures quoted below should be taken as illustrative of the costs that might be incurred.

Customs clearance and inspection costs as well as health checks are normally on a per consignment basis and thus do not vary according to the value of the consignment. They have the same effect as a specific tariff in that they bear more heavily on low-value produce than on high-value produce. This should be borne in mind when comparing cost estimates expressed as a percentage of the value of trade. The UK House of Lords Select Committee on the European Union collected evidence on the costs of administering tariff and non-tariff barriers.<sup>86</sup> The Agricultural and Horticultural Development Board estimated that the transactional costs for customs and health checks between the UK and the EU27 would be *“in the region of 8% to 10%, and perhaps a bit more than that.”* The Food and Drink Federation estimated these costs at *“a further eight per cent”*, and added that the increase in transactional costs for ‘composite products’ was *“likely to be higher”*.

Evidence from an Irish firm of chartered accountants specialising in customs issues was that the cost for customs clearance, either in the payment of a clearance agent or the recruitment of staff in addition to logistics related costs, would be €100 per movement.<sup>87</sup>

Article 13d of the Plant Health Directive requires Member States to charge for the import inspections required by the Directive. As an example, in the UK three separate fees are paid for each consignment. A document check fee (to cover the cost of checking the consignment’s paperwork) amounts to £5.71 (€6.37). An identity check fee to cover the cost of the inspectors checking the assignment, also amounts to £5.71 (€6.37) for small consignments (the size of a truck or railway wagon) or £11.42 (€12.74) if bigger. A physical inspection fee must also be paid which depends on the type of plant material being imported. Where risk targeted checks have been set for trade in a particular commodity from a particular country, on the basis of the compliance record of that trade, a reduced fee is charged. If the consignment arrives outside normal working hours, a higher fee can be charged.<sup>88</sup>

As another example, Keurpunt is an approved inspection site for imported fruits and vegetables at the Port of Antwerp. On its website, it offers administrative and document assistance at a cost of €35/container, physical inspection of potatoes, fruits and vegetables at a cost of €37.50/container plus additional contract costs, and phytosanitary inspection of wood packaging material at €65/container.<sup>89</sup>

Grainger (2017) quotes costs in the range of a few pounds to £25 (€28) to £50 (€56) for declaring a sea container; costs can be significantly greater, if further compliance related services are needed. Other direct costs can include inspection fees, demurrage, storage charges, handling charges, laboratory fees, amongst others. He quotes from a previous study he authored which examined the direct compliance costs incurred by businesses when

<sup>86</sup> House of Lords Select Committee on the European Union, [“Chapter 6: Costs of administering tariff and non-tariff barriers”](#), *Brexit: Trade in Goods*, HL Paper 129, London.

<sup>87</sup> Lynch, C. Partner in BDO Customs and Trade Practice, [Evidence to the Oireachtas Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach inquiry into Brexit: Matters relating to Customs, Trade and Tariffs](#), 25 May 2017.

<sup>88</sup> Details of the current UK rules for importing plants and plant products from outside the EU are given on the [DEFRA web site](#).

<sup>89</sup> <https://www.keurpunt.be/en/>.

importing meat from non-EU countries into the UK. The costs of mandatory port health controls ranged between £382 (€450) and £673 (€793) per container. He notes there are also indirect costs of customs clearance. These tend to be less tangible, but may be much more significant than the direct costs. They include missed business opportunities and failure to take advantage of international trade opportunities, loss of business competitiveness, failure to meet contractual obligations because of delays at ports and borders, and safeguard measures – such as by holding additional stock in warehouses and factories to help buffer against unforeseen delays at ports and borders.

There will also be cash flow implications arising from changes in VAT legislation. At present, EU importers moving products into the EU from the UK are exempt from having to make upfront payments of import VAT on their goods. This does not apply to goods outside the EU customs area. EU importers must pay import VAT upfront, for example, on goods coming from Turkey, even though it has a customs union relationship with the EU. Although these payments are eventually recoverable, the introduction of import VAT on all goods being imported from the UK could represent a major cash flow burden for importers (BRC, 2017). Importers of EU products into the UK would face a similar burden assuming the UK continues to apply EU rules after Brexit.



## DIRECTORATE-GENERAL FOR INTERNAL POLICIES

# POLICY DEPARTMENT STRUCTURAL AND COHESION POLICIES **B**

## Role

The Policy Departments are research units that provide specialised advice to committees, inter-parliamentary delegations and other parliamentary bodies.

## Policy Areas

- Agriculture and Rural Development
- Culture and Education
- Fisheries
- Regional Development
- Transport and Tourism

## Documents

Visit the European Parliament website:

<http://www.europarl.europa.eu/supporting-analyses>

PHOTO CREDIT: iStock International Inc., Photodisk, Phovoir



ISBN 978-92-846-1989-4 (paper)  
ISBN 978-92-846-1990-0 (pdf)

doi:10.2861/783664 (paper)  
doi:10.2861/987958 (pdf)