Reset To Sunset: a proposal to break the impasse in the UK-EU trade talks

By Martin Smith, Gerard Fox, and the CGE trade working group

September 2020

Conservative Group for Europe

About the authors

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The **CGE trade working group (WG)** contributed to and reviewed this report. The WG, formed in spring 2020, examines the detailed policy and economic challenges and opportunities of the UK's new trading arrangements with the EU and beyond. Earlier this year, the group published "Ten questions the UK government needs to answer to enable businesses to prepare for the end of post-Brexit transition". It will publish another research report imminently on the post-transition arrangements for Roll-On Roll-off (RoRo) goods trade. Members of the WG include Michael Cluff, Edward De Mesquita, Nacho Morais, Dan Paterson, Martin Smith, and Rosalind Stewart.

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"The key to unlocking a deal is for UK to make a proposal for its state aid regime. Everything else (would) then fall into place…..Everyone knows what the (regulatory) LPF compromise will be: UK will promise not to lower standards, EU'll have right to punish UK if it does." ~ Charles Grant, Director, Centre for European Reform[1]

"On the issue of alignment or divergence with EU law, the UK is facing a choice of historic proportions. There needs to be a broad-based consensus on the road ahead." ~ Damian Raess, Assistant Professor in Political Science, World Trade Institute, University of Bern[2]

"I sincerely hope that in all corners of government serious thought is given to the question of whether (state aid) is really the right hill to die on." ~ Professor Veerle Hayvaert, London School of Economics[3]

"There is an obvious irony in the fact that leaving the EU would offer the UK the freedom to abandon an approach (on state aid) that it has been pursuing unilaterally for many years." ~ Kitty Stewart, Associate Professor of Social Policy, London School of Economics[4]

"I stress that I do not think state aid has been a political tool. It is not fair to say that; it is based on sound economic principles, which I would say are in line with mainstream free market economics, if there is such a thing. The principle that you do not help ailing or zombie companies is something that anybody would accept, and US economists agree with that principle. A lot of US economists praise the European system." ~ Dr Ulrich Soltesz, Partner, Gleiss Lutz[5]

"In all these fields, we are on shifting sands of what is done on international trade" ~ Holger Hestermeyer, Shell Reader in International Dispute Resolution, King's College London[6]

"The solution might be, for example, to copy some standards and perhaps make them a little different and make them applicable as trade agreement law rather than EU law. That could resolve some of the issues involving the CJEU." ~ Holger Hestermeyer, Shell Reader in International Dispute Resolution, King's College London[7]

"I have long departed from the sovereignty fetish just so long as we retain sovereign authority over what rules we adopt." ~ Pete North, Leave Alliance[8]

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Executive Summary

Purpose of this paper

If the talks between the UK and the EU conclude without a free trade agreement (FTA), leaving the two sides trading on World Trade Organisation (WTO) terms at the end of the transition period, the consequences will be catastrophic for the UK[9] and non-trivial for the EU, which counts the UK as its second-largest export market. There were signs over the summer that this may be avoided: the EU signalled flexibility on fisheries and governance; the UK took steps to implement the Northern Ireland Protocol (NIP)[10] and showed signs of recognising that regulatory autonomy trades off with market access[11]. Some commentators wrote that agreement was likely to be reached[12][13] on regulatory issues. Sadly, the probability of the two sides reaching an FTA appears to have receded significantly in recent weeks.

Rather than taking one side or the other in what has been referred to as a *dialogue de sourds*[14] – in which the two sides talk past each other, repeating what they want and blaming the other side – we seek to bridge the gap and propose a solution to assuage *both sides'* concerns. The fallout from *No Deal* would be both economic and political: the dislocation in the relationship would last beyond 31 December 2020, with each side likely blaming the other for the adverse economic consequences. The mere fact that the UK voted to leave the EU did not of itself necessarily have to lead to such mutual harm, mistrust, and acrimony. **As a group that favours a close relationship between the UK and its natural allies in the EU – while acknowledging that the UK has left – we seek to prevent a breakdown happening under a Conservative government.**

Proposal

Our proposal consists of three elements: a sunset clause, a dynamic adjustment framework to govern the UK's access to the EU market until sunset, and a dispute resolution mechanism. Our paper also contains a call to the UK government – in the event that these proposals are accepted or that agreement is otherwise reached on everything other than state aid – not to prevent an otherwise acceptable FTA over state aid, given that the UK does not have a state aid framework, that the government has not set out any policy intentions that conflict with EU state aid rules, and that Conservative MPs may have concerns about a lax UK state aid framework.

Sunset

Given the uncertainty and remaining concerns, we recommend an interim arrangement with a *sunset*, with the rules governing the UK's access until sunset calibrated according to its regulatory standards, in a mechanism working with reference to precedent from other EU FTAs and set out in a Memorandum of Understanding (MoU) in an amended Political Declaration (PD). No trade deal obtains in perpetuity: the replacement of NAFTA with the USMCA agreement provides a recent example. A sunset avoids a classic Prisoner's Dilemma situation from game theory. If each side does not know the other's intentions, the outcome is mutually suboptimal. When multiple rounds are played, intentions become clearer.

Dynamic Adjustment

There currently remain two principal impediments to a free trade agreement (FTA) being concluded between the UK and the EU. One is the Level Playing Field (LPF) conditions on standards and regulations. The other is state aid. **We propose an interim solution that will satisfy both sides' concerns, limit short-term disruption, and provide time in which the UK can determine its approach to international trade and the two parties can rebuild trust, allowing both sides to approach their long-term relationship anew with a common understanding.**

The EU correctly asserts that the UK is asking for continued privileged access to the EU market without the corresponding obligations. However, even if the UK were genuinely asking for an FTA based on the Comprehensive and Economic Trade Agreement (CETA) with Canada– an FTA with relatively low market access, commensurate with relatively few obligations – this is not on offer from the EU, which insists on the UK following EU rules. The UK's concern is autonomy, yet it assures the public that it has no intention of using its autonomy to reduce standards while arguing for the exclusion of regulatory standards from the FTA's dispute resolution mechanism.

The EU's interest is not in preventing the UK from legislating for itself, but in reserving the highest level of access to the internal market for those who follow the highest proportion of the rules. While a cross-cutting agreement limiting the UK's access *and* obligations still brings up fears of regulatory competition, a period of experimentation should not: the UK's own confusion over its regulatory policy and the short time until sunset combine to limit the potential damage.

During this experimental period, the UK's access to the EU market would be adjusted dynamically according to the extent to which the UK maintains existing standards. The EU can

use the period until the sunset, and the transparency that the UK would commit to give on its regulatory policy, to determine the effect of the UK's new regulatory autonomy. The UK can use it to determine the extent to which the measures – which it has yet to spell out – that it seeks to take that diverge from EU rules are worth reduced market access. While the Prime Minister proposed a version of this a few months ago, our version contains three improvements: it proposes to use non-tariff barriers (NTBs), rather than tariffs, as NTBs are better at protecting the internal market from non-compliant products and their absence is more important to the UK; it is subject to a sunset clause, meaning that any "friction" in the relationship is time-limited and that the EU, including the new European Parliament, can opt not to reach a long-term FTA with the UK if the UK's policies have deleterious effects on the EU; it has a dispute resolution framework that ensures fairness and should be acceptable to both.

Dispute Resolution

Our proposed dispute resolution mechanism resolves the objections of both sides to the other's proposals. Addressing the EU's concerns, we propose that all LPF issues be included in the mechanism. Addressing the UK's concerns over autonomy and neutrality, we recommend that disputes be arbitrated by representatives of neutral countries that have experience of trading with the EU under different arrangements. This brings the added benefit of trust in fairness.

State Aid

The sunset has a further advantage: Conservative MPs can scrutinise the Johnson government's eventual state aid policy. For EU members, many of which had to roll back interventionist policies[15] to comply, state aid is subject to the EU's limits to ensure that Margaret Thatcher's single market is a true free market, with no advantage conferred by government. When concluding FTAs, the EU needs to know its partner's state aid regime. Indeed, state aid is becoming a prominent global trade issue. The UK, though, has not presented its approach; the EU will not sign blank checks[16].

Neither should the Conservative Party. If the plan is to spend taxpayers' money on picking winners, then it represents the opposite of the free-market philosophy through which Margaret Thatcher's governments reversed the UK's relative economic decline. If this is not the plan, then the government should set out what is. Until sunset, Conservative MPs can then debate its merits, including its emerging effects – as the issue's role in global trade evolves – on access to EU and other markets. A workable FTA must not be prevented by an insistence on retaining the latitude to pursue interventionist, big government, un-Conservative policies. We have not rolled back the frontiers of the state at European level only to see them re-imposed at home.

Section One:
Level Playing Field: Standards and regulations

1.1. Introduction

A *No Deal* scenario serves neither side's interest, yet each is making it more likely. The breakdown of trust has meant that each fears the consequences of giving any ground. In a similar manner to the *Prisoner's Dilemma* in game theory, uncertainty of the other side's intentions persuades each to pursue action that ends with them *both* losing out by accepting lower levels of access to the other's market as a trade-off against the uncertainties associated with the other's behaviour under a more open and flexible agreement.

The EU, fearing that the UK may become a deregulatory haven, is keen to uphold "Level Playing Field" (LPF) rules and enforce dynamic alignment provisions, with disputes arbitrated by the Court of Justice of the European Union (CJEU). Its approach to free trade between close neighbours encompasses the principle that neither side should seek an "unfair" advantage through lax regulatory standards or state aid, and demands that current standards in the environment - including industrial emissions, air quality targets, and biodiversity conservation - not drift apart and that harmonisation remain in health and in sanitary safeguards for agri-food. The UK, though, wants its regulatory autonomy, citing the 2016 referendum result.

Both sides can claim justification. The EU wants to protect the internal market: it does not want EU producers undercut. While any product that enters the EU market must meet EU minimum standards, if these standards are not included in UK domestic law then the EU would have to go to greater effort to check that UK producers are adhering to EU standards when exporting to the EU. It cannot, as the UK in many cases demands, recognise the equivalence of UK regulations without knowing how the UK intends to change its regulations, putting the entire FTA into doubt. The UK fears that dynamic regulatory alignment might be open to gaming or, by virtue of EU27-focused design, be inappropriate for the UK. It does not view the CJEU as a neutral arbiter.

Each claims the moral high ground: the UK states that it will not reduce regulatory standards but argues that this should not be subject to a dispute resolution mechanism arbitrated by the CJEU. Both sides previously agreed on LPF provisions but only in the non-binding political declaration (PD). Plus, *both* can claim to be acting on precedent, which indicates, very broadly, two types of EU free trade agreement with third countries: (a) more alignment, more access (b) less alignment, less access. While the former is common to European non-EU countries, the

latter is more common among major non-European economies like Japan, South Korea, and, through CETA, Canada. If the UK were genuinely seeking a CETA-like agreement, it could claim that the EU is inconsistent in insisting on placing obligations on the UK that are not present in CETA. The EU has concluded FTAs with non-European countries with LPF provisions that are less onerous[17] and less enforceable[18] than those that it is seeking with the UK and not arbitrated by the CJEU. The EU, though, has never concluded a CETA-like agreement with a *neighbouring country*.

The EU's European neighbours mostly have trade agreements with it that replicate many, though in not all cases all, of the benefits *and obligations* of membership of the internal market, in which regulations are harmonised or mutually recognised and any product that meets the standards of one country therefore meets those of all[19]. The European non-EU countries either have adopted the entire single market acquis (EFTA-EEA countries: Norway, Iceland, Liechtenstein), are in the process of doing so as part of their eventual accession (Ukraine, Balkan countries), or previously have adopted large parts of it (Switzerland, Turkey) to facilitate volumes of fast-moving trade across EU land borders. Traders from these countries enjoy the benefit of fewer, or lower levels of NTBs, including TBTs and border friction, than those from non-European non-EU countries do. The drawback is that these countries follow many EU rules with no vote in making them. In this paper, we seek a mutually beneficial reconciliation.

1.2. Tensions in the EU's position

The EU's negotiating stance – much, as we will see in the next section, like the UK's – pivots according to convenience between positioning the UK as a third country to be treated according to precedent set by other third countries and attempting to maintain continuity with a status quo that developed over the 46 years of the UK's EU membership.

The EU is consistent in maintaining the balance between access to its market and obligations placed on any country accessing it. It correctly states that privileged access to the EU market comes with responsibilities. There is, as the UK has consistently attempted to deny, a trade-off between regulatory autonomy and market access. However, the EU's position seeks to remove all choice over *where* on this trade-off the UK might position itself. Rather than offer a choice between "less alignment, less access" and "more alignment, more access", the EU is offering a choice between "more alignment, more access" and *No Deal*.

When the UK complains that the EU is asking for it to follow EU rules as the price of an FTA, the response that there is a trade-off between regulatory autonomy and market access implies that the UK could diverge from EU rules at the cost of less access to the EU market. Even if the UK were honestly asking for this, however, the EU does not offer this version of the trade-off

under an FTA; rather, it is only implied on WTO terms, which are far less favourable than those enjoyed by countries that are far less important to the EU as export markets than the UK is.

The EU's position seems to have its roots in the drive to maintain continuity. Indeed, its rationale for seeking from the UK a commitment to maintain standards is that these are standards developed in conjunction with the UK while it was a member[20]. Furthermore, it can be argued that seeking continuing commitments from the UK in areas such as fisheries amounts to ignoring the referendum result and to seeking the arrangement that the UK had in the EU[21].

The primary obstacle to an FTA in the EU's approach, though, is its insistence on a role for the Court of Justice of the European Union (CJEU). It is unusual[22] in FTAs for the domestic courts of one party to be responsible for arbitrating an agreement. It may make sense in the case of a country such as Ukraine, which has an association agreement as a precursor to accession in the distant future and will therefore have to adopt the acquis, which can be interpreted only by the CJEU. It should be different for a country that does not seek future accession to the EU.

The EU would be correct to claim that it has never concluded a "less alignment, less access" trade agreement – or a trade agreement without some role as arbiter for the CJEU – with a neighbouring country. There are good reasons for this. In the cases of Canada and Japan – distant countries – it would be inconvenient for a company unhappy with EU regulations to set up shop in the partner country. Hence, an FTA does not require such a degree of oversight of the partner country's regulations. The UK's proximity, on the other hand, renders this a danger[23].

This is not limited to sectoral regulations, which have clear commensurate defences: if, for example, in chemicals, the UK does not commit to continuing to abide by REACH, the EU can demand that UK chemicals firms designate an EU-domiciled subsidiary governed by REACH to register chemicals. Rather, it also applies to horizontal issues, such as workers' rights: if firms are unhappy with EU labour restrictions, and if the UK has less restrictive requirements, firms in EU countries may consider, due to proximity, relocating to the UK if it has an FTA[24]. Hence, the negotiating mandate given to the European Commission by member states and the European Parliament contains provisions on: "fundamental rights at work; occupational health and safety, including the precautionary principle; fair working conditions and employment standards; and information, consultation and rights at company level and restructuring."[25]

These are all valid concerns. However, the governments of the neighbouring countries that maintain close alignment all desired closer ties with the EU than the UK government does. Turkey's partial customs union and closely aligned standards result from its past seeking of closer ties, which at one time it wanted to result in full membership. Ukraine's association

agreement relates to its long-term goal of membership. Switzerland's array of agreements was a replacement for EEA accession and is due for review. The UK government, by contrast, states that it seeks for the country to be treated as "an independent coastal state" like Canada or Japan.

The EU retorts that it seeks more from the UK because the UK's proximity and size make the gains from the same type of agreement greater for a proximate trading partner. However, as we set out in the appendix on the consequences of *No Deal*, the UK's proximity and size are as much a reason to reach an accommodation that protects the integrity of the internal market. Furthermore, under a *No Deal* situation, undercutting the EU on regulations may in fact be one of the few levers the UK has to compensate for the economic damage that loss of a substantial proportion of exports to the EU would entail. Hence, increasing the probability of *No Deal* may even *increase* the probability of the outcome that the EU seeks to avoid.

There are questions over whether the UK public wants regulatory divergence, but by seeking to shut it off as the price of a trade agreement, the EU renders irrelevant what should be an intense debate in the UK over the relative merits of regulatory autonomy and enhanced access to the EU market. It may also not fully understand that the latitude that the UK seeks to diverge – which it correctly understands to be a political rather than an economic objective – may, as we will see in the next section, be merely symbolic rather than of any genuine substance.

We recommend that the EU, rather than attempting to pull the UK down a particular path, help spell out the trade-offs and their basis in precedent: less regulatory alignment means more border procedures and less access. The UK can then make a choice that the UK public understands to be one of its own government's making rather than an unwanted end state – such as *No Deal* – that it believes has been forced on it by the EU.

The criticism that Prime Minister Johnson has made of the EU's position was summed up in a speech he made earlier this year:

Will we stop Italian cars or German wine from entering this country tariff free, or quota free, unless the EU matches our UK laws on plastic coffee stirrers or maternity leave or unless they match our laws in any other field of policy that might conceivably affect the production of an Alfa Romeo or a bottle of gewurtztraminer?[26]

If the UK were genuinely worried about substandard EU products potentially crossing the border, the correct answer to this would be: "they can come tariff-free as we want to eliminate tariffs, but we will check a percentage of your traders' products at our borders to ensure that

what they are sending to our consumers complies with our regulations; we may demand that our countries' certification bodies be the ones to certify that what crosses our borders complies with our rules; plus, for controlled products for which we really have to take more care, we may ask that they appoint someone in our country to take responsibility for the goods".

We recommend that the EU take this approach: that it not stipulate, as a condition of the FTA, what the UK's regulatory regime should be, but that it reserve the right to monitor the UK's regulatory regime and to protect the internal market if the UK were to reduce its standards.

As we will see in the next section, it is far from clear that the UK would choose the reduced market access that would come from reducing its standards. However, subjecting this period of experimentation to a *sunset* would provide for a period of experimentation and limit any damage that the UK could do to the integrity of the single market in the meantime.

1.3. Tensions in the UK's position

1.3.1. Market access vs regulatory autonomy

The UK's position displays the same inconsistency – between continuity and treatment according to third country precedent – as the EU's, though, in a different way: it seeks to be treated according to the precedent set by non-European non-EU countries on regulatory obligations, but seeks to maintain most of its existing access to the EU market at a level that would normally be consistent with the obligations placed on European non-EU countries.

UK negotiator David Frost has commented[27] that regulatory autonomy is not a negotiating point but rather the point of the entire project. Autonomy would be consistent with CETA, which, as explored previously, does not contain enforceable LPF provisions. However, while the UK argues that all it wants is a CETA-like agreement, it clearly needs and is asking for more than that. The goal to keep trade flowing per status quo appears in the UK's negotiating document in the sections on Customs and Trade Facilitation (CTF) and International Road Transport. These areas are crucial to the UK's market access. Lorries from the UK carry time-sensitive shipments of goods to the continent, often for use in highly integrated Just-In-Time supply chains that can be managed only with essentially borderless trade, utilising Roll-On Roll-Off (RoRo) ferries and the tunnel and geographical proximity[28]. There are no special provisions relating to RoRo in CETA because it is not relevant to an agreement with a country thousands of miles away.

Under CTF, the document[29] says that "streamlined customs arrangements" should "reflect the nature of trade between the UK and the EU": trade that developed thanks to the regulatory alignment that developed over the UK's 46 years of EU membership. It asks to "minimise

delays at the border associated with customs clearance"[30] for RoRo, but fails to recognise that the absence of such delays at present results from regulatory alignment: as standards are the same on both sides of the Channel, nothing has to be checked, except possibly for excise. Regulatory autonomy necessitates a higher incidence of checks than continued alignment[31].

Under International Road Transport, the UK's negotiating document displays ignorance of the trade-off between market access and regulatory autonomy. The UK's position is that hauliers adhere to EU rules[32] while driving within the EU but that the UK be free to regulate domestic transport. This sounds reasonable until one considers the volume of UK goods traffic carried to the continent by hauliers[33]. If the UK relaxes its rules, UK drivers may be able to drive longer hours with shorter rest periods on the UK side than French drivers who, while they may operate under the more lax UK transport rules while in the UK, would still be subject to overall EU social requirements such as the Working Time Directive. At best, the UK drivers would outcompete the French drivers for cross-channel haulage contracts. At worst, fatigue from longer driving hours within the UK would make the UK drivers a safety hazard on French motorways.

The UK's negotiating document admits that its demand would be unprecedented and why: the FTAs that it is citing as precedent are with countries for which this issue is a geographical irrelevance[34]. Other geographically contiguous countries adopt within domestic law the EU rules on drivers' hours: for EFTA-EEA countries it is part of social legislation through the "horizontal adaptations" in the EEA agreement[35]. Hence, the EU's negotiating document demands that drivers be subject to those same "social" requirements[36]. If the UK does not agree, the EU will surely have no alternative but to restrict UK hauliers' access to routes across the EU.

Rather than making a conscious choice for "less alignment, less access" over "more alignment, more access" the UK is asking for "less alignment, more access" and seeking, in the event of *No Deal*, to blame the EU for not agreeing. This is consistent with the messages of the 2016 Leave campaign[37] but not consistent with any precedent that the EU has set with any other country.

1.3.2. Regulatory autonomy vs exercise of that autonomy

It is somewhat curious that the UK argues for the ability to diverge while simultaneously reassuring the EU and the public that it has no intention of diverging materially[38]. Indeed, the rebel Labour MPs who were planning to support the Withdrawal Agreement Bill (WAB) in autumn 2019 claimed[39] to have secured legally binding commitments from the government not to reduce workers' rights, environmental standards, and consumer protection.

There are two possibilities. The first is that the UK is seeking a merely symbolic ability to diverge but not intending to reduce standards[40]. This appears costless. However, even adhering to EU rules autonomously without also granting transparency comes with costs to the UK's market access[41]. The ability to diverge as provided by CETA – along with the same trade-off with market access as in CETA – would lead to burdensome restrictions on the UK's exports[42], while providing little deregulatory benefit if the UK *government* does not diverge or, as also seems likely, the *government* provides *firms* the ability to diverge but most *firms* adhere to EU standards because the UK, like any single country other than the US or China, is too small a market for a multinational firm to set up different production processes. This so-called *Brussels Effect* is well documented in international trade circles. Hence, the latitude to diverge may end up being not only merely symbolic, but also one of the costliest unexercised options imaginable.

The question of whether a majority of the UK public would now like to trade the market access that the UK currently has for the symbolic but unexercised ability to reduce protections is a question that we do not believe to have been adequately answered by the referendum result. The simple question of Leave vs Remain did not ask such technical questions. The Vote Leave manifesto promised[43] to *maintain market access* while gaining regulatory autonomy. Furthermore, research showed that immigration, rather than regulation, was the key issue in the referendum[44]. Finally, a recent survey showed that a majority of young Leave voters would prefer the UK to maintain EU standards[45].

The second possibility is that the UK wishes to deregulate, but not on workers' rights, environmental standards, and consumer protection. While this implies that there must be a raft of costly EU regulations in other areas that the UK has identified for repeal, it is not clear what these are. Plus, changes to technical standards would produce new non-tariff barriers to trade[46]. The third is that the UK wishes to have its regulatory autonomy and to use it to deregulate.

1.3.3. Non-regression vs non-enforceability of non-regression

The EU's FTAs with Japan and Canada include LPF provisions that are weaker than those in EU agreements with neighbouring countries. They prohibit *a tactical choice by the partner country not to implement its current standards* but do not prohibit *regression from* those standards to the minimum international standards such as those set by the International Labour Organisation (ILO)[47]. They also are not enforceable[48]. The UK's negotiating document makes clear that it seeks a similar arrangement: "the UK undertakes to comply with the obligations in a Canada-style agreement but if it doesn't there won't be a breach of the Treaty"[49].

In the above section, we asked why the UK would look for this if it does not intend to reduce standards. The other question is why the EU would seek an enforceable obligation. The answer

is that the frequency with which ministers have cited as the main benefit of Brexit not only the symbolic freedom from EU regulation but also the genuine deregulation that may result means that the EU does not trust the UK's assertion that it will not reduce standards[50].

Our proposal seeks to provide space for the UK to explore the trade-offs and clarify its position, for the EU to gain clarity on the UK's position, and, most importantly, for trust to be rebuilt.

Section Two:
Level Playing Field: State aid

2.1. The EU state aid regime

State aid rules are a crucial part of the internal market. A market cannot be considered a truly free market if certain competitors are receiving support from government and certain competitors are not. Hence, if an internal market is to be created from the domestic markets of different countries, it follows that the countries must commit to limiting their state aid.

In principle this applies not only to an internal market but also to all forms of free trade. Hence, the rules of the WTO also contain certain "anti-subsidy" provisions, but these are not as well developed as those that govern trade among the countries covered by the EU state aid regime. There are two main sets of differences that characterise the much more extensive EU system: the types of state aid covered and the enforceability of the provisions.

The EU system governs "state aid" whereas the WTO system is a set of "anti-subsidy" rules. This is important because state aid encompasses not only subsidies but also cheap loans, tax breaks, contracts that are at terms other than arms-length commercial terms, and any other type of aid that could be construed as conferring a competitive advantage.

The EU rules are also far more enforceable both because of the way they have been interpreted by the CJEU in comparison to the WTO's interpretation of its rules and because of the remedies available. In principle, the EU's rules prohibit non-exempt types of state aid only if there is an effect on trade among member states. However, there is a low burden of proof regarding the effect on trade[51] among member states. Indeed, for those who would like the UK to have more latitude over its own state aid decisions after the end of the transition period, this is one of the concerns with the NIP's Article 10, which applies to any UK measure and is not confined to measures taken by the Northern Ireland Administration[52].

In the WTO, on the other hand, transparency, governance, and the interpretation of the rules over the years have made the rules difficult to enforce. Countries often notify their subsidies only after a long delay; the thresholds for bringing a case on state aid are high. Plus, the remedies available apply only from the date of the judgment onward[53]. In light of the paucity of enforcement mechanisms, member countries turn to countervailing tariffs – known in the EU as Trade Defence Instruments (TDIs) – to combat competition by subsidised foreign competitors.

Because of the importance of state aid in the internal market, the EU's neighbouring countries are almost all subject to its state aid rules. The EFTA countries have the EFTA Surveillance Authority; the EFTA-EEA countries incorporate the whole single market acquis including state aid, while Switzerland's FTA with the EU includes state aid provisions that were rolled over to its agreement with the UK. Turkey, Ukraine, and the Balkan states proposing accession have state aid authorities that are required to follow EU state aid law and policy[54][55].

Within the EU, state aid is a community-level competence. Only one country, Spain, has a national authority that has any competence on the matter[56]. Therefore, when it leaves the single market at the end of the transition period, the UK will need its own state aid regime. Because of its proximity and the resultant competitive advantage that a state-aided UK producer would have in the EU market, the EU's negotiating mandate is that the UK's regime should involve EU state aid law, including its institutional architecture, applying in the United Kingdom. However, the current blockage in the talks is caused not by the content of the UK's proposed new autonomous state aid framework; rather, the problem is that the UK has not produced one.

2.2. The UK government's proposed state aid framework

The Johnson government has not produced its independent state aid framework. Under the backstop agreed by Theresa May, the Competition and Markets Authority (CMA) would have been the UK's state aid authority, strongly overseen by the European Commission, while under previous No Deal advice, the CMA would have acted without EU oversight[57].

The negotiating position taken by the Johnson government replaces this proposal with a simple commitment to transparency and occasional notification[58]. The term "state aid", though, never appears in the UK's document setting out its approach to the notifications. The relevant chapter is entitled "subsidies" and speaks of the UK's own regime of "subsidy control". While there was disagreement among experts[59] as to what this means, the government's recent press release[60] appears to confirm that the UK seeks to gravitate towards the WTO system of "subsidy control", which is less restrictive[61] than the EU's. As the press release highlights – in its announcement of consultation on the new framework – the UK does not have a state aid policy beyond this. Furthermore, while it rules out subsidising unsustainable companies, it does not make clear how it would prevent this and other language in the press release threatens to undermine it[62].

The UK's position on state aid has three crucial characteristics in common with its position on the regulatory LPF: it states that the UK wishes to uphold existing standards[63]; this is further supported by statements from the Prime Minister that the UK even has higher standards than

the EU and that it is therefore the UK that should be worried about the EU rather than vice-versa; however, it seeks the latitude for the UK to diverge without, crucially, enforcement mechanisms enabling countervailing measures from the EU if the UK does diverge.

The Prime Minister is correct[64] to state[65] that other EU countries spend more on state aid than the UK does. Indeed, the strict rules governing state aid are primarily a British invention[66]. Other EU countries have reduced state aid as a result of EU state aid rules promoted by the UK[67]. Because of the influence of the UK, and of UK Conservative politicians in particular, the rules are a guarantee for business against unfair competition more than they are a constraint on member states[68]. However, the UK's negotiating position once again cites the examples of the EU's FTAs with non-European non-EU countries in suggesting that "the consultation commitment should not be subject to the Agreement's dispute resolution mechanism"[69].

It is important to remember two points: that "state aid" is a law concept of the EU internal market and that "state aid" has been an exclusive competence of Brussels for many decades. The fact that the UK does not use the same language as the EU does not of itself prove that it wishes to engage in wholesale picking of winners by government. Because the state aid framework has been handled by the EU for so long, and because the Johnson government, which has rejected the May government's plan, has been in office only for a short time during which it has been pre-occupied with the pandemic, it would not be surprising that the UK would not have a fully fleshed out state aid framework ready to roll out.

However, because of the potential effects on the EU internal market, the precedent set by EFTA countries[70] – and other European non-EU countries [71] – shows that the EU will need assurances about unfair competition from a neighbour stemming from state aid. If the UK plan is to facilitate infrastructure spending for its "levelling up" agenda, then there are good reasons for keeping that out of the EU state aid regime; equally, the EU, though, is likely to agree to that[72]. Furthermore, while commentators have noted[73] the Prime Minster's adviser's desire to invest in technology, this does not obviously conflict[74] with the rules in a more restrictive state aid framework such as the EU's.

The UK does not have its own state aid framework; yet, to conclude an FTA with the EU, it needs to be transparent on state aid. The EU may not be the only partner needing reassurance.

2.3. State aid in the world

Both state aid and regulatory standards can be counted as LPF issues. What each of them has in common is that major players in global trade are paying more attention to them. While it has

been true for some time that tariffs and quotas are not the primary issue in global trade – NTBs are more important as the WTO has whittled tariffs down over time – more attention is gradually being paid to the extent to which "free trade" means adherence to common principles.

Indeed, the UK's own exit from the EU could be partially attributed to concerns that the common rules, collaboratively made to ensure frictionless trade among the member states, had become so extensive that they compromised national sovereignty. Nevertheless, while the UK appears to favour sovereignty over market access, major trading powers appear to be going in the direction of demanding more common rules to ensure that free trade occurs on an LPF. Dr Holger Hestermeyer earlier this year gave several examples[75] to the Lords EU Select Committee of the new prominence of LPF issues in the global trading system.

- The US has begun to include more regulatory LPF issues into its trade agreements. The USMCA agreement that replaced NAFTA included a unique provision that, to qualify under rules of origin requirements, goods had to include a certain percentage of their labour paid at a certain rate per hour.
- State aid is a major concern of the US in the WTO.
- The US believes that WTO law is not sufficient to counteract the Chinese state-run system often referred to as "state capitalism": ostensibly free market enterprise carried out by State Owned Enterprises (SOEs).
- The EU's hard stance on state aid results both from its desire to project its power as a trading bloc and internal pressure: member states do not want the beneficiaries of state aid having the same access to their markets as their own firms.
- The EU-Swiss state aid provision was carried over to the UK's rollover agreement with Switzerland.

The Prime Minister himself pointed out that agricultural subsidies caused the failure of the Doha round of global trade talks[76]. However, he should note that viewing state aid through the prism of "subsidies" is as simplistic as viewing FTAs through the prism of "tariffs and quotas". The global system is evolving such that the UK may find itself unable to conclude many FTAs if it does not have a rigorous framework for ensuring that firms do not gain advantages from aid.

2.4. Conclusion

The UK has yet to produce a state aid framework[77]. Hence, Conservative MPs have not had the chance to dissect such a framework. There has even been said to be division among cabinet ministers[78] regarding what the UK should reserve the right to do. However, the absence of a framework is on the brink of preventing an FTA. While the UK should not be "rushed" by the

EU into producing such a framework to secure an FTA, it equally should not reject an otherwise acceptable FTA to reserve the right to pursue policies with which Conservative MPs may disagree[79] and of which they have yet to be informed.

Our proposal provides time for the government to consult on and to develop a framework, for Conservative MPs to scrutinise it and for the framework to be adapted to the evolving role of state aid in the global trading system. In the meantime, as we set out in section 3.4.7, there are clear benefits to the UK of coordinating its approach with that of the EU. Subjecting this arrangement to a sunset clause means that, once a new long-term FTA is negotiated in 2024, the UK will be able to begin operating under its own state aid framework ***when it has one***.

Section Three:
The solution: Reset to Sunset

3.1. CGE's priorities

As Conservatives who favour a strong UK-EU relationship, we can see both sides. We believe that less regulation could help the EU: some of our members are former MEPs who made that point in Brussels. In a world in which it would not affect the UK's access to the EU market, we might support repealing EU regulations. But we understand the trade-off. A debate on the merits of enhanced levels of access to the EU market and of regulatory autonomy – of which the UK public has been promised *both*, though this would be unprecedented – is overdue. Furthermore, we believe that any rollback of regulations or wholesale loosening of UK restrictions on state aid should be subject to parliamentary debate and democratic consent. The Conservative Party's current parliamentary majority depends on many constituencies in which support for at least the former path is questionable.

3.2. Our proposal: Reset to Sunset

The uniqueness of the situation requires a bespoke approach that is nevertheless consistent with the principles established in trade agreements with other non-EU countries.

Both sides are currently making the mistake of assuming that what is decided now will last in perpetuity. Precedent from prominent trading relationships shows that this need not be the case. The Swiss-EU arrangements are soon to be renegotiated. The NAFTA agreements were renegotiated recently. With a sunset clause to any agreement, many of the uncertainties and the need for onerous preconditions fall away.

Returning briefly to game theory, both sides suffer from an uncertainty around the other's actions and intentions that hinders a collaborative outcome. The *Prisoner's Dilemma* can be modified, though, by allowing more rounds of the game to be played, so that each side can judge the other's response to its moves. The current search by both sides, behaving as if this is a one round game, for insurance against risk and maximum individual flexibility heightens distrust, creating demands that prevent a deal as each trespasses further into the other's red lines. However, when multiple rounds are played, each side is forced to consider how the other will judge its actions in previous and subsequent rounds and to respond to moves made by the other, elevating incentives to both parties for behaviour that favours collaboration and trust.

A sunset, while it would reduce one set of uncertainties around how each party will behave, and reduce the most significant uncertainty for business – whether there will be an agreement at all – will introduce new uncertainties for business around how the rules of the trade game will evolve at each review point. The optimal sunset period would find a balance between affording certainty to business and reducing the incentives to cheat: too long a sunset period allows one set of political actors to palm the consequences of its actions off onto its successors.

We hence recommend an *ongoing* sunset period of 7 years. However, in the short term, because of the stakes involved and the sensitivities on all sides, we recommend a sunset **in 2024** so that all parties know that they will be able to review within their current planning horizon how the other side intends to act. The year 2024 contains three milestones: the next UK general election; the next European Parliament election; and the Northern Ireland Assembly's first vote on extending the border arrangements set out in the NIP.

To reach that point, a Memorandum of Understanding (MoU) would be required with a set of general commitments and intentions covering the key areas of policy concern and contention. The basis for this should be found in an amended Political Declaration.

3.3. Trading arrangement until sunset

While a sunset would provide assurance that any disadvantages endured by both sides in the period 2021 to 2024 would be only temporary, it is of course necessary to determine what the relationship until sunset will be. We propose a solution that, we believe:

- Reassures the EU that there is a limit to the amount of damage that the UK can do to the internal market
- Reassures the UK that it will have the autonomy to make its own laws
- Limits short-term disruption, for which UK exporters are not prepared
- Promotes a debate within the UK over the relative merits of materially diverging from the EU on regulation and state aid versus maintaining enhanced access to the EU market
- Allows time for the UK to develop a comprehensive state aid framework and for this to be debated in parliament, with business, and within the Conservative Party
- Promotes the formulation within the UK polity of a comprehensive strategic approach to global trade rather than *ad hoc* attempts to secure access to various markets
- Rebuilds trust between the UK and the EU

3.3.1 Overall principle: dynamic adjustment

Our proposal is for a dynamic adjustment mechanism in which market access is commensurate with obligations. The UK should not be forced into rule-taking in perpetuity; however, it needs to understand that the enhanced access to the EU market that it is still seeking is reserved for countries – not only EU countries, but also EFTA and neighbourhood countries – that have adopted all, or substantial parts of, the single market acquis and/or Union Customs Code (UCC).

Therefore, we suggest three overarching principles:

- If nothing changes, then nothing changes:
  - If the UK does not diverge from any EU rules, its access to the EU market – including borders that are frictionless with respect to non-customs matters – remains, in accordance with the arrangement enjoyed by the EFTA-EEA countries;
  - As the UK is no longer granting Freedom of Movement (FoM) for workers, this arrangement, which effectively maintains the UK's FoM of goods, services, and capital, cannot be a long-term one because of the indivisibility of the 4 freedoms; nevertheless, the EFTA-EEA countries have access to an "emergency brake" on FoM for workers that could be deemed equivalent to the UK's arrangement until sunset;
  - To complete the process of ensuring that the mechanism starts from status quo, the UK should use the time until 31st December 2020 to complete the process of incorporating into UK law any EU regulations – for example, REACH[80] and live animal transport regulations[81] –that were not transferred into UK law under the May government.

- The consequences of changes – non-tariff barriers that the EU erects to restrict the UK's access to the EU market if it diverges – should be drawn from precedent from other EU FTAs; we set out the levers that can be used and an example framework in section 3.3.3.

- The proportionality of the consequences should be ensured by a dispute resolution mechanism that *does not involve the CJEU except as it pertains to interpreting EU law.* In matters of pure interpretation of the UK-EU trading arrangements, the arbitration panel should, as set out in the following section and in accordance with the mechanism in CETA, consist of representatives of independent third countries that have experience of the issues.

3.3.2. Dispute resolution

3.3.2.1 Importance

Our proposal priorities the establishment of a mutually trusted dispute resolution mechanism over the finalising of the details of the dynamic adjustment mechanism. The reason for this is simple: the parties can agree to continue talks on the details of dynamic adjustment after the end of 2020 as soon as it is established that:

- Trade on the 1st January can operate the same as trade on 31st December 2020. By that point, the UK will have changed no regulations and granted no new state aid. Therefore, it will represent no more of a risk to the internal market than it does now;

- Both sides know that their primary concerns will be assuaged:
  - For the UK, this means autonomy.
  - For the EU, it means protection of the internal market and maintenance of the balance between access and obligations.

- Both sides are assured that they will be treated fairly and evenly in the work of defining what is a proportional response on the EU's part to any actions the UK may take.

There is no doubt that trust between the two sides in the negotiation has never been lower. A dynamic adjustment mechanism that is fairly arbitrated and based, and seen to be based, on precedent that arises from the EU's FTAs with other countries, will reassure the UK that it is not being singled out for especially punitive treatment as a consequence of its decision to leave. For the EU, there is reassurance that it can take measures to protect its internal market from the consequences of the worst actions that it fears the UK could take. When each has a clearer line of sight into the relative merits of market and market access and regulatory autonomy, the two sides can approach the negotiations for a long-term relationship with trust and common understanding.

3.3.2.2. Proposal

Our proposed dispute resolution mechanism addresses this last point. We accept both sides' reservations about what the other has proposed on dispute resolution. From the EU's side, it is not acceptable that the UK declare its intentions not to reduce standards and simultaneously demand that LPF requirements be taken out of dispute resolution and hence become unenforceable. As the UK points out, though, it is clearly unusual for an FTA to be arbitrated by the domestic courts of one of the parties, in this case the CJEU. We therefore propose a dispute resolution mechanism similar to that contained in CETA, with certain changes to address the challenges presented by the UK's proximity, size, and existing relationship with the EU.

The dispute resolution procedure in CETA[82] is essentially two-stage. First, there is a mediation procedure, in which a mediator who is a citizen of neither Canada nor the EU attempts to resolve the dispute. If mediation fails such that a dispute has not been resolved within forty-five days, the party making the complaint may refer the matter to a dispute settlement panel. This panel comprises three individuals, who, if the parties are unable to agree on the composition of panel, can be drawn by lot from an established list.

We propose that:

- To give the UK confidence in fair treatment, the dynamic adjustment mechanism be arbitrated by an independent panel consisting of representative of 5 countries, each of which has experience in the matters in question:

    - Norway, which has experience of incorporating the entire single market acquis outside the wider political structures of the European Union and therefore represents the closest approximation of the UK's starting point.
    - Canada, Japan, and South Korea, which have experience in trading with the EU under an FTA that grants less access to the EU market than single market membership and brings fewer obligations. They therefore represent the farthest "landing zone" the UK could reach: if it starts from "Norway", the maximum distance it will travel by 2024 is to "Canada". Separately, South Korea has experience of adopting REACH from outside the internal market.
    - New Zealand, which does not have an FTA with the EU (although it is negotiating one in conjunction with Australia), but does have experience of regulatory cooperation that has resulted in reduced NTBs in agri-food.

- The entire single market acquis – defined by those parts of the overall EU acquis that have been adopted by the EFTA-EEA countries – be included in the dynamic adjustment mechanism and the dispute resolution mechanism. In this way, dispute resolution goes beyond the CETA provisions, which do not allow for LPF provisions to be enforced.

- Because the above definition of the acquis includes the "horizontal adaptations" taken on by the EFTA-EEA countries, it includes social legislation and therefore extends to measures that the EU fears the UK could take to undercut it that are not specific to one sector.

- To maximise transparency, there could also be a *pre-notification* mechanism: if the UK is considering an action that would diverge from EU rules, the arbitration panel could convene to give both the EU and the UK a signal of the precedent level of regulation to which the UK's new laws correspond and therefore the level of non-tariff barriers

to its market the EU would be justified in erecting. Hence, the UK can incorporate this into its impact assessment with full clarity, rather than speculating on what the EU's defensive measures will be and lodging a dispute if the EU's measures go beyond its expectations.

- The CJEU continue to have jurisdiction over interpretation of EU law, including the original intentions of EU legislators when they passed the law, but that the new dispute resolution mechanism have jurisdiction over the relationship between the UK's degree of convergence with those EU laws and the level of market access that that implies.

"The solution might be, for example, to copy some standards…..and make them applicable as trade agreement law rather than EU law. That could resolve some of the issues involving the CJEU" ~ Dr Holger Hestermeyer[83]

3.3.3. Overview of dynamic adjustment framework

"When the UK government talk about zero tariffs and zero quotas, that is in some ways quite an old-fashioned way to look at a trade agreement" ~ Colin Murray, Reader in Public Law, University of Newcastle[84]

The overriding principle of dynamic adjustment is that the UK's access to the EU market should be calibrated according to its level of alignment with EU rules. This is consistent with any comparison of the trade agreements that the EU has with neighbouring countries and distant countries[85]. But what do we mean by access? The Prime Minister was earlier this year reportedly[86] considering proposing that the EU have the right to punish the UK with tariffs if it reduces its standards. This shows recognition of the trade-off between regulatory autonomy and market access. However, tariffs are not the right instrument. First, successive rounds of WTO talks have limited tariffs. The EU's scope to act using tariffs alone would be limited. Second, making UK goods more expensive – causing only a percentage of EU customers not to buy them - does not entirely protect EU businesses or consumers if those products are not safe[87].

Moreover, NTBs are far more important, especially for a neighbouring country such as the UK. Much of the UK's trade with the EU is time-sensitive: it is carried by fast-moving traffic[88] or consists of interim products within an integrated value chain[89]. This contrasts with Canada's EU trade, most of which is in finished products in the form of "bulk" goods, which can sit in warehouses at ports for longer if they are delayed at the border. The UK needs frictionless borders. Therefore, border control is an NTB lever that the EU can use in its protection of the

internal market. For controlled goods, it needs regulatory integration, because extensive coordination with an EU-appointed person is practically unviable at high volumes.
Below is an illustrative, non-exhaustive, non-prescriptive list of NTBs that can be used as levers and the levels of each. We would suggest that, after agreeing the dispute resolution and pre-notification mechanism, the UK, EU, and members of the arbitration panel from third countries commit to completing the framework through grids such as the ones below.

<table>
<tr><th>Category</th><th>Lever</th><th>Free movement of goods</th><th>Highest access</th><th>Medium - High</th><th>Medium -Low</th><th>Lowest access</th></tr>
<tr><td rowspan="2">Controlled goods (e.g. chemicals, agri-food) and services (e.g. financial, haulage)</td><td>Regulatory authorisations</td><td colspan="2">Status quo</td><td>As South Korea has on REACH</td><td colspan="2">No authorisation: UK traders require an EU subsidiary or EU-appointed person</td></tr>
<tr><td rowspan="2">Border checks (goods): inspections and document checks</td><td rowspan="2">Status quo</td><td rowspan="2">Document check only: risk-assessed on individual trader basis only</td><td rowspan="2">Risk-based plus low set % at random</td><td rowspan="2">Risk-based plus medium set % at random</td><td rowspan="2">Risk-based plus high set % at random</td></tr>
<tr><td>Non-controlled goods and services</td><td>Regulatory recognition</td><td colspan="2">Mutual recognition</td><td>Mutual certification</td><td colspan="2">Neither recognition nor certification: certification only by EU-approved bodies</td></tr>
</table>

We recommend that the UK and EU continue to trade 100% tariff- and quota-free.

3.3.4. Sector by sector approach

The definitions of each level will likely change according to sector and product. Even within agri-food, for example, 100% of live animal shipments are subject to inspections, whereas only 10% of products of animal origin (POAO) that are not live animals are checked under CETA[90]. However, for comparable products, there are levels: in POAO, only 2%[91] of New Zealand products are checked reflecting the enhanced level of regulatory equivalence and cooperation of New Zealand compared to Canada. In this case, "New Zealand" would be the definition of a "low" incidence of checks, Canada would be the definition of "medium", and countries with less regulatory coordination than Canada would be "high".

For *matters of single market legislation* that cross sectors, we propose an approach in section 3.3.6 that makes these integral to the setting of the UK's market access. For *goods* that cross sectors, we recommend a simple approach whereby the UK's access is set according to the lowest level

of equivalence agreed among all the sectors that the good in question touches. A good is only as safe as the least safe part of its production process and supply chain.

3.3.5. Levels of regulatory equivalence

The grid above would be paired with a grid below determining the extent to which the UK's regulations mirror those of the EU. As the UK's measures mirror those of the precedent country, its degree of equivalence moves along the levels.

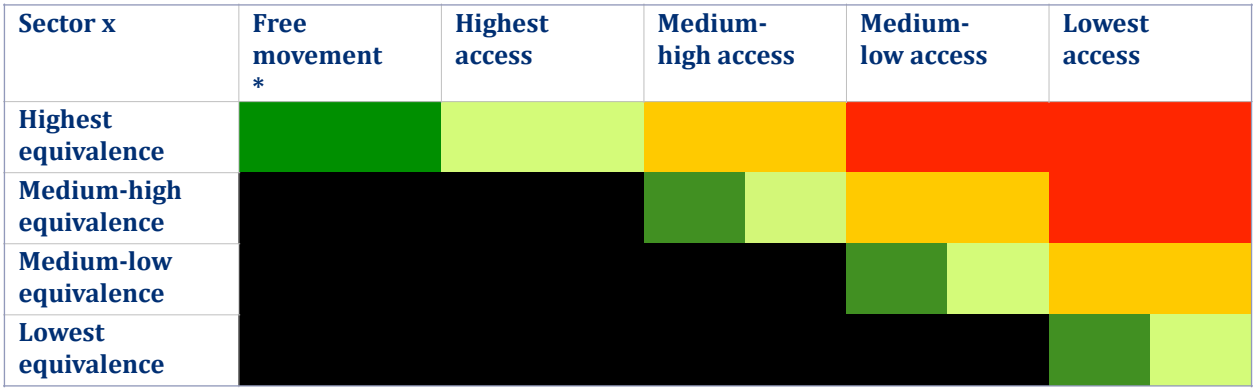
Sector	Highest degree of equivalence	Medium-High equivalence	Medium-Low equivalence	Lowest equivalence
Agri-food	Status quo	New Zealand	Canada	Countries with no regulatory cooperation
Sector x		Country A with transparency and strict regulations	Country B with transparency and medium regulations	Country C with no transparency or lax regulations

3.3.6. Equivalence, access, and horizontal adaptations

These are provisions that cut across sectors that ensure objectives such as protection of workers and the environment and limitation of state aid. Horizontal adaptations have to be incorporated into the framework, for two reasons. First, they encompass some of the most important areas in which the EU fears the UK could undercut the EU if it were to gain regulatory autonomy. Hence, any move on the UK's part to loosen standards in these areas would have to affect the UK's market access.

Second, precedent from the EU's other relationships shows a degree of correlation with the level of market access. The EFTA-EEA countries, which have free movement of goods in the sectors to which the EEA agreement applies, have adopted them. If the UK were to change none of its sectoral regulations, it would still have freedom of movement of goods except for customs matters, rendering its access equivalent to that of the EFTA-EEA countries. CETA, however, contains only unenforceable commitments not to regress in the implementation of existing standards. It does not prevent even regression in those standards down to the level of minimum international standards[92]. Accordingly, CETA does not grant the freedom of movement of goods to Canadian firms that firms from EFTA-EEA countries have. Canadian goods are subject to regulatory controls[93].

We therefore recommend that any regression in horizontal standards cause a – literally – horizontal reduction in market access. Below is an example framework that incorporates horizontal adaptations, with free movement of goods retained only if the UK maintains status quo on both horizontal adaptations and sectoral regulations. Maintenance of status quo in horizontal adaptations would not allow the UK to override lax sectoral regulations: if animal welfare regulations are lax, its live animals are no less of a risk because it adheres to the EU state aid framework. However, status quo in horizontal adaptations *and* sectoral regulations puts the UK in the same position as the EFTA-EEA countries, with no regulatory checks[94].



*of the category of good, service, or capital in question

UK maintains status quo on horizontal adaptations

UK position on horizontal adaptations goes beyond international standards (such as International Labour Organisation (ILO) for workers' rights and WTO for state aid) but falls short of status quo ~ this would be a similar level to the EU's FTA partners, therefore bringing its access in line with its similarity to those partners' equivalence to the EU on sectoral regulations; however, it cannot gain a higher level of access than its sectoral equivalence would merit by adhering to the horizontal adaptations

UK position on horizontal adaptations meets only international standards

UK position on horizontal adaptations fails to meet international standards

The UK might retain the horizontal adaptions and maintain status quo on sectoral regulations in some sectors but not others. In that case it would have free movement of goods in some sectors but not others. However, there is precedent for this: the EEA agreement does not apply, for example, to agriculture and fisheries. Turkey has a partial customs union with the EU.

We also recommend that the UK have the right to reciprocate any action that the EU takes to restrict UK access to the EU market. If the UK were to diverge on regulatory standards and

operate under a different standards regime in any sector, its goods would not automatically be accepted as complying with EU standards; the same would be true in the other direction: once one side moves away from alignment or equivalence, the other does so also regardless of whether the move is to a higher or different standard.

The UK would have to conduct some checks and change its system for regulatory authorisations and other technical barriers to trade (TBTs). It would be up to the UK in this case to determine how different standards regimes between Great Britain and Northern Ireland would not create fetters in the access of providers in different parts of the UK to one another's markets.

3.3.7. Completion of framework and prioritisation of tasks

The above frameworks are only examples; furthermore, the details would have to be filled in sector by sector. It may be difficult to complete them by the end of 2020 in a way that satisfies both parties. We therefore recommend the following sequencing:

A. Agree the overall approach, dispute resolution ,and pre-notification mechanism, and membership of the arbitration panel, to ensure that both parties can trust that subsequent steps will be completed equitably if they are not complete by the end of 2020 and that trade can continue to operate on 1st January 2021 in respect of regulatory matters as it will have done on 31st December 2020;
B. Complete frameworks that can cross sectors – for example in non-controlled goods – in order to complete as many as possible as soon as possible;
C. Complete frameworks in controlled sectors with higher levels of regulation;
D. Refer remaining disputes on composition of frameworks to arbitration panel;
E. UK begins to take steps to diverge if it wishes to, leading to defensive measures by EU.

3.4. Benefits of sunset-limited dynamic adjustment

3.4.1. Limitations of dynamic adjustment

It is obvious that a mechanism such as the above would require a large amount of management. It may also result in many references to the arbitration panel as the UK and EU become accustomed to their new relationship. Therefore, subjecting the arrangement to a sunset assures the parties that any friction caused by this new relationship is time-limited.

3.4.2. The EU can see the UK's intentions

As we note in section 1.2, many stakeholders in the EU fear that the UK will become either a deregulatory haven or a donor of state-funded advantages to private companies, or both. However, as we note in section 1.3, the Prime Minister has assured many stakeholders that the UK has no intention of reducing its standards, including its state aid rules, and has stated that the UK should worry about the EU rather than vice-versa. Despite this, the UK's negotiating objectives call for regulatory and state aid LPF issues to be excluded from dispute resolution.

This rather confused position will be clearer – also to the UK's domestic audience – if the UK has autonomy to implement whatever it is that it genuinely wants to do that diverges from EU rules. The period until sunset will allow the EU to assess the extent to which the UK genuinely seeks to diverge from EU standards. It provides for a limited period of experimentation in which the UK has freedom to act, therefore allowing its intentions to be signalled, but, because of time and other constraints, the amount of damage it can do to the EU's internal market is limited.

3.4.3. The UK can compare the relative merits of regulatory autonomy and enhanced market access

The Leave campaign consistently promised that the UK can have both regulatory autonomy and the kind of privileged access to the EU market that is reserved either for EU members or for neighbouring countries that have adopted all or substantial parts of the internal market acquis. Under dynamic adjustment, each initiative to diverge will be subject, through Impact Assessments (IAs), to analysis of its benefits in reduction of the regulatory compliance burden and its costs to the UK's access to the EU market.

From being a symbolic issue of legislative independence, divergence will be brought "down to nuts and bolts": if it wishes to diverge, the government will have to spell out what legislative measures it intends to take and why they are worth the costs in reduced access to the EU market. It is far from certain that, faced with the choice above, the UK would choose regulatory divergence in every case. What is important to the UK is merely to have the *ability* to do so.

3.4.4. The UK and the EU can approach long-term negotiations with trust and a shared common understanding

Most UK businesses and politicians have no experience of the UK economy outside the internal market and customs union. There is little knowledge of the trade-offs involved with being treated as a true third country. Once it has some experience of the trade-off to help it assess the

relative benefits of regulatory divergence and privileged access to the EU market, the UK will be able to approach the negotiations for a long-term trade agreement with a clearer understanding of where on the trade-off it would like to sit. This will help to rebuild the trust with the EU, which can negotiate with a partner that is not asking for unrealistic special treatment. As the period of experimentation will be arbitrated by trusted and knowledgeable representatives of third countries, the UK will know that the EU is not singling it out for special punitive treatment.

3.4.5. The UK can negotiate its long-term FTA with the EU as part of a coherent global trade strategy

With negotiations on FTAs with non-EU partners potentially further advanced in 2024, the UK will have a greater sense of the trade-offs involved in seeking FTAs with different prospective partner countries. These trade-offs principally involve regulatory issues, which are now key to FTAs in ways that they were not before. The Institute for Government notes (IfG)[95] that the UK does not yet have a defined policy of how to deal with regulatory divergence among prospective FTA partners, highlighting the much-discussed case – in the context of negotiations with the USA – of chlorine-washed chicken, which the government cannot decide whether it wants to ban or tariff.

The IfG[96] notes that while FTAs do not directly deal with regulatory issues, "side bargains" resulting from FTAs often result in regulatory change. If one prospective partner seeks such a change, the UK should know how agreeing to that change will make negotiations with another prospective partner more difficult. A comprehensive *global* strategy will then prioritise certain partners, with a regulatory strategy behind it designed to achieve the optimal *mix* of FTAs.

While there are nations – Canada being the primary example – that have concluded FTAs with both the USA and the EU, it will be important for the UK to consider, in the period until sunset and the negotiation of a new long-term arrangement, the differences between Canada's approach and the necessary one for the UK. As most of Canada's trade is with its neighbour the USA and only a small minority with the EU, it is acceptable for Canada to conclude an FTA with the EU that grants a level of access to the EU market that would be inadequate for a country like the UK[97]. Canada has a coordinated approach that deliberately prioritises trade with the USA.

The UK currently does not have such a coordinated approach. As the IfG notes[9899], the government has not designed its approach to many regulatory issues that will play a role in FTA negotiations. One example of this is the standards regime for manufactured goods. The "UK Conformity Assessed" (UKCA)[100] standard was set to replace the EU's "Conformité

Européenne" (CE) standard in the UK. However, after manufacturers complained[101] that there was no clarity on the content of this standard – whether it would be "more stringent, less stringent, or simply a carbon copy" of the EU's CE scheme – the government announced[102] that it would continue to accept the CE marking through the end of 2021.

Indeed, due to Northern Ireland's adherence to single market rules under the NIP in the Withdrawal agreement, some experts believe[103] that the UK will continue to accept CE indefinitely to avoid technical frictions within the UK's own internal market between Northern Ireland and Great Britain. By the end of 2024, the UK will know whether it needed to keep CE marking for its own internal market, there will have been a Northern Ireland Assembly election and a vote by the Assembly on whether to keep the border arrangements agreed in the NIP. Plus, the UK will have more experience at managing the trade-offs with EU market access inherent in regulatory divergence from the EU, along with a better sense of the regulatory demands made by other prospective FTA partners. It can then approach regulatory issues and their interaction withs strategy for trade agreements across the globe holistically.

3.4.6. Time for UK to develop state aid framework

The context – the global trading system – in which the strategy mentioned in 3.4.5 will be formulated may look very different in 2024. As we set out in section 2.3, while the UK has taken the decision to withdraw from a multilateral regional trading system – a decision that many attribute to the nature of the common rules governing that system – the rest of the world may be going in the direction of more common rules to ensure that free trade occurs on an LPF. The USMCA agreement contains some LPF provisions that are unheard of in prior FTAs.

The question of how much harmonisation of national rules is necessitated by free trade – what exactly a "Level Playing Field" is – is a theoretically never-ending question, but one to which global trading powers are paying more attention, and one that may therefore come closer to a common global definition over the next period of time. The US is calling attention to the dispute resolution mechanisms in the WTO because it believes that they are insufficient to deal with today's threats and the magnitude of those threats given the volume of global trade.

This may mean that the WTO system that the UK cites as its model in state aid – ostensibly to allow it more freedom – either may become more strict or, if this is impossible for political reasons, be bypassed by global trading powers in the preferential trade agreements they reach. In 2024 there will be more clarity over what the regulatory and state aid LPF requirements will be not for only for an FTA with the EU but also for one with other global trading partners.

The UK does not yet have a state aid framework, potentially for the simple reason that this has always been an EU competence and the UK has only just left. Over the next three years, it can develop one – subject to input from policy experts and the government's own MPs, many of whom are likely to have reservations about too lax a framework[104] – and incorporate the evolving role of state aid in the global trading system into its thinking.

It the UK develops a framework in the meantime that diverges from EU rules, then this can be treated as a divergence in "horizontal adaptations" in the mechanism set out previously. The UK can incorporate the implications in terms of lost access to the EU market into its impact assessment.

3.4.7. In the meantime, the UK can continue to benefit from the EU state aid framework

The EU state aid system, which was designed in no small part by British Conservative politicians such as the former European Commissioner Sir Leon Brittan, provides several advantages to the UK as a country that, as the Prime Minister notes, spends less on state aid than many of its neighbours do. By preventing many types of state aid on the part of continental competitors, it provides an LPF for UK businesses operating on the continent.

Maintaining integration with the state aid system would also prevent it being used against the UK in the interim period until sunset. George Peretz QC cites[105] the example of Mexico, which has an FTA with the EU, yet has still experienced the EU's state aid regime being used against it. This is because state aid can be used when it distorts trade with an FTA partner; it simply cannot be used if it is likely to distort trade among member states and EEA countries. If the UK can be added to that system in the interim – on the basis that it maintains EU state aid rules as the EFTA-EEA countries do – then it would be similarly protected unless and until it would diverge.

Maintaining integration with the EU's state aid framework for a finite period of time but subjecting the arrangement to a sunset clause ensures that the lack of a state aid framework does not prevent the conclusion on an FTA now while also not preventing the UK from developing its own independent framework and trading with it once it is developed.

3.4.8. Dynamic adjustment provides immediate certainty for individual businesses

We understand that our proposal brings some uncertainty in one sense: it prolongs until 2024 the decision about what the long-term trading arrangement will be between the UK and EU.

In our view, though, this is easily the lesser of two evils. The uncertainty for individual businesses is far greater if the UK and EU are trading on WTO terms or under the kind of "distant" trade agreement that the UK government claims to want, even if the EU were inclined to agree to that. Under either of these arrangements, a UK business exporting to the EU has complete uncertainty over whether it will be able to keep its promises to its continental clients.

If the EU and UK trade on nothing but WTO terms, a UK business simply does not know whether its goods will be stopped at the border. This uncertainty is reduced but not eliminated under a "distant" free trade agreement. The UK and EU could agree to a set percentage of checks in certain sectors as is the case in CETA with respect to POAO[106]. This gives an individual business a probability that its shipment will be stopped. However, with many sectors subject to border procedures at once, it does not enable a business to estimate the probability of traffic logjam on the way to key ports such as Dover or Eurotunnel. Will the orange lane in Calais contain so many lorries that it overflows into the green lane, blocking the exit? Will so many lorries not have the right paperwork that the new lorry parks in Kent acting as holding pens overflow onto the motorways, blocking the route to Dover and Eurotunnel? As we show in the next section, all the indicators on preparedness suggest that it will not flow as freely as the government hopes.

Under dynamic adjustment, a business will have advance notice if the government plans to legislate for its regulations to diverge. If there is scope for pre-notification in the dispute resolution mechanism, the percentage probability of checks will be known. As sectors will diverge one by one, wholesale traffic chaos can be avoided as only those sectors that have diverged are subject to checks. The government and industry can then monitor the situation in real time and the government can put a pause on diverging legislation if the number of checks overall is getting so high that traffic chaos is possible. UK businesses can build up knowledge over time of the effect of new procedures on their business, enabling them to prepare even if in 2024 there is a "distant" FTA or the UK and EU begin to trade on nothing but WTO terms.

We suspect that, given a choice between, on the one hand, a period of gradual adjustment beginning with no change on 1st January 2021, proceeding onto gradual step-by-step changes specified and planned in advance, and leading to a new long-term agreement later, and, on the

other hand, the disruption and uncertainty associated with a "Big Bang" *No Deal* or "distant" FTA" in a few months, most businesses would, in the current circumstances, choose the former.

The uncertainty over border procedures is reduced, but not completely resolved, if the UK and EU retain frictionless borders with respect to regulatory procedures but do not retain them with respect to customs procedures. We explore the options on this issue in section 4. However, it is clear that more immediate certainty is necessary to avoid large scale disruption on 1st January, 2021, because large parts of the UK business community are not prepared for the changes that would come if new trade frictions – which are inevitable even under an FTA – are introduced.

3.4.9. Readiness

"There is 80% chance of chaos in Kent even with a trade deal" ~ Richard Burnett, chief executive of the Road Haulage Association[107]

"I can't even begin to describe the feeling of despair when I start thinking about answering the question "are we ready for Jan 1" again? Weeks go by and the answer is still the same – no, we're not ready. No-one is ready!" ~ customs and trade expert Dr. Anna Jerzewska[108]

Mr. Burnett's warning echoes that of Descartes Systems Group, which serves the logistics industry and found in late August that two thirds of large firms are very or extremely concerned about longer delays in their supply chain at the end of transition. Fewer than one in five is prepared for *No Deal*[109]. Most have had their preparations disrupted by Covid-19. This echoes the findings of an Institute of Directors survey[110] from July.

Featuring strongly among their concerns is the administrative burden of new paperwork . The Descartes report finds that those with existing experience of paperwork are far more worried about them than those with no experience. UK membership of the internal market and customs union has shielded most companies from such experience, indicating that the lack of preparedness could be even worse than indicated by the headline figures. Those who do not know the requirements cannot judge their level of preparation.

The UK government has announced that border controls for goods moving into the UK will be "light-touch" through the middle of 2021[111]. However, as the IfG noted as far back as 2017, new border frictions are a "canyon, not a cliff edge"[112]. UK exporters also need to be able to cross the EU border. This affects UK exports, of which a high proportion are time-sensitive, and UK

imports, because, even if controls into the UK are light, disruption going over to the EU can lead to disruption in ferry traffic returning to the UK among vessels on closed-loop systems.

The UK government is implementing various systems to attempt to minimise friction. One is the Smart Freight Service (SFS)[113], whose purpose is to complete the process of assessing readiness to cross the EU border before a Heavy Commercial Vehicle (HCV) approaches one of the ports to cross the Short Straits (between Kent and France & Belgium). For goods arriving in Great Britain, the equivalent is the Goods Vehicle Management System (GVMS), which at the end of August was still in beta testing[114].

The limitations of the SFS solution are twofold. First, success depends on a factor outside the UK government's control: the EU side of the border. UK hauliers must learn the systems of the ports on the EU side[115]. While, if successful, the SFS would reduce traffic disruption on the UK side, it would not prevent queues from building up on the EU side if a high proportion of shipments were selected for checks[116].

Second, even "success" of this system may be a pyrrhic victory. The UK is proposing preventing hauliers without the right documentation from accessing ports on the UK side of the border[117], so that they do not cross the Channel and alight on the EU side without the right paperwork, and hence do not block the flow of traffic. However, if a large proportion are unprepared, then "success" means that they comply with a red signal from SFS and do not travel. Hence, "success" means that traffic chaos is avoided because a large proportion of exports are simply shutting down.

The probability of a large proportion of UK hauliers being unprepared for new EU border requirements must be deemed to be high, because UK businesses have no experience of EU import requirements and there are not enough customs brokers with this experience or trained to advise them[118]. Neither is the government's "Check, Change, Go" campaign helping, because it "fails to convey any useful messaging about what steps to take and what will happen if these steps *aren't* taken"[119]. The combination of multiple new untested new systems that may only be ready just before the end of transition and to which hauliers will have little time to become accustomed and the massive increase in new paperwork required to cross the EU border is why 11 industry leaders recently wrote to warn of border chaos[120]. Leaked documents from the government itself echoed similar concerns[121][122]. This is likely why the government is preparing [123]to build lorry parks across England, to act as holding pens for hauliers who are unprepared to cross the EU border and do not yet realise it.

The challenge in getting ready for the end of the transition period is not limited to border procedures, paperwork, and the associated risks to the flow of goods traffic. The negotiators also have little time[124] to finalise the technical details of an FTA if they have not yet started to do so. This is quite possible because the EU's sequencing demands stipulated that the UK first share its state aid framework and that an agreement be reached on a regulatory LPF. Furthermore, in heavily regulated sectors such as agri-food and chemicals – those in which UK businesses have a competitive advantage through the UK's internal market membership and that therefore contribute a significant percentage of UK exports[125] - UK businesses face challenges in getting ready for new regulatory barriers to trade in the marketplace. The Leave Alliance[126] cites the example of chemicals companies having to re-register their chemicals, while the food and drink industry fears that, because of a lack of guidance on the new requirements, it has already missed the deadline to label food correctly for sale in the EU and Northern Ireland[127].

Indeed, many of the problems in readiness to export from Great Britain to the EU (including the Republic of Ireland direct from Great Britain) are of course mirrored in the lack of readiness to "export" from Great Britain to Northern Ireland, which, under the NIP, will apply the EU's Union Customs Code and single market rules on goods. The UK government announced its scheme to help traders from Great Britain shipping goods to Northern Ireland to fill out import documents only in August[128], leading to questions about whether it will be ready in time. While the UK has taken steps to begin building the border infrastructure at Northern Irish ports, these may not[129] be ready to handle wholesale regulatory divergence on day one.

The lack of readiness has not arisen because the government or the business community has been lax. The Northern Ireland element – the NIP was signed only last year – is a result of a lack of time since the protocol was signed. The issues around regulatory authorisations and registrations are also a result of a lack of time – only around a year and a half – since the backstop, which was negotiated by the May government and would have provided for more short-term regulatory alignment, was abandoned. There are now too many new requirements at once because of the government's approach to regulatory divergence[130]. The lack of readiness for border procedures, meanwhile, is a result of the pandemic[131] and of the fact – that time itself cannot solve – that the UK has no experience of trading with the EU as a third country[132].

Our proposal for a limited period of experimentation means that the UK can take "baby steps" into the new trading regime. It does not extend the transition and postpone again what would otherwise be a sudden plunge straight into deep water, but rather builds steps that pass gradually through shallow water, as one sector at a time diverges from EU rules and new border procedures and TBTs are brought in step by step. We also make some suggestions in Section 4 on how customs facilitations can complement a gradual approach to regulatory divergence to ease into a new relationship. In the worst case, even if *No Deal* is

the outcome in 2024, our proposal "boils the frog" by beginning at status quo and turning the border friction and TBTs up one measure at a time as sectors diverge. The flexible nature of dynamic adjustment means that significant border friction *can* be postponed until a significant relief – such as a vaccine – has been achieved from the pandemic, even though it cannot be forecast when that will be.

3.4.10. Gradual step down if No Deal is the destination

Instead of a "Big Bang" or "Day One Cliff Edge" on 1st January 2021, when all sectors adjust at once to new requirements, a phased divergence will allow hauliers and ferry operators to adjust to the new trade barriers. Even the most ardent critic of the EU's position – someone who believes that trading on WTO terms is inevitable whatever happens, and therefore inevitable in 2024, because the EU is a bad faith negotiator – must accept that a period of becoming accustomed to new requirements for exporting to the EU will be helpful for UK businesses.

3.4.11. UK and EU border procedures will be evenly matched

It is not only UK businesses that are not prepared for the end of transition but also the UK government, which has to prepare new customs and regulatory procedures for which over half the UK's imports will now be in scope, even though only a percentage of them will be checked. This more than doubling of the scope of border procedures is a huge logistical challenge. It is not the same for the EU, for which only around 10% of imports come from the UK.

It is clear that the UK government is struggling with this task. Its border operating model indicated that checks would be light through the middle of 2021. The EU does not intend to reciprocate, because the UK is a third country. The UK's "extra" transition period for incoming goods will hence make the UK market more accessible for EU traders than the EU market is for UK traders. A period during which the EU border is also adjusted gradually will even this up.

3.4.12. A period of adjustment will help the EU in its border procedures too

The decision on which goods imports are checked at the border is risk-based. It is logistically impossible for any country to check all shipments. The risk assessment is usually based on the risk posed by an individual trader. However, we hypothesise that the EU currently has little data on UK traders' compliance with EU documentary and regulatory requirements, because UK businesses have been exporting inside the internal market and customs union for so long. A

period of initial adjustment will enable the EU to collect data on the compliance of individual traders within a sector that diverges. It can then use that data to identify risk indicators.

3.4.13. Time for the UK and others to progress the development of border technology

Despite the ambitions expressed[133] by certain parties during the initial debates that led to the backstop negotiated by Prime Minister May, it is not possible – *yet*[134] – for borders to be entirely virtual. However, various countries are developing and testing technologies in this direction.

For example, on the Norway-Sweden border, while no regulatory checks are necessary because of Norway's regulatory convergence with the EU[135] through the EEA agreement and specific arrangements for the transport of goods not covered by the EEA agreement[136], there is still a customs border as Norway is not in the EU's customs union[137]. However, the Norwegian authorities, who already implement many measures, such as remote monitoring by camera[138], to reduce the procedures by which customs officers check that lorry drivers have fulfilled customs requirements, are trialling technologies[139] to further streamline it.

Meanwhile, the UK government itself has expressed confidence that it will have the "smartest border in the world" in the new customs and regulatory border between Great Britain and Northern Ireland, and that this will be ready by 2025[140].

This is easier to manage with a sea border, because the number of physical border crossing points is limited[141]. There are many factors behind the smooth functioning of the Norway-Sweden border, whose presence passengers in cars, thanks to Norway's membership of the Schengen zone, often do not even notice. They include regulatory alignment, certain customs facilitations that derive from bilateral agreements with the EU[142], and Nordic cooperation[143]. However, one factor is that freight companies are allowed to use only a dozen crossings[144].

With a small number of sea routes between Great Britain and Northern Ireland, there is scope for the UK to develop a solution that eases border procedures significantly. However, this is not ready yet; plus, the number of procedures at the border will rise the more the UK diverges or reserves the right to do so without having to inform the EU[145]. Under our proposal, border checks between Great Britain and Northern Ireland can be phased in gradually as Great Britain diverges: the effects can be tested in a limited way. Then the UK can negotiate a long-term agreement with knowledge of the Northern Ireland Assembly's vote on the border arrangements and better insight into how streamlined border procedures – not only its own but

also those of EU countries facing UK ports such as France, Belgium, and the Netherlands – may become, and weigh up the advantages and disadvantages of further divergence accordingly.

3.4.14. Dispute resolution mechanism solves multiple problems

Removing the CJEU from the dispute resolution process and replacing it with an arbitration panel comprised of knowledgeable individuals from countries with experience of different trading relationships with the EU can potentially remove a number of blockages.

First, the UK will have confidence that it is being treated as any other third country would and not being subjected to unusually punitive treatment by the EU. Second, removing the CJEU from the arbitration of the pre-sunset trading arrangements potentially allows it to retain a role in those non-trade areas of the future relationship agreement that cannot operate without it – because they require interpretation of EU law – and in which the UK should not have an objection to its role.

Finally, clarifying that the CJEU will not have a role in arbitrating the trade agreement but rather only in interpreting EU law, should enable the UK to maintain its membership of regulatory agencies whose work is overseen by the CJEU and that it is currently intending to leave. An example is the European Chemicals Agency (ECHA), which oversees the operation of REACH. The UK could incorporate REACH into UK law before 1st January 2021 to provide reassurance to companies in its significant chemicals sector that they can still operate without an EU subsidiary unless and until the UK chooses to diverge from REACH. They will have a chance to state their position on potential divergence on its own merits when it arises rather than having their concerns dismissed as they currently do under a blanket avoidance of CJEU jurisdiction.

3.4.15. Sunset addresses many potential objections

Dynamic adjustment is not a long-term solution. Indeed, when the Prime Minister suggested that the EU have the ability to punish the UK for reducing its standards, Michel Barnier argued that this would introduce regular friction into the relationship. Our proposal differs in three major ways: the first is that we suggest, as we outline in section 3.3.3., that the EU use NTBs rather than tariffs; the second is that we will subject the dynamic adjustment mechanism to independent arbitration, reducing the governance required by the EU while also providing reassurance to the UK of fair treatment; the third is that we subject the agreement to a sunset.

The dynamic adjustment mechanism will require more governance from the EU than other FTAs, even though we have limited it through independent arbitration. Each action that the UK takes will require the EU to identify a commensurate response. We do not believe that this is unmanageable: under many other FTAs, the EU conducts surveillance on the partner country's regulations to decide whether to withdraw equivalence or mutual certification. But it is a burden, commensurate with the uniqueness inherent in a geographically proximate country that is seeking regulatory autonomy but that starts 100% aligned. Subjecting it to a sunset ensures that this burden is not permanent, therefore making it manageable for a time to enable the EU to build a degree of knowledge of the long-term direction of the UK's regulatory policy.

The sunset addresses objections that not only the EU but also third parties would have to the dynamic adjustment mechanism. We address these objections in the next section.

3.5. Potential Objections

3.5.1 Objections from the EU

We understand that some stakeholders in the EU are fearful of maintaining free trade while granting the UK freedom to diverge from EU regulations. Under our proposals, the EU has defence mechanisms available to it if this transpires. Furthermore, three factors limit the amount of damage the UK can do to the internal market: the existence of the sunset itself, the limited time until sunset, and the UK's own strategic confusion.

It is far from guaranteed that the UK will choose wholesale divergence. However, if the EU – including the newly-elected European Parliament – is unhappy with the UK's actions over the period until sunset, it will have the choice not to agree an FTA with the UK in 2024. Ultimately, there is no fail-safe assurance against the UK materially diverging: if it is prepared to absorb any cost to achieve the goal of regulatory autonomy, then it will choose WTO terms either now or in 2024. The period until sunset – a period during which the UK will diverge step-by-step if it diverges – will give the EU chance to determine the effectiveness and sufficiency of defensive measures, enabling it to identify other measures it might need to take under WTO terms after 2024.

Avoiding a reset to WTO terms now, however, avoids incentivising the UK to diverge immediately. Under a WTO-terms situation in 2021, regulatory divergence may be one of the few levers that the UK has available to repair the economic damage from lost exports to the EU. Market access is already lost: the only question is how to repair the damage, and one of the few remaining tools is deregulation. Under dynamic adjustment, the UK has to consider the loss of

market access associated with any initiative to diverge. The business communities affected by divergence will lobby for comprehensive impact assessments to be produced and published.

The time until sunset is relatively short: the UK will not have time to repeal the entire book of EU regulations still on its statute books, especially items of UK legislation that originally acted to transpose EU directives and are now part of UK law. Furthermore, as we set out previously, it is likely that the UK does not have a clear sense of which regulations it wants to repeal and why.

Separately, the EU may also object that different sectors would end up at different points in terms of access during the period until sunset. The EU complains that this is the arrangement that it has with Switzerland but does not want to repeat with other countries. However, there is an element of a sector-by-sector approach in many FTAs: in CETA, for example, the EU grants mutual certification for certain non-controlled products but not for more sensitive products.

We highlighted in section 3.4.15 the potential objection to the amount of management required and why we believe that this is sustainable for a limited period. The management required under this arrangement is the solution to another Brexit "trilemma". Just as the Irish border presented a trilemma, in which the UK could choose only two options out of the three of avoiding a border between Great Britain and Northern Ireland, avoiding a border between Northern Ireland the Republic of Ireland, and leaving the internal market and customs union, so the conclusion of new trading arrangements presents a trilemma, between assuaging the EU's concerns about being undercut, assuaging the UK's concerns about autonomy, and producing an easy-to-manage deal. Committing to careful management of the trading arrangement for an interim period is, in our view, a necessary and worthy sacrifice in assuaging both sides' concerns and re-building trust in the relationship.

A final objection from the EU side may be that our proposed short-term solution – to maintain status quo in regulatory terms and market access on 1st January – means "standing down" the border and in-market regulatory controls that the EU was set to implement *and* not imposing tariffs, hence providing the UK with far greater access to the EU market than envisaged. It is worth re-iterating that the only way in which status quo can be maintained *even in non-customs matters* on 1st January is if the UK (a) incorporates the parts of the acquis, such as REACH and the relevant SPS regulations, that it has yet to incorporate into national law; (b) commits to the regulatory transparency[146] necessary to remove risk from the EU's perspective; and (c) does not then reduce any standards. These are substantial obligations on the UK to maintain the current near-absence of NTBs; if it diverges later then NTBs will emerge. Furthermore, we recognise that total absence of friction is not possible outside the customs union.

3.5.2. Objections from the UK

Under our proposals, the UK's access to the EU's market is reduced if it reduces its regulatory standards. There should not be an objection to this: other countries face this choice too; our dispute resolution mechanism ensures that the UK will be treated as other third countries are.

The UK may have an objection that delaying the reaching of a long-term agreement introduces more uncertainty for UK businesses. However, as we set out in section 3.4.8, there will be far more immediate uncertainty for individual businesses in their everyday transactions if the UK and EU fail to an reach and agreement and trade on nothing but WTO terms *and also* if the UK does pivot to genuinely seeking a "distant" agreement similar to CETA and the EU agrees to it.

Another potential objection from the UK is that postponement of a long-term agreement with the EU postpones the conclusion of FTAs with non-EU countries, some of which, such as Canada, are waiting to see what type of agreement the UK concludes with the EU. That problem, however, is not resolved if the UK and EU fail to reach an FTA and revert to WTO terms, as the assumption would still be that the UK would seek an agreement with the EU at some point.

3.5.3. Objections from third countries

It is possible that some third countries will have some objections to this agreement. We do not believe that these should come from the EU's non-European FTA partners: the only way in which the UK could retain free movement of goods, services, and capital is if it continues to adhere to the EU's horizontal adaptations, to which the FTA partners are not bound. Otherwise, its access will be commensurate with theirs at the same level of regulatory equivalence.

However, certain European countries could have objections. These would include the Balkan countries and Ukraine, which incorporate substantial parts of the acquis and do not yet have free movement of goods, services, and capital. However, it is appropriate to remind those countries that their alignment with the EU is part of a process that is designed to eventually lead to accession, after which their access will be upgraded to the level of free movement. The fact that they have not yet acceded means that they have not completed the process of incorporating the acquis. On 1st January 2021, the UK – assuming that it takes the steps outlined in 3.4.14 – will still have the entire internal market acquis as adopted by the EFTA-EEA countries on its statute books and will retain free movement of goods, services, and capital only if it retains it.

To the extent that the UK's interim situation, after divergence of certain sectors, is more favourable than that of the accession countries at the same interim level of alignment – albeit evolving in opposite directions – the temporary nature of the arrangement should make it acceptable. In 2024 the UK will have to negotiate a new agreement, while the accession countries should be further along in their accession process.

The EFTA-EEA countries could also have an objection: before divergence, the UK would enjoy free movement of goods, services, and capital without accepting free movement of workers, violating the indivisibility of the four freedoms. However, the EFTA-EEA countries have a temporary "emergency brake" on free movement of workers. This situation, for the UK, would last a maximum of four years. We would expect that, under whatever new agreement is reached in 2024, the UK would have to either accept freedom of movement of workers or lose whichever of the other four freedoms it would still have, with new borders to the internal market built at least at the level of "document check only", with documents checked on a risk-assessed basis.

The fact that some *sectors* have free movement of goods, services, and capital while others do not, should not lead to objections: agri-food and fisheries are excluded from the EEA agreement, while the EU's customs unions with Turkey, Andorra, and San Marino are sector-specific.

Section Four:
Customs options

4.1. Why this matters

Under our proposals, the UK's access to the EU market in regulatory terms remains essentially unchanged unless and until it diverges on regulations. However, the caveat "in regulatory terms" is important because regulatory barriers to trade – minimised in the internal market – are distinct from customs procedures. The EU's customs union, formed in 1968, pre-dates the internal market, formed in 1992. Appendix section 5.1.2 sets out the benefits of a customs union that are distinct from the facilitations found in an FTA.

While, operating together, the internal market and the customs union ensure substantially frictionless borders, they are not necessarily conditional on each other. Turkey, Andorra, Monaco, and San Marino have a partial customs union with the EU without membership of the internal market. The EFTA EEA countries incorporate the entire single market acquis outside of excluded sectors, are members of the Schengen zone, and accept state aid rules and horizontal adaptations, effectively making them members of the internal market, but they are not members of the customs union. While Schengen and internal market facilitations and historical Nordic cooperation reduce friction, friction is not entirely absent at the Norway-Sweden border.

If technical barriers to trade and *regulatory* border procedures are the consequence of regulatory divergence – or, stated the other way, if lack of regulatory autonomy is the trade-off associated with absence of such barriers – then the constraint associated with the benefits of membership of the customs union is the lost ability to negotiate FTAs with non-EU countries. The ability to negotiate those FTAs is hence the advantage of leaving the customs union, an advantage that would have to be weighed up against the benefits – absence of customs procedures, both at borders and in business administration – of continued membership.

Of course, the UK government's position since 2016 has consistently been that it would leave the customs union to negotiate FTAs with non-EU countries. However, during that entire period, the UK government was assuming that any new trading arrangement would be permanent. Here, we set out the issues that the UK faces in deciding its customs situation through to 2024.

4.2. Options

Of course, leaving the customs union immediately would allow the UK to not only negotiate but also conclude FTAs with non-EU countries. The UK has already negotiated some agreements: it has rolled over its EU trade agreements with Switzerland and Japan. However, the UK would continue to benefit from the EU's FTAs with these countries if it were to remain in the EU's customs union until 2024. The relevant question is which significant FTAs will be concluded before 2024, if the UK leaves the customs union, with countries that do not have an FTA with the EU. The answer is likely to include only countries that represent a small percentage of the UK's trade *unless* an FTA is concluded with the United States during this period. This, however, is unlikely. The UK's insistence on maintaining regulatory standards in agri-food means that an agreement will likely take longer than this[147].

The other relevant question, therefore, is whether continued membership of the EU customs union prevents *negotiation* of FTAs that would take effect after 2024. The EU would not have an objection to the UK negotiating with other third countries: it has been negotiating during transition. One option could be to agree that the UK can leave the customs union piecemeal, building its own version of Turkey's partial customs union: the UK leaves the customs union for every sector for which it diverges from EU regulations, meaning that sectors with regulatory divergence still maintain the frictionless borders that they enjoy today.

Still a further option is for customs facilitations to be agreed as they have been with Switzerland Norway[148].

Section Five:
Annexes

5.1. Differences between an FTA and the UK's current trading arrangements with the EU

As our proposal seeks to *maintain* the benefits of the internal market *unless and until the UK diverges from the rules underpinning it*, it is worth summarising those benefits.

The internal market provides the most frictionless form of trade ever developed among sovereign nations. It is not only the largest free trade area in the world, but also the deepest, having removed far more potential frictions, with far more facilitations to do business easily and quickly than in a typical FTA or any comparable such bloc. As the Leave Alliance, a pro-Brexit group campaigning for the UK to have a relationship with the EU similar to that enjoyed by the EFTA-EEA countries, describes it: for the UK to have a relationship with the EU similar to that enjoyed by the EFTA-EEA countries, describes it: "*You must imagine a medieval walled city, inside which the traders happily do business – with the public and between themselves – secure within the fortifications*"[149].

Passes to trade *from inside the walls* are dispensed to countries that follow the rules, countries who get a say in making those rules. Regulatory standards for products and services traded in the internal market are harmonised or recognised as mutually equivalent[150] in all EU countries. Hence, anything manufactured in one country cannot be prohibited from sale in another country[151]; no consignment has to be checked at the border for regulatory reasons[152]: anything manufactured in the UK meets the standards of France because the standards are *the same*.

It also means that before countries join the EU, their standards on everything from CE standard certifications for drills to animal welfare standards in agri-food must reach harmonisation or mutual equivalence with those of existing EU countries. Countries in the Balkans are currently integrating the *acquis* – the book of EU legislation – into national law[153].

The aim is to minimise *non-tariff barriers* (NTBs), which, when they exist, are typically more costly than tariffs are[154]. There are many categories of NTB, some of which – such as language and cultural differences – can never be eliminated. Regulatory barriers are the most important. The IfG explains that regulatory barriers "arise as long as different countries have different legal

regulations on health, safety and environmental protection. As a result of pursuing legitimate regulatory objectives in these areas, countries may impose different product standards as conditions for the entry, sale and use of commodities. Countries with different regulatory regimes apply costly checks at the border when importing goods. These checks can range from inspections at the border to the testing of samples to ensure compliance."[155]

The initiative to remove NTBs, including regulatory barriers, came from Margaret Thatcher. Her April 1988 speech – in which she set out progress since the UK joined the then European Economic Community (EEC) in 1973 while also highlighting work left to do - paved the way for the single market.

"You might say: weren't we supposed to have a common market already? Wasn't that the reason we joined Europe in the first place?.... Europe wasn't open for business. Underneath the rhetoric, the old barriers remained. Not just against the outside world, but between the European countries. Not the classic barriers of tariffs, but the insidious ones of differing national standards, various restrictions on the provision of services, exclusion of foreign firms from public contracts. Now that's going to change. Britain has given the lead….(There will be) ….Action to get rid of the barriers. Action to make it possible for insurance companies to do business throughout the Community. Action to let people practise their trades and professions freely throughout the Community. Action to remove the customs barriers and formalities so that goods can circulate freely and without time-consuming delays. Action to make sure that any company could sell its goods and services without let or hindrance."[156]

5.1.1. Differences between an internal market and a free trade agreement (FTA)

"(An FTA) would create a relationship which in terms of market access conditions will be very different from the United Kingdom's participation in the internal market, in the EU Customs Union, and in the VAT and excise duty area…In particular, a free trade agreement does not provide for internal market concepts (in the area of goods and services) such as mutual recognition, the 'country of origin principle', and harmonisation. Nor does a free trade agreement remove customs formalities and controls, including those concerning the origin of goods and their input, as well as prohibitions and restrictions for imports and exports." ~ European Commission readiness notice [157]

The facilitations provided by the internal market greatly exceed those provided in even the "best-in-class" and "next generation" FTAs that the EU has signed with non-European countries. As the IfG states, "a trainer manufacturer in the UK can sell to a shop in Toulon with little more hassle than selling in Tunbridge Wells; there is very little of the process (for non-EU

trade). UK traders looking to send their goods to the EU fill in at most a single form, an "Intrastate declaration for VAT"[158], and the goods move across borders unchecked and unimpeded[159].

The difference is clear from a comparison of the UK government's guidance to traders for importing from outside the EU and its advice – applying until the end of the transition period – on importing from the EU. While the latter[160] contains mostly descriptions of steps that *do not* have to be taken, the former[161], which applies both to imports from countries with which there is an FTA and to imports from those with which there is not, is a multi-step process.

FTAs vary in the extent to which they eliminate NTBs and frictions, but there are "known limits"[162]: none goes as far as internal market membership. As the Leave Alliance describes[163], there can be arrangements and facilitations, but it will never be the same.

"As time has progressed, many of the third countries have done deals with the European Union, to expedite the passage of goods into the "walled city". The walls remain – trade is eased because special arrangements are made to get the goods in. " ~ Richard North, Leave Alliance

Rather than losing them in a standard FTA, our proposal for the pre-sunset trading arrangement seeks to maintain the benefits of internal market membership unless and until the UK diverges from the rules underpinning it.

In this section we summarise the differences.

5.1.1.1. Mutual recognition vs mutual certification

If a country does not participate in the EU internal market, then it cannot be guaranteed that its regulatory standards match those of the EU. However, all goods entering the EU market have to comply with EU minimum standards. In certain categories of highly-controlled goods, such as chemicals, this means that only an EU (or EFTA-EEA) entity can be legally responsible for the goods when they are in the EEA: a company from a non-EEA country often forms an EEA subsidiary. Meanwhile, at the border, if goods arrive from a country whose regulations are different to those of the EEA, those goods are subject to checks as described in section 5.1.1.5.

Included in those checks are conformity checks, which can include document checks: a check on whether the product has a CE marking or other proof of regulatory approval to sell in the EU. In

certain EU-signed FTAs – such as in CETA – there is a provision[164] that certification bodies in the non-EU country (Canada in the case of CETA) can perform the "certification": they can test the product and check that it meets EU minimum standards, and hence grant a certificate, be it CE or other specialised standard. This is certainly a facilitation when compared to a situation in which there is no mutual certification, but it is not the same as mutual recognition. Under mutual recognition, no checks are necessary, because the standards are equivalent.

5.1.1.2. Regulatory authorisation for controlled goods and services

For certain categories of goods and services, ability to trade is restricted to approved individuals and traders. Three good examples are chemicals, live animals, and financial services. Chemicals are dangerous in the wrong hands; live animals can carry diseases and produce unsafe meat; regulation of financial services exists to protect consumers from losing money to unscrupulous service providers and to protect economic stability.

To enable such goods and services to be traded "without let or hindrance" throughout the EEA, the EU monitors member state regulations to ensure that they are equally tough, allowing service providers from each country to "passport" their way into another member state's market without having to be re-approved in each member state. Non-EEA members have to establish equivalence. In July 2019, the Commission revoked equivalence decisions for Argentina, Australia, Brazil, Canada, and Singapore "as these jurisdictions no longer meet the standards set by the EU Credit Rating Agencies after its amendment in 2013"[165].

While there is yet no indication whether the UK will be granted equivalence after the end of the transition, the Financial Conduct Authority (FCA) estimates that 5,476 UK and 8,008 EU financial services firms would be extremely restricted in the equivalence regime[166].

Chemicals are an example of a controlled product. They are regulated in the EEA by the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) framework. The only way for a third country to achieve equivalent market access from outside the internal market is to incorporate REACH into its domestic legislation as South Korea has done[167] and then negotiate frictionless access as part of an FTA[168].

If the UK does not maintain the benefits of the internal market and seeks an FTA without alignment, then, as expert Sam Lowe describes: "An FTA is unlikely to allow UK regulators to continue to sign off highly regulated products looking to be placed on the EU market. This will require British producers of new automobiles, pharmaceuticals, medical devices, and dangerous chemicals to seek regulatory approval within the EU, as well as the UK."[169]

Regarding chemicals, the European Commission's technical readiness notice appears to confirm this as an expectation of an FTA, advising producers established in the UK to "appoint an Only Representative in the EU as registrant for the substance".[170]

As stated previously, we would recommend that the UK adopt REACH and the regulations on live animal transport, and that its mutual recognition arrangements and market access remain unchanged unless and until the UK later repeals these regulations.

5.1.1.3. Services

While it is relatively straightforward to agree that companies from each country should be able to provide services without tariffs or quotas, service provision is more difficult in practice, because qualifications have to be recognised and service providers have to be able to travel, and because there can be barriers from differing national regulations. Obviously, as the service sector comprises 80% of the economy, this is crucial for the UK. Mutual recognition of qualifications is guaranteed throughout the EU, while the Services Directive[171], passed in 2006, sought to remove remaining barriers. FTAs vary in the extent to which they cover services beyond the minimum WTO requirements.

Regarding professional qualifications, the EU does not have the power to stipulate that a third country's qualifications be recognised throughout the internal market. This would have to be negotiated with each member state individually[172].

We cover some of these differences in Section 5.2. However, it should be noted that the financial services sector – one of the most important for the UK economy – would be the most exposed to new barriers to trade caused by a loss of "passporting" rights, the ability to use their UK regulatory permissions across the continent[173].

5.1.1.4. Commercial driving permits and transit

Even private individuals may have to obtain new licences to drive in the EU after the end of the transition period[174]. For commercial drivers, there are many facilitations that will end at the end of the transition period and for which the new arrangements are not yet known[175].

The movement of lorries and the regulation of drivers, while related, are distinct from the treatment of the goods they carry. If the UK fails to negotiate any better arrangement than Turkey's, driving permits will be a significant obstacle to continuing the current volumes of haulage. Turkish drivers face interruption driving through the EU as there are often not enough permits available for some EU countries for commercial drivers[176].

There will be further requirements for UK hauliers using the territory of the EU for transit, even to other EU countries. The UK has access to the New Computerised Transit System through its already negotiated continuing membership of the Common Transit Convention (CTC)[177]. However, if the UK leaves the internal market and customs union, drivers, freight forwarders, or exporters will still have to file on NCTS for the first time. A UK haulier travelling via Dover-Calais to Germany, for example, will have to make a series of bureaucratic filings on NCTS[178] about its planned route. Furthermore, while an FTA will eliminate *tariffs* – also known as "customs duties" – it will not replicate the current facilitations for VAT (currently handled away from the border[179]) and excise[180], creating new declarations that may need inspection at the border.

This compares adversely to the current situation, according to which the lorry just "rolls off" the ferry at Calais and gets on the French motorway towards Germany.

5.1.1.5. Border procedures

"What I think we're about to discover in the UK is that we took seamless borders for granted for 25 years….Yes, you can speed up border checks, but that's a long way from eliminating them.".
~ David Henig, Cofounder, UK Trade Forum[181]

The EU's internal market has largely erased internal borders for goods. FTAs, on the other hand, typically do not eliminate border friction.

Customs expert Dr. Anna Jerzewska describes[182] three different broad categories of border procedure that still remain under an FTA, two of which UK exporters to the EU do not face at present: safety, security, and anti-smuggling; customs clearance; and standards and regulatory procedures. The first category was never entirely removed for the UK as it chose not to join the EU's Schengen passport-less zone. The second category is removed only by membership of the customs union as described in section 5.1.2. Membership of the internal market removes the third category, which would reappear under a typical FTA such as CETA.

Dr. Jerzewska describes standards and regulatory procedures as both sector-specific measures – for example for car parts and Sanitary and Phytosanitary (SPS) checks – and a general "possibility that checks will be conducted to ensure the paperwork is correct or in some cases to carry out physical inspections, for example when there is a suspicion that dangerous goods are entering the market"[183] even though the border is not the primary location for market surveillance.

The IfG describes the purpose of these checks as "governments….focused on the careful management of what is going in and out of their country – preventing smuggling, making sure that animals aren't carrying diseases, checking that food is safe to eat, ensuring that chemicals are properly handled and car parts aren't faulty and, crucially, making sure that their domestic traders aren't being unfairly undercut."[184]

The IfG is describing the process by which, outside of an internal market, compliance must be *proven:* As the pro-Brexit campaign *the Leave Alliance* describes: "it is generally recognised that, in order to access the Single Market, goods must comply with EU rules. Conformity is the way of overcoming the NTB….Potential exporters not only have to ensure their goods conform, they must provide evidence of their so doing. This requires putting the goods through a recognised system of what is known as "conformity assessment".[185]

EU internal market provisions have ensured, though, that, within the internal market, the goals of these checks are met away from the border. The Leave Alliance describes again: "The point about the Single Market is that border checks have been eliminated. The common rules are monitored by relevant national authorities and there is mutual recognition of standards. Thus, if you so desire, you can load a truck with grommets in Glasgow and ship them all the way to Alexandroupoli on the Turkish border, with just the occasional document check."[186]

When goods arrive from outside of the internal market, not every consignment is checked. In fact, the vast majority are not. Inspecting every import or export would be a massive undertaking, creating delays and blockages. The decision of whether to check a shipment is based on a risk assessment of the good, the importer, and the exporter[187].

In some cases, a standard percentage of certain classes of goods is checked[188]. For Turkey, the standard is 5%[189]. As we see in section 5.2.4, the EU has agreed with certain FTA partners set percentages of goods to be subject to measures such as Sanitary and Phytosanitary (SPS) checks. It also has a standard procedure for the frequency of such measures[190]. While some FTAs contain provisions for reducing the checks, there is little likelihood of them being eliminated in an FTA, especially one without alignment[191].

Of all the reasons described in the government's guidance for importing goods from outside the EU why a good can be held up at the border[192], an FTA would eliminate only one: customs duties. The government's guidance is apt because the current procedure facing UK importers bringing in goods from outside the EU is similar to the one that EU importers bringing in goods from the UK will face if the UK fully transitions to becoming a third country. For UK businesses, while controls on incoming goods to the UK can also slow down their businesses – for example by creating delays in receiving raw materials – the UK government can control this. It is UK exporters that are most at risk from new procedures on the EU side of the border, procedures that inconvenience continental clients looking to buy UK products and UK producers looking to export, making the UK less competitive and in some cases making UK firms' exports commercially unviable. That is why the IfG describes the customs challenge as a "canyon, not a cliff edge"[193].

As we will see in section 5.1.3, the UK's trade with the EU revolves around seamless borders, making it crucial for UK businesses that these new border frictions be kept at a minimum.

5.1.2. Difference between customs union and FTA

Margaret Thatcher's speech referenced previously called for the abolition of "customs controls", though in reality she was referring to regulatory controls, because the EU's customs union, formed in 1968, predates the internal market, which came into being in 1992. The two are distinct: for example, the EFTA-EEA countries are members of the internal market[194] except in specifically excluded sectors[195], but they are not members of the EU customs union. In section 4 we provided some options on what the pre-sunset customs relationship could be. Here we set out the two major types of friction removed by a customs union but not by an FTA.

5.1.2.1. Border procedures

While an FTA eliminates tariffs and quotas, FTAs typically do not remove border frictions related to customs. We referred in section 5.1.1.4 to procedures related to VAT and excise. VAT is charged on all non-exempt and non-zero-rated products and services, while excise is a tax on specific goods such as alcohol. Within the internal market and customs union, these are handled away from the border. Outside the internal market and customs union, traders have to carry documentation to show that these have been paid[196].

Furthermore, standard customs documents are still required. The Entry Summary Declaration (ESD), which is filed online, contains around half the data fields of the full declaration, the Single Administrative Document (SAD), which contains over 50 data fields. The ESD is used for risk assessment. While the SAD can also be filed online, a copy must accompany the goods. Further required are a commercial invoice, transport documentation including forwarding instructions and insurance documentation, a packing list describing the contents, a bill of lading, a waybill, transit documents such as a TIR carnet for goods under transit procedure, a customs value declaration for goods above EUR20,000, and licences and certificates for certain goods[197].

Checks at the border may relate to any of these requirements. Customs union membership removes the need: goods from outside the customs union have to comply with them, but once inside the "walls" of the customs union, internal borders among member states are meaningless.

5.1.2.2. Rules of Origin (RoO)

Another requirement that can be checked at the border is for "certificates of preferential origin". These relate to the "Rules of Origin" in an FTA, rules that stipulate a minimum percentage of the value of the good that must have been assembled in the country to which the FTA pertains. For example, if the UK were to have an FTA with the EU, this would remove tariffs, but if most of a good were assembled outside the UK in a country without an EU FTA and then shipped to the UK for onward tariff-free shipment to the EU, then this would contravene the purpose of the FTA. For that reason, traders in the non-EU country with an FTA have to prove that at least the minimum required percentage of the value of the good was added in that country.

It is not only at the border that Rules of Origin can result in prohibitive bureaucracy: companies have to keep records of their production processes and transactions to ensure that they can still qualify. Because of RoO requirements, not all firms that could qualify for tariff relief choose to attempt to do so[198]. Customs union membership removes this bureaucracy: the common external tariff applies RoO to imports *to the EU's customs territory*, at which point RoO are deemed satisfied.

5.1.3. Overall role of frictionless arrangements in UK-EU trade

In the last few sections, we have described many potential non-tariff frictions to trade from which the UK has been exempt for the last 28 years as it has traded from within the EU internal

market and customs union. The UK's trade with the EU has adapted to this in many ways, but in three primary ways that would be threatened by new non-tariff frictions if the UK loses the benefits of the internal market and transitions even to an FTA that eliminates tariffs.

First, supply chains are integrated: much of the trade consists of intermediate products that are shipped back and forth at a high speed to which extensive border frictions that would arise without regulatory alignment are not conducive[199]. Second, and relatedly, the majority of unitary freight traffic moving between the UK and the continent is carried either by Roll-on-Roll-Off (RoRo) lorries or on trailers that function similarly to RoRo as a continental haulier picks them up on the other side of the Channel[200]. Dover and Eurotunnel are the primary arteries: lorries arrive at the port, roll on to the ferry or onto the train through the tunnel, and roll straight off the other side onto the French motorway. The nature of trade with the EEA is hence very different to that of non-EEA trade: shipments from around the world arrive in ports with specialised storage facilities, where they can be held for weeks, with any necessary checks taking place during the "dwell time" that already exists[201].

Finally, controlled goods and services under regulatory equivalence or harmonisation that is reserved for EEA countries comprise a large proportion of trade. They are the sectors in which the difference between the barriers faced by firms in crossing national boundaries within the internal market are most significantly lower than those faced by firms based in countries outside the internal market[202]. Loss of the effect of the single market in reducing NTBs in these sectors would result in loss of significant UK exports.

The overall result of of an FTA that eliminates tariffs and quotas but that fails to replicate a significant part of the benefits of the internal market in its reduction of NTBs is that, as Sam Lowe of the Centre for European Reform (CER) summarises: "final industrial products will be slightly more constrained than now, but they could still be sold competitively in both the UK and EU markets. However, the additional friction will make it difficult for the UK to remain intertwined in pan-EU manufacturing supply chains."[203]

5.1.4. Challenge in negotiating a new trading arrangement

"When a trader (unhappy with the rules and regulations) decides to move his stall outside the walls, he cannot then complain that he is no longer able to trade freely with the people still inside." ~ Richard North, Leave Alliance[204]

The political and public debate has still not got to grips with the trade-offs involved. ~ Sam Lowe, Centre for European Reform (November 2019)[205]

In the previous section we set out the benefits of internal market membership that are usually not replicated in an FTA. As the EU's internal market is the most seamless form of free trade ever created among sovereign states, the challenge in negotiating an FTA is that as much of it as possible must be recreated, even though it can never be entirely replicated. The challenge is akin to knocking down the tallest building in a city and then attempting to quickly rebuild something that must be smaller but has as many features of the original as possible.

The challenge is made more difficult by the UK's negotiating objectives. In a previous section we quoted Margaret Thatcher's speech advocating the removal of NTBs resulting from regulatory differences. The common regulations that resulted enable frictionless trade across the internal market. Yet it is these same common regulations from which the UK government wishes to become autonomous, interpreting that the 2016 referendum signalled either that they had become too onerous or that, symbolically, the UK electorate preferred them to be made at home.

On the final day of the transition period, the UK will have the same regulatory standards as the EU. Some campaigners therefore foresaw[206] an "easy" trade agreement between the UK and the EU. However, as the UK would not commit[207] to maintaining those standards, it could not be granted the same market access as it enjoyed in the internal market and customs union[208].

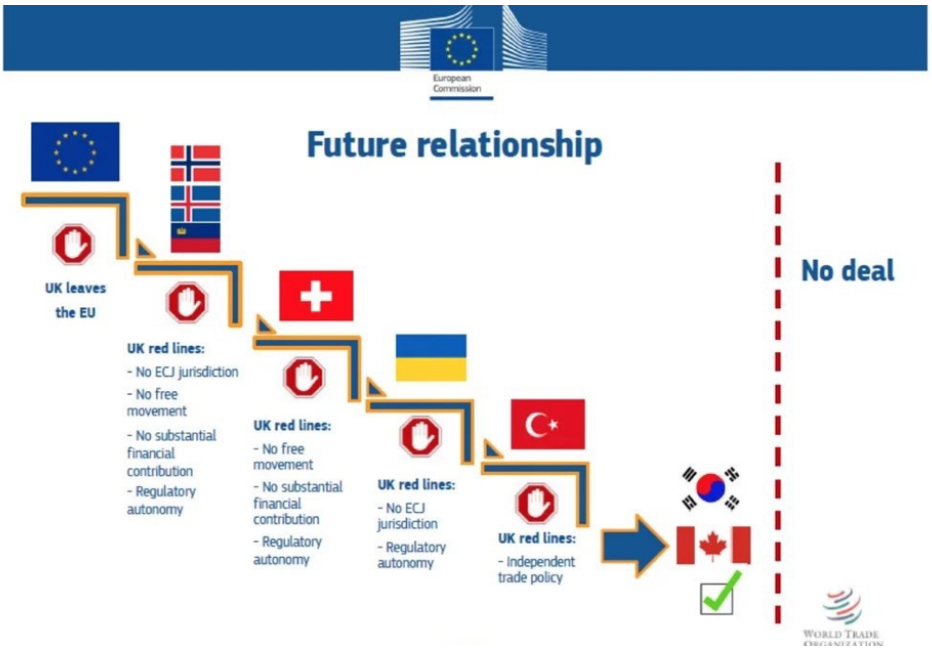
Hence, the UK could not be treated simply as a recent EU member, but rather had to be treated as a third country. As Richard North of the Leave Alliance explains: "From the EU's perspective, it is as if a brand new country had suddenly dropped in from outer space and landed 22 miles off the French coast[209]." This is why, as expert David Henig points out[210], the EU "imposing" checks on the UK – both at EU ports and for trade flowing from Great Britain to Northern Ireland under the NIP - would not be exceptional.

By seeking regulatory autonomy, the UK's negotiating position invites new barriers to trade. Our analysis in the next section of the EU's trading arrangements with different third countries, along with abundant evidence from experts[211][212] shows a clear trade-off between market access and regulatory autonomy. This is why business organisations – whose members would be among the theorised beneficiaries if costly regulations were relaxed – do not want[213] to see a "regulatory breakaway": while being "free" of EU rules might be easier in operating their business before market access is taken into account, not following the same rules as the EU would in reality create significant new barriers. Indeed, even unilaterally following the EU's regulations and standards would not result in frictionless trade unless there is transparency along with a commitment to retain those standards for a period of time[214].

Of course, it could easily be argued that autonomy is the point of Brexit in the first place and delivers on the result of the referendum and, furthermore, that regulatory divergence brings benefits in lower costs to business. We have referred previously, though, to promises made by Vote Leave before the referendum to maintain the trading relationship. Below is another example, this time in a Tweet. When voters have been promised two irreconcilable things – in this case regulatory autonomy and market access per status quo *or better* – a responsible government assesses which is more important. Every expert analysis shows that, while there may be some benefits to divergence, there is no precedent scenario the UK could follow in which the benefits of divergence outweigh the costs of lost market access from it[215]. Furthermore, if, as the Prime Minister claims, regulatory standards will not change – meaning that autonomy is symbolic and sought simply for its own sake – it is hard to see how the benefits of deregulation could be captured.

Furthermore, the government's position is also that there should be as few new barriers as possible, even though, as we noted in section 1.3, it seeks to avoid giving *enforceable* commitments on standards.

The trade-off between market access and regulatory autonomy has been confirmed several times by EU negotiator Michel Barnier. In fact, the following diagram, known as the "Barnier staircase", shows the "step down" in market access with every new step the UK takes to follow rules different from those that underpinned frictionless trade.



This shows a much more distant trading relationship – as described in section 5.2.4, - conferring fewer benefits as the only arrangement with which the UK's red lines are compatible. There are, however, as we outlined in section 1, two riders to the "Barnier staircase": one is the UK, which is arguing for the benefits that come with alignment, but without committing to the alignment; the other is the EU, which seemingly would not agree to a "Canada"-style agreement with lower obligations *and* less access for the UK, even if the UK were honestly asking for that.

Our proposal for the pre-sunset trading arrangement does not seek to contradict this trade-off: rather, it seeks to bring it to life one issue at a time, while utilising the oft-mentioned fact that the UK and the EU start with 100% of their regulations identical. That alignment is not useful without transparency; our proposal seeks complete transparency: the UK would make all its regulatory intentions clear, and the EU would have the right to set the UK's market access accordingly. Furthermore, the fact that "if nothing changes, then nothing changes" means that, rather than knocking down the tallest building in the city and attempting to re-build a structure a fraction as tall, we propose to first pause then evaluate taking one floor at a time off the tallest building in order to reach the level (of divergence) that the UK ultimately wants, a level that it has not shared with the public and potentially not considered with full knowledge of the trade-off.

5.2. The EU's trading arrangements

Given that the UK, when negotiating an FTA, has been treated as a third country, it is worth summarising some of the trading arrangements that the EU has with different third countries. This section shows a clear difference between the EU's trading arrangements with its European neighbours and those with more geographically distant trading partners.

5.2.1. Summary

When the previous UK government of Prime Minister May set out its negotiating objectives, the IfG produced the following table showing why the Prime Minister was effectively asking for all the benefits of remaining in the single market and customs union and simultaneously all the benefits of leaving them.

How do the off-the-shelf Brexit options stack up against the Prime Minister's objectives?

		PM's Lancaster House speech	Stay in the Single Market but leave the Customs Union	Leave the Single Market but negotiate a customs union	Leave the Single Market and Customs Union, but negotiate a bilateral trade agreement			Leave the Single Market and Customs Union with no deal
			Norway	Turkey	Switzerland	Ukraine	Canada	WTO option
"Red lines" — Defensive interests	Control migration from the EU	✓	×	✓	×	✓	✓	✓
	End the jurisdiction of the European Court of Justice	✓	Partial	Mostly	Mostly	Partial	✓	✓
	End applicability of EU regulations	✓	×	Partial	Partial	Very limited	✓	✓
	Pursue an independent trade policy	✓	Mostly	Very limited	Mostly	✓	✓	✓
	Stop obligatory budgetary contributions to the EU	✓	×	✓	×	✓	✓	✓
	Exit CAP and CFP	✓	✓	✓	✓	✓	✓	✓
Offensive interests	Tariff-free trade with the EU	✓	✓	✓	✓	✓	✓	×
	Access to the EU single market for services	✓	✓	×	Very limited	✓	Very limited	×
	Seamless and frictionless border	✓	Partial	Partial	Partial	Partial	×	×
	Voluntary participation in EU programmes	✓	✓	✓	✓	✓	Partial	×
	Speed of negotiation (within Article 50 process)	✓	✓	✓	×	×	×	N/A

Source: Institute for Government analysis, June 2017.

As well as this initially unrealistic approach, it also shows a clear distinction: countries such as Canada, which is far away from the EU, can have an FTA with the EU and maintain regulatory autonomy. Countries in the "neighbourhood" typically enact the same regulations as the EU[216]. Here we explore some of the relationships that the EU has with different partners.

5.2.2. EFTA-EEA

As explored extensively elsewhere in this paper, the EFTA-EEA countries Norway, Iceland, and Liechtenstein participate in the single market except for specifically excluded sectors. This means that they enact into their domestic legislation the rules and standards of the EU internal market. While they have no *official* say in making these rules, they can often influence the process informally. They are not members of the customs union, meaning that, as we show in section 3.4.13, there is still some friction at the border, as commercial drivers need to prove filing, and there are still some requirements on issues such as Rules Of Origin.

5.2.3. Other Europe

Countries in Europe that are outside the EEA can be divided into three categories: Switzerland, Turkey, and those countries that are at some stage of the accession process. Switzerland is a member of EFTA but not of the EEA and, like the EFTA-EEA countries, is not in the EU's customs union. It manages its relationship with the EU through many distinct bilateral agreements that nevertheless largely replicate the EEA agreement[217]. For example, the *Cassis De Dijon* principle referenced elsewhere applies in Switzerland[218]. This mutual recognition means that Swiss industrial products do not need to be physically checked at the border[219].

Both Switzerland and Norway have separate bilateral agreements with the EU to smooth customs: for example, risk assessments for goods moving across the territory of Switzerland or Norway to the EU are shared with the EU and vice-versa, and pre-notification filings are not necessary[220]. We hypothesise that the EU is more likely to reach such agreements on pre-notification filings if there is regulatory convergence: goods from a country whose regulations are mutually recognised or harmonised present a lower risk and therefore do not need to be notified in advance.

Like the EFTA-EEA countries, Switzerland accepts Freedom Of Movement of workers with the EU even to a greater extent than the UK ever did, through membership of the Schengen zone.

Turkey has a partial customs union with the EU and previously incorporated many parts of the EU acquis as part of a process[221] – *de facto* abandoned – towards accession. The many sectors not covered mean that significant border friction is still present at the Turkey-Bulgaria border[222].

The Balkan countries and Ukraine are in the process of incorporating the internal market acquis, along with the rest of the EU acquis, as a precursor to their eventual accession[223].

5.2.4. Non-Europe

The EU has FTAs with many third countries outside Europe that eliminate, or substantially eliminate, tariffs and quotas. It also has certain one-off agreements with many countries that fall short of a full FTA but aim to reduce NTBs. None of these agreements, however, replicates the obligations placed on EU members of "neighbourhood" countries to incorporate EU standards into their domestic legislation; accordingly, the access to the EU's market provided by these FTAs falls far short of what the UK would require in order to maintain its current trade with the EU. Typically, the EU and the partner country are happy with these arrangements because neither is as critical to the other as a trading partner as the EU is to the UK.

5.2.4.1 Mutual certification

Within CETA, the EU's FTA with Canada, there are provisions for *mutual certification* in goods: that is, each accepts results of conformity assessments for the other's market carried out in the other country. Canadian certifiers can assess goods produced by Canadian manufacturers as compliant with the standards of the EU internal market and vice-versa. While this does represent an attempt by a "next generation" FTA to reduce NTBs, it is not the same as mutual recognition. Furthermore, it applies only to some sectors[224], not to "dangerous" products.

5.2.3.2. Regulatory authorisation for controlled goods

Countries outside the EU cannot be members of many of the regulatory agencies that govern the EU's regulation of controlled and dangerous products. The most obvious example is the European Chemicals Agency (ECHA). The EFTA-EEA countries can participate in its work, in return for which they commit to adopting all REACH legislation[225]. Non-EEA countries can negotiate similar access, in return for similarly adopting REACH as South Korea has done[226]. South Korea, too, had no role in establishing the rules of REACH.

5.2.4.3. Border checks and facilitations

While EEA members enjoy borderless access to the EU market, the example of CETA, the EU's trade agreement with Canada, shows that this is not the case for a country with an FTA not based on regulatory alignment. The CETA agreement sets a target percentage, which is to be published, for checks in certain sectors. This includes, for example, 100% of live animals and

10% of animal products for human consumption[227]. The Canadian Trade Commissioner's website provides an extensive list of documentary requirements for Canadian producers exporting goods to the EU[228].

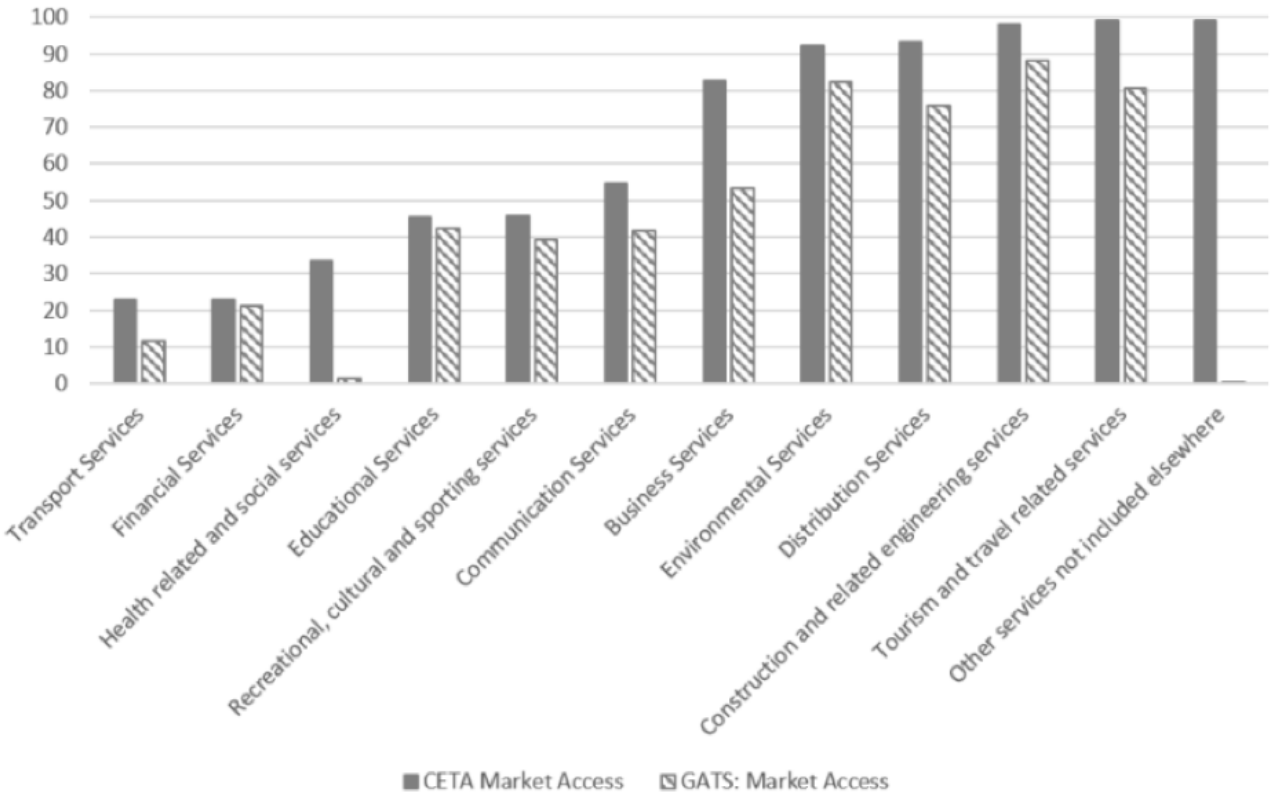
The EU is still in negotiations for an FTA with New Zealand, but has previously reached an equivalence agreement regarding sanitary standards that has enabled it to reach a facilitation on border checks such that only 2% of consignments of animal products for human consumption are checked[229].

It is worth noting that the agreement mandates[230] the party seeking equivalence to demonstrate it: that is, if the UK were to achieve such a facilitation, it would have to be transparent about its sanitary standards and demonstrate that they were equivalent to those of the EU. The reason the EU is insisting on a high percentage of checks – including on the border between Great Britain and Northern Ireland under the Northern Ireland protocol – is that the UK has not provided information on its plans for sanitary standards after the end of transition.

5.2.4.4. Services

Coverage of services is inconsistent and far below the coverage that the UK or EFTA-EEA members currently enjoy. In fact, in CETA, as the graph below shows[231], it barely exceeds WTO minimum requirements.

EU scores for market access in CETA and the WTO General Agreement on Trade In Services (GATS)



5.2.4.5. Obligations

As we cover in section 1.3, there are various LPF provisions in the EU's FTAs with non-European countries such as South Korea and Canada, but they are weak and largely unenforceable. This is not a concern for the EU in the same way as it would be in the case of the UK. Commensurately, those partner countries do not seek the same level of access to the EU market as the UK does.

5.2.4.6. Nature of trade

The characteristics of Canada's trade show why a CETA-style agreement would be inadequate for the UK and the nature of its trade with the EU. While the EU accounts for half the UK's trade with a majority of unitary shipments carried by RoRo and much of it consisting of time-sensitive trade within integrated supply chains, the EU accounts for only 8% of Canada's trade[232], and most of this is carried by containers, consists of finished products, and is not time-sensitive.

Canada does have provisions, though, in one trade agreement for fast-moving lorry traffic. It has them *with the USA* – its road-accessible neighbour and largest trading partner – through the USMCA agreement that succeeded NAFTA[233].

Most developed countries seek such deep trading arrangements with their neighbours.

5.3. WTO terms: consequences of No Deal for UK and EU

Much has been written about the consequences of the UK and EU failing to reach an FTA. Here, we will simply summarise the practical and overall economic consequences with reference to the trading arrangements described above. If trade were to revert to "WTO terms", then the UK would lose all facilitations described above in its access to the EU market.

The government describes WTO terms as "Australia terms". Those terms would be inadequate for the UK, with its time-sensitive fast-moving trade with the EU. WTO terms, though, are worse than that. Australia has 82 different agreements with the EU facilitating access its market.[234] The fact that they do not amount to an FTA does not negate the fact that they facilitate trade more than WTO terms alone do.

It is true that tariffs have been reduced by successive rounds of WTO talks, but, as we have demonstrated extensively in this paper, tariffs are not the most important issue blocking access to a market or the most important barrier the UK would face if it were to lose the benefits of the internal market. NTBs are. As the Leave Alliance describes it: "Tariffs do not prevent access to a market. They simply impose a tax on entry. The actual barrier is the regulatory conformity, what is known generally as a non-tariff barrier (NTB) or, sometimes, as technical barrier to trade (TBT)."[235] The Leave Alliance further describes what happens under WTO terms[236]:

"Your component manufacturer may still comply with exactly the same standards, but if the product requires independent testing, any testing houses and the regulatory agencies are no longer recognised. The consignment has no valid paperwork. And, without it, it must be subject to border checks, visual inspection, and physical testing.

What that means in practice is that the customs inspector detains your shipment and takes samples to send to an approved testing house (one for the inspector, one for the office pool, one for the stevedores and one for the lab is often the case). Your container inspection is typically about £700 and detention costs about £80 a day for the ten days or so it will take to get your results back. Add the testing fee and you're paying an extra £2,000 to deliver a container into the EU.

Apart from the costs, the delays are highly damaging. Many European industries have highly integrated supply chains, relying on components shipped from multiple countries right across Europe, working to a "just in time" regime. If even a small number of consignments are delayed, the whole system starts to snarl up.

Then, as European ports start having to deal with the unexpected burden of thousands of inspections, and a backlog of testing as a huge range of products sit at the ports awaiting results, the system will grind to a halt. It won't just slow down. It will stop. Trucks waiting to cross the Channel at Dover will be backed up the motorway all the way to London."

While it should be obvious from the insight provided by this vocal Brexit-backing source that the consequences of "WTO terms" would hence be catastrophic, it is worth summarising the forecast results. The average tariff faced by UK firms would, thanks to the WTO, be quite low, with some estimates suggesting that it would be as low as 4%[237]. However, NTBs would be equivalent to much more. Some sources suggest a "tariff-equivalent cost" of 10%[238][239]. In both cases, the exact percentage depends on the sector-weighting of exports because each figure is sector-dependent. The drag on UK economic growth is anywhere in the range of 3% to 7%[240]; even the lower end of this range is greater than the contraction during the recession of 2008-9.

There would also be adverse consequences for the EU: although far less important as a percentage of total trade than the EU is to the UK, the UK is still its second-largest export market. The UK government may conclude that the only way to repair the damage from the absence of an FTA could be the deregulation that the EU fears. Furthermore, it is likely to bring the UK's trade policy further into the orbit of the US, whose goals in global trade are often problematic for the EU.

Finally, of course, a *No Deal* situation with mutual recriminations is not conducive to a close and fruitful long-term relationship. It is incumbent on all parties to maximise efforts to avoid it.

References

[1] See tweet https://twitter.com/CER_Grant/status/1291390637351280641

[2] Evidence to the House of Lords Select Committee on the European Union Internal Market Sub-Committee https://committees.parliament.uk/oralevidence/83/pdf/ page 29

[3] Evidence to House of Lords Select Committee on the European Union Internal Market Sub-Committee https://committees.parliament.uk/oralevidence/125/pdf/ page 21

[4] Quoted by Professor Heyvaert in evidence to House of Lords Select Committee on the European Union Internal Market Sub-Committee https://committees.parliament.uk/oralevidence/125/pdf/ page 21

[5] Evidence to the House of Lords Select Committee on the European Union Internal Market Sub-Committee https://committees.parliament.uk/oralevidence/125/pdf/ page 14

[6] Evidence to the House of Lords Select Committee on the European Union Internal Market Sub-Committee, https://committees.parliament.uk/oralevidence/83/pdf/, page 18

[7] Evidence to the House of Lords Select Committee on the European Union Internal Market Sub-Committee, https://committees.parliament.uk/oralevidence/83/pdf/ page 14

[8] See article https://www.turbulenttimes.co.uk/news/trade/brexit-what-price-freedom/

[9] See appendix section 5.3

[10] See European Commission statement https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_20_1372

[11] In the summer it was reported that the UK government was considering proposing the right to diverge from EU standards on the understanding that it would be hit by tariffs it did so https://www.ft.com/content/42022bf3-2912-4bf2-900a-25dcfda776c3

[12] See tweet https://twitter.com/CER_Grant/status/1291390637351280641

[13] See this article by Sam Lowe of the Centre for European Reform https://www.cer.eu/insights/eu-uk-negotiations-no-need-panic-yet

[14] The phrase used by Dr. Holger Hestermeyer, Shell Reader in International Dispute Resolution, King's College London, in his evidence to the House of Lords Select Committee on the European Union Internal Market Sub-Committee https://committees.parliament.uk/oralevidence/83/pdf/ page 10

[15] For example, Germany ended support for the Landesbanken (public regional banks) ~ see evidence to the House of Lords Select Committee on the European Union Internal Market Sub-Committee https://committees.parliament.uk/oralevidence/125/pdf/ page 4

[16] As Katya Adler explains here https://twitter.com/BBCkatyaadler/status/1296048862868766721

[17] See the evidence to the House of Lords Select Committee on the European Union Internal Market Sub-Committee of Dr. Lorand Bartels, Reader in International Law at the University of Cambridge, (https://committees.parliament.uk/oralevidence/83/pdf/ page 11): "you are mostly prevented from failing to implement the standards you already have" and page 17 "I still read that as allowing change, including getting rid of labour law, until you get to the minimum standard"

[18] See Dr. Bartels' evidence (as above) pages 22-23

[19] This is called the *Cassis de Dijon principle*: see summary https://www.europarl.europa.eu/doceo/document/E-8-2016-008884_EN.html

[20] See Dr. Hestermeyer's evidence to the House of Lords Select Committee on the European Union Internal Market Sub-Committee (https://committees.parliament.uk/oralevidence/83/pdf/ page 25)

[21] See also this tweet from Nick Gutteridge https://twitter.com/nick_gutteridge/status/1300743187615670272

[22] See Dr.Bartels' evidence to the House of Lords Select Committee on the European Union Internal Market Sub-Committee (https://committees.parliament.uk/oralevidence/83/pdf/ in particular pages 12 to 13 and 25 to 26); on pages 6 and 7 she also states "It is unusual in the EU-UK example that that reference point is existing law that binds the parties as of today without reference to international law." ~ it is unusual for the EU to seek continuing application of EU law in the UK

[23] See Professor Veerle Hayvaert's evidence to the House of Lords Select Committee on the European Union Internal Market Sub-Committee https://committees.parliament.uk/oralevidence/125/pdf page 2

[24] As Nicola Smith of the TUC states in her evidence to the House of Lords Select Committee on the European Union Internal Market Sub-Committee (https://committees.parliament.uk/oralevidence/83/pdf/ page 27), the reason the EU is concerned is because of statements by the UK's own politicians implying that reducing regulatory standards is one of the principal opportunities to arise from leaving the EU

[25] European Commission's negotiating mandate https://www.consilium.europa.eu/media/42736/st05870-ad01re03-en20.pdf article 101 (page 28)

[26] Prime Minister's speech: https://www.gov.uk/government/speeches/pm-speech-in-greenwich-3-february-2020 ~ in this speech he also commits to not reducing standards

[27] Quoted by Lord Robathan in an expert witness session of the House of Lords Select Committee on the European Union Internal Market Sub-Committee https://committees.parliament.uk/oralevidence/83/pdf/ page 7

[28] See section 5.1.3

[29] UK's negotiating objectives https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/868874/The_Future_Relationship_with_the_EU.pdf Chapter 7, paragraph 27 (page 9)

[30] UK's negotiating objectives https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/868874/The_Future_Relationship_with_the_EU.pdf Chapter 7, paragraph 30 (page 10)

[31] David Henig, cofounder of UK Trade Forum in evidence to House of Lords EU select committee on the Northern Ireland Protocol https://committees.parliament.uk/oralevidence/59/pdf/ says on page 20 "once regulatory divergence happens or is at risk of happening, it is likely that the level of checks will intensify" ~ this was in reference to Northern Ireland under the Protocol, though in the context of Northern Ireland adhering to the rules of the EU single market. Colin Murray on page 20 gives the example of the UK reducing regulatory standards on emissions from cars: "if the Commission was aware of something like that happening in the UK's legislative process, it would look at what checks are being imposed." See also the Institute for Government report "*Frictionless trade?* What Brexit means for cross-border trade in goods" here https://www.instituteforgovernment.org.uk/sites/default/files/publications/5704%20IFG%20-%20Frictionless%20Trade%20Web_0.pdf on page 30: A more ambitious trade deal that recognised the starting point of convergence and covered the breadth of UK sectors would be much more difficult to negotiate but could deliver a significant reduction in disruption"

[32] Such as the AETR, which addresses issues such as mandated rest periods for drivers and ensures that hauliers from other countries respect these rules while driving within the EU

[33] UK's negotiating objectives https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/868874/The_Future_Relationship_with_the_EU.pdf chapter 19 paragraph 63 page 14

[34] UK's negotiating objectives https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/868874/The_Future_Relationship_with_the_EU.pdf chapter 19 paragraph 62 page 13

[35] EEA agreement protocol 1 https://www.efta.int/sites/default/files/documents/legal-texts/eea/the-eea-agreement/Protocols%20to%20the%20Agreement/protocol1.pdf

[36] European Commission's negotiating mandate https://www.consilium.europa.eu/media/42736/st05870-ad01re03-en20.pdf article 74 (page 21)

[37] The manifesto is retrieved here http://www.voteleavetakecontrol.org/briefing_newdeal.html and states that "there is a European free trade zone from Iceland to the Russian border and we will be part of it." This implies a level of integration on a par with that enjoyed by European non-EU countries: that means EFTA-EEA countries, which incorporate the single market acquis, (see appendix section 5.2) and others such as Ukraine and the Balkan countries that incorporate all or large parts of the EU single market acquis as a precursor to accession; meanwhile, other Vote Leave publications such as "Why Vote Leave" - http://www.voteleavetakecontrol.org/our_case.html - set out the costs of EU regulations, most of which the European countries they mention *still incorporate* outside the EU. In this speech - http://www.voteleavetakecontrol.org/michael_gove_the_facts_of_life_say_leave.html - Michael Gove again mentions the European non-EU countries "from Iceland to Turkey" as precedents even though they incorporate the single market acquis, while here - http://www.voteleavetakecontrol.org/priti_patel_speech_at_the_spring_conference_of_the_association_of_licensed_multiple_retailers.html - Priti Patel talks of the opportunities "if you were not bound by these burdens"

[38] Prime Minister's speech, 3 February 2020 https://www.gov.uk/government/speeches/pm-speech-in-greenwich-3-february-2020

[39] See Caroline Flint's Tweet from October 2019 https://twitter.com/carolineflint/status/1185313243159580672?lang=en

[40] The view expressed by Lord Lamont on Lords committee https://committees.parliament.uk/oralevidence/83/pdf/ page 20

[41] Sam Lowe of the Centre for European Reform explains here https://www.cer.eu/insights/flexibility-does-not-come-free that the fact that regulations would be aligned on day one or that the UK might unilaterally stay aligned does not avoid border frictions and other regulatory barriers to trade; Dr Sylvia de Mars, Senior Lecturer in Law at the University of Newcastle, states to the House of Lords EU select committee in her witness evidence on the Northern Ireland Protocol that "it is not enough to just have the same rules…..it is about the overseeing architecture. It is the extent to which the EU has insight into what we are doing in practice that determines whether or not there is friction at the border. That is why the single market is so unique". https://committees.parliament.uk/oralevidence/59/pdf/ page 26

[42] See appendix section 5.2.4 and this article by Sam Lowe of the Centre for European Reform https://www.cer.eu/insights/flexibility-does-not-come-free

[43] See previous reference to Vote Leave manifesto and various speeches by spokespeople

[44] See the British Election survey word clouds - https://www.britishelectionstudy.com/bes-findings/what-mattered-most-to-you-when-deciding-how-to-vote-in-the-eu-referendum/#.X1ek5XlKhPY – indicating that those who voted Leave were primarily motivated by immigration and those who voted Remain were primarily influenced by the economy, therefore indicating that a solution that would bring about a brake on immigration while preserving much of the UK's economic relationship with the EU would have the support of most of the electorate; Furthermore, this study - https://natcen.ac.uk/media/1319222/natcen_brexplanations-report-final-web2.pdf - (page 13) by NatCen Social Research shows that the two primary issues were the economy and immigration, with (page 26) those groups thinking that immigration has made things worse more likely to vote Leave; EU regulations were mentioned by only 3% of voters as a motivating factor.

[45] See article https://www.huffingtonpost.co.uk/entry/brexit-poll-eu-rules-voters_uk_5ec2697ac5b6092e8e0c7ff9?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAAIUQlGDGGF0zdIC2ZeDmbRSwr9lFuUWF-9mdCyexF6AS7Q7CgDqD_zz4yWuvjtcrm4Ft00yn2Aso_oe7_IIhF5fCeYYEJxsi63hFXZYRrqLEhwHgTXl6RrwLbdj3u7EQQ_0Bp49QcDnmXtKFSE7A0bDgiT4XIzuSgubp71sqJ9NP

[46] This cross-Whitehall briefing - https://old.parliament.uk/documents/commons-committees/Exiting-the-European-Union/17-19/Cross-Whitehall-briefing/EU-Exit-Analysis-Cross-Whitehall-Briefing.pdf - (page 18) indicates that NTBs as a result of genuine regulatory divergence could create larger costs than the immediate loss of access through border procedures identified by Dr. Sylvia De Mars in the notes above.

[47] See Dr. Bartels' evidence to the House of Lords Select Committee on the European Union Internal Market Sub-Committee https://committees.parliament.uk/oralevidence/83/pdf/ especially pages 11 and 17

[48] In the evidence in the note above, see Dr. Bartels' comment on page 23 that the report can be "put in the bin" https://committees.parliament.uk/oralevidence/83/pdf/

[49] See the explainer from the UK In A Changing Europe think tank https://ukandeu.ac.uk/six-key-messages-on-the-uks-negotiating-position/

[50] See the exchange between Dr. Holger Hestermeyer and Dr. Lorand Bartels in evidence to the House of Lords Select Committee on the European Union Internal Market Sub-Committee https://committees.parliament.uk/oralevidence/83/pdf/ on page 21 as well as the closing comments by Nicola Smith, plus the speeches referenced above by Priti Patel and others.

[51] See the evidence given by George Peretz QC to the House of Lords Select Committee on the European Union Internal Market Sub-Committee https://committees.parliament.uk/oralevidence/125/pdf/ page 20

[52] See Peretz' evidence as above, page 19

[53] See the evidence given by Dr. Luca Rubini, Reader in International Economic Law at the University of Birmingham, to the House of Lords Select Committee on the European Union Internal Market Sub-Committee ~ https://committees.parliament.uk/oralevidence/186/pdf/ page 2

[54] See the evidence given by Dr. Holger Hestermeyer to the House of Lords Select Committee on the European Union Internal Market Sub-Committee https://committees.parliament.uk/oralevidence/83/pdf/ page 19

[55] See the evidence given by George Peretz QC to the House of Lord Select Committee on the European Union Internal Market Sub-Committee https://committees.parliament.uk/oralevidence/125/pdf/ page 10

[56] See Peretz' evidence as above

[57] See Peretz's evidence as above, page 11

[58] The UK's negotiating objectives https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/868874/The_Future_Relationship_with_the_EU.pdf chapter 20 paragraph 64 page 15

[59] In their evidence given to the House of Lords Select Committee on the European Union Internal Market Sub-Committee, Dr. Luca Rubini argues that the shift from "state aid" to "anti-subsidy" marks a more lax approach (https://committees.parliament.uk/oralevidence/186/pdf/ page 1) while Alexander Rose, Partner of DWF LLP,

[60] See press release https://www.gov.uk/government/news/government-sets-out-plans-for-new-approach-to-subsidy-control

[61] See 4 expert evidence sessions on state aid of the House of Lord Select Committee on the European Union Internal Market Sub-Committee: https://committees.parliament.uk/oralevidence/125/pdf/; https://committees.parliament.uk/oralevidence/186/pdf/; https://committees.parliament.uk/oralevidence/188/pdf/; https://committees.parliament.uk/oralevidence/83/pdf/ as well as this article https://www.wired.co.uk/article/no-deal-brexit-state-aid-tech, which also specifies that the WTO regime covers only goods

[62] The key sentence is this one: ""While our guiding philosophy remains that we do not want a return to the 1970s approach of picking winners and bailing out unsustainable companies with taxpayers' money, the UK must have flexibility as an independent, sovereign nation to intervene to protect jobs and to support new and emerging industries now and into the future."

[63] Prime Minister's speech 3 February https://www.gov.uk/government/speeches/pm-speech-in-greenwich-3-february-2020

[64] This article https://www.wired.co.uk/article/no-deal-brexit-state-aid-tech highlights the percent of GDP that major EU countries including the UK spend on state aid

[65] Prime Minister's speech 3 February https://www.gov.uk/government/speeches/pm-speech-in-greenwich-3-february-2020

[66] See the evidence given by Dr Soltesz to the House of Lord Select Committee on the European Union Internal Market Sub-Committee https://committees.parliament.uk/oralevidence/125/pdf/ in particular pages 4 to 5 and 13 to 14

[67] See above

[68] See the evidence given by Professor Andrea Biondi to the House of Lord Select Committee on the European Union Internal Market Sub-Committee https://committees.parliament.uk/oralevidence/125/pdf/ page 8

[69] The UK's negotiating objectives https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/868874/The_Future_Relationship_with_the_EU.pdf Chapter 20 paragraph 65 page 15

[70] See above for Switzerland and annex 15 of the EEA agreement for Norway, Switzerland, and Lichtenstein https://www.efta.int/media/documents/legal-texts/eea/the-eea-agreement/Annexes%20to%20the%20Agreement/annex15.pdf

[71] See earlier note on Ukraine, the Balkan countries, and Turkey

[72] See the discussion among experts in the House of Lords Select Committee on the European Union Internal Market Sub-Committee evidence session https://committees.parliament.uk/oralevidence/188/pdf/ page 8 and 9

[73] See this article https://www.thetimes.co.uk/article/johnson-sees-no-deal-as-better-than-surrender-t5sf30chw and this article https://www.businessinsider.com/dominic-cummings-brexit-tech-giant-critics-2020-9?r=US&IR=T

[74] See this article https://www.wired.co.uk/article/no-deal-brexit-state-aid-tech

[75] See the transcript https://committees.parliament.uk/oralevidence/83/pdf/ page 18 and 19

[76] Prime Minister's 3 February speech https://www.gov.uk/government/speeches/pm-speech-in-greenwich-3-february-2020

[77] See this recent update https://twitter.com/lisaocarroll/status/1300818942647300096

[78]See the evidence given by George Peretz QC to the House of Lord Select Committee on the European Union Internal Market Sub-Committee https://committees.parliament.uk/oralevidence/125/pdf/ page 9

[79] See this quote from David Gauke: https://www.conservativehome.com/thecolumnists/2020/08/david-gauke-without-a-proper-state-aid-regime-the-uk-is-unlikely-to-reach-a-deal-with-brussels.html "From my days in the ERG, I recall plenty of conversations about how the EU imposed regulatory burdens on businesses, prevented trade deals with rising economies like China and resulted in too much power in the hands of the unelected (oh, happy innocent days). Restrictions on bailing out private sector companies were not so much of problem for us Thatcherites."

[80] The Commission's readiness notice (https://ec.europa.eu/info/sites/info/files/notice_to_stakeholders_brexit_reach.pdf page 2) states that as of the time of writing REACH will no longer apply in the UK

[81] The Commission's readiness notice (https://ec.europa.eu/info/sites/info/files/animal_transport_en.pdf page 2) states that as of the time of writing the regulations on the protection of animals during transport will no longer apply in the UK

[82] This whole paragraph summarises the following paper, which explains the dispute resolution mechanism https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3392474

[83] Dr. Hestermeyer's evidence to the House of Lords Select Committee on the European Union Internal Market Sub-Committee https://committees.parliament.uk/oralevidence/83/pdf/ page 13

[84] Evidence to the House of Lords EU Select Committee regarding the Northern Ireland Protocol https://committees.parliament.uk/oralevidence/59/pdf/ page 26

[85] See section 5.2

[86] See article https://www.ft.com/content/42022bf3-2912-4bf2-900a-25dcfda776c3

[87] As the Leave Alliance states here http://leavehq.com/blogview.aspx?blogno=128 ~ "Tariffs do not prevent access to a market. They simply impose a tax on entry"

[88] See section 5.1.3.

[89] See section 5.1.3.

[90] See section 5.2.4.

[91] See section 5.2.4.

[92] See section 1.3.

[93] See section 5.2.4.

[94] See section 5.2 and 5.3

[95] See this article by James Kane https://www.instituteforgovernment.org.uk/blog/trade-regulation-chlorinated-chicken

[96] Trade and regulation after Brexit" https://www.instituteforgovernment.org.uk/sites/default/files/publications/trade-and-regulation-after-brexit.pdf

[97] See appendix section 5.2.4.

[98] See the two notes directly above

[99] See also this note from the IfG on the UK-US trade talks https://www.instituteforgovernment.org.uk/blog/uk-still-lacks-answers-basic-questions-trade-talks-us-begin

[100] See article https://www.ft.com/content/16a10238-2524-46ac-a659-a48c0b00c96b

[101] See announcement https://www.gov.uk/guidance/placing-manufactured-goods-on-the-market-in-great-britain-from-1-january-2021

[102] See announcement https://www.gov.uk/guidance/placing-manufactured-goods-on-the-market-in-great-britain-from-1-january-2021

[103] See Tweet by Sam Lowe of the Centre for European Reform https://twitter.com/SamuelMarcLowe/status/1300818994543329280

[104] See one reaction here to the 9th September announcement of the consultation on the state aid framework https://www.thetimes.co.uk/article/state-aid-for-technology-companies-is-odd-if-there-is-no-sign-of-a-market-00grt2303

[105] See his evidence to the House of Lords Select Committee on the European Union Internal Market Sub-Committee https://committees.parliament.uk/oralevidence/125/pdf/ page 2

[106] See section 5.2.4.

[107] Evidence to the House of Commons Select Committee on the Future Relationship with the European Union, transcript available here https://committees.parliament.uk/oralevidence/825/pdf/ ~ see Q670

[108] See Tweet https://twitter.com/AnnaJerzewska/status/1308305414367313921

[109] *Is the UK ready for Brexit? August 2020 research report* detailed here https://www.ukhaulier.co.uk/news/road-transport/brexit/descartes-brexit-readiness-report-highlights-uk-businesses-ill-preparedness-leaving-supply-chains-at-unprecedented-levels-of-risk/

[110] Reported here https://www.theguardian.com/business/2020/jul/13/three-in-four-uk-firms-unprepared-for-brexit-iod-study-shows

[111] See the government's Border Operating Model https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/908534/Border_Operating_Model.pdf

[112] Report here https://www.instituteforgovernment.org.uk/sites/default/files/publications/IfG_Brexit_customs_WEB_0.pdf from page 40

[113] Government website https://www.gov.uk/government/consultations/enforcing-operation-brock-plans-in-2021/proposed-legislative-amendments-on-enforcing-operation-brock

[114] Government website https://developer.service.hmrc.gov.uk/api-documentation/docs/api/service/goods-movement-system-haulier-api/1.0

[115] A summary is provided in the Border Operating Model (above) of the French "Si Brexit" system and the Portbase and RXSeaport systems used in Belgium and the Netherlands

[116] As David Henig makes clear here https://twitter.com/DavidHenigUK/status/1308673091065860096 the "imposing of checks" is a normal requirement on a third country; as we highlight elsewhere, the greater the degree of regulatory autonomy, the more checks are required

[117] See "enforcing SF in Kent" https://www.gov.uk/government/consultations/enforcing-operation-brock-plans-in-2021/proposed-legislative-amendments-on-enforcing-operation-brock and the latest announcement on the Kent Access Permit https://news.sky.com/story/brexit-michael-gove-says-lorry-drivers-will-need-kent-access-permit-to-access-county-once-transition-period-ends-12079553

[118] See IfG report *Preparing Brexit: The scale of the task left for UK business and government* from July https://www.instituteforgovernment.org.uk/publications/preparing-brexit-scale-task and this update from Joe Mayes https://twitter.com/Joe_Mayes/status/1308448269547327488

[119] See this briefing from the IfG https://www.instituteforgovernment.org.uk/blog/check-change-going-nowhere-government-brexit-communications

[120] See article https://www.ft.com/content/49af99f3-4669-4654-a444-4e5e9635791c

[121] See article https://www.bloomberg.com/news/articles/2020-09-03/u-k-races-to-fix-critical-gaps-exposed-in-brexit-border-plan?utm_source=twitter&utm_campaign=socialflow-organic&cmpid%3D=socialflow-facebook-brexit&utm_content=brexit&utm_medium=social&sref=Fyz1CWIe

[122] See article https://www.bbc.com/news/uk-54260470

[123] See article https://www.bloomberg.com/news/articles/2020-09-03/government-gets-power-to-build-brexit-lorry-parks-across-england?sref=Fyz1CWIe

[124] See comment by trade and customs expert Dr. Anna Jerzewska https://www.politico.eu/newsletter/morning-trade-uk/politico-pro-morning-trade-uk-business-anxiety-delayed-on-the-runway-japanese-firms-europe-bound/

[125] See the Institute for Government report *Frictionless trade? What Brexit means for cross-border trade in goods*, https://www.instituteforgovernment.org.uk/sites/default/files/publications/5704%20IFG%20-%20Frictionless%20Trade%20Web_0.pdf page 18

[126] See article https://www.turbulenttimes.co.uk/news/brexit/brexit-chemical-uncertainties/

[127] See article https://www.businessinsider.com/brexit-food-companies-warn-boris-johnson-has-missed-labelling-deadline-2020-9

[128] Government announcement https://www.gov.uk/government/news/major-650-million-investment-for-northern-ireland

[129] See multiple other references in this paper on the link between regulatory divergence and new border procedures and TBTs and the example cited in section 3.4.14 and elsewhere of chemicals, in which the government's blanket rejection of a role for the CJEU, which oversees the European Chemicals Agency (ECHA), is set to create new TBTs for UK firms.

[130] See multiple other references in this paper on the link between regulatory divergence and new border procedures and Technical Barriers To Trade (TBTs)

[131] Two thirds of businesses have seen their preparations interrupted by the pandemic https://www.ukhaulier.co.uk/news/road-transport/brexit/descartes-brexit-readiness-report-highlights-uk-businesses-ill-preparedness-leaving-supply-chains-at-unprecedented-levels-of-risk/

[132] The business leaders who recently warned of border chaos (https://www.ft.com/content/49af99f3-4669-4654-a444-4e5e9635791c) at the end of transition do not complain about lack of access to government but rather that the government does not *know* the answers to their questions

[133] See this series of tweets https://twitter.com/SamuelMarcLowe/status/907296685596008448

[134] See Sabine Weyand's comment https://www.voanews.com/europe/brexit-lessons-norways-hard-border-sweden

[135] See the annexes to the EEA agreement https://www.efta.int/legal-texts/eea/annexes-to-the-agreement and this briefing by customs expert Anna Jerzewska https://www.parliament.scot/S5_European/Inquiries/20200901_CTEEA_ExternalResearch.pdf beginning on page 19

[136] See Dr. Jerzewska's report above

[137] See article https://www.bbc.com/news/technology-41412561

[138] See article https://www.bbc.com/news/technology-41412561

[139] See the references to the new digital clearance system in this article https://www.voanews.com/europe/brexit-lessons-norways-hard-border-sweden

[140] See the expert discussion for the House of Lords EU Select Committee inquiry on the Northern Ireland Protocol https://committees.parliament.uk/oralevidence/59/pdf/ page 28

[141] See the expert discussion for the House of Lords EU Select Committee inquiry on the Northern Ireland Protocol https://committees.parliament.uk/oralevidence/59/pdf/ page 28

[142] See this briefing by customs expert Dr. Anna Jerzewska https://www.parliament.scot/S5_European/Inquiries/20200901_CTEEA_ExternalResearch.pdf The section on Norway begins on page 19 and covers regulatory convergence and mentions that there is no requirement for pre-notification mechanisms

[143] See article https://www.bbc.com/news/technology-41412561

[144] See article https://www.bbc.com/news/technology-41412561

[145] See this tweet from David Henig, Cofounder of the UK Trade Forum https://twitter.com/DavidHenigUK/status/1300831669780467713

[146] As referenced elsewhere, Sam Lowe here https://www.cer.eu/insights/what-boris-johnson-eu-uk-free-trade-agreement-means-business and Dr. Sylvia De Mars here https://committees.parliament.uk/oralevidence/59/pdf/ (page 26) have commented that following EU rules is not sufficient: the EU needs to have transparency over what is happening in the partner country's regulatory policy in order to reduce or eliminate regulatory border controls

[147] See this tweet from David Henig, Cofounder of the UK Trade Forum https://twitter.com/DavidHenigUK/status/1300831669780467713

[148] See Dr. Jerzewska's report https://www.parliament.scot/S5_European/Inquiries/20200901_CTEEA_ExternalResearch.pdf

[149] See article http://www.eureferendum.com/blogview.aspx?blogno=86369 ~ this blog is by the same authors as the Leave HQ blog

[150] *Frictionless trade? What Brexit means for cross-border trade in goods*, Institute for Government, https://www.instituteforgovernment.org.uk/sites/default/files/publications/5704%20IFG%20-%20Frictionless%20Trade%20Web_0.pdf see page 17

[151] See this summary of the *Cassis De Dijon* principle https://www.europarl.europa.eu/doceo/document/E-8-2016-008884_EN.html

[152]See other references and also the Leave Alliance again here http://leavehq.com/blogview.aspx?blogno=128

[153] See the current trade picture here https://ec.europa.eu/trade/policy/countries-and-regions/regions/western-balkans/ and the progress towards accession here https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-communication-on-eu-enlargement-policy_en.pdf

[154] *Frictionless trade? What Brexit means for cross-border trade in goods*, Institute for Government, https://www.instituteforgovernment.org.uk/sites/default/files/publications/5704%20IFG%20-%20Frictionless%20Trade%20Web_0.pdf see page 16

[155] *Frictionless trade? What Brexit means for cross-border trade in goods*, Institute for Government, https://www.instituteforgovernment.org.uk/sites/default/files/publications/5704%20IFG%20-%20Frictionless%20Trade%20Web_0.pdf see page 16

[156] See speech here https://www.margaretthatcher.org/document/107219

[157] Example here https://ec.europa.eu/info/sites/info/files/notice_to_stakeholders_brexit_reach.pdf

[158] There is a de minimis threshold such that even this is not required under certain values

[159] *Implementing Brexit: Customs* Institute for Government https://www.instituteforgovernment.org.uk/sites/default/files/publications/IfG_Brexit_customs_WEB_0.pdf page 10

[160] Seen here https://www.gov.uk/starting-to-import/moving-goods-from-eu-countries

[161] Seen here https://www.gov.uk/import-goods-outside-eu?step-by-step-nav=8a543f4b-afb7-4591-bbfc-2eec52ab96c2

[162] See Sam Lowe from the Centre for European Reform https://www.cer.eu/insights/what-boris-johnson-eu-uk-free-trade-agreement-means-business

[163] See article on the EU Referendum blog http://www.eureferendum.com/blogview.aspx?blogno=86369

[164] See the European Commission page on CETA https://ec.europa.eu/growth/tools-databases/nando/index.cfm?fuseaction=ceta.main and the protocol on conformity assessments http://data.consilium.europa.eu/doc/document/ST-10973-2016-ADD-7/en/pdf

[165] See European Commission website https://ec.europa.eu/commission/presscorner/detail/en/IP_19_4309

[166] https://www.fca.org.uk/publication/impact-assessments/eu-withdrawal-impact-assessment.pdf

[167] See an analysis of "K-REACH" here https://www.khlaw.com/webfiles/KREACH%20scorecard.pdf

[168] As described by the Leave Alliance here https://www.turbulenttimes.co.uk/news/brexit/brexit-chemical-uncertainties/

[169] See article https://www.cer.eu/insights/what-boris-johnson-eu-uk-free-trade-agreement-means-business

[170] Readiness notice page 2 https://ec.europa.eu/info/sites/info/files/notice_to_stakeholders_brexit_reach.pdf

[171] See European Commission homepage on the Services Directive https://ec.europa.eu/growth/single-market/services/services-directive

[172] See this article by Sam Lowe of the Centre for European Reform https://www.cer.eu/insights/what-boris-johnson-eu-uk-free-trade-agreement-means-business : "The recognition of non-EU/EEA qualifications is largely done by individual member-states, and it is not in the EU's gift to offer blanket recognition to a third country. In practice, much as it has done in FTAs with Canada and Japan, the EU will probably agree to facilitate a dialogue between member-state certification bodies and their equivalents in the UK, but little more. This is far inferior to what exists now, whereby UK qualifications are broadly recognised across the EU (with some caveats)."

[173] See this article by Sam Lowe of the Centre for European Reform https://www.cer.eu/insights/what-boris-johnson-eu-uk-free-trade-agreement-means-business

[174] See information on the International Driving Permit here https://www.gov.uk/driving-abroad/international-driving-permit and here https://www.rac.co.uk/drive/travel/driving-abroad/international-driving-permits-and-brexit/

[175] Current official guidance https://www.gov.uk/guidance/carry-out-international-road-haulage-after-brexit

[176] See article https://www.ft.com/content/b4458652-f42d-11e6-8758-6876151821a6

[177] European Commission https://ec.europa.eu/taxation_customs/business/customs-procedures/what-is-customs-transit/common-union-transit_en

[178] See the procedure here https://ec.europa.eu/taxation_customs/sites/taxation/files/transit_manual_en.pdf section 4.1.3.1 and here https://www.gov.uk/guidance/new-computerised-transit-system-transit-declaration-completion-cip7

[179] https://www.gov.uk/starting-to-import/moving-goods-from-eu-countries?step-by-step-nav=849f71d1-f290-4a8e-9458-add936efefc5

[180] For EU countries, the Excise Movement and Control System https://ec.europa.eu/taxation_customs/business/excise-duties-alcohol-tobacco-energy/excise-movement-control-system_en tracks the movement of excise goods to the destination country; this allows the goods to move through union transit countries under "duty suspension": the payment of excise waits until the goods arrive in the destination country.

[181] See Tweet thread https://twitter.com/DavidHenigUK/status/1308673091065860096

[182] See the report here https://www.parliament.scot/S5_European/Inquiries/20200901_CTEEA_ExternalResearch.pdf

[183] See Dr. Jerzewska's report on https://www.parliament.scot/S5_European/Inquiries/20200901_CTEEA_ExternalResearch.pdf page 8 to 13

[184] *Implementing Brexit: Customs* Institute for Government https://www.instituteforgovernment.org.uk/sites/default/files/publications/IfG_Brexit_customs_WEB_0.pdf page 9

[185] See article http://leavehq.com/blogview.aspx?blogno=128

[186] See above

[187] See IfG above

[188] Customs expert Dr. Anna Jerzewska describes the decision on checks as "a mix of risk profiling and random checks" ~ see report https://www.parliament.scot/S5_European/Inquiries/20200901_CTEEA_ExternalResearch.pdf page 7

[189] See article https://www.ft.com/content/b4458652-f42d-11e6-8758-6876151821a6

[190] Rules are here https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R2129&qid=1599767456931&from=EN

[191] See article by Sam Lowe of the Centre for European Reform here https://www.cer.eu/insights/what-boris-johnson-eu-uk-free-trade-agreement-means-business

[192] *Implementing Brexit: Customs,* Institute for Government https://www.instituteforgovernment.org.uk/sites/default/files/publications/IfG_Brexit_customs_WEB_0.pdf page 40

[193] See government guidance https://www.gov.uk/import-goods-outside-eu?step-by-step-nav=8a543f4b-afb7-4591-bbfc-2eec52ab96c2

[194] EEA agreement https://www.efta.int/Legal-Text/EEA-Agreement-1327 and basic features https://www.efta.int/eea/eea-agreement/eea-basic-features

[195] Protocol 2 to the EEA agreement sets out the excluded products https://www.efta.int/sites/default/files/documents/legal-texts/eea/the-eea-agreement/Protocols%20to%20the%20Agreement/protocol2.pdf

[196] See Dr. Jerzewska's report on https://www.parliament.scot/S5_European/Inquiries/20200901_CTEEA_ExternalResearch.pdf page 7

[197] Dr. Jerzewska describes the full process here https://www.parliament.scot/S5_European/Inquiries/20200901_CTEEA_ExternalResearch.pdf on page 4 to 7, while the European Commission website provides official guidance on paperwork requirements here https://trade.ec.europa.eu/tradehelp/documents-customs-clearance

[198] See this article by Sam Lowe of the Centre for European Reform https://www.cer.eu/insights/what-boris-johnson-eu-uk-free-trade-agreement-means-business ~ "few FTAs come close to being fully utilised"

[199] There are many references to integrated supply chains in *Frictionless trade? What Brexit means for cross-border trade in goods*, Institute for Government, https://www.instituteforgovernment.org.uk/sites/default/files/publications/5704%20IFG%20-%20Frictionless%20Trade%20Web_0.pdf, but see for example the summary on page 5: 44% of the value of exports value comes from imports, indicating that intermediate products are of critical importance.

[200] *Implementing Brexit: Customs* Institute for Government https://www.instituteforgovernment.org.uk/sites/default/files/publications/IfG_Brexit_customs_WEB_0.pdf page 40 page 13

[201] See above

[202] *Frictionless trade? What Brexit means for cross-border trade in goods*, Institute for Government, https://www.instituteforgovernment.org.uk/sites/default/files/publications/5704%20IFG%20-%20Frictionless%20Trade%20Web_0.pdf see page 18

[203] See article: https://www.cer.eu/insights/what-boris-johnson-eu-uk-free-trade-agreement-means-business

[204] See article on the EU Referendum blog http://www.eureferendum.com/blogview.aspx?blogno=86369 ~ North, a Brexit supporter, was warning of these problems as far back as February 2017

[205] See article https://www.cer.eu/insights/what-boris-johnson-eu-uk-free-trade-agreement-means-business

[206] See one example here https://www.bbc.com/news/av/uk-40667879

[207] See section 1.3 on the UK's confused position on regulatory standards

[208] As referenced elsewhere, Sam Lowe here https://www.cer.eu/insights/what-boris-johnson-eu-uk-free-trade-agreement-means-business and Dr. Sylvia De Mars here https://committees.parliament.uk/oralevidence/59/pdf/ (page 26) have commented that following EU rules is not sufficient: the EU needs to have transparency over what is happening in the partner country's regulatory policy in order to reduce or eliminate regulatory border controls and other TBTs

[209] See article on the EU Referendum blog http://www.eureferendum.com/blogview.aspx?blogno=86369

[210] See Tweet thread https://twitter.com/DavidHenigUK/status/1308673091065860096

[211] See David Henig of the UK Trade Forum here https://uktradeforum.net/2020/07/28/the-uks-regulatory-sovereignty-vs-free-trade-dilemma/;

[212] See Sam Lowe of the Centre for European Reform commenting on NTBs in trade between Great Britain and Northern Ireland once the latter remains aligned with single market rules and the former not https://twitter.com/SamuelMarcLowe/status/1303596781993951233

[213] See the Food and Drink Federation here FDF on costs of regulatory divergence https://www.fdf.org.uk/publicgeneral/fdf-uk-eu-trade-priorities.pdf and others here https://www.ft.com/content/ac27f198-f408-11e9-a79c-bc9acae3b654

[214] See Sam Lowe of the Centre for European Reform here https://www.cer.eu/insights/flexibility-does-not-come-free and the earlier references to Sylvia De Mars' evidence to the House of Lords EU Select Committee

[215] See the cross-Whitehall report here https://old.parliament.uk/documents/commons-committees/Exiting-the-European-Union/17-19/Cross-Whitehall-briefing/EU-Exit-Analysis-Cross-Whitehall-Briefing.pdf page 18

[216] Dr. Hestermeyer also makes the distinction between "neighbourhood" and other agreements in his evidence to the House of Lords Select Committee on the European Union Internal Market Sub-Committee here https://committees.parliament.uk/oralevidence/83/pdf/ on page 19

[217] Dr. Jerzewska;s report describes this as a "commitment to legislative equivalence" https://www.parliament.scot/S5_European/Inquiries/20200901_CTEEA_ExternalResearch.pdf page 22

[218] See article https://www.blv.admin.ch/blv/en/home/import-und-export/rechts-und-vollzugsgrundlagen/cassis-de-dijon.html

[219] See Dr. Jerzewska's report https://www.parliament.scot/S5_European/Inquiries/20200901_CTEEA_ExternalResearch.pdf page 23

[220] See Dr. Jerzewska's report as above from page 19 onwards

[221] See Dr. Jerzewska's report as above on page 24

[222] See article https://www.ft.com/content/b4458652-f42d-11e6-8758-6876151821a6

[223]See the European Commission's review of the process here https://ec.europa.eu/trade/policy/countries-and-regions/regions/western-balkans/

[224] The sectors are listed here https://ec.europa.eu/growth/tools-databases/nando/index.cfm?fuseaction=ceta.main

[225]See article by Richard North of the Leave Alliance https://www.turbulenttimes.co.uk/news/brexit/brexit-chemical-uncertainties/

[226] See the reference above to K-REACH

[227] See annex 5-J of the CETA text here https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/05-A.aspx?lang=eng#ea

[228] Guidance available here https://www.tradecommissioner.gc.ca/guides/eu_export-guide_ue.aspx?lang=eng

[229] See annex 8A of the agreement here https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:21997A0226(02)&from=EN

[230] See above article 9

[231] See article by the UK Trade Policy Observatory https://blogs.sussex.ac.uk/uktpo/publications/can-ceta-plus-solve-the-uks-services-problem/

[232] See the Canadian Trade Commissioner https://www.tradecommissioner.gc.ca/guides/eu_export-guide_ue.aspx?lang=eng#:~:text=the%20EU%20accounted%20for%20approximately,valued%20at%20approximately%20%2490.9%20billion

[233] See, for example, the provision for mutual recognition of commercial drivers' licences https://www.fmcsa.dot.gov/international-programs/reciprocity-and-recognition-united-states-and-canadian-commercial-drivers and the rules on the ability of truck drivers from Canada to transport goods to and from the US https://www.trucknews.com/features/law-and-cabotage-rules-remain-largely-unchanged/

[234] See article http://leavehq.com/blogview.aspx?blogno=128

[235] As above

[236] As above

[237] See the estimate by the CBI reported here https://www.euronews.com/2018/12/19/how-would-uk-eu-trade-be-affected-by-a-no-deal-brexit

[238] UK trade and the World trade organisation - a Brexit briefing for non-specialists by Richard Barfield: https://brexitfactbase.com/pdfs/UKTradeWTO.pdf section 2

[239] See cross-Whitehall briefing section 9 https://www.parliament.uk/documents/commons-committees/Exiting-the-European-Union/17-19/Cross-Whitehall-briefing/EU-Exit-Analysis-Cross-Whitehall-Briefing.pdf

[240] See previous two notes; Barfield estimates 2.4% to 3.9% from loss of exports; Cross Whitehall briefing (note 7), page 18, estimates nearly 7% including 3.5% from further later loss of market access as regulations diverge

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SEPTEMBER 2020

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