David Collins

The EU, The UK and Global Trade

A New Roadmap

Series Editor: Sheila Lawlor

New Direction &

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The EU, The UK and Global Trade
A New Roadmap

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How to Trade After Brexit: Exploiting Economic Freedom and Legal Independence

The UK Referendum, Brexit and EU-UK Trade.
As the UK prepares for a change in direction, the onus will be on a new prime minister to honour the decision taken by Britain’s electorate in 2016 to leave the EU. Though both major political parties are pledged to leave the EU, the government being returned on the manifesto commitment to leave the EU, the Single Market and Customs Union, that has not yet happened. But worse, the proposed Withdrawal Agreement would have bound the UK into an EU customs union arrangement and external tariffs and its goods economy to single market rules. It could not, therefore, strike optimum free trade deals globally, including an all-encompassing Free Trade Agreement (FTA) with the EU.

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

Legally, too, an FTA is quite straightforward, as David Collins the UK international economic and trade lawyer, explains here. It would also respect the referendum decision and benefit both parties. If the EU refuses or delays, then the UK would have much to gain from WTO trade terms, the mis-named ‘no deal’ scenario, a proven basis for around 96 per cent of the world’s successful trade and the UK’s default position in law. Collins sets out the legal framework for both the FTA and WTO trade options, and the steps now needed for each.

The first step must be to propose an FTA formally to the EU and work towards that option. For this to happen, the new prime minister must draw a line under the failed Brexit negotiations and the constraints of the doomed

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1 This foreword draws on the themes in my publication Deal, No Deal? The Battle for Britain’s Democracy (2018).
Withdrawal Agreement, which would leave the UK under much EU law - half in, half out of the bloc and legally prevent an FTA being reached with the EU or other countries. Simultaneously the UK should prepare to leave the EU on the new date of 31 October on WTO (‘no deal’) terms if an FTA, or interim agreement with a time fuse for an FTA, has not been agreed by then. Not only would this strengthen the UK’s negotiating hand, but it would also bring the stability needed for prosperity and allow for the orderly piloting of new arrangements and near friction-free trade.

The Doomed Withdrawal Agreement – Why failure? Lessons to learn?
There will be enormous pressure on the new leader to compromise and accept a version of the failed Withdrawal Agreement, with some modifications. It should be resisted, because the Withdrawal Agreement represents an unacceptable sacrifice of Britain’s interests, made by incompetent negotiators who were in fact opposed to the very idea of Brexit.

The UK gave way to EU demands from the start – for EU citizens’ rights operating under EU laws, a large payment to Brussels (not legally required) quantified by the EU and on the EU’s false assumptions about the Irish border (which, despite claims, is not actually covered by the 1998 Belfast Agreement signed by Ireland and the UK). When, to appease both the EU and the vocal ‘remain’ lobby in cabinet and Commons, the UK continued to make further concessions, it did so at the cost of surrendering the country’s declared Brexit aims, as well as its negotiating strength.

For the EU the die had been cast on future trade at the outset by Angela Merkel. When meeting EU leaders in June 2016 to consider their response to the referendum, the German Chancellor announced that Britain could not ‘cherry pick’ and ‘there must be and will be a noticeable difference between whether a country wants to be a member of the EU family or not …’. Thereafter the EU sought to dominate the negotiations, subvert the UK’s Brexit aims and subordinate its economy to EU law, to curtail its competitive potential. Apart from the political wish to treat the UK harshly to deter other Eurosceptic electorates from seeking to leave, economically the UK should not be seen to gain from Brexit, to be better off ‘out’ or reap the fruits of
freedom. The EU negotiators aimed to ensure that UK businesses would remain bound by a common rulebook, the EU regulatory framework; and that they and 70 million UK consumers would be prevented by the UK’s being in an EU customs union and so bound by its external tariff from buying cheaper, often better, goods from non-EU countries. Step by step they moved to achieve that goal of ultimate success, November’s Withdrawal Agreement.

The UK’s prime minister, with her pro-EU chief negotiator and remain-oriented cabinet ministers, was increasingly complicit with such EU demands. By spring 2018 they publicly began on the path to the Withdrawal Agreement, which became the prime minister’s nemesis. The embryonic plan had been prepared secretly by the prime minister’s chief negotiator with EU officials without the normal exercise of cabinet responsibility, emerging in July as the Chequers plan. Imposed on the cabinet on July 12, it appears to have been signed off beforehand with the German Chancellor during a rushed visit by Mrs May to Berlin. It proposed that the UK goods and agri-goods economy would be subjugated to EU laws via a so-called ‘common’ EU rulebook (ie the EU’s rulebook), that UK harmonisation with EU rules would continue, and there would be a ‘combined customs territory’. Under it the EU would be poised to dominate much of UK economic and trade policy.

Chequers prompted the resignation of the two most single important cabinet ministers to the implementation of a true Brexit, the foreign secretary who had led the leave campaign and recognized the plan’s implications for a genuine Brexit, and the Brexit secretary who had already opposed attempts by the prime minister’s chief negotiator and his Brussels counterparts to obstruct Brexit. Other government ministers also resigned. Chequers went down even worse with the public, which polled two to one against.

For the EU, Chequers did not go far enough, and after further UK concessions to meet the goal of UK economic subservience to the EU system, the proposed Withdrawal Agreement was finalised in Brussels in November. Not only would the UK remain in and under all current EU law
until 2021 during the proposed transition period, but it would have no representation in the Court of Justice of the European Union (CJEU, also known as ECJ) or participation in other institutions of EU governance. It would be obliged to make a large payment to the EU (c. £40bn was mentioned but still open to change and upwards assessment) and unprecedented commitments to EU citizens in the UK and their families, creating two classes of citizen in the UK – legacy UK and ex-EU. After 2021 its trade would be subject to EU customs union laws and tariffs, its goods economy subject to EU law and the EU rulebook in a ‘single customs territory’ and Northern Ireland subject to Single Market law, creating a border across the Irish Sea. That subjugation would be indefinite in law, the UK to be released only if the EU were satisfied about alternative Irish border arrangements. Even then, any future relationship would be bound by the same principles and to build on the same arrangements (Article 23 of the Political Declaration), so there could not be an all-encompassing FTA.

The UK would be economically a serf state, subjected to the EU external tariff and single market rulebook for its goods economy, unable to pursue an independent trade policy. It would have no power to make or shape those laws, its productive markets and enterprises subordinated to EU interests with no UK representation, regulated by laws over which it would have no say. It could not compete economically with the EU, nor benefit from an independent trade policy to strike optimum trade deals with what the EU refers to as ‘third countries’. This would be a quasi-colonial status: indeed, one EU official tweeted, ‘Britain [would be the EU’s] first colony’.

When imposed on the cabinet, the Withdrawal Agreement prompted the resignation of two more cabinet ministers, with other ministerial resignations following. The House of Commons rejected it three times, after which the prime minister delayed Brexit until 31 October.

**Moving on to a free trade agreement.**
The European Elections have shown the great enthusiasm among many for a genuine Brexit, and Mrs May, the architect of the Withdrawal Agreement, has finally set the date for her departure. The opportunity should therefore be
seized to leave behind the terms of the Withdrawal Agreement that could bind Britain to the UK to the EU’s laws and its economic system and prevent an independent trade policy. An FTA should be proposed to the EU, providing for genuine free trade across goods and services, with no sacrifice of sovereignty authority. Simultaneously the UK should make the necessary preparations for a no deal exit on 31 October.

If the referendum decision is honoured by restoring constitutional sovereignty and political and legal independence, the benefits will be an independent trade policy and the restoration of an economic system in line with Britain’s historic freedoms. The UK’s economy has by and large flourished because it has been based on free markets, trade, entrepreneurship and competition underpinned by the rule of law, the Common Law.

By contrast, the EU’s economic model reflects the dirigiste centrally run system, under a process-driven set of laws and regulations, the aim of which is full political, monetary and economic union.

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

Sheila Lawlor
Director,
Politeia, May 2019
This publication will examine the UK’s trade future with respect to the EU under two scenarios: first, through the establishment of a Free Trade Agreement (FTA); and second, without any formal trade arrangement, under which the UK’s trading relationship with the EU will be governed by the rules of the World Trade Organization (WTO). It will then consider the UK’s trade position with respect to other countries following its departure from the EU, now due to take place on 31 October 2019.

Given the strategic importance of the EU as a trading partner for the UK, the negotiation of an EU FTA covering both goods and services is still a top priority. Without such an agreement in place, trade terms with the EU will be under the framework of the WTO. Although sometimes misleadingly and ominously described as ‘no deal’, ‘crashing out’ of the EU, or the ‘cliff edge’, trading under WTO rules will be entirely manageable and should lead to minimal disruptions. WTO rules should minimize the harmful impact of many potential legal barriers to trade between the UK and the EU as well as between the UK and third countries.

The UK has indicated that it intends to pursue bilateral and possibly regional FTAs with other countries, including notably those of the Commonwealth and the United States. This is a sensible strategy and while FTAs are never easy, it is likely that after Brexit the UK will enjoy reasonable success in concluding these arrangements given its strong economic position and the fact that, unbridled from the EU, it will not be required to make compromises in favour of other member states in the bloc. Even without such arrangements, trade terms with the rest of the world will be under the framework of the WTO, preventing arbitrary barriers to trade and keeping tariffs on most goods reasonably low.
The UK and the EU should seek to conclude as soon as possible a comprehensive FTA allowing for deep economic integration while maintaining the promises made by the government during the referendum and enshrined in the Withdrawal Act of 2017. These are: full regulatory autonomy, the end of free movement of people and the termination of the jurisdiction of the European Court of Justice (ECJ).

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

**Goods and Product Standards**

The UK-EU FTA will seek to replicate as closely as possible the zero-tariff environment which existed through the UK’s membership in the EU. Article XXIV of the WTO’s General Agreement on Tariffs and Trade (GATT) facilitates FTAs in which FTA parties grant preferential tariffs to those within it relative to other WTO members, which would otherwise violate the GATT’s Article I Most Favoured Nation (MFN) obligation, obliging members to treat goods from all other countries the same as each other. The only requirements for an FTA are that there must be a notification to the WTO and that the FTA must cover ‘substantially all trade’. The precise meaning of this phrase is unclear, but we know that sector-specific FTAs would not be permitted. While some products could be excluded, the expectation is that the arrangement will cover all or almost all goods.

**Technical Barriers to Trade (TBTs)**

One of the most difficult aspects of the goods component of a UK-EU FTA will undoubtedly relate to non-tariff product standards, otherwise known as Technical Barriers to Trade (TBTs) or Sanitary and Phytosanitary (SPS) measures in the case of foods and agricultural products. The EU has resisted importation of a range of goods which do not fit with European understandings
in relation to health (e.g. hormone treated beef and genetically modified organisms or biotech products) originating from countries like the US.

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

**Customs Arrangements**

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

The UK government has spoken of the desire for ‘frictionless trade’ in goods. Near frictionless trade could involve some kind of simplified customs procedures falling short of an actual customs union, possibly using a virtual border involving periodic customs self-assessments by exporters coupled with the use of information technology like bar code scanning. Furthermore, the EU would certainly require reassurance that the UK does not position itself as a ‘backdoor to the EU’ by allowing goods into its territory from a third state which could then be shipped into the EU as if they were UK goods. Compliance with ROO to enjoy the preferential treatment of the FTA with respect to lower tariffs will require some inspections. The burden of these inspections is often exaggerated, typically costing less than 1 per cent of the value of the traded good.

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

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

A comprehensive free trade agreement (FTA) between the UK and the EU would go some way towards rectifying the weaker access for services but even here the full integration currently available under the Single Market would almost certainly be unavailable. The CETA with Canada, often thought of as a blueprint for future UK-EU trade relations, provides for various mutual recognition arrangements with respect to professional qualifications, establishing a joint committee for such matters. However, as it stands, this is little more than an agreement to agree. There is no mutual recognition for legal services, for example. Were the UK to obtain a similar FTA to CETA, there is no indication that this arrangement will grant UK lawyers practice rights in EU Member states, although it is conceivable that UK legal training may be recognised for the purposes of re-qualifying in an EU Member state. For financial services, a scheme of enhanced equivalence has been proposed by Barnabas Reynolds in a 2017 Politeia publication. This would allow the cross-border supply of financial services on the basis of shared outcomes (such as consumer safety and macroeconomic prudence) allowing the UK and the EU to deviate in terms of their specific regulatory structure with minimal intrusion into services flows. The EU has offered similar arrangements to other countries and may do so for the UK in the context of an FTA, although this cannot be taken for granted. The CETA includes commitments on financial services but it
is far from complete, for it example it contains a broad prudential carve-out which could impact cross-border trade in this service significantly. While diminished access for financial services under a UK-EU FTA is a cause for concern for many, others have noted that post-Brexit the UK should be able to take advantage of regulatory autonomy in this area since many of the EU’s financial regulations have stifled business in the UK, for example in relation to insurance and asset management. MiFID has been heavily criticised as burdensome and inefficient and could be replaced with a British regulation designed to suit the needs of the domestic industry and its clients.

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

Traditional investment treaties (which the UK was able to conclude before the Lisbon Treaty) contain Investor-State Dispute Settlement (ISDS) mechanisms, which permit private investors to bring claims directly against host states in international arbitration, with party appointed arbitrators – a system which has worked well for the UK over several decades. This process has become controversial in recent years in part due to its perceived secrecy. The EU consequently devised an Investment Court System (ICS) which consists of state appointed arbitrators (rather than party appointed ones, as under traditional ISDS) coupled with an appeal court of standing judges. The procedure will have enhanced transparency and the judges will be experts in international law, rather than in commercial matters as typically the case in normal ISDS. The CETA between the EU and Canada contains this procedure
and it would seem as though the EU intends to include the ICS in its future IIAs, with the ICS having recently been ruled compatible with EU law by the ECJ. Going forward the EU has put much effort into proposals for a Multilateral Investment Court system. The UK should take part in these discussions and consider whether to support this initiative in the coming years.

**Intellectual Property, Data Protection, Procurement and Competition**

A comprehensive FTA between the UK and the EU should also involve matters such as intellectual property, data protection, procurement and competition. Given that UK laws in these spheres generally correspond to those of the EU already by virtue of the UK’s long-standing membership in the EU, it is expected that there will be limited legal difficulties in these areas, however there may be short-term pragmatic problems concerning the UK’s lack of institutional infrastructure to enforce some of these regulations.

**Timing**

Although CETA took seven years to conclude, the negotiation and ratification of an UK-EU FTA are likely to take less time given that the UK is negotiating from the position of a similar legal framework to that of the EU. Still, it will be nearly impossible to put such an agreement in place before the end of October of this within less than a year, even with the political will from both parties. However, the UK would be able to offer zero or low tariffs and minimal non-tariff barriers as enshrined in an FTA without violating the WTO’s MFN obligation (granting the EU better treatment than other WTO members) by virtue of the ‘interim agreement’ exception contained within GATT Article XXIV (the provision which allows for MFN-breaching FTAs). Article XXIV(5)c) states that any such ‘interim agreement’ should provide for the formation of an FTA ‘within a reasonable length of time’, meaning that it does not have to be in place immediately. The transitional, interim period with the EU, provided that it leads to an FTA within ten years should be able to foreclose any MFN-based complaints from other WTO members. It is important to understand, however, that this does require agreement from both parties, along with a clear commitment to conclude an FTA in the future. The UK cannot simply trigger Article XXIV of the GATT on its own.
The WTO has indicated that it considers a temporary arrangement between the UK and EU with zero tariffs and minimal non-tariff barriers to be entirely compliant with the MFN principle as long as the UK and EU have agreed to negotiate a permanent FTA. Although in theory such an interim arrangement could be challenged by third parties (as an MFN violation) this is unlikely. In any event such challenges would take a long time to work their way through the dispute settlement system during which time the UK could continue to offer the EU the preferential treatment prior to the conclusion of an actual FTA. Practically speaking, this means that no transition period is necessary, precluding one of the main purposes of the now-rejected Withdrawal Agreement.
In the absence of FTAs, UK trade with the EU and non-EU countries will take place under the WTO rules. Given that the WTO framework accounts for most of the world’s trade and has a track record of success in removing barriers to trade, this arrangement is entirely manageable and should not be a cause of anxiety for the British public. Most of the work preparing for trading on WTO terms has already been done and more is pending.

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

The WTO consists of a negotiating forum which pursues trade negotiations on a multilateral consensus basis and a dispute settlement body which issues binding legal judgments (called recommendations) and which authorizes enforcement through retaliation. The WTO court system has been described as the most successful international court in the world in terms of its caseload and compliance rates, although as noted its Appellate Body is currently suffering from a deficient roster of judges because of blocking by the US. Reforms are being discussed which may involve making the dispute settlement facility optional to WTO Members, with the US presumably withdrawing, at least for the time being.

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

WTO membership lowers consumer prices and therefore has a beneficial impact on real wages and competitiveness throughout the economy. The implications for the UK of trading only on WTO terms outside of the EU and without FTAs are broadly positive. Overall productivity would likely rise as the structures of production would become concentrated in non-protected sectors. The UK would no longer need to maintain tariffs on sectors which it has no significant domestic production to satisfy industrial lobbies elsewhere in Europe. Some economists have estimated that this would lead to a net gain to consumer welfare and GDP of 4 per cent. Furthermore, WTO membership would allow UK to abandon the burdensome EU regulations required by the Single Market, which many economists have argued should bring further efficiency gains in terms of GDP.

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

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

With respect to trading with the EU, EU tariffs to all WTO members on most goods are reasonably low. The EU’s average tariff is around 4 per cent, which has been offset already by the decline in value of the pound since Brexit. EU MFN tariffs are higher on some products, notably automobiles and agriculture, but savings from tariffs earned by the UK on EU goods and from a significant portion of the £39 billion exit fee imposed by the EU (but not paid if there is no FTA) could be used towards compensating UK industries which suffer from these barriers through re-training and re-adjustment programmes.

As a member of the WTO, the EU cannot impose arbitrary regulatory barriers on goods in the form of conformity assessment procedures on imports from other WTO members such as onerous product testing. This is especially so where ‘like conditions’ prevail. Conditions, meaning the regulatory environment, will remain the same after the UK leaves the EU because the UK is not changing its own conformity assessment / testing procedures – this is precisely the purpose of the Great Repeal Bill. They will remain identical to the way they currently are within the EU, at least for the time being. The only ‘change’ is that the UK will not be an EU member – this is not a change in the level of scientific risk on food, chemicals or any other products, which might justify additional procedures at the border. It is therefore arguable that additional regulatory barriers imposed by the EU on UK goods would be arbitrary and unjustified. It is true that some customs procedures could become more burdensome than they are today because of the need to assess any tariffs and verify health compliance for some food, agricultural and chemical products. But this process must be risk-led and no more onerous than necessary. Still, although the UK intends to replicate most of the existing EU regulations, at least temporarily, important differences could emerge after some time. For example, the UK producers who already registered chemical substances under the EU’s Registration, Evaluation, Authorisation and Restriction of Chemicals Regulation (REACH) may have to appoint a proxy
within the EU to re-register the same substances or rely on its new importers in the EU. Some companies have already begun to prepare for this process. EU companies would also experience similar difficulties with their imports to the UK since the UK is likely to set up its own regime for these products eventually.

It is expected that some of these issues can be mitigated in part through enhanced infrastructure and technologies at our borders. Preparations for this have taken place over the last nine months by both the UK and ports in the EU (the Netherlands, Belgium and France). Officials in these countries have assured the UK that they are endeavouring to make customs procedures as smooth as possible, as required under the GATT and the WTO’s Trade Facilitation Agreement. There is nothing to gain by restrictive customs procedures and all parties are aware of this. While there may be some initial impediments as traders adjust to the new environment, this should be temporary and will not be massively disruptive.

With respect to the border with Ireland, again there is no reason to impose a so-called ‘hard border’ involving customs officers, barriers and inspections. Many inspections can be performed away from the border using technology and trusted trader pre-registration schemes, as suggested above. Arrangements of this kind in Ireland will not constitute a breach of the WTO’s MFN principal because soft-touch customs procedures either for tariff collection or health and safety inspections can be minimized for traders who originate from the border region and cross it regularly (under the GATT Article XIV exemption for ‘border traffic’). Moreover, were another WTO member to complain that goods entering the UK from the EU (through Ireland) were treated preferentially because of these streamlined processes, there is a strong argument to be made that this approach would be justified under the GATT Article XXI exemption for national security. This is because of the risk that full border controls could undermine the fragile peace on the island of Ireland. National security might even be used to justify a special zero tariff for all goods crossing the border, even in the absence of an FTA. Given the very small volume of goods which cross the Northern Ireland / Ireland border it is highly unlikely that any WTO member would attempt to instigate such a complaint anyway.
In order to get ready for trading under WTO rules on its own, UK has established The Trade Remedies Authority, which is a domestic agency to deal with subsidies and dumping remedies as well as the imposition of safeguards measures, as specified under WTO rules. This function had previously been fulfilled on the UK’s behalf by the European Commission. The EU currently has over 100 trade remedy measures in place against products from 25 countries.

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

The UK aimed to present its WTO schedule for goods as a straightforward ‘rectification’ of the EU’s schedule for goods in the summer of 2018. However, WTO members demanded renegotiation of the agricultural tariff rate quotas (TRQs) within those schedules (of which more below). The UK’s goods schedule led to objections from more than 20 WTO member states, most of which were agricultural exporters. Such objections are not fatal, they simply mean that negotiations, as required under Article XXVIII of the GATT will be more protracted. This will in no way prejudice the UK’s arrangements for ‘no deal’ departure. If the UK fails to satisfy these other Members and establish certified WTO schedules before 31 October 2019, it could unilaterally apply its schedule of goods even without reaching agreement with other WTO Members. Article XXVIII:3(a) provides that where agreement with the Members concerned cannot be reached, the Member proposing to modify or withdraw the concession ‘shall, nevertheless, be free to do so.’ On 13 March 2019 the UK announced its temporary tariff regime that would be applicable in the event of a no-deal Brexit. Under this temporary applied schedule, 87 per cent of total imports to the UK would be eligible for tariff-free access, including car parts (precluding the need for large scale stockpiling of these materials, as many warned). Other products, including some meat, dairy and
finished cars, would be subject to tariffs with a view to protecting the UK’s domestic industry.

The UK’s Tariff Rate Quotas
Under GATT Article XIII:2, the EU offered import TRQs (a certain percentage of goods entering at a lower than normal tariff) to other WTO members. The EU has almost 100 TRQs, 86 of which are for agricultural goods, the largest portion of which are on meat. As an aside, the EU’s official schedule of tariff quotas have not actually been certified since the enlargement of the EU, which could potentially frustrate negotiations. When it leaves the EU, the UK will be required to share the burden of the lower tariff quotas offered by the EU to other WTO members. This will in theory involve the UK reaching an agreement with all supplying WTO members which have a substantial interest in exporting the various products into the UK at the lower than normal tariff rate.

Disentangling TRQs on agricultural goods and re-allocating shares between the UK and EU involves a substantial change in the existing commitments and is therefore considered a ‘modification’ rather than as a rectification of the UK’s schedule for goods. WTO Members must ascertain what proportion of EU quotas – which are currently shared between the UK and the EU-27 as a single bloc – belongs to the post-Brexit UK. In October 2017 the UK and the EU formally informed WTO Members how they plan to split up the EU’s TRQs after Brexit. The joint plan indicated that the EU’s existing agricultural quota commitments will be ‘apportioned’ based on historical trade flows. The proportions were calculated on the basis of trade flows to the UK and EU-27 countries, averaged across the years 2013, 2014 and 2015. The joint plan does not include any changes to the overall levels of quotas. Some of the major exporters of agricultural products, such as Australia, Brazil, New Zealand, and the US were dissatisfied with the EU-UK joint proposal. These countries felt that the EU-UK plan diminished flexibility and market access for their exporters. As noted above, the UK is currently negotiating its schedules of goods, including the split of TRQs, with other WTO Members. Major agricultural exporters aim to increase the quotas and to obtain compensation for any loss of market access caused by the UK’s departure from the EU.
Agricultural Subsidies

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

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

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

**Services**

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

As the UK exports about £220 billion and imports about £130 billion of services per year, maintaining an open trading arrangement in services with the EU and the rest of the world through the WTO will be crucial. The UK’s under-performing services exports to non-EU countries like Canada and India are believed to be even larger than those relating to goods, representing massive potential gains post-Brexit. For example, the UK insurance industry has been poorly supported by the EU due to language barriers and legal differences.
The UK submitted its draft schedule of commitments on services to the WTO in December 2018 in order to have a complete set of schedules in place by the time it leaves the EU. The new schedule, disaggregated from that of the EU27, will essentially represent continuity for the service providers involved. Unlike the UK’s schedule for commitments on goods, for services it is more an issue of replicating the status quo. For this reason, it should be better received by the rest of the WTO membership. As suggested above, under the GATS, WTO members must submit schedules that set out the extent to which they are prepared to open their markets to foreign service providers. For the EU’s each sector contains exemptions and opt-outs, with individual member states either declining to open their national markets in specific areas or setting out conditions for doing so. The UK’s schedule has fewer exceptions than those of most member states. This is because it has a more open approach to services. Consequently, this process should be less problematic for third countries.

In January 2019, Russia, Taiwan and Costa Rica objected to UK’s submitted draft schedule for GATS. It is not clear what these three countries opposed, as such documents are confidential. It might be inferred that Russia’s objection is simply a reflection of its strained diplomatic ties between the UK. Under WTO rules, the objections triggered a 45-day consultation period which ran until 4 March. During this time the UK was required to hold discussions with the three parties to attempt to resolve their concerns. As with goods, the UK’s schedules on services can only be certified if all objections have been lifted. There is no indication that any resolution to these complaints has been achieved, with the deadline having passed. Importantly though, failure to complete certification by that date is not fatal for the UK, which has declared its draft schedule to be in force on a provisional, uncertified basis. Therefore the UK services schedules should come into effect on an uncertified basis upon Brexit. The EU’s own WTO schedules are uncertified, as the WTO membership never formally ratified amendments made since 1999.

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

The EU’s 27 Members have not made extensive commitments under the GATS for market access and non-discrimination, especially in relation to Mode 2 (cross-border) supply of services. It may be possible to circumvent some of these regulatory barriers by establishing a meaningful commercial presence within the EU - indeed it appears as though several financial institutions have already done this. It is worth noting that euro clearing has been allowed by Brussels, at least for the short term, alleviating some of the concern related to a no-deal scenario for this sector. The legal profession also stands to suffer from diminished access to the EU as the Lawyer’s Establishment Directive (allowing rights of practice to lawyers qualified in any EU Member state to practice anywhere within the EU) will no longer apply to UK-qualified lawyers. There may be various ways for UK lawyers to mitigate this impact, for example by qualifying in Ireland or by providing advice in conjunction with an EU-qualified practitioner. The issue is complicated by the fact that each EU Member state imposes different regulatory requirements on their legal practitioners and in some jurisdictions, it will be difficult for foreign lawyers (including UK lawyers after Brexit) to offer advice on EU law, for example, without having EU nationality. The provision of legal advice in relation to
home state law or international law should be somewhat easier. There is moreover some concern that after Brexit there will be no automatic enforceability of judgments issued by UK courts throughout the EU, requiring additional judicial procedures in EU Member states where assets may be held. This may represent a further threat to the dominance of London as the choice of forum for large commercial claims. Others believe that London’s legal expertise coupled with the desirability of the common law will prevent this outcome. A shift away from the civil courts to commercial arbitration, with near universal enforceability under the New York Convention, could similarly counter these fears, as London offers extensive expertise in this kind of dispute settlement.

The Government Procurement Agreement (GPA)
The GPA is a plurilateral WTO agreement, which means that it is optional to existing (and future) WTO members. Prior to Brexit, it was the EU which was a party to this agreement, not the UK, which means that the EU had been responsible for fulfilling the obligations under the treaty, including those which are within the competence of its member states. In February 2019, GPA parties gave their final approval to the UK’s accession to the GPA, in its own right, once it leaves the EU. Under the terms of the decision, the UK is covered by the GPA as a member state of the EU until the date of its withdrawal from the EU or, if the EU and the UK conclude an agreement that provides for a transition period during which EU law would apply to and in the UK, until the date of expiry of that transition period. The UK’s accession to the GPA will take effect 30 days after the UK government submits its instrument of acceptance. Joining the GPA gives UK companies access to the £1.3 trillion procurement market of the GPA’s 47 signatory states, including 27 EU Member states.

Digital Trade
Seventy WTO members indicated their intention to commence negotiation for a plurilateral agreement covering e-commerce, as announced in Davos in February 2019. It will include such matters as combatting spam and preventing data localization requirements. The UK should consider signing onto this agreement following Brexit as it is a leader in the field of digital trade and e-commerce.
As a member of the EU, the UK was limited to the trade agreements negotiated by the EU because the EU reaches trade agreements on behalf of the bloc for each member state for goods and services. After Brexit, the UK will want to conclude FTAs with other countries, including those with which the EU already has FTAs (the benefits of which the UK lost upon Brexit).

**Rolling Over EU-FTAs**

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

The UK indicated that it seeks to replicate the EU’s trade agreements as far as possible and have them ready in the event of a no-deal Brexit. So far, the UK has signed a trade continuity agreement with nine countries – Caribbean Forum (CARIFORUM) trade block, Chile, the Eastern and Southern Africa (ESA) trade bloc, Faroe Islands, Iceland and Norway, Israel, some Pacific states, the Palestinian Authority and Switzerland. The UK has also signed trade agreements with Australia and New Zealand, however these are Mutual Recognition Agreements (recognizing conformity assessment procedures for goods and services) rather than comprehensive FTAs. In February 2019, the UK signed the UK-Switzerland Trade Agreement, which would maintain the UK-Swiss trade under the preferential terms currently available to both countries through the EU’s arrangement with Switzerland. If the UK leaves the EU without any arrangement on 31 October 2019, the UK-Switzerland Trade Agreement will immediately apply from the date of withdrawal. Some of these agreements lack several provisions commonly found in modern FTAs. For example, the UK-Switzerland Trade Agreement does not include rules on
services and intellectual property rights. It only covers trade in goods, including provisions on ROO, preferential tariffs and quotas, non-tariff measures, geographical indications and government procurement.

It is unlikely that the UK would be able to roll-over all the existing EU trade agreements by 31 October 2019. In particular, trade agreements with major trading partners including Canada, Japan, South Korea and Turkey will almost certainly not be in place on Brexit day. The UK may therefore wish to pursue signing a memorandum that provisionally applies the EU’s trade agreements with these countries to provide certainty to businesses while negotiating for a new agreement. If the UK does not extend all the EU’s existing trade agreements with third countries by 31 October 2019, the UK’s trade with these countries (as with the EU itself) will be governed by WTO rules. Trade negotiations with other countries have been underway for months and should be expected to pick up steam following Brexit when there is a clearer picture of the UK’s trading relationship with the EU. The US has expressed a willingness to conclude an FTA and there are indications that the UK will seek to join the Comprehensive Progressive Trans Pacific Partnership (CPTPP) an 11-state trade pact among countries located on the Pacific Rim.

Some EU FTA partners may be unwilling to offer the same trade agreements to the UK because they may not be prepared to extend the same level of access to the smaller UK and its smaller market than they did to the EU with its size and considerable negotiating power. Another difficulty associated with rolling over the EU’s FTAs involves ROO. As discussed, these are rules which verify how much of a product is deemed to be from a party country, allowing it to qualify for preferential access. ROO are complicated for composite products which are part of multi-state value chains, as where some components come from the UK and some from the EU. Re-negotiating ROO in the context of rollover requires what is known as ‘diagonal cumulation’ – all three states must agree on rules for cumulative content – meaning the UK, the EU and the third party. There has not yet been any indication that the EU will agree to cooperate in this process to benefit the UK, although failing to do so arguably evinces a lack of good faith.

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

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

The Contents of Future UK FTAs with Third States
It is unquestionable that the UK’s FTAs with the rest of the world will include services given that the UK exports £220 billion in services per year to the EU and the rest of the world and represents its key comparative advantage. Services are less geographically dependent than goods, suggesting that the UK should be able to secure FTAs with third states around the world in relation to services (especially given its favourable time zone), however this will likely involve the UK trading access to its goods market. Such a bargain will almost certainly be the case with the US, seemingly the most lucrative market beyond the EU. Enhanced access to the US financial services market would be very economically advantageous for the UK but this will probably mean accepting US agricultural products, many of which conform to regulatory standards which are less stringent than those of the EU. Some will welcome such imports as conducive to greater competition and lower prices, much as competition from US companies in various services sectors could represent a boon for consumers.

Article V of the GATS which facilitates FTAs, requires that such arrangements cannot be sector-based. FTAs covering services require ‘substantial sectoral coverage’ which means that all or near all services must be covered in an FTA. Services negotiations in FTAs are bound to be more complex because of the
highly regulated nature of this kind of economic activity. The UK’s priority in services negotiations will be the liberalization of trade in financial services as well as securing mutual recognition agreements for professional qualifications to allow movement of services professionals, such as lawyers, on a temporary basis. Since, as noted earlier, the UK is very much a global leader in financial services regulation it is expected that the UK will be in a strong bargaining position with respect to setting the terms of such agreements.

With the importance of services in mind, the UK should consider becoming a signatory of the Trade in Services Agreement (TiSA) which is an FTA covering services that was being negotiated among 23 WTO member states including the EU and many other developed countries, although negotiations are currently paused. Together these countries comprise approximately 70 per cent of world trade in services. TiSA is essentially an expansion of the WTO GATS, meaning that the participants will commit to greater liberalization for their services than they did under GATS in part because, as developed countries, these parties have more interest in opening services than most WTO members (two-thirds of which are developing countries) so negotiations on TiSA could proceed more efficiently than it would were 164 members involved. The plan is eventually to incorporate the TiSA into the WTO with a view to it encouraging other WTO members to join incrementally. The last round of negotiations for the TiSA concluded in November 2016 and there is no set deadline to terminate the negotiations.

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

The issue of product standards regarding health and safety in FTAs will be more complex and raise some difficulties from a negotiating standpoint. It is
not clear what stance the UK will take regarding certain controversial products like hormone treated beef or genetically modified organisms. This could present an obstacle to an FTA with a country like the US were the UK to insist on retaining EU-type restrictions on these products. As the WTO dispute settlement tribunals ruled against the EU’s restrictions on both these classes of products the UK could follow global, scientific consensus and allow these products by recognizing US product assessment procedures, to the extent that they also conform to WTO SPS and TBT requirements. Consumers are of course free to choose not to purchase these products should they doubt their safety or object to the manner in which they are produced.

Foreign investment is a vital component of the UK economy, with inward and outward FDI stocks roughly even at just under £1 billion per year respectively, among the highest in the world. It should therefore feature in the UK’s FTAs with the rest of the world. The UK has 97 Bilateral Investment Treaties (BITs) currently still in force, most of which are with developing countries. It is a party to the Energy Charter Treaty, which facilitates trade and investment in the energy sector. As indicated above in relation to the UK-EU FTA, the UK should include an investment chapter in its future FTAs with other countries offering foreign investors the basic protections contained in these treaties. Whether as part of FTAs or through BITs, the UK should take this opportunity to update its investment treaty practice from its Model BIT of 2008 in line with modern trends. These include providing clearer definitions of indirect expropriation and Fair and Equitable Treatment, the standard under which most investment claims have been brought. It would be advised to include provisions specifying the right to regulate in matters of public interest in order to foreclose claims based, for example, on regulations designed to address public health matters. Such precautions should not be viewed as interferences with normal market conditions in the UK, but rather insurance against frivolous claims, which, although rare, are best avoided. As indicated above, the UK should avoid departing from standard ISDS in its investment treaties as this represents an attractive feature to foreign investors and could be advantageous to UK firms operating overseas in environments with weak rule of law. Since many of the UK’s future investment partners will be emerging and developing countries the importance of the procedural and substantive protections of investment treaties must not be underestimated.
The optimal conclusion to the lengthy Brexit withdrawal negotiations with the EU is a comprehensive FTA offering deeper integration than any of the EU’s previous FTAs, based upon replication of existing levels of market access and tariffs between the two countries where possible. While it is hard to imagine that such an agreement could be concluded by 31 October, an interim agreement with many of these features could be put in place now and would be entirely WTO-compliant.

If this does not happen in time for the new Brexit Day on 31 October 2019, departure from the EU without a formal trade agreement should in no way be viewed as a nightmare ‘no deal’ scenario. While some tariffs will be slightly higher vis a vis the EU, other tariffs will be lower and outside the Single Market the UK will be able to implement its own regulatory standards on goods and services internally and with to other countries. New customs procedures at borders can be mitigated with the right infrastructure and technology. Preparations for trading with the EU under WTO terms are well under way. Industry and the general public are beginning to realize that many of the dangers of life outside the EU have been exaggerated.

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

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

Source: World Trade Organisation
World Trade Organisation Dispute Settlement: The Panel Process

60 days

By 2nd DSB Meeting

0-20 days
20 days (+10 if Director-General asked to pick panel

6 months from panel’s composition, 3 months if urgent

Up to 9 months from panel’s establishment

60 days for panel report unless appealed...

‘reasonable period of time’: determined by: member proposes, DSB agrees; or parties in dispute agree; or arbitrator (approx. 15 months if by arbitrator)

30 days after ‘reasonable period’ expires

Consultations (Art. 4)

Panel Established By Dispute Settlement Body (DSB) (Art. 6)

Terms of Reference (Art. 7) Composition (Art. 8)

Panel Examination
Normally 2 meetings with parties (Art. 12)
1 meeting with third parties (Art. 12)

Expert review group (Art. 13; Appendix 4)

Review meeting with panel upon request (Art. 15.2)

Panel issued to parties (Art 12.0; Appendix 3 par 12 (j))

Panel report circulated to members (Art 12.0; Appendix 3 par 12 (k))

DSB adopts panel/appellate report(s) including any changes to panel report made by appellate report (Art. 16.1, 16.4 and 17.14)

Implementation report by losing party of proposed implementation within ‘reasonable period of time’ (Art. 16.1, 16.4 and 17.14)

Dispute over implementation: Proceedings possible, including referral to initial panel on implementation (Art. 21.5)

In cases on non-implementation parties negotiate compensation pending full implementation (Art. 22.2)

Retaliation
If no agreement on compensation, DBS authorises retaliation pending full implementation (Art. 22)

Cross-retaliation
Same sector, other sectors, other agreements (Art. 22)

During all stages good offices, conciliation or mediation (Art. 5)

NOTE: a panel can be ‘composed’ (i.e. panellists chosen) up to about 30 days after its ‘establishment’ (i.e after DSB’s decision to have a panel)

Appellate review (Art. 16.4 and 17)

… 30 days for appellate report

Dispute over implementation: Proceedings possible, including referral to initial panel on implementation (Art. 21.5)

Source: World Trade Organisation
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Rebalancing the Debate: The Benefits Of Trade Liberalization And Implications For Future Policy
Andrea Potlogea
The change of prime minister has opened the way to a Brexit that will bring a brighter economic and trade future to the UK. Here, David Collins, who holds the chair of International Economic Law at City University, explains that the UK should now propose a Free Trade Agreement to the EU. Not only would the FTA bring friction- and tariff-free trade between this country and the bloc, but it would restore the constitutional sovereignty for which people voted in the referendum.

Professor Collins proposes that the government should simultaneously prepare to leave the EU on 31st October and trade under WTO trade law, if the EU delays or refuses a Free Trade Agreement. Departure from the EU without a formal trade agreement should in no way be viewed as a nightmare ‘no deal’ scenario. While some tariffs will be slightly higher vis a vis the EU, others will be lower outside the Single Market. Moreover, the UK will be free to implement its own regulatory standards on goods and services and with other countries. New customs procedures at borders can be mitigated with the right infrastructure and technology.

The essential first step, as the series editor, Sheila Lawlor, explains in her foreword, is to draw a line under the Withdrawal Agreement, which would have fettered the UK economy and trade to the EU’s laws and rule book and prevented the freedom to pursue free trade deals with the EU and other countries.