

# 42

The answer to life,  
the universe,  
and everything <sup>*EU*</sup> ^

*And the Banker, inspired with a courage so new  
It was matter for general remark,  
Rushed madly ahead and was lost to their view  
In his zeal to discover the Snark*

**Lewis Carroll**

## **Foreword**

**by Steve Baker, MP**

This timely paper reveals the broad range of trade deals which is currently possible with the European Union. It exposes as histrionic the suggestion that we must choose either EU membership or isolation which is so often used by advocates of political union for the nations of Europe. For the EU to refuse the UK one of these deals, or some variant from it suitable to our country's unique position, would be not merely an act of spite but a departure from established practice.

We advocates of the United Kingdom as a democratic self-governing nation trading freely with the world are right to be optimistic about our prospects outside what will be a fundamentally unreformed EU. This paper is a clarion call for unity, optimism and hope as we work towards a public decision to make our Parliament responsible for our laws, transparently accountable to the British people and in open relationship with the world.

*Steve Baker was elected to Parliament representing Wycombe in 2010. He served first on the Transport Select committee before moving to the Treasury Committee. He was twice elected to the Executive of the Conservative 1922 Committee by Parliamentary colleagues. He is co-chairman of Conservatives for Britain.*

## Introduction

The United Kingdom was invited to vote on whether to remain within the European Union.

Supporters of 'Remain' presented the decision as providing a very narrow range of options. The legacy remains with us today. One narrative suggested that there was a binary, Manichean, choice. Either the UK stays inside the EU (and accepts any pitiful amendments to the treaty as the best of a bad lot), or it leaves and strides out into a landscape sketched out by Hieronymus Bosch.

This is clearly a false dichotomy, and some prominent Remain supporters (including Lord Rose, the campaign leader) admitted as much even at the time.

Another 'Remain' narrative suggests that a couple of other options were on the table, but they amounted to self-harm. The 'Norwegian model' in particular was placed on a particularly lofty pedestal by Remain, purely in order to batter it and cast it down. The casuistry associated with this was unbecoming of the Cabinet Office or Downing Street spokesmen who pushed it.

The reality is that the nature of the European Union's trade associations with third parties is far more complex. It is possible to distinguish 42 different types of trade agreements the EU has agreed with other states and regions. That is just using the Commission's own definitions and terminology. Indeed, a legitimate argument can be made that the true figure is actually 50; and in any event the process is also set to generate a half dozen new variants thanks to the Commission adapting to WTO rules over deals between trade blocs.<sup>1</sup>

So much for the either-or narrative and picking Hard of Soft Brexit.

Of course, not all those 42 (or 50, or future 55) options are applicable to the conditions of the United Kingdom. But the very fact of the variety, and their transition indeed over time, demonstrates that the EU's trade agreements are far more flexible than supporters of the *Remain* side are prepared to give credit for.

With Brexit, it was already evident the EU would on past form recognise that existing trade patterns require putting on a secure footing. From the UK's current starting point of compliance, it already ticks most of the difficult negotiation boxes; most of the issues

---

<sup>1</sup> The figure of 42 changes depending on how you count the Cyprus SBAs, Gibraltar, the EBA model, and the PLA IAA. East Germany's situation might be sub-divided into its GDR backdoor membership pre-reunification, and the brief period of its unrepresented status across Brussels institutions shortly after merging politically with the former FRG. 'Less than WTO' status could also be subdivided between states such as South Sudan that had not yet become members, and embargoed states such as North Korea (whose own embargoed terms might vary from other states, such as Zimbabwe which still enjoyed a beef export quota). Then there is the differential between individual 'WTO only' states where NTB-removing elements are nevertheless included in differing EU bilaterals. Furthermore, the Commission's own categorisation of the 'Anything But Arms' model also varies. Thus the figure of 50 is probably more accurate, though 42 more properly represents the Commission's historic interpretation.

around trading arrangements will be about confirming that current rules and standards would continue to apply. The UK, with a generally trusted civil service, respected professional organisations, and (often overlooked in this equation) a very low level of corruption, already meets the quality control requirements that would allow current levels of trade to continue against the possible imposition of Non-Tariff Barriers (NTBs), and certainly within a two year transitional timeframe.

That leaves the tariffs themselves. As research by *Business for Britain* shows, shifting to the worst case scenario of WTO rules without any replacement tariff still leaves the UK £4bn better off after matching any new tariffs by forms of support for tariff-hit industries.

We explore later the concept of the UK's national interest, and how each European state has different motivators and drives that will affect very differently whether it is a good fit for EU membership (the UK is one which does not). In this section, we thematically explore a little more about the options already demonstrably on offer.

Several fall within the ideal 'Goldilocks Zone' in which the UK can orbit around the Commission, sitting a lot further away in treaty terms than as an EU member.

To get there has always meant quitting the EU first.

## The big picture

The types of trade deal that the EU has negotiated with third parties has varied over the years. This should hardly surprise us.

In some cases it might be down to a gradualist approach, with parties agreeing to agree what can be agreed upon at a given time, while anticipating political mood in a given blocking lobby might change over time. Alternatively, it may be that a country has different priorities; Norway hardly needs to concern itself with banana export quotas, for example. It might again be that the deal is not with a state at all; it might be an arrangement with another trade bloc. Or there might be some element of geography that generates particular circumstances. Gibraltar for example is famously a rock, and therefore it is pointless applying the Common Agricultural Policy to it.

In the course of this paper we set out 42 types of trade treaty that exist. But like the botanist, we might group them collectively into various types of genus.

- **EU membership;** Being one of the 28 member states of the EU, with some marginal differentiation.
- **EEA membership;** Trading into the Single Market but with border checks, liberated from most of the *acquis*, while having freedom to agree FTAs with other parties as well.
- **Customs Union membership;** Access to the Single Market without border checks, but limited input into EU decision-making. The pill is sweetened financially.
- **Small territory association;** A special deal for a statelet or dependency.
- **Customs access plus broad spectrum competences engagement;** A trade deal that also includes agreements on a number of other issues of common interest.
- **Customs access plus limited competences engagement;** A trade deal with one or two minor bolt-ons, which over time will likely be expanded.
- **Bilateral developed free trade deal;** A complex trade deal, perhaps including non-trade elements, that also addresses NTBs and seeks to reduce wider trade obstacles.
- **Free (free-er) trade arrangement;** An agreement to seek to reduce tariffs and certain barriers.
- **Bilateral inter-trading bloc agreement;** An agreement with another party of states.
- **Advantageous trade access for a developing country;** An unbalanced deal that deliberately advantages a developing state in order for trade to act as development aid.
- **Non-economic treaty;** A separate agreement that fosters cooperation or may even break down barriers (not covered in the 42, but sometimes augmenting trade cooperation).

- **WTO-level default**; Existing international trade rules that cover perhaps two thirds of the countries the EU (and the UK) trades with.

Obviously, the UK is not Bermuda nor is it Namibia, so some of these options are off the table. Others will on review not prove to be optimal for a developed economy. But let's look at them in more depth.

## Level 42

The full list is set out in Table 1, below. That list is compiled from those agreements to which the Commission itself has assigned a specific term to the type of arrangement, or at least defined it as different to other set terms.

Table 1: Types of EU trade agreement

Type of Agreement	Example
EU membership	France
Subsumed political union/merger with nation state	East Germany
EU membership with opt-out	Denmark
European Economic Area (EEA)	Norway
Transitional Europe Agreement Establishing an Association	Pre-accession Bulgaria
Protocol 3 Association	Guernsey <sup>2</sup>
Outermost Region (OMR)	Guadeloupe <sup>3</sup>
Cooperation and Customs Union (CCU)	San Marino
Customs Union	Turkey
Deep and Comprehensive Free Trade Agreement (DCFTA)	Ukraine
Free Trade Agreement plus bilateral(s)	Switzerland, Faroes
Basic symmetric free trade agreement (eg CEFTA) Macedonia	Macedonia
Transatlantic Trade and Investment Partnership (TTIP, pending)	USA
Comprehensive Trade and Economic Agreement (CETA, ongoing)	Canada
Non-Member Member territory - EU exclave	Büdingen am Hochrhein <sup>4</sup>
EU-OCTA (OCT Association)	Falklands
Non-EU OCTA	South Georgia

<sup>2</sup> This category covers treaty terms as applied for OCTs of an accession state. As they are tailor-made, each one in effect may be considered a distinct form of association, catering for existing historic local subsidiarity, but we group them together here for convenience. Examples include Ceuta, and Åland. In Gibraltar's case the exclusion of certain competencies is particularly marked, as is its affiliated MEPs.

<sup>3</sup> For simplicity, we also include in this bracket the quasi-OMR status held by Saint Martin over 2007-2010.

<sup>4</sup> This community, along its Italian counterpart Campione d'Italia, belongs to an EU member state but is treated as part of the Swiss customs union. Each is an exclave separated by about a mile of Swiss territory.

New Generation Free Trade Agreement	South Korea
Bilateral Stabilisation and Association Agreement: Non-reciprocal trade preference agreement with bolt- ons	Macedonia (formerly)
Free Trade Agreement	Malaysia (ongoing)
Agreement on Commercial and Economic Cooperation (ACEC)	Canada (previously)
Agreement on Trade and Economic Cooperation	Mongolia
Economic Partnership, Political Coordination and Cooperation Agreement (EPPCCA)	Mexico
Interim Agreement on Trade and Trade-related Matters	Bosnia
Informal backdoor legacy association (no official term)	Algeria after independence
Trade Agreement	Colombia
Economic Partnership Agreement (EPA)	CARIFORUM (provisional)
Association Agreement and Additional Protocol	Chile
“Association Agreement with a strong trade component”	Central America
Euro-Mediterranean Agreement Establishing an Association (EMAA)	Israel
Interim Economic Partnership Agreement	Madagascar
Comprehensive Partnership and Cooperation Agreement	Vietnam
Partnership and Cooperation Agreement (PCA)	Russia
Trade, Development and Cooperation Agreement (ATDC) - Asymmetric free trade agreement	South Africa
Generalized/Global System of Preferences Plus status (GSP+)	Costa Rica
Generalized/Global System of Preferences – WTO default with preferential rates for developing country	South Sudan
Partnership Agreement	Lomé Agreement
Cooperation Agreement	Syria
Most Favoured Nation (MFN) plus Joint Programming	Namibia
WTO MFN default	United States
Agreement on Trade and Commercial and Economic Cooperation (ATCEC)	USSR (previously)
Less than WTO	North Korea

So let's take each of these in turn. In each instance we'll classify the type of association, provide a case example, review what it entails and how it differs from other types, and consider the extent to which it provides a route for the UK.

## **Type: 1, EU membership**

**Example:** France

**Summary:** This model should be generally known to the reader. It involves a state signing up to all the treaties and *acquis*.

In practice, member states operate under marginal opt outs, minor concessions and exemptions. It has for example taken sixty years for subsidies to the German coal industry to start to be phased out, since they were considered a form of social and regional aid that the German Government politically did not want to end. It is not unusual to see ministers conceding an integrationist or harmonising measure in return for a derogation, allowing a period of transition and extra time for something to be phased out.<sup>5</sup>

**Options for the UK:** This option only works for a country committed to EU integration, and using bargaining chits to fight the detail of deals rather than on getting derogations or opt-outs from them. Politically, the UK doesn't want to be part of a federal Europe and had issues even with generating intergovernmental pillars at Maastricht for JHA and CFSP, let alone see them collapsed within the EU structures. This route requires a total sea change in UK foreign policy and a commitment to ending the nation state, not merely ignoring but running full contrary to the Brexit vote.

## **Type: 2, Subsumed political union/merger with nation state**

**Example:** East Germany

**Summary:** For a number of years, East Germany had a sort of backdoor affiliation with the EEC. In this regard it mirrored, though heading in the reverse direction, the route followed by post-independence Algeria (see example 25, below). However, for a short period after the collapse of Communism and the merger of West and East Germany, the former GDR was in a particularly anomalous position.

The constitution of the Federal Republic allowed for the extension of Basic Law into acceding Länder. The geographical extension of Community law was murkier. In the event, while it was vexing the lawyers, the heads of government supported the principle. East Germany joined the customs union in June 1990, and was permitted at most a thirty month period of derogations (a timeframe that suggests a crash adaptation to the realities of Brexit is plausible).<sup>6</sup> However, from the period of West German takeover 1994, in effect East Germany was surrogated by the existing FRG political system in the Council of Ministers, by already-recruited West German officials in the Commission, and by

---

<sup>5</sup> Politically, this is particularly useful in allowing ministers to change jobs, and governments to lose power, in the interim, meaning that another later incumbent takes the flak.

<sup>6</sup> Environmental standards, unsurprisingly, were allowed a longer time to adjust.

West German MEPs in the European Parliament (it got its own MEPs when the German tally was increased via the Maastricht Treaty, but MEP elections only happened in June 1994). In effect, for a two year period East Germany was a proxy member of the European Community.

**Options for the UK:** This case study is not directly relevant to the UK, as it doesn't plan to merge with another country. Nevertheless, the instance of political decisions exceeding the limits of legal opinions may be a useful reference point in any area where political consensus exists on continuing current UK-EU arrangements but where legal precedent is uncertain. This may be particularly relevant to localised arrangements between Northern Ireland and the Republic after Brexit, should a political consensus emerge to allow an otherwise irregular deal to stand.

### **Type: 3, EU membership with opt-out**

**Example:** The UK currently.

**Summary:** Familiar to readers, this is the current status of the United Kingdom within the EU. A very marginally modified version lay in what was set to emerge from the renegotiation package.

**Options for the UK:** A state continuing this route neglects to address the many failures of the current terms of EU membership. It creates a medium term fix without solving any of the strategic failures arising. It has, in any event, been ruled out by the Brexit vote.

### **Type: 4, European Economic Area (EEA)**

**Example:** Norway – although a better example is Iceland (since the Norwegian government has signed up to one-sided deals in order to more easily transition to full EU membership, which is a party political objective but not a popular one).

**Summary:** The EEA Agreement covers EU legislation in all policy areas of the Single Market. This includes the free movement of goods, services, persons and capital, as well as competition and state aid rules, but also consumer protection, company law, environment, social policy, and statistics.

Separately, it allows for cooperation in research and technological development, education, training and youth, employment, tourism, culture, civil protection, enterprise, entrepreneurship and small and medium-sized enterprises.

Case law of the Court of Justice of the European Union is also of relevance to the EEA Agreement, as the provisions of the EEA Agreement shall be interpreted in conformity with pre-accession rulings

(i.e. judgements earlier than 2 May 1992). However, cases involving the non-EU states are reviewed by a distinct EFTA court.

Significantly, many EU competences are excluded from the EEA. These are the CAP and CFP (excluding the products themselves); the customs union; common trade policy; common foreign and security policy; justice and home affairs (the EEA EFTA States are however voluntarily part of the Schengen area); direct and indirect taxation; and economic and monetary union.

There are some excellent studies reviewing what this means in practice, and the reader is directed in particular to several publications by Civitas and by the Bruges Group (available on their websites).<sup>7</sup>

There is currently a lot of misinformation coming out about the EEA from those who support the full EU model. These particularly cover (i) influence in the regulatory process (ii) value for money and the Norway bill, and (iii) the amount of regulations EEA members still have to adopt.

In terms of influence, there are several key points to recall. As any audit of EU/EEA regulations reveals, in the international hierarchy of trade standards it is the international and not European institutions that sit at the top. We explore this in a separate paper, but critically the UK voice is ceded to the European Commission, while EEA states represent themselves in these fora. They thus retain their influence and veto at source. Secondly, decision making by EEA EFTA states is done by consensus and not (as in the EU) by QMV, meaning any government retains its veto. Casting its veto causes difficulties as it prompts suspension of free trade in that product; that however is an extra motive for the EEA state's position to be taken into account by the Commission. Thirdly, EEA states exert influence within the EU structures by being represented at Brussels. Structurally, the links are maintained through a variety of institutions; the EEA Joint Committee, the EEA Council, the EEA Joint Parliamentary Committee, and the EEA Consultative Committee in particular. EEA EFTA states liaise between themselves through their own Standing Committee of the EFTA States. This has five subcommittees and (at last count) 32 working groups. As input occurs behind the scenes across several hundred EU committees, this is all the tip of the iceberg and to suggest the EEA has no input is outrageous.

Two questions tend to get asked about the EEA alternative: how much money would it save, and how many EU regulations would it cut out?

In terms of value for money, supporters of EU membership suggest that Norway's EEA bill per capita is barely an improvement on the UK's. Again, this is a gross simplification. For starters, it ignores the fact that per capita Norway is wealthier than the UK, and that is how baseline contributions are calculated. It also ignores the fact that the Norwegian Government itself has come in for criticism from EEA counterparts for signing up to EU programmes to express its *communaautaire* values rather than out of hard-headed vfm assessments. In other words, Europhile ministers in Oslo have made a point of shooting themselves in the foot.

---

<sup>7</sup> A considerable amount of valuable work on small print issues is in particular to be found associated with the 'Flexcit' project (qv). Much of this has direct and wider bearing across renegotiation issues and is worth reviewing. This author disagrees with some of the strategic conclusions drawn, including the principle of its true value lying pre-referendum (since the prospect however unreal of a veto made it a ready piñata).

This is particularly the case with respect to one set of payments that are an added extra. Norway foots 97% of the EEA bill for what are in essence social and regional grants to Eastern Europe. EEA membership costs are overwhelmingly down to these grants, although they are not part of the central terms. It is very much an open question whether these grants now form an inherent part of the EEA membership deal.

To further complicate matters, even that share itself is deceptive, as Oslo decided to pick up Bern's share when Switzerland voted against joining the EEA... So in any case, the maths typically cited is actually wrong.

A positive scenario means that the UK would save perhaps £5bn in its direct payments, compared with the current EU bill.<sup>8</sup> The worst case scenario would be that a significantly reduced 'membership' bill would be expected. Even if this were the case, to these savings can be added those that would be made through the repatriation of competences currently hampered by regulations at EU level, of which a prime example is over the CFP. So serious was this cost that it twice scuppered attempts in referenda for Norway to join the EU, and remains a key sticking point for Iceland joining.<sup>9</sup>

This takes us to the second variable. In terms of the regulations, by definition since numerous competences are excluded from the arrangement, the amount of regulations and the quantity of EU red tape will be less for EEA members. Again, the actual figure that would apply is unknown and there has apparently been no official study undertaken by either EFTA or (understandably) the Commission. This has been exacerbated by some errors in taking references to the share of directives as meaning to apply to all EU regulations.<sup>10</sup>

What do we know? Firstly, according to a report by the EFTA Secretariat in Brussels for the Icelandic Foreign Ministry that was published in May 2005, only some 6.5% of EU regulations, directives and decisions had fallen under the EEA Agreement over the first eleven years of its existence, a total of 2,527 pieces of legislation. Of those only 101 required a change to Icelandic laws already in place – perhaps a strong indicator of the extent to which these were being negotiated by Icelanders at global level higher up the legislative food chain. Separately, developing this report, Iceland's Parliament ran its own study and in March 2007 concluded that over the previous 15 years, of the 1,656 laws it had passed, 285 (17.2%) were directly because of Iceland's membership of the EEA. If those more generally ascribed to membership were also counted, the percentage rose to 21.6%. A similar question was raised in the Norwegian parliament in 2004. The then-government replied that over the period 1997-2003 there had been 11,511 pieces of legislation adopted by the EU. Of those 2,129 fell under the EEA Agreement, or about 18.5 percent. As recently as August 2010, Norwegian sovereignty campaigners *Nei til EU* released their own research covering the years

---

<sup>8</sup> For example, see *The Norwegian Way: A case study for Britain's future relationship with the EU*, Jonathan Lindsell, Civitas, 2015.

<sup>9</sup> The Norwegian fisheries minister resigned in protest on discovering the terms of the deal for the putative 1973 accession. By contrast the Heath Government recognised it as a terrible deal for the UK fishing fleet and communities, but were prepared to accept the damage.

<sup>10</sup> A useful starting point (albeit partial) can be found at <<http://www.eureferendum.com/blogview.aspx?blogno=85798> >

2000-2009, and according to their statistical analysis the national share ran at a rate of 8.9 per cent.<sup>11</sup>

Even if we take these statistics as being materially out by a significant factor, it is clear that a very large proportion of EU rules would not need to be on the UK statute books and that there is considerable opportunity to repeal laws that on review appear to be damaging. Those analyses are dated and a further caveat arises as a result; however, the EU has also become more integrated as a result of the Lisbon Treaty and increasingly legislates in areas that fall outside of the EEA terms.

To summarise, both in terms of 'membership costs' and the potential for legislative review that arises from shifting to EEA terms, there are potentials for significant gains. This should be a specific area looked at by the Treasury in their reported planned audit of EU membership. We won't hold our breath.

In conclusion, the concept of non-EU EEA members living in a 'fax democracy' is a falsehood. EEA members have greater legislative freedom than EU members, are not regulated by the EU across much of the economy, and have kept a right of veto that has been surrendered by counterparts at the FCO. In point of fact, given QMV in the Council of Ministers is now the norm rather than the exception (covering on Commission estimates 80% of decision making), it is London that is operating as the fax democracy.

**Options for the UK:** The Swiss rejected EEA membership in 1992. Norwegian Eurosceptic campaigners see it as far superior to EU membership, but prefer to see the country outside of the EEA and trading on WTO terms. There are costs associated with it. But the EEA would at least be something of an improvement on the UK's current condition since it would cut membership fees, albeit by an uncertain amount. It would remove many of the more damaging EU competences. It would slightly improve on the current ECJ system by introducing a parallel, though still problematic, EFTA court. The prospect of a fax democracy developing would be avoided if the Commission appreciated that attempts to impose one would hamper trade since the UK would impose its veto, though that depends on UK diplomats developing a robust attitude. Meanwhile, British negotiators would get more engaged directly at the international coal face drafting the trade standards that otherwise later emerge lower down through the EU legislative processes.

There is a lot going for the EEA compared with were the UK presently is, though there are key problems and variables. It is not the optimal resting place, and we do not recommend it as an objective. The central concern is that it carries a very high risk of entropy once reached, though this might be mitigated by a time limit for affiliation. Its value is as a transitional location where the UK could be parked while difficult elements of a new UK-EU Channel Treaty is signed, and an FTA agreed, if such talks risk running over the timeframe permitted under the Article 50 process.

---

<sup>11</sup> Covered in a short paper in *Controversies*

<<https://d3n8a8pro7vhmx.cloudfront.net/taxpayersalliance/pages/5197/attachments/original/1422261997/controversies.pdf?1422261997>>

## **Type: 5, Transitional Europe Agreement Establishing an Association**

**Example:** Pre-accession Bulgaria

**Summary:** These agreements covered a transitional period during which Eastern European applicant states prepared for EU membership; this was set to last ten years, in two phases. Coordination would occur through high level official and ministerial meetings, particularly through an Association Council. Any issues would be resolved by arbitration.

Central was the establishment of a Free Trade Area based on reciprocity and defaulting to GATT rules. This meant a phased abolition of industrial tariffs, happening more quickly on the EU side. Quotas would be immediately scrapped. Agricultural tariffs and barriers would be opened up more slowly and subject to further talks. Skilled workers of that nationality within the EU would gain equal rights, as would their dependents, subject to national provisions on market access. Social security would be transferrable where already eligible. Market access rights to self-employed and businesses were set out. Mutual recognition procedures begin to be worked out. Temporary residency for service providers is established. There is to be free movement of capital, particularly with respect to investments. Intellectual property rights are to be protected. Public contracts are opened up.

Given the context is one of preparing for accession, it should not surprise us that a section deals with the approximation of laws. These extend much more widely than economic issues and cover the broader set of EU competences. The country is to work towards adopting the EU acquis in the following areas; customs law, company law, banking law, company accounts and taxes, intellectual property, protection of workers at the workplace, social security, financial services, rules on competition, protection of health and life of humans, animals and plants, consumer protection, indirect taxation, technical rules and standards, nuclear law and regulation, transport, and the environment.

The EU would provide support to the education sector across all ages. This would include “promoting teaching in the field of European Studies”.

Economic cooperation meanwhile would focus on expert coordination in policies over the mining sector, investment, agriculture, energy, transport, regional development and tourism, science and research. Work would be done on the “progressive integration” of energy markets.

How might cooperation occur? Take environmental affairs. There it includes the exchange of information and experts; training programmes; joint research activities; cooperation at regional level (including via the European Environment Agency) and at international level; development of strategies, particularly with regard to global and climatic issues; and environmental impact studies.

Similar types of processes would function in such fields as transport, telecoms, financial services, fighting money laundering, health and safety, tourism, counternarcotics, cultural programmes, and so on.

The agreements provided for funds to be dedicated to pursue these programmes.

**Options for the UK:** The terms of this type of agreement are perhaps less interesting than their flexibility, and that they demonstrate economic association is possible in conjunction with an intergovernmental way of doing business on areas of common concern. If such an agreement provides a route for states to enter the EU, it may also provide a key element of flexibility in assisting the route out.

## **Type: 6, Protocol 3 Association**

**Example:** Guernsey

**Summary:** Protocol 3 of UK accession to the EEC allows for special status for its dependencies. These are not completely identical. But in essence it means that Guernsey for example is not a full EU member. Like the Isle of Man, it lies within the EU's Customs union. It is inside the EU concerning most of the free movement of goods but outside with regard to non-customs related fiscal matters and the free movement of persons and services. EU nationals cannot be discriminated against. But there are limits on freedom of movement of people or services. It does not qualify for EU grants for structural funds or CAP aid.

Relevant EU legislation is directly applicable. Section 2(i) of The European Communities (Bailiwick of Guernsey) Law, 1973 states,

2. (I) All such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Treaties, and all such remedies and procedures from time to time provided for by or under the Treaties, as (having regard to the provisions of Articles twenty-five, twenty-six and twenty-seven of the Act annexed to the Treaty of Accession and to the provisions of the Protocol) in accordance with the Treaties are without further enactment to be given legal effect or used in the Channel Islands shall, in the Bailiwick, be recognised and available in law, and be enforced, allowed and followed accordingly

This means that it is, unlike Norway, a fax democracy, albeit affected by a smaller amount of legislation than the UK. An amendment of 1994 allows the Bailiwick to voluntarily adopt EU law that it chooses to mirror. This particularly applies to intergovernmental aspects (a diminishing volume).

**Options for the UK:** Not a precedent, other than to provide an example of flexibility.

## **Type: 7, Outermost Region (OMR)**

**Example:** Guadeloupe

**Summary:** Not all acceding governments found the route of an equivalent to Protocol 3 appropriate to the needs of some of their OCTs. The OMR route was the next step down.

OMR status allows for deviation from standard EU policies in areas of customs and trade policies, fiscal policy, the development of free zones, agriculture and fisheries policies, and conditions for supply of raw materials and essential consumer goods. Rules on State aid can be relaxed. Additional regional and structural grants are available, as are specialist elements of agricultural aid.

**Options for the UK:** Not a precedent, other than to provide an example of flexibility.

## **Type: 8, Cooperation and Customs Union (CCU)**

**Example:** San Marino

**Summary:** The agreement in effect covers all those products covered by the Common Customs Tariff, excepting those given protection under the EU treaties. San Marino in general terms forms part of the EU customs union, and applies the common external tariff (CET). Provision is made for cumulation (import of unfinished goods and partial production locally).

The agreement includes clauses relating to the non-discrimination of nationals in the workforce, and over pensions transfers.

**Options for the UK:** See below.

## **Type: 9, Customs Union**

**Example:** Turkey

**Summary:** By nomenclature one might suspect Turkey's association with the EU to be less developed than San Marino's. The relative sizes of the economy and Turkey's geostrategic location, together with attempts to assuage it for keeping it at arm's length, have meant that the customs union has somewhat developed over time.

The original Ankara Agreement, signed in 1963, allowed for a three phase coming into force of a customs agreement: a preparatory, transitional, and final stage.

In 1995 this was finally developed into something more substantial and began to start approaching a complex Customs Union. Terms now included the removing of all tariffs and quotas, Turkish alignment on the CET (or at least not undercutting EU rates), gradual Turkish harmonisation of its commercial policy, intellectual property rights, and a ban on price controls.

The Customs Union covers all industrial goods but not agriculture (except processed agricultural products), services or public procurement. Bilateral trade concessions apply separately to agricultural products. Processes gain their oversight from a Customs Union Joint Committee, and disputes are settled by arbitration.

The terms have not been universally popular in Turkey, but opposition to some extent was mollified by the addition of agreements providing hundreds of millions annually in regional and social aid in what amounts to compensation. In effect, Turkey became the largest single recipient of EU development aid, despite being a first world state.

**Options for the UK:** This benevolence will not be accorded to any state gaining this status through leaving the EU. However, nor would the state be expected to contribute to the regional or development aid of others.

Might Turkey correspondingly provide an option after Brexit? It does generate membership of the customs union, but at less of an institutional input than EEA members. Ankara can still to some degree threaten to ignore damaging rules though does not have an outright veto. The agreement is limited and would not cover all of the UK economy.

An issue it does not resolve is that of renegotiating the EU's third party agreements, since Customs Union states have to negotiate their own. This, and remaining areas of protectionist reserve, has still not stopped Ankara from signing FTAs with EFTA and 16 states of interest to its markets.

The late Ronald Stewart Brown identified nine reasons why a customs union approach might still work. It allowed for continuing UK success in the global marketplace. Transition would be straightforward. It was diplomatically coherent to sell to EU protectionists. It might (questionably) under a new structure allow for some say in the Council of Ministers, since Germany would still like to have a liberal ally. It avoids issues for high tariff export sectors.<sup>12</sup> Existing third party FTAs would at least in part be likely to transition easily. The UK could meanwhile push for more and better national FTAs in services and investment. The UK would gain greater leeway in pursuing trade disputes. Finally, the UK would be seen to be a promoter of global free trade.<sup>13</sup>

These are valid points. Our assessment however is that FTAs provide greater end gains, and that a customs union option provides a less structurally sound parking place than EEA membership might;

---

<sup>12</sup> Identified as 40% foreign owned and powerful lobbyists. Though this might be seen as a reason for letting them fight their own battles which thus coincide with the UK getting a good FTA deal.

<sup>13</sup> <<http://www.capx.co/staying-in-europe-for-trade/>>

it could be a temporary halting spot if EEA membership is vetoed.<sup>14</sup> However, this carries the same risks of entropy associated with that alternative temporary halt.

A further area of interest though lies in the decision to seek the approximation of competition rules, not the harmonisation. As a process this flexibility, currently being sought by US negotiators under TTIP, allows for greater trade opportunities and would certainly ease transition under Brexit. This process could be one element at least that might be explored.

## **Type: 10, Deep and Comprehensive Free Trade Agreement (DCFTA)**

**Example:** Ukraine

**Summary:** A DCFTA is a serious treaty. The fact that Kiev plumped for one with the EU rather than enter a Moscow-dominated customs union was a fundamental element in triggering a major war in eastern Europe.

In essence, a DCFTA is a trade treaty with significant areas of intergovernmental cooperation across a number of areas in which the EU otherwise engages. The Ukraine DCFTA, designed on similar terms for other East-of-Europe states, contains 15 chapters, 14 annexes and three protocols. Focus falls on cooperation in energy, transport and environment protection, industrial cooperation, social development and protection, equal rights, consumer protection, education, youth, and culture. There is enhanced also cooperation in foreign and security policy and in energy.

The agreement means that the EU eliminates 98.1 per cent of tariffs by value.

In terms of trade defence instruments, WTO rules are used as the norm, but the intent is to work together on an Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA) so that trade in given areas is treated as between EU member states.

**Options for the UK:** The DCFTA model demonstrates that tariffs and barriers can be overwhelmingly chopped without a state having to be a signed up member of the customs union. It also shows that intergovernmental cooperation in key areas such as combatting crime do not depend on EU membership either.

We might put Ukraine's situation in reverse. An EU member state that were to shift to DCFTA status could expect to encounter few NTB compliance barriers, since it would already be compliant with the *acquis*; we can also see that the tariff barriers themselves liable to be imposed may very well prove to be minimal. We can also observe the agreement being tailored specifically to Ukraine's economic priorities; we can reasonably anticipate any future DCFTAs covering the economic priorities and key sectors of whatever trade links and sectors are under review (and would reasonably, for example, include chapters on the City or vehicle manufacturers).

---

<sup>14</sup> The very concept of it being an option itself reduces the chance of a state spitefully generating such a veto.

The DCFTA thus provides a precedent the FCO should be examining as a long term alternative to EU membership. Ironically perhaps, Ukraine is now closer to the type of deal the United Kingdom aspired to in acceding to the EEC in 1973 than the UK currently is.

## **Type: 11, Free Trade Agreement plus bilateral(s)**

**Example:** Switzerland

**Summary:** Switzerland's economic and trade relations with the EU are governed by the 1972 FTA. Switzerland's relationship might best be described as a series of bloc bolt-ons (Bilateral I and Bilateral II agreements). These include agreements on trade in agricultural products, product standards (Mutual Recognition of Conformity Assessment), public procurement, air transport, road and rail transport, and tax transparency. The Swiss also on a case by case basis participate in EU peacekeeping missions.

Switzerland participates in a number of EU budget lines involving research, youth, the EU MEDIA programme, and lifelong learning. It has latterly started to engage in the Erasmus+ exchange programme and in the Horizon 2020 research programme as a non-EU country without associate status.

Since 1999, there has been a mutual right of residency. Separately, Switzerland is part of the Schengen zone and a full participant in the Dublin asylum system. However, in a referendum in 2014 the electorate decided to re-impose quotas on foreign nationals. The suspension of one aspect of the package means several other agreements signed at the same time risk being collapsed. Negotiations are ongoing to resolve this.

Changes in EU law only apply after a joint bilateral commission decides so, which it can do only by consensus. The areas covered are fewer in number than EEA states.

The Swiss example is very particular and other examples of 'FTA+' formats exist. That of the Faroes for instance is largely just about fish.

**Options for the UK:** Switzerland provides a valuable case study for the UK on many levels. One is over residency rights. Over 1 million EU citizens live in Switzerland, and another 230 000 cross the border daily to go to work. Some 430 000 Swiss citizens live in the EU. Currently, these rights are under review by both sides as a result of a referendum on the subject. Sources suggest a deal has been in the offing but was on hold in order to remove a precedent useful to the UK side from the Brexit negotiations, and then from the referendum itself. If true, this backfired. In any event, the end deal will now generate some form of precedent.

Secondly, the EU accounts for 64.7% of Switzerland's foreign trade. This is a far higher proportion than the UK, yet it has decided it is in its national interest not to join the EU as a member. Indeed,

after a cost-benefit analysis, Bern decided the costs were too high and that its present terms were better.

Significantly, Switzerland has an important financial sector. Rather than join the EU, it has managed to circumvent access difficulties while keeping free of an increasingly damaging regulatory burden.<sup>15</sup> Despite being outside the EU, Switzerland still has more banks per capita than any other nation.

Thirdly, there is a note of caution to be learned from EU doom mongering. The Commission in particular hates the Swiss arrangement as it considers it awkward and untidy. Yet the EU collectively recognises that it has to recognise the realities of an operational democracy. In its latest audit of Single Market affiliates, the review notes,

“The Council is convinced that it is in the interest of both the EU and Switzerland to strengthen their relations on a basis which fully respects the legal principles of the Single Market.”<sup>16</sup>

Business is business and whatever the Commission may think, the Council has previously demonstrated it will ensure arrangements will always be made to keep the trade and cooperation going.

Switzerland does not in short provide an exact model for a future UK association, any more than the example of the Faroes does. What it does demonstrate however is that it is possible to see a system where market access is available for key parts of the economy, to which are then added on agreements authorising joint activity in certain EU areas of competence, and participating in particular schemes and programmes to which the UK feels there is a national gain. It can do so all the time while retaining a veto. This is not necessarily a perfect model – it will depend on the nature of the terms that might be struck – but it is a valid alternative for gaming around.

## **Type: 12, Basic symmetric free trade agreement**

**Example:** Macedonia

**Summary:** The EU is also capable of establishing a free trade agreement that includes an in-built mechanism for cutting obstacles to trade. This is exemplified in the CEFTA model.

---

<sup>15</sup> The Swiss for example have been negotiating a number of bilateral simplified authorisation regimes with EU states; are negotiating with the Commission for the equivalence of Swiss financial market legislation by the EU, and are looking at a future sectoral agreement for financial services (FSA) with the EU Commission. Market access in the interim is reached through three mechanisms: onshore presence (setting up a subsidiary within the EU); active cross-border engagement (existing foreign customers are serviced and new customers are actively acquired out of Switzerland); and passive cross-border (existing customers abroad are provided with standard services while new customers are acquired abroad on the customers' own initiative). See the website of the Swiss Bankers Association (<<http://www.swissbanking.org>>).

<sup>16</sup> Council conclusions on a homogeneous extended single market and EU relations with Non-EU Western European countries, General Affairs Council meeting, Brussels, 16 December 2014

CEFTA was set up in 2006 to aggregate the EU's FTAs across South Eastern Europe, and at the outset included states that subsequently left to become EU members. The agreements liberalised 90% of trade and almost all trade in industrial goods. It covered provisions on issues such as competition, government procurement, and protection of intellectual property. It provided for convergence of relevant trade-related rules, notably with regard to industrial and sanitary-phytosanitary rules. It set the objective of seeking to liberalise trade in services.

In a sense it is today the Free Trade sub-bloc of the Regional Cooperation Council, the successor to the Stability Pact for South Eastern Europe (geographically covering the Ottoman Balkans plus the Ukraine). The two are distinct but intended to be complementary, the latter being an observer on the former.

Institutionally, it has a Secretariat, a Joint Committee (chaired by rotation), three sub-committees looking at Agriculture and Sanitary and Phytosanitary Issues, Customs and Rules of Origin, and TBTs and NTBs, plus three working groups on Technical Barriers to Trade, Trade in Services, and Customs Risk Management.

**Options for the UK:** CEFTA was set up to deal with complexities that do not arise with the UK's case – a spaghetti bowl of 32 sets of FTAs and some signatories that weren't yet even WTO members. However, the example demonstrates that other models of cooperation are possible by grouping together FTA partners within an organisational format. As we demonstrate in a separate paper, Latin American trading associations prove that different types of bloc are achievable - looser agreements based mainly on facilitating trade, and successful with it. CEFTA shows that a structure might be achievable for the UK and other states wanting to leave the EU (or for that matter the EEA) that operates intergovernmentally and at less cost and with a much lower regulatory burden.

## **Type: 13, Transatlantic Trade and Investment Partnership (TTIP, pending)**

**Example:** USA

**Summary:** The full terms of TTIP are yet to emerge, and particularly important will be whether the Commission allows for equivalence of standards rather than uniformity. If that does happen, then it means a country can trade into the Single Market without having to precisely mirror EU regulations. This rather overturns the primary consideration for the UK having to be in the EU in the first place.

**Options for the UK:** Whatever its end form, TTIP will be a developed trade agreement. The final agreement will cover 24 chapters, over market access, regulatory cooperation, and rules. Whatever the end text, it will provide a possible template for trade access for a non-EU member. This includes work on key UK industries including the Financial Services sector and vehicle exports.

## **Type: 14, Comprehensive Trade and Economic Agreement (CETA)**

**Example:** Canada

**Summary:** CETA is in essence a form of highly developed New Generation Free Trade Agreement. Once implemented, it will eliminate all industrial duties and around 90% of agricultural ones. Public contract bidding is opened up across government. An advisory Regulatory Cooperation Forum is set up. Standards bodies will cooperate to reduce TBTs.

Significantly, there is mutual recognition of conformity assessment certificates issued by each other's conformity assessment bodies in a number of sectors, such as electrical, electronic and radio equipment, toys, machinery, and measuring equipment. This means a conformity assessment body in the EU can test EU products for export to the Canadian market according to Canadian rules and vice versa.

Around half of the overall GDP gains for the EU are expected to come from liberalising trade in financial services, telecommunications, energy and maritime transport.

The agreement also allows for the temporary movement of key company personnel and service-providers, allowing for easier visa access to certain categories of professionals. A framework for a future mutual recognition of qualifications in regulated professions is also added. CETA is the first EU trade agreement that covers investment, a new EU competence.

**Options for the UK:** CETA demonstrates that FTAs can be agreed with the EU that cover a complex range of fields. Clearly sticking points can emerge. The EU retains a quota system for beef, pork, and sweetcorn while poultry and eggs will not be liberalised. These observations alone should provide useful pointers for UK negotiators.

## **Type: 15, Non-Member Member territory - EU exclave**

**Example:** Büsingen am Hochrhein

**Summary:** Two EU states, Germany and Italy, have small tranches of territory sitting inside Switzerland separated by a few hundred yards of Swiss countryside. This understandably generates technical difficulties in policing, in oversight of trade and collecting tariffs, and until Switzerland joined Schengen over the movement of people too. Italy's counterpart is Campione d'Italia, though Livigno has also historically enjoyed a privileged VAT status owing to its relative isolation. Both the Euro and Swiss Franc are used.

The solution in effect was to administratively count these small territories as part of the Swiss customs area.

The application of EU law to the Sovereign Base Areas of Cyprus (SBA) meanwhile is a particular peculiarity which might arguably be counted as a distinct bracket, falling between an EU-OCTA, a Protocol 3 case and an exclave. But as its status has changed to mirror that of Cyprus within the EU, for the sake of simplicity we might categorise it here.

**Options for the UK:** Not a precedent, other than to provide an example of flexibility.

## **Type: 16, EU-OCTA (OCT Association)**

**Example:** Falklands

**Summary:** OCTAs are designed to cater for overseas territories that are small functioning democracies, dependent on another state that is an EU member, and with vulnerable specialist economies. The standard *acquis* does not apply, but is tailored to the particular needs of the OCT.<sup>17</sup>

The TFEU and its secondary legislation do not (with exceptions) automatically apply to the OCTs. The OCTs do not form part of the single market and must comply with the obligations imposed on third countries in matters of health standards and rules of origin.

The specific trade arrangements are expected to be unbalanced and lie in the OCT's favour. Areas expected to feature in this sort of deal include environmental action (with EU financial support), disaster relief (hurricanes and disease), tourism, more flexible rules for cumulation (ie allowing for raw products from the neighbouring continent), and excellent services access; but in essence every EU competence is opened up for some measure of cooperation.

**Options for the UK:** Not a precedent, other than to provide an example of flexibility.

## **Type: 17, Non-EU OCTA**

**Example:** South Georgia

**Summary:** This definition covers other OCTs that are excluded from the OCT arrangement as they are empty wilderness. They may well, however, be occupied by EU nationals.

**Options for the UK:** Not a precedent, other than to provide an example of flexibility.

---

<sup>17</sup> Council Decision 2013/755/EU

## **Type: 18, New Generation Free Trade Agreement**

**Example:** South Korea

**Summary:** New Generation FTAs extend the focus from traditional FTAs onto areas not usually covered. This means addressing not just trade in industrial goods, but also as a matter of course increasing access for agricultural production, the free movement of services and the work force, investment, and intellectual property rights.

**Options for the UK:** Such CETA-light deals would cover many of the trade issues that the UK would be interested in signing off, but not necessarily all of them. A comprehensive New Generation FTA might fit the bill and would be an improvement on the WTO default, even if used as a transitional phase while wider negotiations on a phase 2 deal are being pursued (assuming a wide range of bilateral cooperation issues was sought to be encompassed in treaty text).

## **Type: 19, Bilateral Stabilisation and Association Agreement**

**Example:** Macedonia (formerly)

**Summary:** This form of treaty constitutes a Non-reciprocal Trade Preference Agreement with bolt-ons. In other words it grants advantageous trade terms, with the aim of gradually easing the country into a free trade status, and generates some mechanisms for bilateral cooperation. It is seen as a temporary support structure, particularly in the context of regional conflict; in Macedonia's case it covered the period from 2001 to its inclusion in the CEFTA group in 2006.

Agreements vary from country to country. In Macedonia's case it included clauses on developing political and regional dialogue, a phased reduction of its tariffs (instantly done in contrast by the EU), equality of discrimination by local state monopolies, equality of treatment of legally-resident workers, coordinated social security systems, progressive access to services markets, and equal access to public contract bids. Macedonia would start to adopt the *acquis* by approximating its laws (as an applicant state, it intended to in any event).

Cooperation was also authorised outside trade, in generic terms; avenues included the consolidation of the rule of law, border controls and other migration areas, counter-criminal cooperation, social security development, education and training, transport, energy, and research. Financial assistance in the form of loans is planned for.

**Options for the UK:** The deal is fairly broad brush in general terms, acting as an enabler of further agreements, while providing generous transitional tariff terms. As such it is of interest rather than a precedent for the UK's transition, though the push for agreeing European Conformity Assessment Protocols confirms that the Commission prioritises what might otherwise be a significant TBT after

Brexit. The reference to Macedonia engaging in “participation in the work of specialised European organisations (CEN, CENELEC, ETSI, EA, WELMEC, EUROMED, etc.)” (Article 73) reminds us again of the importance of these bodies in feeding down into the CEU’s own regulatory system, and what the UK stands to gain from full and direct self-representation.<sup>18</sup>

## **Type: 20, Free Trade Agreement**

**Example:** Malaysia (MEUFTA: ongoing)

**Summary:** MEUFTA negotiations remain classified, but in general terms it is known that they are overwhelmingly limited purely to trade issues. The 16 chapters cover Market Access for Goods, Services, and Investment; barriers such as TBTs, Sanitary and Phyto-Sanitary (SPS) Measures, and Rules of Origin; Intellectual Property Rights; Competition; Government Procurement; Customs and Trade Facilitation, Trade Remedies, Dispute Settlement, and Mediation; Regulatory Transparency; and some other elements. The one main social and non-trade element is over Sustainable Development Issues (Labour and Environment), an area with no genuine Brexit considerations.

**Options for the UK:** A pared-back straightforward FTA excludes areas that the UK might be interested in cooperating in. However, these might be negotiated separately.

## **Type: 21, Agreement on Commercial and Economic Cooperation (ACEC)**

**Example:** Canada (from 1976)

**Summary:** This was a Non-preferential agreement, and the first formal agreement of its kind between the EEC and an industrialised third country. Canada and the EEC committed "to develop and diversify their reciprocal commercial exchanges and to foster economic co-operation."<sup>19</sup>

To put it into context, the agreement starts off by both parties according the other Most Favoured Nation (MFN) status under world trade rules, rather than defining anything new. The remainder is enabling, allowing for cooperation across areas of trade and commerce where both sides were interested.

---

<sup>18</sup> These bodies fall on a higher legal plane than the EU. CEN is the European Committee on Standardisation; CENELEC is its counterpart covering electrotechnical standards; ETSI agrees telecommunications standards; EA accredits the standards checkers themselves; WELMEC works on European Legal Metrology (ie measurements). These are examples of intergovernmental bodies setting international standards in which the Commission increasingly represents EU member states, but not countries with EEA status or less.

<sup>19</sup> L260, 24/09/1976.

It permitted closer business and commercial links, encouraged economic co-operation, exchanges and joint undertakings, facilitated efforts to resolve trade and investment disputes, and encouraged dialogue to support multilateral trade liberalisation in GATT and WTO.

New mechanisms were added in 1990, including for example agreements on R&D cooperation, education, and vocational training.

**Options for the UK:** This format is showing its age, and yet has proved to be a sufficient mechanism for the EU and Canada to cooperate under for the 40 years that have elapsed prior to CETA. As a worst case scenario with a default to WTO standards, an agreement of this type (which only runs to 1144 words, a quarter of which are in the preamble) could act as an enabling text to allow for the EU and UK to legally develop areas of trade access, building on WTO terms. It is very much at the 'colder' end of the Goldilocks Zone though.

## **Type: 22, Agreement on Trade and Economic Cooperation**

**Example:** Mongolia

**Summary:** This is a twenty year old agreement that is still in force. It followed shortly after post-Soviet Mongolia signed up to the GSP and both parties agreeing to apply standard MFN status to each other. The Agreement on trade and economic cooperation is relatively wide-ranging, but recognises the major disparity in development and advantages the Mongolian side more. A range of EEC barriers are dropped. Investment and cooperation is encouraged, particularly with respect to natural resources, energy, telecomms, the environment, and tourism. It includes authorisation for financial and technical cooperation, joint ventures, and a commitment to protect human rights.

Oversight is provided by a Joint Committee, meeting annually. Further bilateral agreements are permitted.

**Options for the UK:** Not especially relevant given the UK's existing WTO status.

## **Type:** 23, Economic Partnership, Political Coordination and Cooperation Agreement (EPPCCA)

**Example:** Mexico

**Summary:** This so-called Global Agreement was signed in 1997 and consisted of trade provisions subsequently developed into an FTA in two parts; one in goods (entered into force in 2000) and another in services (2001).

EPPCCA was intended to “institutionalise political dialogue, strengthen commercial and economic relations by means of the liberalisation of trade in conformity with the rules of the WTO and shall reinforce and broaden cooperation.” It generated a political dialogue, established mechanisms to progressively build on WTO provisions on goods and services, authorised developments on lifting restrictions on capital movements, agreed to open up public procurement, and also contained enabling measures to start to liberalise across privatisation and competition, investment, financial services, and even IT. There would be cooperation in energy, transport, tourism, counter-narcotics, education, poverty, and health. Operationally it is overseen by a Joint Council, meeting annually.

**Options for the UK:** The inclusion of a clause covering the Mexican mining sector, and another subclause referring to GPS, again remind us how EU trade treaties are adapted to the needs of the trade covered, and that any current seeming gaps in how a post-Brexit model might look would naturally be put on the table. Tellingly, cooperation on fisheries (Article 35) is not prominent and only takes place “in accordance with their respective legislation, if deemed appropriate.”

By contrast, the treaty also contains an open-ended or “rubber clause”, Article 43. This states

### Future developments clause

1. The Parties may by mutual consent expand this Title with a view to enhancing the levels of cooperation and supplementing them by means of agreements on specific sectors or activities.
2. With regard to the implementation of this Title, the Parties may put forward suggestions for widening the scope of mutual cooperation, taking into account the experience gained in its application.

Including this clause allows the treaty to be extended and for agreements to take place on any areas of common interest. Within the EU treaties this has proved to be a threat; Articles 94, 95 and 308 have authorised activity not sanctioned by the ratification process. In this instance, an Article 43 option included in any Brexit Treaty could authorise (subject to Parliamentary approval) fallen bilaterals to be restored on a rolling basis. Including such a consent clause at the outset in turn could generate a reduced obligation for a wider ratification process (triggering multiple referenda, and in places like Wallonia) for any follow-on UK-EU treaties.

## **Type: 24, Interim Agreement on Trade and Trade-related Matters**

**Example:** Bosnia

**Summary:** The interim agreement is intended to speedily enact the trade and trade related elements of the Stabilization and Association Agreement. It is reciprocal.

The wider SAA itself operates under four pillars. Autonomous trade preferences (ATMs) allow duty free quota free access to the EU market for most products. Bilateral free trade areas are created. There is support for regional trade integration. WTO membership is identified as the objective.

The text itself is extensive, in Bosnia's case running to nearly 400 pages (95% of which are the annexes).

**Options for the UK:** The background to the negotiations may provide some insight into transitional processes and accelerated negotiations running against a clock.

## **Type: 25, Informal backdoor legacy association**

**Example:** Algeria after independence

**Summary:** East Germany and Algeria provide polar opposite examples of unofficial backdoor association with the EEC. In the former case, the country was given privileged status and ultimately was merged into an EC state; in the latter, a country (part of which was considered an extension of an EEC member state) headed in the other direction.<sup>20</sup>

The justifications for this status differed. Bonn for political reasons considered trade with East Germany to be internal trade rather than exports. The EEC agreed to follow this interpretation, giving East Germany backdoor membership of the Common Market. In so doing it allowed such features such as what one might style the 'pork proxy' to develop.<sup>21</sup>

Algeria, for several years after independence, informally retained certain former privileges purely it seems on the grounds of administrative convenience. Although common sense suggested otherwise, there appears to have been some measure of uncertainty over whether any party needed to formally abrogate Article 227(2) of the Rome Treaty. That clause gave effect to EEC rules to France's overseas departments in the areas of the free movement of goods, agriculture (except for the

---

<sup>20</sup> In the case of another exiting country, Greenland, transition occurred through the medium of a new treaty without a time gap.

<sup>21</sup> In the 1960s, Denmark (not then an EEC member) exported pork to East Germany which operated tariff rates lower than West Germany's. The GDR was then able to export much more of its own domestically-reared pork to West Germany but without facing those tariffs. East Berlin ran a similar wheeze with Scandinavian eggs.

common organisation elements), the liberalisation of services, rules on competition, currency and balance of payments support, and emergency trade barriers. Non-participation in the other treaty aspect covered by 227(2), the institutions, by Algerian nationals arguably should have indicated treaty application had been invalidated. Crucially however, the Algerian President himself requested that existing rules be allowed to carry across until both parties could agree a new bilateral (which eventually happened, in the form of a transitional agreement in 1969 and a fuller treaty in 1976). What this meant in practice was that for a decade after independence, Algeria informally remained part of the EEC customs union, of benefit in particular to its agriculture, for as long as its rules remained compliant with EEC regulations.

**Options for the UK:** An informal agreement of this nature is not a target to aim for, as it generates legal uncertainty where specific rights and obligations might apply.

The example of the Algerian *interregnum* does, however, suggest that where an exiting state clearly demonstrates in its domestic law that EU trade rights and obligations are maintained, and that current Single Market rules are complied with, access to the Single Market could be continued during an extended period of negotiation. The proviso would be that there is no objection from the Commission, and no legal challenge (though the latter would itself take time to resolve).

These examples are thus unusual but potentially informative precedents for any transition where Brexit negotiations unexpectedly generate delays.

## **Type: 26, Trade Agreement**

**Example:** Colombia and Peru

**Summary:** The EU reached an agreement with Colombia and Peru in the absence of a bloc deal with the Andean Community. The EU's revised GSP rules (see below) meant that both countries were set to default away from privileged access rules. The new treaty allows for improved access for EU telecommunications and financial services, along with its construction, machinery and automobile industries; in return the EU would impose lower tariffs on key food exports, particularly bananas, grapes and shrimps.

The treaty includes clauses easing the paperwork of import management, covering food safety NTBs, and adding caveats for professional residency rights in the two countries. It includes a human rights clause, and an arbitration mechanism.

**Options for the UK:** Not a precedent, other than to provide an example of flexibility.

## **Type: 27, Economic Partnership Agreement (EPA)**

**Example:** CARIFORUM (provisional)

**Summary:** The EPA is a bloc-to-bloc agreement, where the other bloc shares common economic priorities that are of a different economic order from those of the EU. It is designed to open up the EU market in services, and provide duty-free-quota-free market access for all products, in return only for a 25 year phasing-in of access for sensitive EU exports. The agreement includes measures covering investment and fair competition. The EU meanwhile is to provide aid to the states to implement reform.

It is also intended to facilitate trade links between CARICOM states and OCTs of EU members.

**Options for the UK:** Not a precedent, other than to provide an example of flexibility.

## **Type: 28, Association Agreement and Additional Protocol**

**Example:** Chile

**Summary:** The Agreement sets out that both parties will enhance their political dialogue and seek to coordinate their positions in international fora. The Agreement covers several areas in the cooperation field, some but not all of which relate to trade. It establishes the principle of increased consultation of civil society.<sup>22</sup>

In trade terms, it establishes a gradual ten year establishment of a free trade area for goods. It covers the customary elements of food safety rules and certain similar Technical Barriers to Trade (TBTs). It sets out measures intended to generate a free trade area in services, liberalise investment, open up government procurement, liberalise capital movements, protect intellectual property rights, and provides a dispute settlement mechanism. It also includes a human rights clause.

The additional protocols in question in Chile's case merely relate to EU accession states. But it could quite easily contain amending clauses developing the existing terms further.

**Options for the UK:** The use of additional protocols to amend existing EU trade agreements with third parties is of relevance to Brexit. Just as they require ratified amendments to add EU accession states, these existing agreements would need protocols to remove the UK by name. What this means is that thanks to waves of EU accession, these governments are already used to a measure of flexibility with the membership of their EU trade treaties. It suggests - but does not of itself prove - that many, if not most, of them could be prepared to grandfather the existing terms across into a

---

<sup>22</sup> This has a measure of political sensitivity in Chile, as 'civil society' was seen as a mechanism first for partisanship under Allende and then opposition to the Pinochet regime.

mirrored UK successor bilateral which follows the same terms. This would allow for continued bilateral trade access on existing terms while the UK sought to generate more comprehensive FTAs over time. (As no one appears to have asked, it is impossible at this stage to know.)

## **Type:** 29, Association Agreement with a strong trade component

**Example:** EU-Central America Association Agreement

**Summary:** This involves a progressive and reciprocal liberalisation. It is the first ever region-to-region Association Agreement which involves three pillars. These are political dialogue, cooperation, and a trade agreement. The trade angle alone runs to over 300 pages. It basically develops a wide range of existing WTO agreements and pushes them a little further, particularly areas that might act as a TBT.

**Options for the UK:** Not entirely directly relevant, as it is an agreement between blocs and also intended to support democratic processes. It is also an example of 'liberal imperialism' in being heavily orientated towards supporting various rights agendas.<sup>23</sup> This, and an emphasis on support for poverty reduction, social justice and indigenous peoples, makes its non-trade segments irrelevant to the UK's needs.

Again though there is a potentially valuable precedent in a rubber article. Article 27 allows for further cooperation without the need for a fresh treaty authorising it. This reads;

### Evolutionary Clause

1. The fact that an area or cooperation activity has not been included in this Agreement shall not be interpreted as an impediment for the Parties to decide, in accordance with their respective legislations, to cooperate in those areas or activities.
2. No opportunities for cooperation shall be ruled out in advance. The Parties may use the Association Committee to explore practical possibilities for cooperation in their mutual interest.
3. As regards the implementation of this Agreement, the Parties may make suggestions designed to expand cooperation in all areas, taking into account the experience acquired during the implementation thereof.

As we saw earlier with Mexico's "Future Developments Clause", any highly contentious blocking areas of a post-Brexit deal over competences might possibly be parked for resolution under such

---

<sup>23</sup> This is not to say that campaigners for human rights do not merit support in the region; but to differentiate between campaigns for basic human rights in recent democracies as compared with the legalistic neo-liberal human rights agenda in established ones.

article, subject to Parliamentary oversight and approval but allowing for unfettered trade to continue while sticking points are resolved.

## **Type:** 30, Euro-Mediterranean Agreement Establishing an Association (EMAA)

**Example:** Israel

**Summary:** The 1995 Barcelona Process started a phase of the EU seeking to establish bilaterals with Mediterranean states. These cover political, economic and social matters in a context of “reciprocity, solidarity and co-development”, and those that have been signed now replace the simpler cooperation agreements of the 1970s (see below).

There is some measure of variation, but essentially they involve political and security dialogue; economic, trade and financial cooperation, aimed at gradual trade liberalisation; sustainable development; social and cultural cooperation and on educational matters; and the encouragement of intra-regional cooperation. The central trade objective is the gradual establishment of a Mediterranean free trade area, under WTO rules: enforcement is either phased in over up to 12 years, or already enacted as in Israel’s case.

The final terms of that free trade area involve the free movement of goods, the gradual removal of customs duties, no quotas, and to apply to industrial and agricultural goods. In Israel’s case for example, an exchange of letters in 2009 extended the 2000 tariff reduction areas to cover food and fish. The agreements fall short in Services, which are covered by default WTO rules and the General Agreement on Trade in Services (GATS). There is a broad pledge to liberalise the capital sector at a future point. The treaty is operationally supervised by an Association Council operating at ministerial level, and an Association Committee manages it.

For the sake of convenience, rather than count it as an additional category we include in this group the Interim Association Agreement on Trade and Cooperation, such as exemplified by the Palestine Authority. The PLA IAA is intended to provide a transitional parking place while it gradually adopts the standards required of the EMMA.

**Options for the UK:** The fact that the European Commission has expended significant political capital to sign up countries such as the PLA to an EMMA network designed to remove barriers to EU commerce suggests it would see it as a priority to ensure that TBTs will not emerge to hamper EU-UK trade post-Brexit. EU-PLA trade for example currently runs at only around €154m.

## **Type: 31, Interim Economic Partnership Agreement**

**Example:** Madagascar

**Summary:** The IEPA concept was designed to cover the transitional period between the running out of the Cotonou (CPA) terms in 2007 and an agreement on a replacement. The CPA was itself intended to be temporary. It was needed as a stop gap after the preferential trade terms generated by its predecessor, the Lomé Convention, were judged to be in breach of global rules as they were discriminatory against states not covered by them.

The response of the Commission was to shift the emphasis from a universal set of privileged terms to a series of privileged bilaterals between trading blocs. This means developing a series of seven comprehensive regional EPAs, one of which is what emerged with CARIFORUM, which we encountered above. Since regional diversification is intended as the future norm for EU association with the old ACP states, this in turn means that the current number of officially-recognised models (42) will increase further over time.<sup>24</sup>

IEPA terms vary considerably, especially over the rate at which tariff cuts are to happen, the extent to which certain industries might remain protected, and over the inclusion of a 'non-execution' clause that might be triggered if democracy falters.

**Options for the UK:** Not especially relevant, as it has been a means of providing transitional privileged status to protectionist economies in receipt of development aid.

## **Type: 32, Comprehensive Partnership and Cooperation Agreement**

**Example:** Vietnam

**Summary:** This agreement expanded on an existing Framework Cooperation Agreement (see below). It moved specifically into establishing cooperation in areas such as trade, the environment, energy, science and technology, good governance, tourism, culture, migration, and the fight against corruption and organised crime. A number of these are associated with possible development aid. Part of the objective is to encourage the country into the wider system of international treaties in these areas, and to lock into it a psychology of adhering to treaties once signed. It identifies as an objective the future creation of an FTA.

**Options for the UK:** Not a precedent, other than to provide an example of flexibility.

---

<sup>24</sup> This trend of regionalisation also fits into the Commission mind set of preferring to support the development of countervailing trade blocs with which to do business (and through which to justify its own corporate existence).

## **Type: 33, Partnership and Cooperation Agreement (PCA)**

**Example:** Russia

**Summary:** PCAs aim in general terms to provide a framework for political dialogue, support democracy, assist in a transition to a market economy, and encourage trade and investment. They authorise cooperation in the legislative, economic, social, financial, scientific, civil, technological and cultural fields. The PCA with Russia is also specifically intended to act as a stepping stone to a future FTA.

Signatories grant each other MFN status. But additionally, they also allow for free transit of goods including exemption from import duties and taxes. Quotas are lifted and dumping is forbidden, excepting specified products (generally textiles). A number of obstacles are lifted, covering employment, the cross-border supply of services, current payments and discrimination against nationals who are lawfully. The PCA with Russia includes elements dealing with social security.

Companies that are set up in the PCA (other than those involved in transport, excluding in Russia's case shipping; in Russia's case also including some financial activity) must receive treatment on a par with the best accorded to any other party, including domestic companies. The cross-border supply of services is to be progressively opened up. For Russia, certain sectors listed in the annexes may be regulated domestically. Capital transfers are opened up more. Property rights are confirmed.

Specific focus is given to social and economic development, privatisation, investment and development of financial services, agriculture and the food sector, energy, transport, tourism, environmental protection, regional cooperation and monetary policy. Anti-criminal activity often also features in PCA clauses. Oversight is provided by a Cooperation Council, additionally associated this time with a Parliamentary Cooperation Committee. The PCAs run for an initial period of ten years but are automatically renewed on a yearly basis unless one of the parties objects.

**Options for the UK:** Not a precedent, other than to provide an example of flexibility. However, the recent Framework Agreement with the Philippines has generated a telling aside.<sup>25</sup> The Commission took the Council to the CJEU to challenge how the latter interpreted the legal bases contained in the treaty it had negotiated – specifically over the readmission of third-country nationals (Article 79(3) TFEU), transport (Articles 91 TFEU and 100 TFEU) and the environment (Article 191(4) TFEU). In the Commission's eyes though, the reference to these competences was not about enabling agreements to take place, but about something closer to a requirement for it to include them in trade deals as part of a development package. This amounted to a power grab by the Commission to extend its role in these competences when involved in international negotiations. The Court agreed with the Commission. The result is that member states have even less of a role in international trade negotiations than they did before.

---

<sup>25</sup> C-377/12, June 2014.

## **Type: 34, Agreement on Trade, Development and Cooperation (ATDC/TDCA)**

**Example:** South Africa

**Summary:** An ATDC is an asymmetric free trade agreement. It is intended to provide a measure of privileged access to a developing country which is considered still eligible for development aid.

The South African agreement was intended as a stepping stone for Lomé participation, which was itself overtaken by the WTO disputes referenced above. The concept was to start to reintegrate a post-embargoed state into the world economy. To achieve this, it included an asymmetric timetable; agreed protected goods; a definition of rules of origin; and a number of elements of authorised cooperation. This latter included cooperation on social dialogue and freedoms, the environment, culture, cooperation against narcotics and money laundering, and AIDS.

**Options for the UK:** Not a directly relevant example.

## **Type: 35, Generalized/Global System of Preferences Plus status (GSP+)**

**Example:** Costa Rica

**Summary:** The standard GSP arrangement (see below) offers major tariff reductions to developing countries. This results in partial or entire removal of tariffs on two thirds of all product categories. The "GSP+" development means full removal of tariffs on essentially the same product categories. These are granted to countries which ratify and implement international conventions relating to human and labour rights, environment and good governance.

The list is regularly reviewed and as at 2014 was down to ten states, as countries that had become wealthier in GNI terms are no longer eligible for special status.

An alternative variant is the "Everything but Arms" (EBA) model for least developed countries (LDCs), which grants duty-free quota-free access to all products, except for arms and ammunition.

**Options for the UK:** Not a directly relevant example.

## **Type: 36, Generalized/Global System of Preferences (GSP)**

**Example:** South Sudan

**Summary:** This mechanism provides for a WTO default but with preferential rates for developing countries and in particular goods. The list of countries eligible regularly comes under review. In 2012,

34 countries which had an operational EU FTA have been taken off the list. 33 EU OCTs were also taken off as they have their own association systems. 20 countries that were now identified by the World Bank as high or upper middle range economies in GNI terms over a three year period had also been removed from the list, largely defaulting to normal WTO terms. Notably, that list included Saudi Arabia, Argentina, Brazil, Brunei, and Russia. 49 countries operating under the EBA system (see above) were then set to gain additional benefits as the number of covered states diminished.

Significantly, in 2014 one of the countries taken off the GSP list was China, which thus defaulted to standard WTO access to all EU markets. In fact under a 'graduation' mechanism many of its former privileges had already been slowly ended so the transition was less than abrupt.

**Options for the UK:** Not a directly relevant example. It is worth noting that the end of the GSP system as countries become wealthier has increased the drive for FTAs amongst developing states.

## **Type: 37, Partnership Agreement**

**Example:** The Lomé Agreement

**Summary:** The 1975 Georgetown Agreement established a group of ACP states whose number has since grown. Its format has changed in time as we have seen above, but the original concept was to combine development aid with a measure of privileged trade access to the EEC market. A set national quota of agricultural and raw material would be permitted to enter the Common Market tariff free. Brussels funding was also set aside for development aid and investment.

The system began to fall apart when preferential access to Caribbean banana producers was successfully challenged by US suppliers operating in Central America.

**Options for the UK:** Not relevant to the UK as a model, except to demonstrate the importance of World Trade Organisation rules.

## **Type: 38, Cooperation Agreement**

**Example:** Syria

**Summary:** The Syrian bilateral is very dated (it was signed in 1977) and in any event currently frozen, but it still provides a further model. It was intended to be transferred into an Association Agreement, but the process fizzled out.

The Cooperation Agreement was relatively plain. It permitted future agreements on trade to be developed, and allowed advantageous access for a number of products and MFN status for the remainder. A Cooperation Council would explore how tariffs and barriers could be further cut.

**Options for the UK:** This is a very basic enabling treaty that establishes a simple mechanism for rolling bilateral improvements. It is also of incidental interest for the clauses which specifically required the UK to change its Syrian customs duties and remodel them on the EEC norm, “with rounding to the fourth decimal place,” reminding the reader of the impact of EU membership on UK fiscal systems.

## **Type: 39, Most Favoured Nation (MFN) plus Joint Programming**

**Example:** Namibia

**Summary:** This model involves a default to WTO terms, but onto which is bolted a cohesive structured aid programme (quite possibly to fill a gap of any coherent national development plan existing). This is coordinated at EU level. Sectors are divided up between activities funded by the EU aid package, and others provided by specific member states. Thus tourism is broken down so Germany provides support to Namibia’s national parks, while the UK is training its tourism professionals.

**Options for the UK:** Not a directly relevant example.

## **Type: 40, WTO MFN default**

**Example:** United States

**Summary:** In the absence of any free trade mechanism of any kind, it is still entirely possible for a state to trade with the EU. Indeed, the United States is able to do so quite successfully. It is able to do so even better than in the past because of the advance of free trade in the global environment.

Not all sectors are liberalised. Some face significant tariffs when exporting. Some states such as India are particularly protectionist. Others are much more open. The European Union market is one of those that allows considerably greater access today than was the case forty years ago.

Today, imports from outside the Single Market face an average tariff of 5.3%. Agricultural produce faces average 12.2% rates - as the UK is a net food importer, this however generates a particular negotiating strength after Brexit.

The US has been able to export massively to the EU despite not being an EU member, either as its lead or as its second biggest trade supplier. US investment in Europe is over three times more than in all of Asia combined. 7½ million US jobs are dependent on merely WTO terms, and an equal number in the EU. In 2012, trade in goods alone was valued at \$650bn.<sup>26</sup> By value, 46.6% of agricultural imports and 73.1% of non-agricultural imports from the United States even under WTO terms now enter the EU tariff free.<sup>27</sup> This has been achieved without membership of the Single Market.

In the 1970s, it made far greater sense in trade terms for the UK to join the EEC's customs union and avoid discrimination. As the costs of regulation for the UK economy have increased, and the barriers to free trading states who aren't EU members has meanwhile gone down, that set of sums now requires a complete reassessment. Some sectors do stand to lose from facing tariffs by trading on WTO default terms; others face tariffs no greater than the margin of variation in currency exchanges. Tariffs faced would meanwhile be reciprocated and funds generated could be hypothecated to invest (following WTO-permitted rules) back in any affected industry.<sup>28</sup>

Running as a thread through the research aggregated in the 1000 pages of *Change or Go*, by Business for Britain, is that international trade agreements set defaults that are exceptionally generous by historic standards. These are predominantly established through the General Agreement on Tariffs and Trade (GATT) for goods; the General Agreement on Trade in Services (GATS); and Trade-Related Aspects of Intellectual Property Rights (TRIPS). Annexes to these agreements cover specific sectors; Agriculture, Health regulations for farm products, Textiles and clothing, Product standards, Investment measures, Anti-dumping measures, Customs valuation methods, Pre-shipment inspections, Rules of origin, Import licensing, Subsidies and counter-measures, Safeguards, the Movement of natural persons, Air transport, Financial services, Shipping, and Telecommunications.

There have been some suggestions that Brexit Britain risks facing a barrage of NTBs and TBTs. This risk is exaggerated.<sup>29</sup> Developed economies are supported by a major lattice of intergovernmental bodies and agreements facilitating the administration of trade. The EU is merely one extra layer, and broadly speaking itself heavily dependent on the other agreements to operate. So long as the EU and the UK recognise each other as being competent to test standards, and mutually recognise those standards as being met by the testing body, the key difficulty is then resolved. There is no evidence to suggest such an agreement, which features in many of the types of agreement listed above, cannot be reached, not least because the UK starts from a state of proven compliance and trust.

**Options for the UK:** The WTO default does not preclude the development of separate bilaterals - agreements which, further to the trade treaties covered in this paper, administratively ease trade.

---

<sup>26</sup> EU-US Relations: Trade and Investment, < <http://www.euintheus.org/what-we-do/policy-areas/trade-investment-and-business/eu-us-relations-trade-and-investment/>>

<sup>27</sup> < <http://stat.wto.org/TariffProfile/WSDBTariffPFView.aspx?Language=E&Country=E28> >

<sup>28</sup> See chapter 30 of *Change or Go*.

<sup>29</sup> See Appendix D of *Change or Go*.

Indeed, those calling for WTO terms are really calling for WTO terms with these agreements bolted on. The extent of these varies. India, for example, has 68 bilateral agreements with the EU. China has 64 agreements. The United States has 134 agreements.<sup>30</sup>

Reviewing the list of Chinese bilaterals, it appears that 6 of the treaties generate significant advances while the remainder appear to facilitate bilateral cooperation within the framework of global agreements, or allow for EU enlargement.<sup>31</sup>

Some of these will need replicating after Brexit. Happily, the both the volume and the problems associated with achieving this are also exaggerated. The models already exist; and the UK already applies the norms to which these agreements are intended to set for the third party. Moreover on review most of the agreements are ones in which the UK is already cooperating through UN agencies as a signatory.

## **Type:** 41, Agreement on Trade and Commercial and Economic Cooperation (ATCEC)

**Example:** USSR

**Summary:** Organising a trade deal with an ideological enemy opposed to capitalism, yet still providing a major consumer market, was never going to generate a standard trade format. The model used with Moscow and with countries like Albania was ACTEC.

The treaty applies MFN status, with exemptions (particularly textiles). It reduces quotas and license requirements. It establishes a principle of consulting over safety TBTs. It permits bans on the basis of law and order (which would cover anti-communist material), weapons, nuclear material, and wartime embargos. The principle was one of accepting that trade should be expanded rather than blocked. Commercial property rights would be respected (though this was caveated and was a known area for exploitation by a technologically-lagging Moscow). Businessmen would have easier access to the country, premises, and local staff (all issues of suspicion during the Cold War). State enterprises would not be encouraged to use the barter system in dealing with their counterparts.

---

<sup>30</sup> Collated at < <http://ec.europa.eu/world/agreements/searchByCountryAndContinent.do?id=4&letter=A>>.

<sup>31</sup> Agreement between the European Community and the Government of the Peoples Republic of China on cooperation and mutual administrative assistance in customs matters; Memorandum of Understanding between the European Community and the National Tourism Administration of the People's Republic of China, on visa and related issues concerning tourist groups from the People's Republic of China (ADS); Cooperation Agreement on a Civil Global Navigation Satellite System (GNSS) - GALILEO between the European Community and its Member States and the People's Republic of China; Agreement on maritime transport between the European Community and its Member States, of the one part, and the government of the People's Republic of China, of the other part; Agreement for scientific and technological cooperation between the European Community and the Government of the People's Republic of China; Agreement on Trade and Economic Cooperation between the European Economic Community and the People's Republic of China.

The agreement was largely an enabler, allowing for further more specific agreements to follow on trade, personal access, property rights, and also on navigation.

**Options for the UK:** One for Jeremy Corbyn's advisers to review.

## **Type: 42, Non-WTO**

**Example:** North Korea

**Summary:** This category includes states where trade access is restricted or WTO rights do not apply. In the case of the DPRK, this is on the basis of eight UNSC resolutions. These are targeted in particular over arms, luxury goods, and financial transfers.

North Korea is in any event not a WTO member and is not subject to its rules or beneficial minimal rates. Other countries also not covered by WTO tariff thresholds are South Sudan (recently independent), Eritrea, Somalia, and Turkmenistan, along with certain semi-independent and underpopulated OCTs. There are also 23 observer states, of which all but the Vatican have an obligation to negotiate future entry.

**Options for the UK:** Not a relevant example.

## **Looking back to front**

From this list we can see there is a huge level of variety from which the UK can pick a trade treaty with the EU that falls short of EU membership. Once we accept that option, we are no longer constrained by the notion of the *acquis communautaire*, and in particular that certain competences have to be (mis)managed at the Brussels level.

What competences would any treaty restore to national parliaments and the devolved assemblies? One way to tackle that question is to look at the accession process in reverse. Countries seeking to join the EU face 35 chapters where there has to be either compliance or an agreement to allow a measure of divergence (typically over a transitional period). If we look at the flip side of that list, we can assess where it is in the national interest to strip something from our association with the EU and low ourselves to diverge. Table B, below, looks at those 35 chapters.

Table B: Reverse-engineering the 35 accession chapters

<b>Chapters of the <i>acquis</i></b>	<b>Issues and Opportunities</b>
Chapter 1: Free movement of goods	WTO rules already allow for significant freedom; an FTA would allow for nearly total freedom. Is being in a customs union worth a couple of per cent?
Chapter 2: Freedom of movement for workers	A more FTA arrangement allows for tighter border controls and visas.
Chapter 3: Right of establishment and freedom to provide services	Typically covered in FTAs to some degree. The Single Market in Services has signally failed to materialise after 20 years (the UK would benefit most by far).
Chapter 4: Free movement of capital	Typically covered in FTAs.
Chapter 5: Public procurement	The UK is currently more open than other EU states.
Chapter 6: Company law	Typically covered in FTAs.
Chapter 7: Intellectual property law	Covered in FTAs.
Chapter 8: Competition policy	Partially developed by WTO rules. Typically covered in FTAs.
Chapter 9: Financial services	Would need specifically addressing. But outside the EU would remove obligations to impose damaging EU regulations.
Chapter 10: Information society and media	An unnecessary EU development.
Chapter 11: Agriculture and rural development	The UK has a strong negotiating hand as a net food importer, especially from protectionist states. It could mimic the CAP and still save tax money.
Chapter 12: Food safety, veterinary and phytosanitary policy	The UK is currently compliant; a mutual recognition deal is what is required. This also generates an opportunity to avoid another horsemeat scandal.
Chapter 13: Fisheries	The UK could regain control of its waters: a major lost resource.
Chapter 14: Transport policy	The UK could decide such issues through its own Parliament.
Chapter 15: Energy	EU membership generates an enduring risk of North Sea resources being seen as a joint asset and EU rules regulating strategic decisions on shale and renewables.
Chapter 16: Taxation	VAT changes could be possible. The UK would be permanently secured from enduring risks of tax harmonisation.
Chapter 17: Economic and monetary policy	The UK would be permanently secured from enduring risks of indirect support (via the main EU budget) for failing Eurozone economies. <sup>32</sup>
Chapter 18: Statistics	Technical issues, already compliant.
Chapter 19: Social policy and employment	The UK could decide such issues through its own Parliament.
Chapter 20: Enterprise and industrial policy	The UK could decide such issues through its own Parliament.
Chapter 21: Trans-European networks	Bilaterals could cover this area, which is largely a method of infrastructure subsidy which has had limited benefit for the UK.

<sup>32</sup> Such a guarantee was stated as a specific UK objective in the Cameron letter to Tusk. In reality, no guarantees are possible within the main EU budget; the 2014-2020 EU budget saw billions of euros in social and regional aid shifted to compensate for economic problems in the economies of Ireland, Greece, Spain, Portugal, Italy and East Germany. There is no UK veto for such budget lines, and to generate one is anathema to EU principles. The inclusion of this impossible objective by Downing Street is astonishing.

Chapter 22: Regional policy and coordination of structural instruments	Could be devolved (along with many of the other areas on this list).
Chapter 23: Judiciary and fundamental rights	Abuses of human rights law could be ended.
Chapter 24: Justice, freedom and security	Common Law traditions ( <i>habeas corpus</i> etc) would be preserved against continental law systems (Napoleonic Code).
Chapter 25: Science and research	Could continue bilaterally.
Chapter 26: Education and culture	Could continue bilaterally.
Chapter 27: Environment	Could continue bilaterally – with a review of cost effectiveness, starting with energy costs for the steel industry.
Chapter 28: Consumer and health protection	Covered by WTO rules and could be developed by FTAs.
Chapter 29: Customs union	Not necessary for exports; if preferred, EEA membership is an option.
Chapter 30: External relations	Would come under UK national control.
Chapter 31: Foreign, security and defence policy	Would come under UK national control. Bilaterals and multilaterals (NATO) would be developed.
Chapter 32: Financial control	No longer relevant.
Chapter 33: Financial and budgetary provisions	No longer relevant.
Chapter 34 - Institutions	No longer relevant.
Chapter 35 - Other issues	Addressed as 'Any Other Business'

The 1000 page review of the advantages and costs of Single Market membership, *Change or Go*, demonstrated that EU membership is no longer necessary for the UK economy to trade with EU states. More specifically, it demonstrated that membership of the Single Market no longer was.

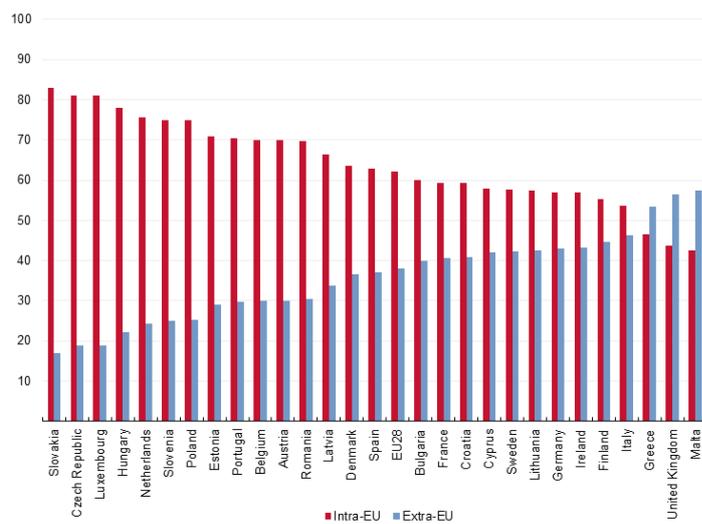
If the view is that Single Market access is not needed, then most of the other areas peel away automatically. Even if the EEA model is adopted, a number of other competences still fall off, and the state regains its ability to manage these areas as best suit its own national and regional needs.

## Options

The UK gains less from EU membership than other EU states because it has different economic needs and ties. All economies differ to varying degrees so that should not surprise.

Three illustrations can briefly alert us to this fact. The following Chart, Chart C, demonstrates that the UK as an economy is far less integrated into the continental system than every other EU state but Malta.

*Chart C: Intra EU exports compared with Extra EU exports by Member State, 2013 (% share of total exports)*

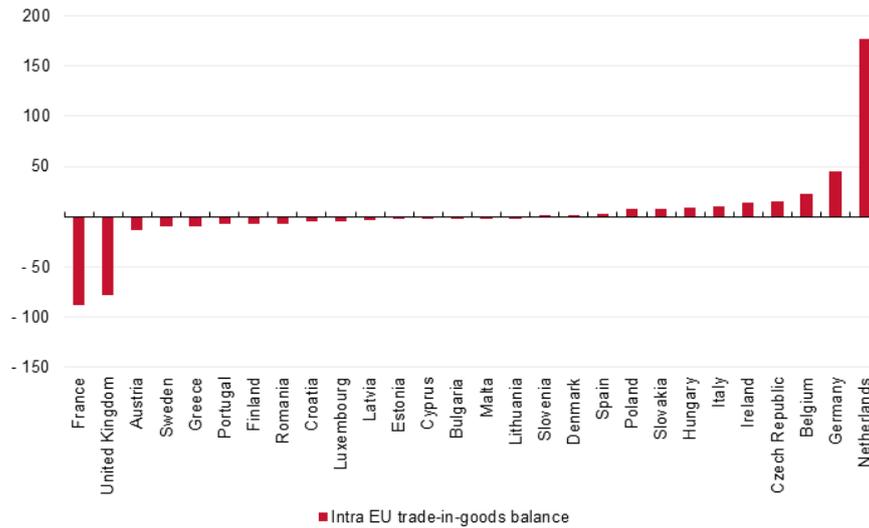


Source: Eurostat<sup>33</sup>

<sup>33</sup> <[http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Intra\\_EU\\_exports\\_compared\\_with\\_Extra\\_EU\\_exports\\_by\\_Member\\_State,\\_2013\\_\(%25\\_share\\_of\\_total\\_exports\).png](http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Intra_EU_exports_compared_with_Extra_EU_exports_by_Member_State,_2013_(%25_share_of_total_exports).png)>

The next chart, D, shows that the UK balance of trade fares badly from current EU membership compared with other states.

Chart D: Intra-EU trade balance by Member State, 2013 (EUR 1 000 million)



Source: Eurostat<sup>34</sup>

Finally, the following Table, E, shows the direction of trade growth, demonstrating that some countries are becoming more dependent on the EU market – but the UK is not among them.

<sup>34</sup> < [http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Intra-EU\\_trade\\_balance\\_by\\_Member\\_State,\\_2013\\_\(EUR\\_1\\_000\\_million\).png](http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Intra-EU_trade_balance_by_Member_State,_2013_(EUR_1_000_million).png) >

Table E: Intra EU exports compared with Extra EU exports by Member State, 2002 and 2013 (% share of total exports)

	Proportion of trade with EU-28 partners	
	2002	2013
<b>EU-28</b>	<b>68.3%</b>	<b>62.0%</b>
Belgium	75.5%	70.1%
Bulgaria	62.3%	60.1%
Czech Republic	86.3%	81.1%
Denmark	69.9%	63.5%
Germany	63.7%	57.0%
Estonia	81.7%	71.0%
Ireland	66.0%	56.9%
Greece	61.1%	46.6%
Spain	74.9%	63.0%
France	65.2%	59.3%
Croatia	66.1%	59.2%
Italy	61.7%	53.7%
Cyprus	57.8%	58.0%
Latvia	77.8%	66.4%
Lithuania	69.3%	57.4%
Luxembourg	88.3%	81.0%
Hungary	85.4%	77.9%
Malta	47.4%	42.6%
Netherlands	80.5%	75.7%
Austria	76.1%	70.0%
Poland	81.5%	74.8%
Portugal	81.4%	70.3%
Romania	74.1%	69.6%
Slovenia	77.3%	74.9%
Slovakia	90.1%	83.0%
Finland	61.2%	55.3%
Sweden	58.6%	57.7%
United Kingdom	61.4%	43.6%

Source: Eurostat<sup>35</sup>

The point is that EU membership or even EU membership with tweaks does not suit a country that is more dependent on Services, has a globally important Financial sector, is at the bottom of the table for its share of GDP that is dependent on exports to the EU market (and thus benefits from Single Market access), is a traditionally deregulated economy and therefore exceptionally vulnerable to red tape, and has global assets including its language. We explore these factors in a separate paper and need not dwell on them – the key point is the variety of alternatives that exist.

<sup>35</sup> < [http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Intra\\_EU\\_exports\\_compared\\_with\\_Extra\\_EU\\_exports\\_by\\_Member\\_State,\\_2002\\_and\\_2013\\_\(%25\\_share\\_of\\_total\\_exports\).png](http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Intra_EU_exports_compared_with_Extra_EU_exports_by_Member_State,_2002_and_2013_(%25_share_of_total_exports).png) >

This takes us to Table F, which sets out a suggested list of variables a trade deal needs to encompass.

*Table F: Suggested key agenda items to form part of a new treaty settlement*

- Better tariff rates than the WTO default, particularly for a small number of key exports facing a more significant increase
- An agreement on Services access
- No new quotas (which would otherwise in any event be reciprocated)
- Mutual Recognition of Conformity Assessment (MRCA), confirming current standards and avoiding new TBTs
- Application of other international agreements over wider mutual recognition of standards, for instance Council of Europe or EEA agreements
- Continued participation in programmes and funding but only if deemed of mutual benefit (if the EU is running them, they will want UK participation and money)
- Authority within the treaties to separately negotiate further bilaterals to cover developing gaps on existing arrangements. This might be as, or distinct from ...
- A Future Developments/Evolutionary Clause (see treaty types 23 and 29)
- A bilateral system of cooperation, including a cooperation council, mechanisms for parliamentary oversight, and working committees structure

Looking at these objectives, we can now see that not only is EU membership not required to deliver these gains, but that a number of alternatives much lower down the list of 42 are capable of supplying them instead - and at less of a cost.

Once they accept that EU membership is bad for Britain, the UK's negotiators face an embarrassment of riches. There are advantages that begin to emerge across a variety of models. Other papers explore these, and in some considerable depth.<sup>36</sup> But negotiators deserve to review – and from a blank slate – the advantages that can be gained by pursuing an EEA model, a Swiss model of multiple bilaterals, the examples now generated by the new Deep and Comprehensive Free Trade Agreements, by the negotiations that have been ongoing with Canada and the United States, but also a range of other advanced Free Trade deals that have been successfully concluded and have built on standard WTO rules.

None of these are entirely without problems, and indeed the issues associated with them are very different in their nature. But as the 42 cases show, these treaties are themselves rarely seen as fixed end points but rather as transitional and evolutionary, allowing for further developments and deeper trade agreements to be developed in turn. Such an

---

<sup>36</sup> The reader is directed in the first instance to;  
<<http://www.globalbritain.co.uk/sites/default/files/GB%20Brexit%20Position%20Paper.pdf>>  
<<http://www.brugesgroup.com/eu/efta-or-eu-qs-as.html?keyword=16>>  
<<http://www.brugesgroup.com/eu/the-norway-option.html?keyword=16>>  
<<http://www.civitas.org.uk/europe/index.php>>  
<<http://businessforbritain.org/change-or-go/>>

approach generates problems for EU members who don't want to be part of that ever-closer union experience and who have plumped for the full package from the outset. It also though generates a solution for countries that are less tightly bound.

The particular issues that might arise from any of those models, and which generate the points in Table F, would be addressed in the talks. The problem of course is that no one has yet asked.

## Conclusion: Finding the Goldilocks Zone

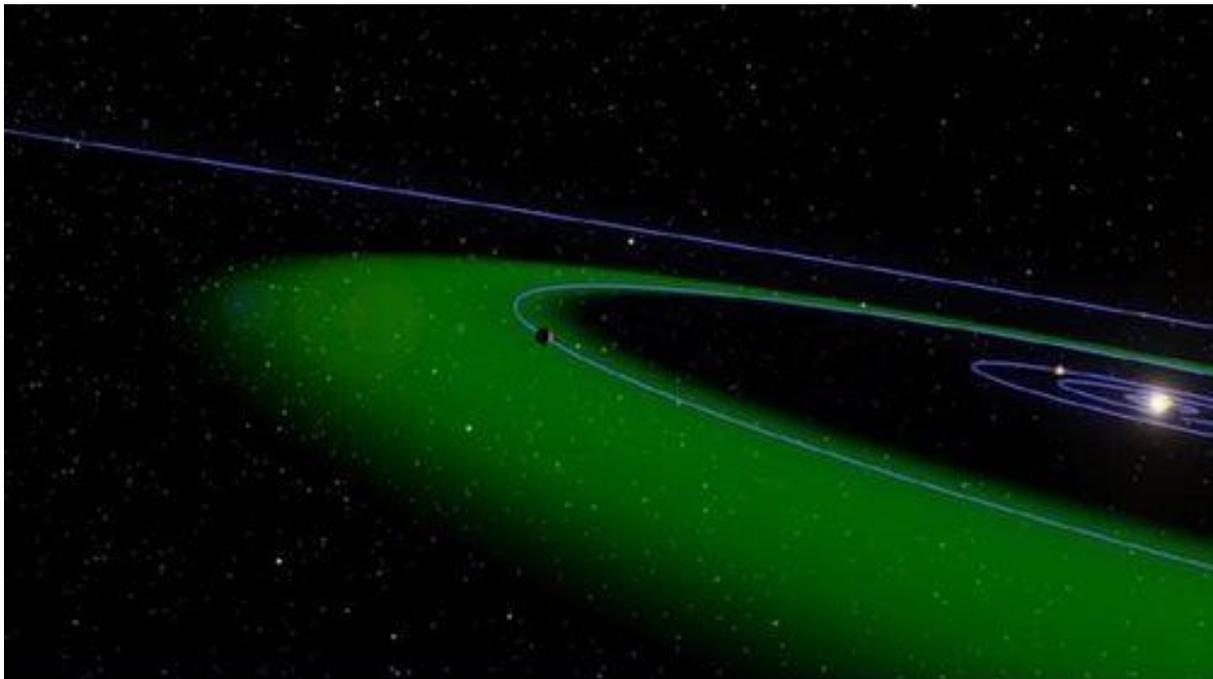


Illustration: NASA/JPL-Caltech<sup>37</sup>

Astrophysicists have an expression they use for that zone in space, around a star, in which planetary life might develop. It is a patch that is neither too hot, not too cold, and is 'just right'. As a result they call it the 'Goldilocks Zone'.

We might use a similar term for the distance in treaty terms between the United Kingdom and the European Union. Too close to Brussels, and both the UK economy and sovereignty overheat or burn up; too far away, and the advantages of trade are not fully accessed and businesses feel the freeze.

In what happy zone might such a treaty lie? The NASA/Caltech image shows just one planet in a system's habitable area. A review of the possible types of treaty to which the UK may

---

<sup>37</sup> <<http://www.nasa.gov/audience/formedia/telecon-20071106/animation2.html>>

aspire suggests that several treaty types could occupy it. These include the DCFTA, advanced FTA (TTIP/CETA), or CEFTA models. Moving more towards the edges of the zone are agreements such as a neo-multilateral (Swiss style) or EEA approach. A WTO agreement is itself quite manageable, if a handful of key standard bilaterals can be reached, and proves to be an improvement on the increasing toastiness of an EU membership orbit.

So the UK faces several options. It is a fortunate position to be in. But it won't be if it follows the a Remainiac path that constitutes minimal actual change in its current solar perigree.

The approach from Government has historically been to look for minor changes, and pray over time for selenological drift. Over the period from Major up until May, Number 10 for its part has historically just concentrated on a messaging exercise. Spokesmen have stated like latterday Copernican Inquisitors that the facts and realities are different through dint of mere declaration.

Yet an "Old Downing Street Model" that merely keeps the orbit within the Single Market cannot but in time succumb to the gravitational pull and wild flares of the expanding star. That mechanism is too closely interconnected with the political project.

Yet outside it, genuine and prosperous change is possible. In this paper we do not propose a single specific "British model" from amongst the several valid options, and for practical cause. The end trajectory will emerge from a negotiation involving a number of parties with various interests and lobbies of their own. It will uncover some areas where agreement can quickly be reached, and others where a long term deal over cooperation in a particular competence takes more time.<sup>38</sup> In that instance, the result may even be that the UK first transitions via another treaty model.

This transition is neither new nor terrifying; it has happened to almost all of the countries on the planet, invariably over time in the direction of an opening up of the EU's markets and in the pursuit of greater free trade.

42, it turns out, is the answer. Nobody in the Foreign Office or in Government, however, has yet asked the question.

Until now.

---

<sup>38</sup> The realities of negotiation encompassing variables in the end deal have been accepted in referenda in the past. The Quebec Government's White Paper on Sovereignty-Association, for instance, identified three or four "tables de négociation" at which blocks of competences would be worked on in parallel. Sovereignty-Association itself as a concept was so nebulous its proponents declined to state whether at the end of the talks it would end up as an FTA, customs union, or currency union. With world trade terms and deals considerably more progressed, the UK today already has a range of pigeon hole models to start the talks around.

## About the author



Dr Lee Rotherham has been an adviser to John Major's whipless rebels, Eurosceptic MEPs, three Shadow Foreign Secretaries, the Conservative delegate to the Convention on the Future of Europe, a delegate to the Council of Europe, and government ministers. He was Head of Opposition Research for the No Campaign in the AV Referendum, and Director of Special Projects at Vote Leave, the designated pro-withdrawal campaign during the 2016 referendum. Outside of Westminster he has worked in publishing, teaching, heritage, and in Defence.

He has been very extensively published in academia and across think tanks. His

publications as author or co-author include *The EU in a Nutshell*; *Ten Years On - Britain Without the European Union*; *Change or Go*; *Plan B for Europe*; *Controversies from Brussels and Closer to Home*; *Manning the Pumps*; *Hard Bargains or Weak Compromises*; *The Hard Sell*; *Bloc Tory*; *Common Ground*; *A Spotter's Guide to Sound Government Policies*; and the award-winning *Bumper Book of Government Waste* and *Brown's Wasted Billions*.

His historical works include *A Fate Worse Than Debt – A History of Britain's National Debt from Boadicea to Cameron*; *The Sassenach's Escape Manual*; and historical tour guides to Roman Britain, colonial North America, the Hundred Years War, and the Apocalypse.

Lee is a reservist in the British army, and has served on three overseas deployments.