

COMMENTS

Contemplating the Future of U.K.-EU Trade: Post-Brexit Options for a Trade Relationship Between the United Kingdom and the European Union

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I. INTRODUCTION

After years of being an active member of the European Union (EU), the United Kingdom (U.K.) has decided to officially withdraw its membership.¹ On June 23, 2016, the U.K. government conducted a referendum to determine whether to continue its membership in the EU.²

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1. Alex Hunt & Brian Wheeler, *Brexit: All You Need To Know About the UK Leaving the EU*, BBC NEWS (Mar. 24, 2017), <http://www.bbc.com/news/uk-politics-32810887>.

2. *Id.*

More than 30 million people voted, tallying a vote in favor of leaving the EU.³ Nearly 52% of voters voted to leave, while 48.1% voted to remain in the EU.⁴

As a result of the vote to leave the EU, the U.K. has officially begun the process of withdrawing.⁵ Withdrawal from the EU is a rather complex and intricate process.⁶ Laid out in article 50 of the Treaty of Lisbon, withdrawal requires the withdrawing state to officially notify the EU of its intention to withdraw.⁷ This provision demands that the notification abide by the constitutional law of the withdrawing state.⁸ The U.K., thus, must withdraw in accordance with its own constitutional measures.⁹ As a state without a formal written constitution, the U.K., instead, relies on the sovereignty of Parliament.¹⁰ Stark contention quickly arose over Parliament's role in triggering article 50 and whether it must first approve the referendum results to officially initiate the withdrawal.¹¹ The Supreme Court of the U.K. recently considered this question, ruling in favor of Parliament's sole authority to approve the referendum that would then begin the U.K.'s withdrawal from the EU.¹²

Only upon triggering article 50, may the U.K. officially begin the process of leaving the EU, thus, slipping into a precarious position.¹³ The U.K. will then commence negotiations with the EU on an exit deal, involving the creation of a possible subsequent U.K.-EU trade relationship.¹⁴ EU history reveals that Greenland is one of the few countries that has withdrawn from the EU, which was then known as the European Economic Community (EEC).¹⁵ Greenland's withdrawal, however, offers no insight for the U.K. because Greenland entered into a deal with the EU as an overseas territory, an option unavailable to the

3. *Id.*

4. *See id.*; *EU Referendum Results*, ELECTORAL COMMISSION, <http://www.electoralcommission.org.uk/find-information-by-subject/elections-and-referendums/past-elections-and-referendums/eu-referendum/electorate-and-count-information> (last visited Oct. 23, 2016).

5. Hunt & Wheeler, *supra* note 1.

6. *Id.*

7. Consolidated Version of the Treaty on European Union art. 15, Oct. 26, 2012, 2012 O.J. (C 326).

8. *Id.*

9. *See id.*

10. *See* PAUL CRAIG, *Britain in the European Union*, in *THE CHANGING CONSTITUTION* 104, 105-07 (Jeffrey Jowell et al. eds., 2015) [hereinafter *Britain in the EU*].

11. *R (Miller) v. Sec'y of State for Exiting the European Union* [2017] UKSC 5, [119] (appeal taken from Eng.); *see* Hunt & Wheeler, *supra* note 1.

12. *R (Miller)*, [2017] UKSC 5 at [112].

13. Hunt & Wheeler, *supra* note 1.

14. *Id.*

15. Swati Dhingra & Thomas Sampson, *Life After BREXIT: What Are the UK's Options Outside the European Union?*, LONDON SCH. ECON. POL. SCI. 1, 2 (Feb. 12, 2017).

U.K.¹⁶ As a European country with close proximity and unparalleled ties to the EU, the U.K. is treading in unchartered territory in its desire to leave.¹⁷

This Comment begins with an exploration into the U.K.'s original motivation for membership in the EU. It then closely examines the withdrawal process and recent developments in the U.K.'s decision to leave the EU. Finally, this Comment describes possible options for the U.K. to consider a future trade relationship with the EU, ending on an analysis of the most suitable options for the U.K. to seek in its endeavor to detach from the EU.

II. THE UNITED KINGDOM'S MEMBERSHIP IN THE EUROPEAN UNION

The U.K. first applied to join the EU—then known as the EEC—in July 1961, following its failure to create a European free trade zone and its departure from the British traditional “disengagement policy” concerning the European continent.¹⁸ The EU was founded on the notion of “foster[ing] economic co-operation” through a Single Market of the free movement of goods, services, and people.¹⁹ To facilitate economic development, the EU provided its own separate government, in the form of a parliament, focusing on policing and facilitating membership, as well as its own judiciary to the same effect.²⁰ The motivation behind the U.K.'s application to join the EU has been subject to contentious debate.²¹ Not only has the U.K. been accused of applying for membership only for the sake of joining the Single Market, but its application has also been claimed to derive from “economic problems and lack of alternative policies.”²² The then-EU's “positive development” was considered necessary to reverse the U.K.'s “waning influence” in global trade.²³ The then-EU's Single Market was viewed in a particularly attractive light, stemming from its promotion of “free movement of persons and services

16. HOUSE OF COMMONS, BREXIT: SOME LEGAL AND CONSTITUTIONAL ISSUES AND ALTERNATIVES TO EU MEMBERSHIP (2016) (UK).

17. *Theresa May's Brexit Speech in Full: Prime Minister Outlines Her 12 Objectives for Negotiations*, INDEPENDENT (Jan. 17, 2017), <http://www.independent.co.uk/news/uk/home-news/full-text-theresa-may-brexite-speech-global-britain-eu-european-union-latest-a7531361.html> [hereinafter *May's Brexit Speech*].

18. Kristian Steinnes, *The European Challenge: Britain's EEC Application in 1961*, 7 CONTEMP. EUR. HIST. 61, 61 (1998); Lee H. Burke, *Britain and the EEC*, 130 WORLD AFF. 163, 166 (1967).

19. Hunt & Wheeler, *supra* note 1.

20. *Id.*

21. Steinnes, *supra* note 18, at 62.

22. *Id.* at 63.

23. *Id.* at 63-64.

and free movement of goods” between Member States, thereby cultivating economic development and growth.²⁴ Despite the U.K.’s desire to join, French leader, Charles de Gaulle, unfortunately vetoed the U.K.’s application on January 14, 1963, citing the U.K.’s past reluctance for European integration, U.K.’s failure to create its own “free-trade community,” its known reservations and objections to its own membership, and the possibility that the U.K.’s relationship with the United States of America would adversely influence the EU’s progressivity.²⁵

On January 22, 1972, the U.K. finally gained membership into the EU, which officially came into force on January 1, 1973.²⁶ Membership granted the U.K. entry into “an enlarged market and [use of] preferential access to those markets associated, [and] . . . special trade arrangements with the [EU].”²⁷ The benefit of a “[Single] [M]arket of some 250 million people,” was predicted to create new opportunities and development to the U.K.’s trade industry, all the while fostering “a climate of intensified competition.”²⁸

The U.K.’s entry into the EU came into effect pursuant to the European Communities Act of 1972 (1972 Act).²⁹ This Act prescribed provisions for incorporating EU law into domestic legislation.³⁰ Section 2(1) of the Act provides that any rights, powers, and restrictions arising from EU law are unequivocally binding on the U.K.³¹ As such, this Act effectively ensures the U.K.’s full and functioning membership in the EU by giving effect to the supremacy of EU legislation and treaties.³²

Lacking a formal constitution of its own, the EU was founded on the principles set forth in the Treaty of the European Union (TEU) and the Treaty on the Functioning of the European Union Community (TFEU).³³ The TEU specifically laid out EU constitutional governance,

24. European Commission Press Release MEMO/09/531, Explaining the Treaty of Lisbon (Dec. 1, 2009).

25. Burke, *supra* note 18, at 173.

26. Stephen C. Schmidt, *United Kingdom Entry into the European Economic Community: Issues and Implications*, 12 ILL. AGRIC. ECON. 1, 1 (1972).

27. *Id.* at 3.

28. *Id.*

29. The European Communities Act 1972 pmbl. (UK). The European Union (Amendment) Act 2008 generally amended the original draft by changing the wording and references from European Community to European Union, while also giving effect to the Treaty of Lisbon. *See, e.g.*, The European Union (Amendment) Act 2008 (UK).

30. *See, e.g.*, The European Communities Act 1972.

31. *Id.*

32. *Id.* § 2(1); Mark Elliott, *United Kingdom: Parliamentary Sovereignty Under Pressure*, 2 INT’L J. CONST. L. 545, 548-49 (2004).

33. *Britain in the EU, supra* note 10, at 105-07.

which authorized a legal structure that labeled EU treaties multinational and permitted intergovernmental competence over policy and domestic affairs.³⁴ The TFEU further set out EU competency over EU Member States.³⁵ On December 1, 2009, the Treaty of Lisbon came into force, effectively amending both the TEU and the TFEU.³⁶ This Treaty comprehensively clarified the power of the EU, while assigning various roles and obligations to the Member States,³⁷ establishing governance through the European Commission and judicial review by the European Court of Justice (ECJ).³⁸ Member States subsequently became bound to participate in the Single Market, submit to the jurisdiction of the ECJ, and contribute financially to the EU.³⁹

III. PROCESS FOR WITHDRAWAL FROM THE EUROPEAN UNION

EU members may voluntarily withdraw pursuant to article 50 of the Treaty of Lisbon.⁴⁰ Article 50 puts forth guidance, stating:

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.
3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with

34. *Id.* at 106.

35. Consolidated Version of the Treaty on the Functioning of the European Union art. 1, May 9, 2008, 2012 O.J. (C 326) 47.

36. Clive H. Church & David Phinnemore, *Understanding the Treaty of Lisbon*, 10 ROM. J. EUR. AFF. 5, 1 (2010); *see, e.g.*, Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Dec. 13, 2007, 2007 O.J. (C 306) 1 [hereinafter Treaty of Lisbon].

37. Church & Phinnemore, *supra* note 36, at 12.

38. European Commission Press Release MEMO/09/531, *supra* note 24.

39. *Id.*

40. Treaty of Lisbon, *supra* note 36.

the Member State concerned, unanimously decides to extend this period.⁴¹

Accordingly, to initiate withdrawal, a prospective withdrawing Member State must notify the EU of its intention to withdraw.⁴² Official notification, pursuant to article 50, then triggers the negotiations between the withdrawing Member State and the EU for its withdrawal and a possible subsequent relationship.⁴³

Thus far, withdrawal from the EU has only been accomplished by former European colonies and overseas territories, namely Algiers and Greenland.⁴⁴ Greenland, for instance, withdrew from the EU in 1985, following a referendum to leave what was then known as the EEC.⁴⁵ Following withdrawal, Greenland and the EU signed the “Greenland Treaty,” on the basis of article 48 of the TEU, which permitted amending treaties with the unanimous approval of all EU Member States.⁴⁶ This Treaty established a relationship based on Greenland’s particular status “as an Overseas Country and Territory.”⁴⁷ Therefore, Greenland, even after withdrawing, maintains a “special status and commercial agreement” to facilitate a continuing, albeit different, relationship with the EU.⁴⁸

IV. THE UNITED KINGDOM’S WITHDRAWAL FROM THE EUROPEAN UNION

The U.K. Supreme Court recently declared that Parliament must pass an act for the U.K. to lawfully leave the EU.⁴⁹ Such judgement arose from various contention over how article 50 of the Treaty of Lisbon may officially be triggered to begin the U.K.’s EU exit deal negotiations.⁵⁰ As mentioned above, mandating that “[a]ny Member State may decide to withdraw from the Union in accordance with its own constitutional requirements,” article 50 lays out specific guidelines directing the notification and withdrawal process.⁵¹ The U.K. Supreme Court, thus,

41. *Id.*

42. *Id.*

43. *Id.*

44. Dhingra & Sampson, *supra* note 15, at 2.

45. *See id.*; Frederik Harhoff, *Greenland’s Withdrawal from the European Communities*, 20 COMMON MKT. L. REV. 13, 13 (1983).

46. HOUSE OF COMMONS, *supra* note 16, at 10 (UK).

47. *Id.*

48. *Id.*

49. R (Miller) v. Sec’y of State for Exiting the European Union [2017] UKSC 5, [121] (appeal from Eng.).

50. *Id.* at [5].

51. Treaty of Lisbon, *supra* note 36, art. 50.

addressed the preliminary step necessary to trigger article 50 for the U.K. to give official notice of its withdrawal.⁵² The Secretary of State strongly contended that the Referendum 2016 vote in favor of withdrawing from the EU was sufficient to trigger article 50, while the opposing party asserted that withdrawing from the EU required an act of Parliament authorizing the withdrawal, as prescribed by the U.K.'s legislative system of parliamentary sovereignty.⁵³

After deliberation on the matter, the Court found that Parliament was the only branch with the power to change domestic law at the international level.⁵⁴ Upon thorough analysis of referendum precedent, the Court noted that referendums must indicate with specificity how any changes that may result from a vote will be put into effect.⁵⁵ The Court referred, first, to the recent referendum, Act 2015, which lacked any express direction of implementing withdrawal.⁵⁶ The Court then looked at the Referendum Act of 1972, involving a previous vote about whether to withdraw from the EU that resulted in a decision to remain, which also lacked the necessary express direction of implementing a vote requiring a change in legislation.⁵⁷ Although both referendums included statements made on behalf of the government, nothing in those statements were put forth by Parliament about any potential change in legislation.⁵⁸ Therefore, the Court concluded that because the recent referendum results required a change in domestic law that was not explicitly provided for in the referendum, only Parliament had the authority, at that point, to implement the results to abide by article 50.⁵⁹

Following this decision, the government quickly introduced a bill to this effect to Parliament.⁶⁰ On March 16, 2017, the Withdrawal from the EU (article 50) Bill became law upon receiving royal assent from Queen Elizabeth II.⁶¹ The Bill passed without any amendments,⁶² officially

52. *R (Miller)*, [2017] UKSC [5] at [121].

53. *Id.* at [5].

54. *Id.*

55. *Id.*

56. *Id.* at [119].

57. *Id.*

58. *Id.*

59. *Id.* at [121].

60. *Article 50 Bill Process Begins*, GOV.UK (Jan. 26, 2017), <https://www.gov.uk/government/news/article-50-bill-process-begins>; Nicholas Winning, *U.K. Government Introduces New Brexit Trigger Bill*, WALL ST. J. (Jan. 26, 2017), <https://www.wsj.com/articles/u-k-government-introduces-new-brex-it-trigger-bill-1485435935>.

61. Adam Payne, *The Queen Has Officially Signed the Brexit Bill*, BUS. INSIDER (Mar. 16, 2017), <http://www.businessinsider.com/the-queen-signs-the-article-50-brex-it-bill-2017-3>; *Brexit Bill: Parliament Clears Way for Talks with EU*, BBC NEWS (Mar. 14, 2017), <http://www.bbc.com/news/uk-politics-39262081> [hereinafter *Brexit Bill*]; Jill Lawless, *U.K. Parliament*

granting the U.K. government the power to trigger article 50 to officially jumpstart its EU withdrawal.⁶³

V. ALTERNATIVES FOR THE UNITED KINGDOM TO CONSIDER UPON WITHDRAWAL

In withdrawing from the EU, the U.K. will have a myriad of considerations to take into account for when it is no longer an EU Member State.⁶⁴ A U.K.-EU trade relationship will be vital,⁶⁵ as the EU “will remain for many years [the U.K.’s] biggest market, and forever [within the same] geographical neighbourhood.”⁶⁶ British Prime Minister Theresa May is not interested in the U.K. replicating an already existing EU relationship.⁶⁷ Existing models, however, offer insight into a possible U.K.-EU relationship that may be negotiated.⁶⁸ With that being said, the U.K. may consider European Free Trade Association (EFTA) membership, European Economic Area (EEA) membership, free trade agreements (FTA) with the EU, and World Trade Organization (WTO) membership.⁶⁹

A. *Membership in the European Free Trade Association*

EFTA has procured an agreement for its members to receive various benefits and privileges of EU membership without actual EU membership.⁷⁰ Currently, EFTA is composed of Norway, Iceland, Lichtenstein, and Switzerland.⁷¹ Unlike the EU, EFTA focuses solely on

Passes Brexit Bill, Clearing the Way for E.U. Divorce Talks, TIME (Mar. 13, 2017), <http://time.com/4700525/brexit-bil-eu-theresa-may/>.

62. *Brexit Bill*, *supra* note 61; Lawless, *supra* note 61.

63. European Union (Notification of Withdrawal) Act 2017, c. 9 (UK).

64. *May’s Brexit Speech*, *supra* note 17.

65. *Id.*

66. *David Cameron’s EU Speech*, GUARDIAN (Jan. 23, 2013), <https://www.theguardian.com/politics/2013/jan/23/david-cameron-eu-speech-referendum>.

67. *May’s Brexit Speech*, *supra* note 17.

68. Peter Spence & Szu Ping Chan, *Safe Harbour: Why the Norway Option Could Take the Risk out of Brexit*, TELEGRAPH (June 28, 2016), <http://www.telegraph.co.uk/business/2016/06/18/safe-harbour-why-the-norway-option-could-take-the-risk-out-of-br/>.

69. *See, e.g.*, HOUSE OF COMMONS, *supra* note 16, at 26; HM GOVERNMENT, ALTERNATIVE TO MEMBERSHIP: POSSIBLE MODELS FOR THE UNITED KINGDOM OUTSIDE THE EUROPEAN UNION ¶3.1 (Mar. 2016) (UK), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/504604/Alternatives_to_membership_-_possible_models_for_the_UK_outside_the_EU.pdf.

70. Rajah Rab-Nawaz, *Leaving the European Union: The Impact on Migration and Consequent Effects on the UK Economy*, 7 QUEEN MARY L.J. 114, 132 (2016).

71. *Id.* at 132; Ovidiu Horia Maican, *Legal Aspects of Brexit*, 6 JURIDICAL TRIB. 252, 255 (2016).

free trade, contracting only to facilitate trade purposes.⁷² With the primary purpose of supporting economic relations and cooperation in and outside of Europe for prosperity and growth, EFTA works to ensure “lower trade costs and promote international economic integration.”⁷³ With a sole focus on trade, there is no political component in the membership, thus allowing members to remain independently sovereign.⁷⁴ As such, members may freely and independently contract bilateral agreements with other countries.⁷⁵ Presently, there are twenty-seven EFTA agreements with approximately thirty-eight non-EU countries.⁷⁶

EFTA currently has a free trade agreement with the EU⁷⁷ to promote free trade between EFTA members and EU Member States.⁷⁸ This agreement specifically provides for an array of trade in nonagricultural goods, including industrial products, trade, intellectual property, competition, and investment.⁷⁹ Accordingly, members must make financial contributions to the EU; however, they do not have a “general duty” to adopt EU legislation and are only required to implement those that are relevant to trade.⁸⁰ EFTA membership may be held jointly with EEA membership; however, it must be noted that the EEA agreement supersedes those of EFTA.⁸¹

B. Membership in the European Economic Area

The EEA is an agreement between all EU Member States, Norway, Iceland, and Liechtenstein for access to the Single Market.⁸² Members, thus, participate in the “free movement of goods, services, people and capital within the EEA.”⁸³ Membership further provides for EU payments and domestic incorporation of EU law.⁸⁴ Members, however,

72. Maican, *supra* note 71, at 256.

73. Dhingra & Sampson, *supra* note 15, at 7.

74. John J. Glynn, *EEC-EFTA-COMECON-CAC-LAFTA*, in INTERNATIONAL MANUAL ON THE EUROPEAN ECONOMIC COMMUNITY 37 (H.K. Junckerstorff ed., 1963).

75. Maican, *supra* note 71, at 256.

76. *Id.*

77. HOUSE OF COMMONS, *supra* note 16, at 26.

78. *Id.*; *Five Models for Post-Brexit UK Trade*, BBC NEWS (June 27, 2016), <http://www.bbc.com/news/uk-politics-eu-referendum-36639261>.

79. *Free Trade Agreements and Trade Relations by Country*, EFTA, <http://www.efta.int/free-trade/free-trade-agreements> (last visited on Mar. 25, 2017).

80. *Five Models for Post-Brexit UK Trade*, *supra* note 78.

81. *Id.* at 133.

82. Dhingra & Sampson, *supra* note 15, at 4; *European Economic Area (EEA)/Relations with the EU*, EFTA, <http://www.efta.int/eea> (last visited on Mar. 25, 2017).

83. Dhingra & Sampson, *supra* note 15, at 4; Rab-Nawaz, *supra* note 70, at 133.

84. *Five Models for Post-Brexit UK Trade*, *supra* note 78.

do not receive any of the privileges of EU agreements with other countries outside the scope of the Single Market.⁸⁵ Agreements with other countries, thus, must be negotiated through EFTA.⁸⁶

The Norwegian experience as an EEA member illustrates how an EEA member may extend its relationship with the EU beyond that of EEA membership.⁸⁷ Norway is known for its “semi-detached relationship with the EU.”⁸⁸ Norwegian access to the Single Market is less than that of an EU Member State,⁸⁹ which means Norway must pay tariffs but has less accessibility to the agriculture and fishery market.⁹⁰ As such, Norwegian companies must abide by the “Rule of Origin” that stipulates Norwegian companies may only receive preferential EU rates upon providing documents attesting to its EEA origin.⁹¹

As an EEA member, Norway’s obligations to the EU vary.⁹² First, Norway is obliged to incorporate EU trade legislation pertaining to the EEA agreement into its domestic legislation.⁹³ In 2012, Norwegian domestic law contained nearly “three-quarters of all EU legislation,”⁹⁴ including areas directly and indirectly related to trade.⁹⁵ Failure to comply with those EU law results in adjudication in EFTA courts that only follows ECJ precedent.⁹⁶ Second, Norway makes financial contributions to the EU to support struggling EU Member States and EU programs.⁹⁷ Norway’s contributions are comparable to those made by current EU Member States.⁹⁸

85. HOUSE OF COMMONS, *supra* note 16, at 28.

86. *Id.*

87. Wolfgang Münchau, *Brexit: The Norway Option Is the Best Available for the UK*, FIN. TIMES (June 28, 2016), <https://www.ft.com/content/eb8dbe8c-3d0c-11e6-9f2c-36b487ebd80a>.

88. Damien Gayle, *The Norway Option: What Is It and What Does It Mean for Britain?*, GUARDIAN (Oct. 28, 2015), <https://www.theguardian.com/politics/2015/oct/28/the-norway-option-what-is-it-and-what-does-it-mean-for-britain>.

89. HM GOVERNMENT, *supra* note 69, ¶ 3.5.

90. Maican, *supra* note 71, at 256.

91. HM GOVERNMENT, *supra* note 69, ¶ 3.6.

92. *See* Rob Young, *How Norway’s Relationship with the EU Has Split Views*, BBC NEWS (June 15, 2017), <http://www.bbc.com/news/business-36527069>.

93. Gayle, *supra* note 88.

94. *Id.*

95. Rab-Nawaz, *supra* note 70, at 133; Gayle, *supra* note 88.

96. HM GOVERNMENT, *supra* note 69, ¶ 3.17.

97. *Id.* ¶ 3.14.

98. *Id.*

C. *Free Trade Agreements with the European Union*

FTAs with the EU are an attractive alternative to EU membership.⁹⁹ Such FTAs require approval from all EU Member States as well as from the EU Parliament.¹⁰⁰ EU-FTAs provide “more favorable terms of trade” between the EU and non-EU countries.¹⁰¹ Although no two EU-FTAs are exactly the same, varying in their terms and scope of trade,¹⁰² Switzerland and Canada illuminate the variance in relevant EU trade agreements.¹⁰³

Considered to be one of the most extensive trade arrangements with the EU, the Swiss-EU trade relationship comprises more than 120 trade agreements.¹⁰⁴ The Swiss-EU relationship is very complex because of Switzerland’s close proximity to the EU and its vast trading with EU Member States, making it necessary to go beyond EFTA membership into more individualized FTAs.¹⁰⁵ Switzerland has restricted access to the EU market,¹⁰⁶ encompassing both trade in goods and services with the exclusion of agricultural goods and some services,¹⁰⁷ while diminishing various cross-border barriers, like tariffs.¹⁰⁸

In exchange for access to the EU Market, Switzerland has various obligations to the EU.¹⁰⁹ First, it is required to incorporate EU legislation into its domestic law.¹¹⁰ Although compliance is not expressly mandated in the agreements, the failure to do so permits the EU to restrict Switzerland’s access to the Market.¹¹¹ Second, Switzerland is required to contribute financially to the EU to support EU Member States and EU programs.¹¹²

That being said, the Canada-EU FTA, the Comprehensive Economic and Trade Agreement (CETA), goes beyond any current trade

99. RICHARD GORDON QC & ROWENA MOFFATT, *BREXIT: THE IMMEDIATE LEGAL CONSEQUENCES* 52 (2016) (ebook).

100. HOUSE OF COMMONS, *supra* note 16, at 31.

101. JAMES K. JACKSON ET AL., CONG. RESEARCH SERV., R44559 *ECONOMIC IMPLICATIONS OF A UNITED KINGDOM EXIT FROM THE EUROPEAN UNION* 13 (2016).

102. *Id.*

103. HM GOVERNMENT, *supra* note 69, ¶¶ 3.27, 3.52.

104. Marc Maresceau, *EU-Switzerland: Quo Vadis*, 39 GA. J. INT’L & COMP. L. 727, 729 (2011).

105. *Id.*

106. Maican, *supra* note 71, at 257.

107. *Id.*; TREASURY COMMITTEE, *THE ECONOMIC AND FINANCIAL COSTS AND BENEFITS OF THE UK’S EU MEMBERSHIP, 2016-17*, HC 122, ¶ 163 (UK), <https://publications.parliament.uk/pa/cm201617/cmselect/cmtreasy/122/122.pdf>.

108. HM GOVERNMENT, *supra* note 69, ¶ 3.28; see Maican, *supra* note 71, at 257.

109. Gayle, *supra* note 88.

110. *Id.*

111. HM GOVERNMENT, *supra* note 69, ¶ 3.30.

112. Gayle, *supra* note 88.

deal with the EU in maintaining Canada's independence.¹¹³ Although this deal was made official in 2017, following seven years of negotiations, it is still not currently in effect.¹¹⁴ Focusing primarily on trade in goods, CETA stipulates a tariff phaseout on all industrial and many agricultural goods, providing for a reduction to most discriminatory measures pertaining to trade and exportation.¹¹⁵ To receive these protections, Canadian goods must comply with the "Rule of Origin," which requires exporters to "prove that their goods are entirely 'made in Canada.'"¹¹⁶ Services, however, are not fully protected by the FTA,¹¹⁷ which means that services not covered must then comply with strict EU rules and legislation to operate in any EU country.¹¹⁸ In light of this agreement, Canada is free from many traditional EU obligations,¹¹⁹ namely no financial contributions to the EU and no incorporation of EU law into its domestic legislation.¹²⁰

D. Membership in the World Trade Organization

WTO membership is a final alternative relationship to EU membership.¹²¹ Although dedicated to facilitating international trade between countries all over the world,¹²² WTO membership is considered the lowest threshold of trade relations with the EU.¹²³ Currently, there are 164 WTO members,¹²⁴ who have very restricted access to the EU market for goods.¹²⁵ With the purpose to protect against discrimination, WTO members are required to treat members equally, provided another FTA has not been otherwise negotiated.¹²⁶ Therefore, pursuant to WTO rules, the EU enforces a most favored nation clause (MFN) that permits the same tariff rates to apply to all WTO members, absent a supplementary

113. HM GOVERNMENT, *supra* note 69, ¶ 3.54.

114. JACKSON ET AL., *supra* note 101, at 13.

115. *Id.*; *Five Models for Post-Brexit UK Trade*, *supra* note 78.

116. *Reality Check: Would Canada's Deal with the EU Be a Good Model for the UK?*, BBC NEWS (June 17, 2016), <http://www.bbc.com/news/uk-politics-eu-referendum-36561409> [hereinafter *Reality Check*].

117. *Five Models for Post-Brexit UK Trade*, *supra* note 78.

118. *Id.*; *Reality Check*, *supra* note 116.

119. *Id.*

120. HM GOVERNMENT, *supra* note 69, ¶¶ 3.57, 3.63.

121. *Id.* ¶ 3.66.

122. *Five Models for Post-Brexit UK Trade*, *supra* note 78.

123. HOUSE OF COMMONS, *supra* note 16, at 35.

124. *Members and Observers*, WORLD TRADE ORG., https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (last visited Mar. 25, 2017).

125. *Five Models for Post-Brexit UK Trade*, *supra* note 78.

126. TREASURY COMMITTEE, *supra* note 107, ¶ 155; Dhingra & Sampson, *supra* note 15, at 7.

trade agreement.¹²⁷ With that being said, members of the WTO lack EU obligations,¹²⁸ namely no incorporation of EU legislation into their domestic law and no financial contributions to the EU,¹²⁹ unless provided otherwise by a separate trade agreement.¹³⁰

VI. OPTIONS MOST APPLICABLE TO U.K.-EU TRADE

Prime Minister May has confirmed that the negotiations for the U.K. withdrawal will not include partial EU membership or secondary EU membership because the U.K. does not want to be “half-in, half-out” of the EU.¹³¹ Therefore, EFTA and EEA membership will likely not be considered.¹³² The U.K. recognizes that it and the EU must “continue to be reliable partners, willing allies and close friends,” and, thus, seeks to freely trade with the EU, so long as the relationship does not hold “on to bits of [EU] membership.”¹³³ She further stated that any new relationship will not provide for access to the Single Market.¹³⁴ It is, therefore, the U.K.’s intention to garner “maximum freedom to trade with and operate within European markets—and let European businesses do the same in Britain.”¹³⁵ However, Prime Minister May explicitly rejects continuing ECJ authority, EU legislation incorporation, and financial contributions to the EU, thereby demanding the creation of a “new and equal partnership.”¹³⁶ With all of this considered, the U.K. has the option to either create an FTA with the EU or, in the alternative, rely on WTO membership.

Unfortunately, there are no exact or closely mirroring FTA models that parallel the proposed relationship that the U.K. seeks to create with the EU. Although, the EU has numerous FTAs with countries within Europe, the Mediterranean, and elsewhere around the world, those agreements do not align with the express desires of the U.K.¹³⁷

127. JACKSON ET AL., *supra* note 101, at 3.

128. *Five Models for Post-Brexit UK Trade*, *supra* note 78.

129. *Id.*; see Dhingra & Sampson, *supra* note 15, at 9; TREASURY COMMITTEE, *supra* note 107, ¶ 154.

130. Dhingra & Sampson, *supra* note 15, at 9; TREASURY COMMITTEE, *supra* note 107, ¶ 154.

131. *May’s Brexit Speech*, *supra* note 17.

132. See Ben Chapman, *Brexit: What Is the Single Market and Why Should We Care that the UK Is Leaving It?*, INDEPENDENT (Jan. 17, 2017), <http://www.independent.co.uk/news/business/news/brexit-latest-news-what-is-eu-single-market-customs-why-care-if-uk-leaves-it-european-union-theresa-a7531061.html>.

133. *May’s Brexit Speech*, *supra* note 17.

134. *Id.*

135. *Id.*

136. Chapman, *supra* note 132.

137. Dhingra & Sampson, *supra* note 15, at 11.

Unfortunately, the Norwegian and Swiss models both run counter to the U.K. objectives because they hold on to aspects of EU membership that Prime Minister May seeks to dissolve, namely financial contributions to the EU, membership in the Single Market, and incorporation of EU law into domestic law.¹³⁸

The Canada-EU FTA is the most apt model, emulating many of the U.K.'s particular trade desires.¹³⁹ Using the Canada-EU FTA as an illustration, the U.K. has the option to create the "more detached relationship with the EU" it desires,¹⁴⁰ while effectively dissolving many of the EU obligations it seeks to end, namely contributing financially to the EU, being bound by the ECJ's rulings, and having membership in the Single Market.¹⁴¹ An FTA of this nature, however, only eliminates tariffs for particular goods.¹⁴²

Due to the U.K.'s close ties and proximity to the EU, a CETA-like FTA may prove more harmful than helpful in the U.K. economy.¹⁴³ First, any U.K.-EU agreement cannot only provide protection for trade in goods with limited coverage of services.¹⁴⁴ Approximately 80% of the U.K. economy is made up of commercial services,¹⁴⁵ ranking it the second largest service exporter worldwide with the EU being its top market.¹⁴⁶ Second, seven years passed before the EU and Canada finalized their agreement,¹⁴⁷ which is a delay that the U.K.'s economy may not survive, if restrained from exporting its services to its top market.¹⁴⁸ Therefore, a U.K.-EU FTA inspired by the Canada-EU FTA must be seriously amended to accommodate the U.K.'s trade in services to the EU.¹⁴⁹

In the event that an FTA is not negotiated, the U.K. must rely on its WTO membership.¹⁵⁰ The WTO allows the U.K. its desired independence, as well as support in some of its trading industry without membership in the Single Market, financial contribution, and

138. *Reality Check*, *supra* note 116.

139. *Id.*

140. HM GOVERNMENT, *supra* note 69, ¶ 3.52.

141. *Reality Check*, *supra* note 116.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. HM GOVERNMENT, *supra* note 69, ¶ 3.52.

147. Chapman, *supra* note 132; *Reality Check*, *supra* note 116.

148. HM GOVERNMENT, *supra* note 69, ¶ 3.52.

149. *See* Chapman, *supra* note 132.

150. C.W., *Why the "WTO Option" for Brexit Will Prove Tricky*, ECONOMIST: ECONOMIST EXPLAINS (Jan. 9, 2017), <http://www.economist.com/blogs/economist-explains/2017/01/economist-explains-4>.

incorporation of EU law.¹⁵¹ Of course, with the WTO only protecting trade in goods, the U.K. will suffer severely in sustaining its largest trade market because there is no MFN clause for trade in services, resulting in discriminatory treatment.¹⁵² As such, reliance solely on the WTO membership, thus, may be considered the worst option for the U.K., and a last resort, if no other relationship is negotiated.¹⁵³

With all of this considered, any post-Brexit U.K.-EU trade relationship will be unprecedented and wholly distinct. It is imperative that the U.K. use the Canada-EU FTA as a starting point to then mold and cater to the U.K.'s specific trade needs.¹⁵⁴ The U.K.'s highest priority then must be to draw terms favoring its expansive trade in services because it "sells more services to the rest of the EU than it buys."¹⁵⁵ If no FTA is negotiated timely or effectively, the U.K. detrimentally risks its trade in services by resorting to WTO membership, leaving the vast majority of its trade unprotected.¹⁵⁶ Given these points, the U.K. must use all of its bargaining power to strive to maintain not only its sovereignty but also the livelihood of its trade industry. Therefore, the U.K. may find itself sacrificing one for the other to ensure the survival of its economy.

151. TREASURY COMMITTEE, *supra* note 107, at ¶ 154.

152. *Id.* ¶¶ 152, 154-55.

153. *Id.*

154. *See id.* ¶¶ 139-40.

155. *See id.* ¶ 176.

156. *See id.* ¶ 160; C.W., *supra* note 150.