

HOW TO MAKE BREXIT WORK FOR ALL

BIG PRINCIPLES FOR A STRONG BREXIT PARTNERSHIP



November 2017



FOREWORD

The proposals in this document are being put forward as a positive contribution to the debate on the future relationship between the United Kingdom of Great Britain and Northern Ireland and the European Union post-Brexit. These Big Principles for a Strong Brexit Partnership are offered to all sides for positive consideration and constructive criticism towards agreeing the detailed work which will then require implementation over an adequate transition phase.

This positive initiative is driven from a business and jobs perspective while taking account of the realistic political climate and proposes a trade model that will deliver on the stated objectives of both the EU and the UK.

It is importantly noted that, for these proposals to be realised, a withdrawal deal needs to be finalised between the UK and the EU at the earliest opportunity so that future trade arrangements can be discussed as appropriate. We hope that all can be guided by these Big Principles as they work through this process.

The Big Principles are founded on:

- A new Customs Partnership between the United Kingdom and the European Union enabling:
 - Borderless, tariff-free trade for goods
 - Managed movement of people and skills for the UK
 - Co-development of new global trade deals
- Coupled with a comprehensive deal on trade in services
- With the possibility for the UK to remain party to EU bodies and agencies in areas of mutual economic and social interest and benefit

While the door should realistically be left open for the UK to change its mind on Brexit, including the possibility of an even stronger partnership by the UK remaining a member of both the Single Market and Customs Union, these Principles offer a model which can be implemented with less political change.

PROPOSAL:

Form a new “Customs Arrangement” between the UK and the EU that would allow for the continued trade of goods with additional arrangements for the trade in services and access to trade deals.

GUIDING PRINCIPLES:

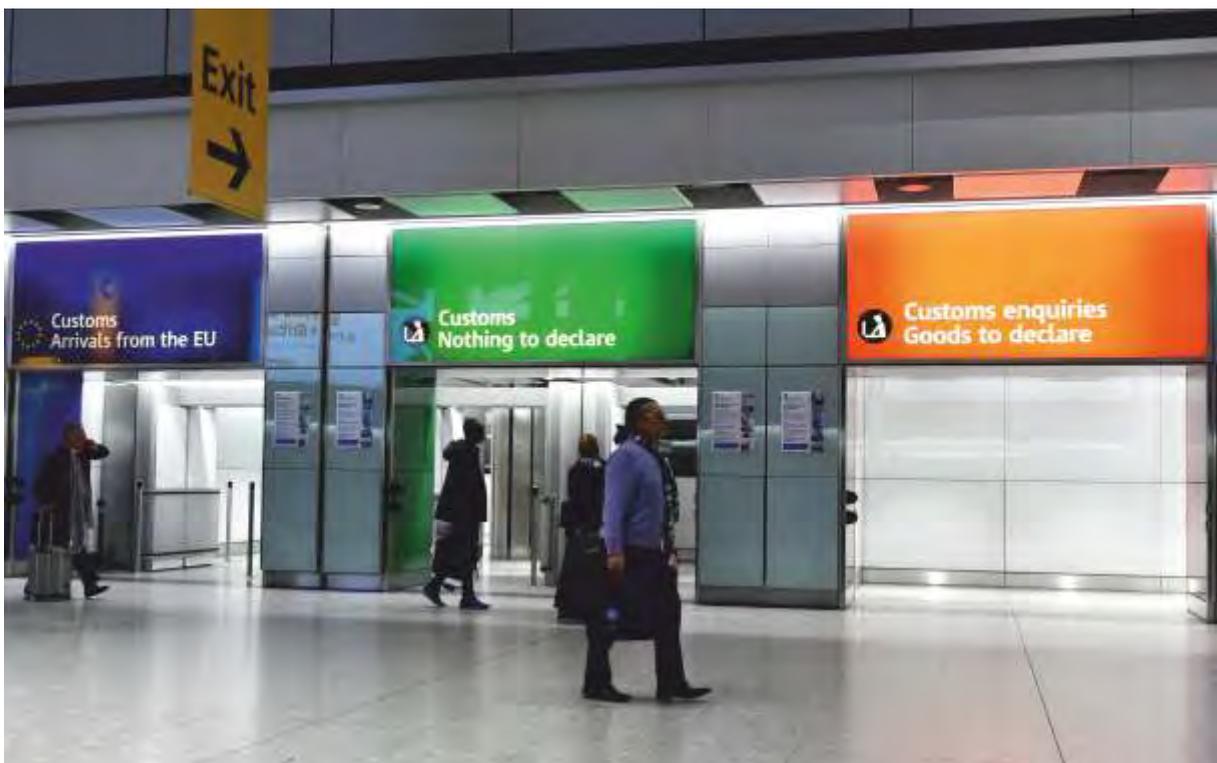
- Eliminate the need for a border on the island of Ireland and address concerns regarding border and customs checks at UK ports.
- Enable the trade in goods and services to largely continue, as much as possible, without tariff and non-tariff barriers.
- The UK should not be required to accept freedom of movement and should be free to pursue its own immigration policy.
- The UK should no longer be required to be under the direct jurisdiction of CJEU as another model for dispute settlement as per other EU trade deals could be established.
- Align the UK’s new tariffs with the existing Common External Tariff and maintain regulatory alignment which would protect the UK from an influx of cheaper, lower quality goods which might compromise standards in manufacturing and food production.
- Protect the integrity of the EU Customs Union and the Customs Agreement with the UK through pursuit of a mutually agreed trade agenda.
- Protect the integrity of the EU Single Market and Ireland's place within it.
- Eradicate the need for a long, drawn-out Free Trade Agreement between the EU and the UK that may be less comprehensive.
- A time-limited transition period of adequate length should be agreed on status quo terms to allow trade continue as at present until a new deal is finalised.

This proposal, of all those currently under consideration, falls closest to what the UK has already proposed in its position paper on future customs arrangements. It is put forward on the basis that while there has been much discussion regarding the UK remaining part of “the” EU customs union, there has been less focus on the UK forming “a” customs union or alternative arrangement with the EU with benefits for both parties that take account of the value and sizes of both economies. This proposal is more considerate of the EU position and market protection concerns than the UK proposal for a Customs Partnership with the EU.

Under this proposal the UK and EU should seek to form a new Customs Arrangement allowing for the continuing trade of goods and services (including agri-food trade) as free as possible from tariff and non-tariff barriers. The deal sought under this proposal is more comprehensive than the EU's current Customs Union with Turkey which only covers certain goods and agricultural products as it also includes measures focused on services. Under this proposal the UK would align its tariffs with the common external tariff on areas covered by the arrangement thus protecting the integrity of the EU market and eliminating the need for a border on the island of Ireland.

Given the significance of the UK economy, it is also proposed that unlike Turkey, the UK should be included in, and allowed to benefit from, any future trade deals that are agreed by the EU (Turkey must accept goods from EU FTA partners even if they refuse to reciprocate). The inclusion of the UK as a potential market for third countries should be a benefit for the EU negotiators while also potentially making the compromise on UK-pursued trade deals more palatable to businesses and the electorate.

The work undertaken by the EU Directorate-General for External Policies on "Enhancement of EU-Turkey bilateral trade relations and modernisation of the EU-Turkey Customs Union" has been referenced in drawing up this proposal. This work looks to address the inadequacies of the current arrangement between the EU and Turkey while also enhancing trade by broadening the scope of the deal to include agriculture, services, procurement and investment.



DETAILED PROPOSAL

The UK Government in its paper *Future Customs Arrangements: a future partnership paper* has stated that it wishes to establish “a new customs arrangement that facilitates the freest and most frictionless trade possible in goods between the UK and the EU...”¹ This is a welcome ambition and one that is supported by the business communities in both Ireland and the UK where the impact of potential borders is more acutely felt than in perhaps other parts of the European Union. However, the view that the UK can achieve this while pursuing its own trade deals is incompatible with the EU treaties and could compromise the integrity of the EU internal market. With that in mind, the Big Principles now proposed put forward a solution that can address both of these issues.

It should be noted that any new framework for trade between the UK and the EU will take time to both agree and implement. Until a new deal is finalised, a transition period should be agreed under the current conditions for trading that exist between the two parties. This is the most sensible approach to avoid businesses having to change their trading models multiple times while the details of a future trading framework are agreed between the EU and the UK.

BACKGROUND

The UK paper referenced above highlights the importance of UK-EU trade. It states:



“As a bloc the EU accounts for the largest proportion of UK trade. In 2016, UK imports from and exports to the EU totalled £553bn, with over 200,000 UK businesses trading with the EU.”²



The picture is quite complex however, with large variations in the deficits and surpluses in the trade of goods and services between the two markets. A recent research briefing paper published by the UK Government³ showed that while overall the UK has a trade deficit of £71 billion with the EU, it currently has a trade surplus in its services of £24 billion.

However, when looked at in the context of the overall volumes of trade, the situation becomes more complex. Although the UK runs a trade deficit in its trade in goods with the EU, this trade is much more important to both economies, valued at close to £384 billion. Meanwhile, value in services trade is less than half of goods trade with only £169 billion worth of services traded between the EU and the UK in 2016⁴. Furthermore, when taken in totality (goods and services) the EU accounts for 43.9% of total UK exports and the UK imports more from the EU than it does from the rest of the world combined⁵.

From an EU perspective, while the EU might export only 7% of its total goods to the UK, 26 of the remaining 27 EU countries run trading deficits with the UK (the exception is Germany which is the UK’s largest export market in the EU and also the only EU country to run a trade surplus with the UK)⁶.

¹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/637748/Future_customs_arrangements__a_future_partnership_paper.pdf

²https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/637748/Future_customs_arrangements__a_future_partnership_paper.pdf pg 4

³<http://researchbriefings.files.parliament.uk/documents/CBP-7851/CBP-7851.pdf>

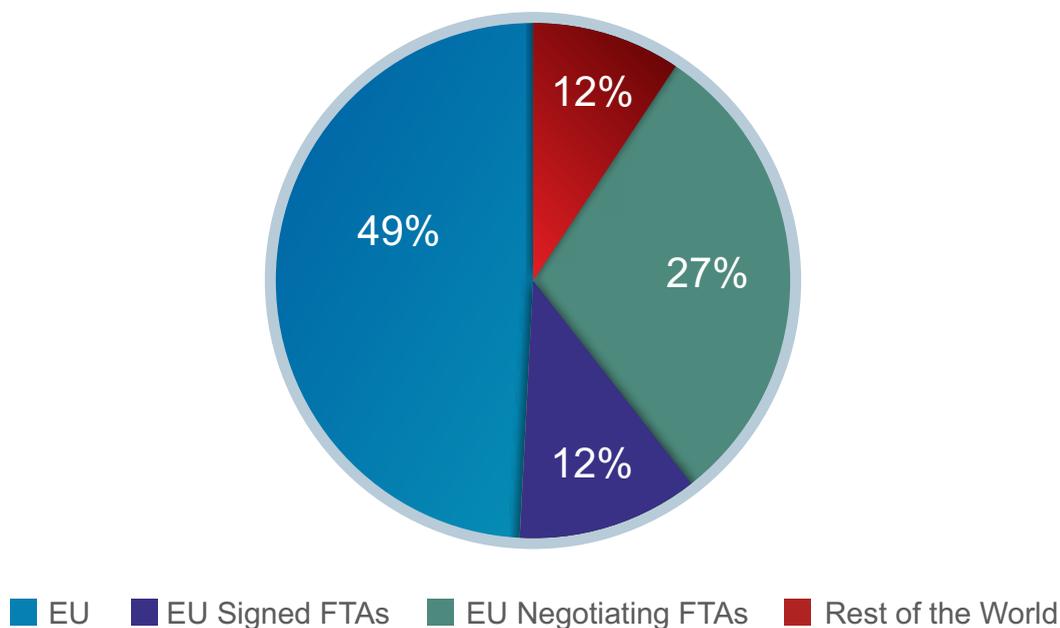
⁴http://www.britishtishchamber.com/wp-content/uploads/2017/09/COBCOE_Brexit_Report_September-2017_E.pdf

⁵<http://researchbriefings.files.parliament.uk/documents/CBP-7851/CBP-7851.pdf>

⁶<http://visual.ons.gov.uk/trading-places-uk-goods-trade-with-eu-partners/>

To further complicate matters, the above doesn't account for the integrated nature of this trade with supply chains often being spread across EU countries. Disruption to this trade will not just affect end products getting to market; it will also impact how these products get made.

UK Global Trade in Goods & Services



In addition to trade with the EU, the UK also benefits from trade arrangements between the EU and other third countries. The EU currently has trade agreements in place with 32 countries including its trade deal with the EFTA countries and individual deals with countries such as South Korea and South Africa. The EU has a further 43 trade agreements partly in place (including with Canada which was provisionally applied in September 2017). Finally the EU is in current negotiations with 19 countries on negotiating a trade deal (including Japan, India and the Mercosur states)⁷. The UK benefits greatly from these deals, with easier access to markets that it might now lose as a result of Brexit. In 2015 alone, trade with countries with which the EU has an active trade agreement accounted for over a fifth of all UK trade meaning that approx 60% of all UK trade⁸ is either with the EU or with third countries via EU trade deals. The Confederation of British Industry (CBI) in the UK has calculated that should the EU finalise all its current deals that are being negotiated, 88% of UK trade would then be covered through EU membership⁹.

Taken in totality, the above demonstrates why it is important for the UK and the EU to agree a future trading model that maintains as much of the current trading framework as possible.

⁷<http://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/>

⁸<http://visual.ons.gov.uk/uk-trade-partners/>

⁹<http://www.cbi.org.uk/business-issues/brexit-and-eu-negotiations/eu-business-facts/10-facts-about-eu-trade-deals-pdf/>

CUSTOMS ARRANGEMENT

Under Article XXIV:8 of the General Agreement on Tariffs and Trade 1994

“For the purposes of this Agreement:

(a) A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that

(i) duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and,

(ii) subject to the provisions of paragraph 9, substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union;

So the agreement would have its own Common External Tariff and this would, as much as possible, be identical to the EU’s Common External Tariff.”

There is precedent for the EU to form a customs arrangement with a third country as exemplified by the EU-Turkey Customs Union arrangement that came into force on 31 December 1995¹⁰. This deal has limited scope covering only industrial goods but excluding agricultural goods (with the exception of processed agricultural products), services or public procurement. Further bilateral trade concessions apply to agricultural as well as coal and steel products¹¹. While the Chamber does not recommend that the UK and EU replicate this agreement as the model for their future relationship post-Brexit, it provides a useful precedent from which a future co-operation model can be built.

Previous work by the European Commission on modernising the Customs Union with Turkey shows that there is an acceptance within the Commission that this is not yet an ideal trading framework¹²:

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“After 20 years, the framework of bilateral trade relations has become outdated: it is limited to industrial and certain processed agricultural products, with complementary alignment on some economic legislation and ad hoc preferential concessions on certain agricultural products.”

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¹⁰https://www.avrupa.info.tr/sites/default/files/2016-09/Custom_Union_des_ENG_0.pdf

¹¹<http://ec.europa.eu/trade/policy/countries-and-regions/countries/turkey/>

¹²http://ec.europa.eu/smart-regulation/roadmaps/docs/2015_trade_035_turkey_en.pdf

It is therefore fair to propose a more comprehensive arrangement for the UK-EU deal than that which is already in place for Turkey. Given that both the EU and the UK are currently equivalent in trading and regulatory standards, such an ambition is achievable provided the right safeguards are put in place and adhered to.

We would propose that a customs agreement come into force that would cover the trade of all goods between the UK and the EU, including agricultural produce. As the nature of trade has changed over time with much more focus at borders now on regulatory compliance rather than customs adherence, this should also be factored into this arrangement.



REGULATION

Around 80% of border checks currently conducted in Ireland (on goods traded with third countries) are to ensure that goods being imported comply with EU standards and regulations. This is most notably required for the import of medicines and in the area of animal health. Only around 20% of border checks are for traditional customs measures. This shows that standards and regulations are the main reasons for customs borders along the EU's frontiers with technical advancements allowing for the bulk of customs processing and paper work being facilitated online and with the potential that these can be further checked away from national borders.

With this in mind, part of this arrangement will need to include regulatory alignment or equivalence between the UK and the EU. For this to be achieved it would require the UK to adopt the EU regulatory *acquis* in order to maintain regulatory equivalence and standards across all traded goods. Another option would be for the UK and the EU to sign a comprehensive Regulatory Equivalence Agreement. The UK has already suggested such an agreement on agri-food measures but this could be extended to cover all goods traded between the UK and the EU. In its position paper on *Northern Ireland and Ireland* the UK proposes:

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“One option for achieving our objectives could be regulatory equivalence on agrifood 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.”¹³

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Such an agreement would be more ambitious than any other signed by the EU. It should ensure the legal certainty that the relevant UK and EU authorities will accept the findings of the other's regulatory agency that exports are compliant with the applicable regulatory requirements and vice versa. This is already common practice in the EU.

In order to ensure such an agreement is not abused, compliance checks could be conducted on a systematic basis (as practised today) to ensure that standards are being maintained. It should also be governed by an international dispute resolution mechanism where grievances and complaints can be brought and whose judgements should be binding (options for this are explored later in this proposal). Should such measures be adopted, there should also be a mechanism put in place where the UK would be consulted on any future regulatory changes that are being considered by the Commission.

¹³https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/638135/6.3703_DEXEU_Northern_Ireland_and_Ireland_INTERACTIVE.pdf

Regulatory equivalence on its own will not be enough to eliminate the need for border controls. Given that a primary concern for the EU in any future trade deal will be maintaining the integrity of the internal market, measures will need to be put in place to ensure sub-standard goods from third countries are prohibited from entering the EU through any potential back doors. The best way of achieving this is for the UK to have a formal Customs Arrangement with the EU that would see it align its new tariffs with the existing Common External Tariff. Under this arrangement, the UK should retain tariff revenue collected so that it is not part of the EU budget as at present.

Unlike Turkey however, such an arrangement should not be done at the expense of the UK having no input into future trade deals conducted by the EU on its behalf. Under this proposal, the UK's scale justifies having an input (but no veto) into future trade deals and automatically having access to those markets where trade deals are agreed under the same conditions as those for the EU. This is an enhancement on the Turkey deal which automatically has to open its market for goods covered by EU trade deals with the burden of then having to mirror those deals with the partnering country. In the Commission's own research it has declared that such an arrangement means that Turkey is "locked out of EU-third party negotiations, with repercussions of tariff preference erosion, and democratic deficit in decision making for Turkey¹⁴".

The Common Commercial Policy (CCP) to be followed by the UK-EU Customs Arrangement should mirror that of the EU. The EU CCP is overseen by the 113 Committee, and a similar arrangement should apply in the UK-EU Customs Arrangement. So, negotiations with third countries would be twin-track, i.e. one with the EU and one with the UK-EU Customs Area.

As the UK is the world's sixth largest economy and the EU's second largest, this is a reasonable compromise as access to the UK market would be seen as a bargaining strength for the EU in its external trade policy. This could be a beneficial arrangement for the UK too. The Prime Minister's recent trip to Japan highlighted that trade deals with the EU will still remain the priority for many countries with which the UK may wish to form bilateral relations¹⁵. The EU has since announced that it is to begin trade negotiations with Australia and New Zealand, two other key markets for the UK in its trade agenda¹⁶. Under what was agreed during the Japanese visit, the UK will potentially mirror any deal made between Japan and the EU without any input into this process. Such an outcome does not best serve the UK's trade objectives, but input into the process as outlined above will at least ensure that UK interests are heard in any forthcoming trade negotiations. The Department for International Trade in the UK could be the conduit for UK input into these trade deals.

¹⁴<https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>

¹⁵<https://www.gov.uk/government/speeches/pms-florence-speech-a-new-era-of-cooperation-and-partnership-between-the-uk-and-the-eu>

¹⁶https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/639609/Enforcement_and_dispute_resolution.pdf

A combination of regulatory equivalence coupled with an aligned common external tariff should protect the EU internal market sufficiently to allow trade of goods to continue between the UK and the EU without the need for customs and regulation checks to take place along the borders between the UK and the EU. It will also ensure that both European and UK businesses can maintain both their markets and supply chains for their goods. The trade in goods is now highly integrated across the EU and disruptions to this trade could potentially have damaging impacts across both the UK and the EU. A recent paper published by the EU Directorate-General for Internal Policies found that, when averaged out across a number of studies, the loss by 2030 was predicted to be anywhere from €34-109 billion and €13-63 billion respectively¹⁷. In this paper, the only remaining EU27 country identified as potentially losing as much as the UK in percentage of GDP terms is Ireland.

Furthermore, there could be broader implications for trade caused by the loss of the UK market. For example, the EU currently has a trade surplus with the UK in goods with agriculture just being one sector where this is evident. Cutting off this market would not only potentially bring about food scarcity in the UK, it would also have a damaging impact for the EU. The Irish Farmer's Association (IFA) in its policy paper on Brexit has warned that displacement of food caused by Brexit "could create a serious market disturbance on the EU market, potentially destabilising the EU market balance. The retention of access to and maintenance of the value of the UK market is critically important, therefore, not just for the Irish farming and food sector, but for food producers and the food industry across the EU¹⁸."

The model above would also best ensure that there would be no need for a hard border on the island of Ireland, thus helping to ensure that the complex all-island trade model that has emerged since the Good Friday Agreement could continue to operate, ultimately providing the economic underpinning that has helped sustain the peace process.



¹⁷[http://www.europarl.europa.eu/RegData/etudes/STUD/2017/595374/IPOL_STU\(2017\)595374_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/595374/IPOL_STU(2017)595374_EN.pdf)

¹⁸<https://www.ifa.ie/wp-content/uploads/2017/03/763773Brexit-imperatives-policy-paper55629.pdf>

OTHER TRADING MATTERS

The above trading model only covers goods, which is why it is insufficient on its own to fully satisfy the trading needs of both the EU and the UK. One of the criticisms often cited against the Turkey deal is that it is not comprehensive enough for the modern trading environment.

The EU has long sought a progressive and outward looking trade policy as demonstrated by the recently implemented Comprehensive Economic and Trade Agreement (CETA) deal and previous comprehensive trade deals with the likes of South Korea and Ukraine. We feel there is no reason why such a progressive approach should not be taken for any future trade deal with the UK.

According to the Commission, services in the EU are roughly classified under three headings:

- 1) Services that are subject to EU regulations such as energy, financial services, transportation and telecommunication.
- 2) Those services covered by Services Directive 200/123/EC including legal and accounting services, business related services and construction services.
- 3) Services covered by national regulations most usually public services like health, social services and education.

A comprehensive deal should be jointly crafted that encompasses all of the services included in categories 1 and 2 above. Such a deal will require the UK to align its regulations with those of the EU in order for the free flow of trade in these services to be maintained. It should also include mutual recognition for professional qualifications especially for all those awarded before the UK's departure from the EU. There are two existing agreements that we feel can be looked to as inspiration for a future deal between the EU and the UK.

The first is CETA, which is by far the most advanced trade deal the EU has struck with a country outside of Europe. CETA will make it easier for EU and Canadian firms to provide services to each other and sectors such as legal services, accountancy, transport and telecom services are all covered. The agreement further includes procurement provisions that allow EU companies to tender for Canadian government contracts. The agreement also provides for mutual recognition of qualifications for regulated professionals such as architects, accountants and engineers¹⁹.

The second model is the Deep and Comprehensive Free Trade Area (DCFTA) between the EU and Ukraine, Georgia and Moldova which allows for a high level of inclusion in the single market for three of the four freedoms and excludes the movement of people. This agreement also provides for "full internal market treatment" for some services although this is conditional on full compliance and adoption of the EU *acquis* with oversight from the Court of Justice of the EU (CJEU), particularly in financial services and telecommunications.

Furthermore, for such a comprehensive deal to be struck with the UK, the EU may insist on all four freedoms of the single market being maintained. However, as the UK has indicated that it will adopt the *acquis* into its domestic law on leaving the EU, there is scope for an amended version of this deal to be adopted to suit both UK and EU trading objectives.

¹⁹<http://ec.europa.eu/trade/policy/in-focus/ceta/ceta-explained/>

There is the possibility that under the GATS (General Agreement on Trade in Services) this could be achieved as part of the overall EU-UK Customs Arrangement.

Whatever deal is agreed, it should also include scope (for mutual benefit) for the UK to participate in specific EU agencies and programmes. For example, the DCFTA includes provisions for its signatories to be able to participate in the Horizon 2020 programme for scientific research, the Erasmus+ programme for cooperation in higher education, the European Defence Agency, Europol, etc., all of which will be of interest to the UK on its departure. Furthermore the European Economic Area (EEA) countries of Norway, Liechtenstein and Iceland participate in various EU programmes. Participation should be set at a premium with the UK making an agreed appropriate contribution to the budgets of the programmes and agencies which it will remain party to after departure.

Other bilateral matters that should be covered either as part of a deal as outlined above or by separate bilateral arrangements include the UK's continued participation in the Internal Energy Market; membership of the European Common Aviation Area and the Open Aviation Area; and membership of the Common Transit Convention. As above, when appropriate there should be a membership fee for the UK to remain party to these bodies in recognition of the benefits that will be afforded to the UK through its membership.



DISPUTE SETTLEMENT

One of the red lines set by the UK on its objectives for Brexit is that the country will no longer be subject to the direct rule of the CJEU. In her Lancaster House speech on 17 January 2017, Prime Minister May stated²⁰:

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“So we will take back control of our laws and bring an end to the jurisdiction of the European Court of Justice in Britain. Leaving the European Union will mean that our laws will be made in Westminster, Edinburgh, Cardiff and Belfast. And those laws will be interpreted by judges not in Luxembourg but in courts across this country.”

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However, more recently there has been a change in tone from the Prime Minister. When discussing her vision of a future trading relationship between the EU and the UK in Florence on 22 September 2017, she conceded that “we will need a strong and appropriate dispute resolution mechanism²¹”. The UK has also put forward proposals of potential models in its *Enforcement and dispute resolution: A future partnership paper*²² that was published on 23 August 2017.

The options put forward include a Joint Committee as has been established to monitor and supervise the EEA and NAFTA agreements in addition to being a forum for dispute resolution. A second option would be an arbitration model such as that set up to monitor CETA and the New Zealand-South Korea FTA, although such a model might be restrictive in its oversight capacity. A further option not included in the UK’s paper is the dispute settlement mechanism (DSM) that has been adopted for the EU-South Korea FTA. This is based on the WTO dispute settlement mechanism but its procedures are faster. As outlined in a Commission research paper²³:

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“If consultations between parties fail to reach a solution, the dispute is referred to an arbitration panel composed of 3 experts agreed to by the parties. After receiving the parties’ submissions, the panel holds a hearing that is open to the public, with opportunities for third parties to inform the panel through amicus curiae submissions. The Panel must normally rule with 120 days and its findings are binding.”

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All of this demonstrates that there are enough options available for a dispute settlement model to be agreed that will satisfy the needs of both negotiating parties while also ensuring that the integrity of any future agreement will be upheld. For such a mechanism to work, there will need to be some consideration of CJEU rulings into the future in so far as they relate to the future trading relationship that is ultimately agreed.

²⁰<https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>

²¹<https://www.gov.uk/government/speeches/pms-florence-speech-a-new-era-of-cooperation-and-partnership-between-the-uk-and-the-eu>

²²https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/639609/Enforcement_and_dispute_resolution.pdf

²³<https://publications.europa.eu/en/publication-detail/-/publication/0c690c4d-2d3b-11e6-b497-01aa75ed71a1>



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