

FLEXCIT

Britain after the EU: A blueprint

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The sovereign nations of the past can no longer solve the problems of the present: they cannot ensure their own progress or control their own future. And the Community itself is only a stage on the way to an organised world of tomorrow.

Closing words of Jean Monnet's memoirs

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Summary

The UK secession from the EU, following a referendum and the British government invoking Article 50 of the Treaty of the European Union, would be a significant geopolitical and economic event. Nevertheless, we expect that the most powerful drivers of the subsequent exit negotiations would be the need to conclude them speedily, while protecting the Single Market.

This suggests an exit strategy that involves the adoption of the "Norway Option" - trading with EU member states through the European Economic Area - and the block repatriation of EU law as an interim solution. An exit agreement can be concluded thereby, with minimum delay, the immediate objective being to achieve an economically neutral transition into a post-Brexit world.

Better access to global and regional standard-setting bodies compensates for the disadvantages of the "Norway Option". Nevertheless, the outcome is not optimal so we recommend putting down a marker for the complete renegotiation of the EEA Agreement, seeking to replace it with a free trade area centred on an expanded EFTA, plus agreements on political co-operation.

In order then to remove the EU law-making monopoly over the entire EEA, we have proposed a different way of administering a European single market, one which covers the entire continental land mass. To achieve this will require wide-ranging negotiations outside the Article 50 process, the continuation of which should be part of the exit settlement.

Our post-exit Britain then emerges from a further eight steps, guided by research, consultation and debate. The "Norway Option" is merely the opening gambit – in the strict technical sense of the word. Our offering is a networked Britain, committed to a FLexible response and Continuous development which we call FLexCit. That is the essence of this blueprint.

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1.0 Introduction

Based originally on a submission to the Institute of Economic Affairs (IEA) for their "Brexit" prize, this paper addresses the mechanisms which the UK would need to employ, following formal notification by the UK of its intention to leave, invoking Article 50 of the Treaty of the European Union (TEU) after an "out" vote in a British referendum.

Few would dispute that this would be a major political event, possibly equivalent in its impact to the fall of the Berlin Wall, as some have said. The financial implications and the potential impact on our international trading arrangements would also make withdrawal an event of considerable economic importance.

In this paper, we are not concerned with reasons why Britain might exit the EU or the advantages or disadvantages of such a step. Nor do we spend time looking at how such a situation might arise. The starting point is that the decision to leave has already been taken. We therefore explore and set out a programme of policy steps to be followed by a British government in the wake of that decision.

In particular, we look at the process of withdrawal within the context of Article 50 negotiations and how the UK might fit into the fresh geopolitical and economic landscape that would follow. Additionally, we identify measures Britain needs to take in the following two years, domestically (within the UK), vis-à-vis the remaining EU and internationally, "in order to promote a free and prosperous economy".

To that effect, areas of government policy and overall political economy affected by "Brexit" come under our scrutiny and we suggest a flexible set of policy responses. Central to these is trade policy but there are many others, notably regulation in general, foreign and fiscal policies and the wider questions of economic policy. Environmental and labour market regulation, immigration, and defence are also relevant.

In pursuing our analyses, we have concluded that, in the short term, there are very few realistic options for trade policy. In the longer term, there seem to be more possible options than have so far entered the general debate. The IEA in its Brexit competition thought we should explore how Britain should seek to fit in the "fresh ... landscape" created as a result of the UK's exit, but we believe that alone is too passive a view. Rather, we believe that, to achieve a desirable settlement, Britain should also aim to take an active role in changing the global landscape.

To a very great extent, such change is not so much an option as an inevitable consequence of "Brexit". The event is of such magnitude that it will have the effect of reshaping the landscape whether intended or not. It might even precipitate a long-overdue re-ordering of the post-war settlement.

In our view, therefore, a coherent exit plan requires something more than perpetuating or expanding existing arrangements, or merely responding to change. We see withdrawal in terms of it presenting opportunities to reshape the broader trading and regulatory architecture in which all nations operate.

The aims of such actions will be to deliver beneficial effects, but the uncertainty renders any estimates of future trade and other matters impossible to quantify accurately. We have thus provided only broad ideas of where the future might lie. Just one thing is certain: the Britain and the trading nations of the world today are not how they will be in the years after Britain leaves the EU.

Nevertheless, we have been mindful of the conditions in which a successful "out" campaign will have been fought, and the broader political environment in which the Article 50 negotiations will have to be conducted. We are convinced that, in the first stages, politics will trump strictly economic considerations, with three factors having an over-riding effect on the short-term decisions.

Firstly, it must be recognised that, once the Article 50 process has started, there is no turning back. To rejoin the EU, Britain would have to undergo the full candidature procedure, which would also involve a commitment to joining the euro.

Secondly, having regard to the character of the debate on Britain's EU membership, we see the Single Market, and the related issue of Foreign Direct Investment (FDI), having assumed a totemic status. It is thus inconceivable that the "out" campaign could have succeeded without it having made firm, unbreakable assurances that current trading relations will continue.

Thirdly, we see expectations raised for a speedy withdrawal. Once "the people have spoken", there will be little tolerance for prolonged negotiations. In a highly charged atmosphere where trust has been eroded, the government will be under huge pressure to act quickly.

These factors will dictate the nature and tempo of the Article 50 talks, and therefore, their immediate outcome. British negotiators will have little flexibility as to the type of agreement that can be concluded. They will have to deal with the economic consequences (and opportunities) of withdrawal on a timescale considerably shorter than is ideal.

To conclude, we explain what must be done to achieve a politically sustainable outcome. We then set out how we would handle negotiations that will determine Britain's position in a post-EU world, taking account of both the short and the longer-term. But, after a look at some preliminary issues, we also explore in more detail the political background to "Brexit" and the effect of the politics on the strategy and conduct of negotiations.

2.0 Preliminaries

Before negotiators can address the substantive issues, there will be a number of preliminary matters to deal with, not least the media response to the referendum result and the formalities of the Article 50 notification to the European Council. Both might be expected to trigger significant adverse reaction in the financial markets, sending market indicators smashing through the floor.

There is plenty of evidence of the sensitivities of market responses to EU-related news. One good example is the reaction during the eurozone crisis to Greece's "shock decision" to hold a referendum on its bail-out package in October 2011. London's FTSE 100 dropped more than two percent, with markets in Germany, France, Spain and Italy sliding between 2.7 and four percent. Global markets fell between 1.7 and 2.5 percent.¹

To avoid, or at least minimise, adverse market reaction, the British government will need to act decisively. It should offer immediate reassurances as to its negotiating intentions, and especially of its determination to promote stability and to protect its trading position. It would be very helpful if it brokered joint announcements with EU partners and institutions, signalling an intention to work together constructively towards a positive outcome.

2.1 Media operations

Not only initially but throughout the conduct of the negotiations, all parties will need to be acutely conscious of the effect of their activities and statements on market confidence. An effective communication strategy is essential. Operations would benefit from the establishment of a dedicated media office, staffed by an experienced team able fully to exploit new communication technologies.² Key members might be recruited from outside government. European Union representatives might be invited to set up a parallel unit, with a promise of the utmost co-operation.

Without in any way seeking to interfere with the freedom of the press, the government might invite media organisations, including news agencies, to appoint specialist staff to handle the negotiations. Special "deep background" workshops might be offered. Ongoing efforts should major on background and technical briefings of greater depth than are normally available from

¹ *The Daily Telegraph*, 1 November 2011, "Markets fall on as Greece announces referendum on euro bail-out". <http://www.telegraph.co.uk/finance/financialcrisis/8861840/Markets-fall-on-as-Greece-announces-referendum-on-euro-bail-out.html>, accessed 18 November 2013.

² Numerous studies have been made on the role of the media and diplomacy, and of the use of new technology. See, for instance, Archetti, Cristina (2010), *Media Impact on Diplomatic Practice: An Evolutionary Model of Change*, American Political Science Association (APSA) Annual Convention, Washington, DC, http://usir.salford.ac.uk/12444/1/Archetti_Media_Impact_on_Diplomatic_Practice_An_Evolutionary_Model_of_Change.pdf, accessed 7 January 2014.

government services, but there should also be an effective rapid-response capability.

2.2 Departmental responsibility for negotiations

The official media operations can only work within the broader structures set by government. Successful management of the negotiations will be a major undertaking, requiring cooperation from most Whitehall departments and considerable resources and political commitment. It will also demand a shift in thinking to deal with what amounts to a fundamental change in national strategy.³

As such, it may well be wise to by-pass the Foreign and Commonwealth Office (FCO). The Cabinet Office might be a suitable alternative with the negotiating team led by the Chancellor of the Duchy of Lancaster. This would permit the appointment of a senior and respected personage from outside party politics, as the post-holder can be a member of the House of Lords.

A good negotiating atmosphere will be vitally important. This must not be left to chance. It will require specific actions early on in the process, with the emphasis on presenting the talks as a co-operative exercise. An early appointment of a person committed to the success of the negotiations would send a positive message and would help set the tone.

Given that one of the most powerful complaints about the EU is the lack of democracy in a structure which is said to be inherently anti-democratic, it will be incumbent on the Government to act in a transparent manner, as far as is compatible with the negotiation process.

In deciding the negotiating policy, there is probably no such thing as a "best way". Different people and organisations will have different views. Some positions will be passionately held, but driven by emotion and sentiment rather than hard fact. Others will be based on what is believed to be clinical analysis of economic realities. Nevertheless, sentiment has a place in politics and public opinion must be accommodated. Furthermore, there will be many uncertainties – not only the "unknowns" but the "unknown unknowns".

To help counter uncertainty, government should facilitate a national debate early on in the negotiations, out of the party political sphere and at arms-length from the executive. Parliament should have an important supervisory role and the appointment of a joint committee of both Houses for the duration could be something worth considering. This could provide material for periodic

³ The official history of the UK and the European Communities (Milward, Alan S, 2002) is entitled: "Rise and fall of a national strategy 1945-1963", signalling the change from being opposed to entry to the European Communities to a policy of seeking membership. Withdrawal from the EU represents no less a change in national strategy and will probably require a similar timescale.

parliamentary debates. Ministers should make frequent statements to both Houses on the progress of talks.

2.3 An independent Advisory Council

The appointment of an independent Advisory Council – with expert sub-committees – would be highly desirable. Its initial task should be to structure and assist the national debate, to review and explain options and then to advise on the stances Britain might take in the negotiation process. We would also see it continuing after "Brexit" to inform further the plans and negotiations as they develop.



Figure 1. Palais des Nations, Geneva. Home of the United Nations in Europe. Potential location for the Article 50 negotiations. (photo: Wikipedia Commons).

In many ways, this is the proper, democratic way to identify measures the UK needs to take "in order to promote a free and prosperous economy". The Council should work in a transparent way, initiating a range of studies and promoting discussion and debate, working with government at all levels, the parliaments and devolved assemblies, trade associations, NGOs and civil society generally, to ensure that British needs are fully understood and have the widest possible backing. Even the best outcome is not a solution unless it has public support.

As to the Article 50 negotiations, the location of the main talks will be crucial. The Justus Lipsius building in Brussels – home of the European Council – would be the obvious choice, but it might engender a hothouse atmosphere which is not conducive to deliberative negotiations. Further, the sight of British representatives on our television screens trooping off to Brussels might send the wrong signal, positioning them as supplicants rather than as equal partners. At this location, where British Council staff are working, it might also be difficult to keep the teams apart and prevent "infection" and leakage.

A more neutral venue might therefore be preferable. Geneva could be a good choice. It is home to many UN institutions, the World Trade Organisation (WTO) and other international bodies. It has good communications and the infrastructure to handle international negotiations. The EU maintains a strong presence in the city and would have few logistic difficulties in supporting prolonged talks.

3.0 The political background

The British political establishment has for many decades embraced the idea of European economic and political co-operation, but has never been wholly at ease with the idea of political integration. In particular, there has been no enthusiasm for vesting power in the supranational authority of what has become the European Union, described by one observer as a "bureaucratic monstrosity", where the economic gains from a British exit "would substantially outweigh the costs".⁴

The EU's commitment to political integration has been responsible for much of the ongoing friction between Britain and the other Member States. British politicians have compensated for this by extolling EU membership as a means of facilitating co-operation with the countries of continental Europe, especially on trade, while downplaying or even ignoring the encroachment of political integration. But, says MP Gisela Stuart, "Europe is not just about economics or simply creating a free trade area and a single market within its boundaries, though these are important. The European Union is, and always has been, a political project, even though this has not been something that has been as openly acknowledged as it should have been in Britain".⁵

Nevertheless, British membership has been politically tenable as long as the emphasis was on institutions and internal relationships, building the *acquis* (the body of regulation) as a means of constructing the so-called single or internal market. But, as the political agenda has become more assertive, antagonism has

⁴ *The Times*, 7 May 2013, <http://www.thetimes.co.uk/tto/news/politics/article3757641.ece>, accessed 4 December 2013.

⁵ Gisela Stuart (2003), *The Making of Europe's Constitution*, p.56. The Fabian Society. London. <http://www.fabians.org.uk/wp-content/uploads/2012/04/TheMakingOfEuropesConstitution.pdf>, accessed 30 November 2013.

intensified, in particular with the eurozone states after the economic crisis which started in 2009.

"The heart of the matter", says Lord Lawson, "is that the very nature of the European Union, and of this country's relationship with it, has fundamentally changed after the coming into being of the European monetary union and the creation of the eurozone, of which - quite rightly - we are not a part". "Not only do our interests increasingly differ from those of the eurozone members but, while never 'at the heart of Europe' (as our political leaders have from time to time foolishly claimed), we are now becoming increasingly marginalised as we are doomed to being consistently outvoted by the eurozone bloc. So the case for exit is clear".⁶

Even supporters of the EU have endorsed Lord Lawson's stance, most notably the *Financial Times* columnist Wolfgang Münchau, who agreed that, "Britain does not need Europe". Acknowledging that the single market carries higher costs than benefits, he asserted: "A departure need not be a disaster if the terms are negotiated with skill". The Single Market, he added:

... has been a macroeconomic non-event. Its impact on aggregate gross domestic product is statistically imperceptible. If you really wanted to defend it on macroeconomic grounds, you would need to argue that trend growth would otherwise have declined – and would have done so at exactly the time when the single market was introduced. Good luck with that.⁷

From the opposite end of the political spectrum comes Ambrose Evans-Pritchard, declaring: "There are plenty of good reasons for and against Brexit, but warning of economic Armageddon is not among them. The economic effects are impossible to quantify, and probably neutral". The issue that matters, he writes:

... is whether or not Britain can continue to be fully self-governing under the sovereignty of Parliament as long as it remains in the EU, or whether it should even be trying to so in a modern global world. It is about the proper locus of democracy, and whether or not the historic nation states of Europe are still the optimal organising basis for modern societies. All else is trivia.⁸

Against that background, popular anti-EU sentiment is having such a disruptive effect on domestic politics that it is destabilising the party system and threatening the viability of the Conservative Party. In an attempt to restore political equilibrium, Prime Minister David Cameron in January 2013

⁶ The Times, *op cit.*

⁷ Wolfgang Münchau, *The Financial Times*, 12 May 2013, Lord Lawson is right – Britain does not need Europe. <http://www.ft.com/cms/s/0/08ce43b0-b8d9-11e2-869f-00144feabdc0.html?siteedition=uk#axzz2jnab0pBF>, accessed 4 December 2013.

⁸ *Daily Telegraph*, 16 January 2014. Ambrose Evans-Pritchard, Ford's pull-out threat on Brexit greatly inflates relevance of dying EU, <http://blogs.telegraph.co.uk/finance/ambroseevans-pritchard/100026413/fords-pull-out-threat-on-brexit-greatly-inflates-relevance-of-dying-eu/>, accessed 19 January 2014.

committed to an "in-out" referendum, with a target date of 2017.⁹ It is this, amongst other things, which set the scene for this evaluation.

The importance of this background cannot be over-emphasised. Essentially, the driver of a referendum leading to "Brexit" will be political rather than economic. As remarked in a recent report: "Any decision to leave the European Union is first and foremost a social, cultural and political one. It must revolve around issues of national sovereignty, citizenship and freedom of determination".¹⁰

During any referendum campaign, we would nevertheless expect the main economic actors, and industry groups such as the CBI, to use economic grounds as the reason for continued membership. But we would expect the "out" campaign to be won on the strength of political arguments. Political issues, we believe, will then dominate the "Brexit" negotiations.

4.0 Negotiating options

For the other 27 Member States as well as Britain, the Article 50 notification will be a major event. The negotiations will impose considerable demands on their diplomatic services and the resources of the EU institutions. Throughout the negotiating period, there will be considerable uncertainty, with the potential for damaging publicity.¹¹

There is also a possibility that Britain's notification occurs at the same time or just after treaty negotiations described above, when other member states are preoccupied by their own affairs or suffering "negotiation fatigue". Any new treaty may have been initially blocked by Britain during the ratification process, this negativity influencing the exit negotiations and rendering a successful outcome extremely difficult to achieve.

On the other hand, Article 50 requires the Union to conclude an agreement with the departing state, "taking account of the framework for its future relationship with the Union". Additionally, Articles 3, 8 and 21 (TEU) variously require the Union to "contribute to ... free and fair trade" and to "work for a high degree of cooperation in all fields of international relations, in order to ... encourage the

⁹ Speech, 23 January 2013, <https://www.gov.uk/government/speeches/eu-speech-at-bloomberg>, accessed 19 December 2013.

¹⁰ Capital Economics Limited (2014), *Nexit – Assessing the Economic Impact of the Netherlands Leaving the European Union*, <https://www.capitaleconomics.com/data/pdf/NExit.pdf>, accessed 7 February 2014.

¹¹ The importance of this is set out in the paper by Tim Oliver on "Europe without Britain. Assessing the Impact on the European Union of a British Withdrawal", published by the German Institute for International and Security Affairs (September 2013). He argues that exit could be traumatic to the EU as well as the UK. http://www.swp-berlin.org/fileadmin/contents/products/research_papers/2013_RP07_olv.pdf, accessed 11 February 2014.

integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade".

Union negotiators must, therefore, entertain reasonable attempts to reduce trade restrictions. Moreover, their actions are justiciable, giving Britain the option of lodging a complaint with the European Court of Justice (ECJ), a provision which affords it some leverage.¹² This notwithstanding, the EU could take the view that working within the WTO framework is sufficient to satisfy treaty obligations. There is nothing explicit in the treaties which requires it to conclude a formal trade agreement with Britain.

Nevertheless, the idea that the Union might refuse outright to negotiate and then impose trade barriers, lies beyond the realm of practical politics. The greater concern might be that EU negotiators will not necessarily embrace outcomes most favourable to Britain. The crux of the matter was identified by former Taoiseach and EU ambassador to the US, John Bruton. He warned that the EU is built on compromise and allowing Britain to retain all associated privileges outside it would set a dangerous precedent.¹³

This makes it very necessary to pick the right option for "Brexit". Essentially, there are three broad possibilities: the "free-for-all" (WTO); bilateral options, involving either a Swiss-style free trade agreement or a Turkish-style customs union; and the EFTA/EEA "Norway Option".

4.1 The "free-for-all" (WTO) option

This option eschews the negotiation of a free trade agreement with the EU, and relies on WTO/GATT agreements to facilitate trade. It has considerable attraction within the wider Eurosceptic community, where it is an article of faith that the trade imbalance with the EU would protect Britain from any predatory action.¹⁴

The trade imbalance is noted by the Centre for European Reform (fig 2 below) but, while the EU buys half of Britain's exports, Britain only accounts for little over 10 percent of exports from the rest of the EU. On that basis, Britain would be in a weak position to negotiate access on its terms. Additionally, half of the EU's trade surplus with the UK is accounted for by just two member states: Germany and the Netherlands. Most EU member states do not run substantial trade surpluses with the UK, and some run deficits with it. Those in deficit might seek to block any agreement.¹⁵

¹² <http://europa.eu/about-eu/institutions-bodies/court-justice/#case4>, accessed 25 November 2013.

¹³ *Open Europe*, exit simulation, 11 December 2013.

<https://twitter.com/search?q=%23EUwargames&src=hash>

¹⁴ Thus argues the Global Britain think tank, pointing out that the eurozone surplus on goods, services, income and transfers currently stands at €63 billion in 2012. Global Britain Briefing Note 86, <http://www.globalbritain.org/BNN/BN86.pdf>, accessed 5 December 2013.

¹⁵ Springford, John & Tilford, Simon (2014), *op cit*

Supporters of the "free-for-all" option argue that the effects of "Brexit" would be limited, as discriminatory tariffs are "illegal under the provisions of the WTO". The EU could not thus impose higher tariffs on an independent Britain than it did its own members.¹⁶ Further, because the WTO system relies on the principle of progressive liberalisation, it is argued that the imposition of new tariffs on a departing Britain is prohibited on these grounds.¹⁷

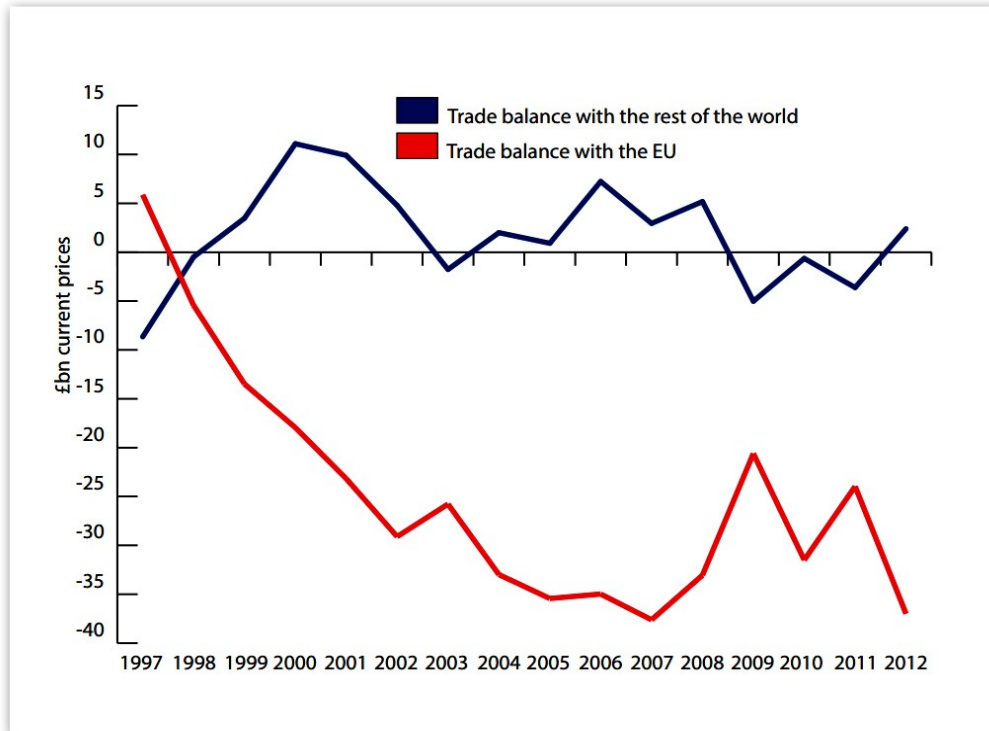


Figure 2: The UK trade balance with the EU and the rest of the world (Source: UK Office of National Statistics, via CER)¹⁸

The reality though, is that, whilst an EU member, Britain benefits from tariff concessions which apply by virtue of membership. This amounts to discrimination against non-members but is permitted under the rules concerning regional trade agreements.¹⁹ Similar discrimination is permitted for the 55 countries with which the EU has preferential trade arrangements. Given that the EU is negotiating or has pending agreements with 84 more countries and is considering negotiating with six more, there are potentially 145 countries

¹⁶ Global Britain, *op cit.*

¹⁷ See for instance: <http://newalliance.org.uk/trade.htm>

¹⁸ Springford, John & Tilford, Simon (2014), The Great British trade-off. The impact of leaving the EU on the UK's trade and investment, Centre for European Forum, http://www.cer.org.uk/sites/default/files/publications/attachments/pdf/2014/pb_britishtrade_16jan14-8285.pdf, accessed 20 January 2014.

¹⁹ Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994, http://www.wto.org/english/tratop_e/region_e/regatt_e.htm#understanding. See also: http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm, both accessed 5 December 2013.

(around 80 percent of all non-EU countries) with which the EU could maintain discriminatory arrangements, to the disadvantage of Britain.²⁰

But should Britain leave the EU, this would not be a matter of applying new tariffs but of withdrawing concessions. That is permitted.²¹ Thus, if Britain had no covering trade agreement, the EU could re-impose tariffs, at whatever rate was applicable to its other third country partners.²² Britain would not even qualify for reduced tariffs under the Generalised Scheme of Preferences (GSP).²³

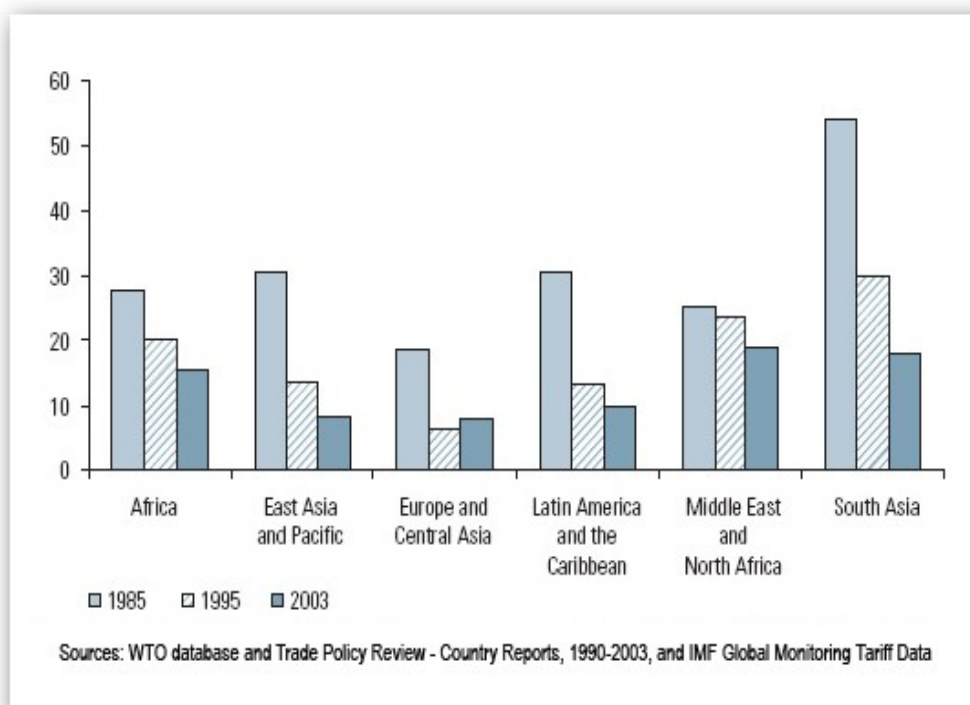


Figure 3: Trends in tariff rates by regions (simple averages %)

Perversely, if Britain then retaliated, the WTO provisions on discrimination would kick in. Whatever tariff levels were imposed on goods from EU member states would have to apply uniformly to similar goods from all other countries. A duty on cars from the EU, for instance, would have to be matched by the same levy on cars from all other trading partners, including Japan and Korea.

²⁰ http://trade.ec.europa.eu/doclib/docs/2012/june/tradoc_149622.jpg, accessed 13 January 2014.

²¹ Article XXVII of the 1994 GATT Agreement, http://www.wto.org/english/res_e/booksp_e/analytic_index_e/gatt1994_10_e.htm#1071, accessed 13 January 2014.

²² The general duty on motor cars is ten percent. For prevailing rates of duty, see: http://ec.europa.eu/taxation_customs/customs/customs_duties/tariff_aspects/customs_tariff/, accessed 5 December 2013.

²³ That is now restricted to LDCs and other low and lower-middle income countries. See: European Commission, Revised EU trade scheme to help developing countries applies on 1 January 2014, 19 December 2013, http://europa.eu/rapid/press-release_MEMO-13-1187_en.htm, accessed 19 December 2013.

This cannot even be by-passed by imposing discriminatory domestic taxes, as indicated currently by action being taken against Brazil.²⁴

EU Member States, however, are permitted further discrimination in that they would be permitted to check documents and make physical inspections of goods entering the customs union (and the EEA). Under the Border Inspection Post (BIP) system, the EU can also specify the port of entry for products of animal origin, to ensure sufficient facilities for inspection are available.²⁵ Such measures might drastically slow the flow of British imports. By contrast, Britain is already well equipped to check imported goods and, with a decentralised system of inland container ports, would not be under the same constraints. To impose artificial barriers to trade would breach WTO rules.

These barriers, generically known as "Non-Tariff Measures" (NTMs), have become more important than tariffs.²⁶

While the process of reducing tariffs globally has been one of the successes of the international system, it has been described as like draining a swamp. The lower water level has revealed all the snags and stumps of non-tariff barriers that still have to be cleared away. After thirty years of swamp draining, the stumps have started to grow. Decades of ever tighter regulation of goods - most of which was adopted for purely domestic policy aims - have escalated regulatory protection.²⁷

Within the EU/EEA, Britain could rely on the weight of Community institutions to assist in breaking down barriers. Without specific trade agreements, there is only the fall-back of the WTO's agreement on Technical Barriers to Trade (the TBT Agreement).²⁸ Yet data suggest that restrictive measures are increasing (figs 3&4).²⁹ Trade is still a long way from free and, since the global crisis, is becoming even less so.³⁰

²⁴ European Commission, EU requests WTO consultations over Brazil's discriminatory taxes, 19 December 2013, http://europa.eu/rapid/press-release_IP-13-1272_en.htm, accessed 20 December 2013.

²⁵ Commission Decision of 28 September 2009 drawing up a list of approved border inspection posts. (2009/821/EC), accessed 5 December 2013.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:296:0001:0058:EN:PDF>

²⁶ Anon (2005), Looking Beyond Tariffs - The Role of Non-Tariff Barriers in World Trade, OECD, http://www.keepeek.com/Digital-Asset-Management/oecd/trade/looking-beyond-tariffs_9789264014626-en#page18, accessed 29 December 2013.

²⁷ Ronald Baldwin, cited in Baldwin, Richard E (2000), Regulatory Protectionism, Developing Nations, and a Two-Tier World Trade System, *Brookings Trade Forum* 2000, 237-280, http://muse.jhu.edu/journals/brookings_trade_forum/v2000/2000.1baldwin.html#FOOT1, accessed 14 January 2014.

²⁸ http://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm, accessed 29 December 2013.

²⁹ WTO, World Trade Report 2012, http://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report12_e.pdf, accessed 27 December 2013.

³⁰ Marc Bacchetta, Cosimo Beverelli, Non-tariff measures and the WTO, 31 July 2012. <http://www.voxeu.org/article/trade-barriers-beyond-tariffs-facts-and-challenges#fn>, accessed 29 December 2013.

This growth of trade restrictions is one outward sign of what is generally regarded as a failure in multilateralism, reflected in a lack of progress since the launch of the Doha round of WTO talks in November 2001.³¹ Furthermore, dispute settlement is less than optimal.³² Proceedings on the long-running dispute between Airbus and Boeing were lodged in 2004 and are still ongoing, while the resolution of the so-called "banana war" took 20 years.^{33,34}

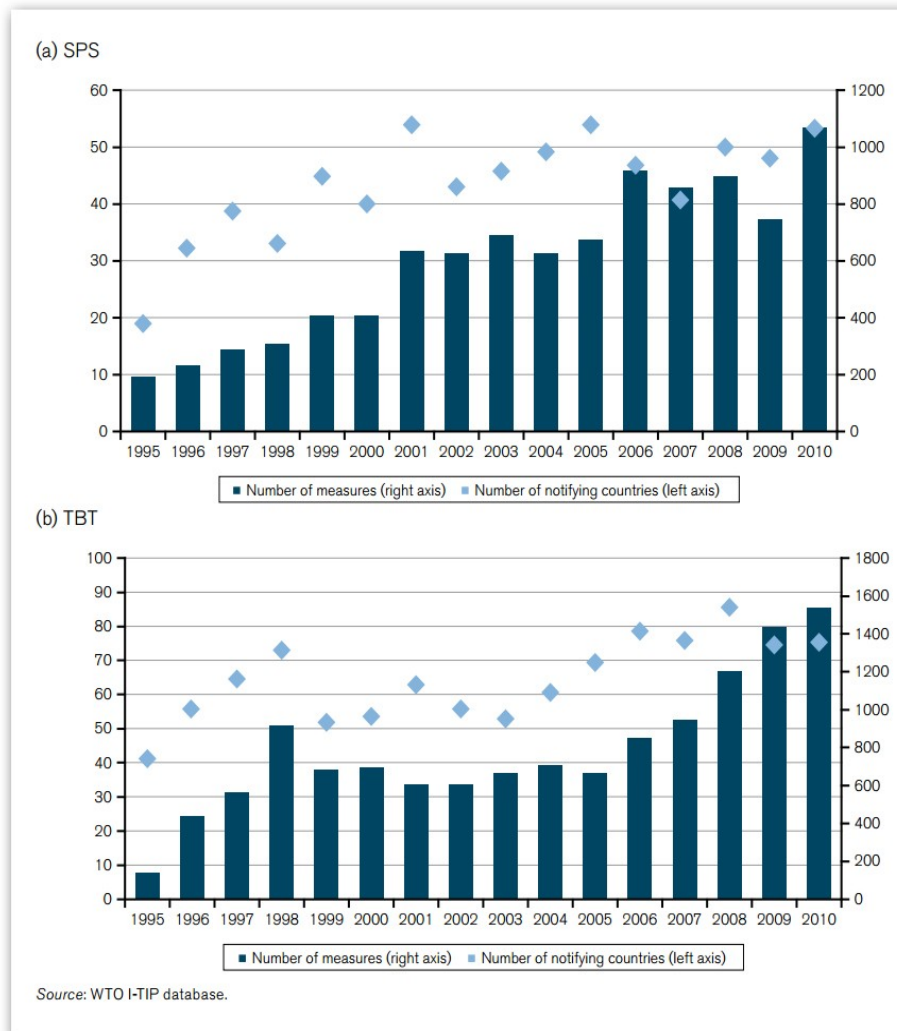


Figure 4: Notifications of non-tariff measures (SPS/TBTs), 1995-2010 (number of notified measures and notifying countries per year). Source: WTO secretariat.

³¹ BBC, The death of the WTO's Doha talks, 25 July 2006, <http://news.bbc.co.uk/1/hi/business/5215318.stm>; and Lloyd, P. (2012). Multilateralism in Crisis. ARTNeT Working Paper No. 114, June, Bangkok, ESCAP; www.artnetontrade.org, accessed 2 January 2014.

³² Iida, Keisuke (2004), Is WTO Dispute Settlement Effective? *Global Governance* 10, 207–225.

³³ WTO, European Communities - Measures Affecting Trade in Large Civil Aircraft, http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds316_e.htm, accessed 2 January 2014.

³⁴ BBC, Banana war ends after 20 years, 8 November 2012, <http://www.bbc.co.uk/news/business-20263308>, accessed 2 January 2014.

In all respects, therefore, a strategy based on an expectation that Britain can rely solely on WTO agreements, without securing direct agreements with the EU, would not be well-founded. Britain would struggle to maintain its current levels of external trade.

4.2 The bilateral (Swiss/Turkey) options

The Swiss rely for their trading arrangements with the EU on a series of "pick and choose" bilateral agreements. Some 120 agreements are in place, including the Schengen Association Agreement, of which 20 are decisive for joint relations.³⁵

There are substantial advantages to this approach, which have been rehearsed widely.³⁶ However, around 40 percent of Swiss legislation derives from EU rules, characterising the arrangements as a means of moving closer to the EU rather than maintaining distance. Not least, access to European capital markets necessitates continuous updating of Swiss law. Overall, the Swiss approach – which is regarded as unique to the country – is thus seen as an exception, rather than a formal model.³⁷

Nor, it would seem, is the example readily transferable. MPs from the House of Commons Foreign Affairs Committee found on a visit to Berne in 2013 that the EU did not wish to continue with the current system. Bilateral agreements are too complex and time-consuming to administer. More importantly, the EU considers that, without any provision for Switzerland's automatic adoption of new legislation in areas covered by its agreements, and without any dispute settlement mechanism, the current system creates "legal uncertainty".³⁸ It is unlikely to be repeated.³⁹

³⁵ European Parliament, Directorate General for Internal Policies, Internal Market beyond the EU: EEA and Switzerland, <http://www.europarl.europa.eu/document/activities/cont/201003/20100315ATT70636/20100315ATT70636EN.pdf>, accessed 3 December 2013.

³⁶ Not least here: Speech to the Bruges Group by Ruth Lea, Britain and Europe: A New Relationship, <http://www.brugesgroup.com/SpeechbyRuthLea.pdf>, accessed 27 November 2013.

³⁷ Switzerland's approach to EU engagement: a Financial Services perspective, report prepared for the City of London corporation by the University of Kent Centre for Swiss Politics, April 2013. <http://www.cityoflondon.gov.uk/business/economic-research-and-information/research-publications/Documents/research-2013/Switzerlands-approach-to-EU-engagement.pdf>, accessed 11 December 2013

³⁸ HoC, The future of the European Union: UK Government policy. First Report of Session 2013–14. Volume I, <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmfa/87/87.pdf>, accessed 19 December 2013.

³⁹ See also Appendix 4: text of the press release following the Swiss Referendum of 9 February 2014. Note specifically, the reminder that: In the Council Conclusions on relations with EFTA countries of December 2012, Member States reiterated the position already taken in 2008 and 2010 that the present system of "bilateral" agreements had "clearly reached its limits and needs to be reconsidered".

As to the Turkish model, this is a limited customs union, covering a range of goods and services, but not agricultural products. Turkey is bound by the EU's common tariff and unable to negotiate its own deals, but is allowed to retain the income from duties collected.⁴⁰

With both models, though, we consider that their utility cannot be assessed solely (or at all) by reference to their inherent merits. Greater regard must be given to the nature of the Article 50 negotiations and the political environment in which they will be conducted and, in particular, demands for an early exit and the need to protect the Single Market.

4.3 Timing complications

If, following the "in-out" referendum, there is a strong demand for the earliest possible exit from the EU, we anticipate that the two years initially set by the Treaty for Article 50 negotiations will be treated as a maximum. Although the period can be extended by unanimous agreement, there will be little tolerance for prolonged talks and certainly not for a process that drags on for many years.

Expectations will undoubtedly create a political momentum that will be difficult to ignore, especially if a general election intervenes. Dominating the talks, therefore, will be an over-riding need to bring them to a speedy conclusion. Furthermore, speed is no bad thing. To avoid unnecessary market uncertainty and political instability, leaving the EU is best done quickly – advice which was tendered to nations proposing to leave the euro.⁴¹

Advocates for bilateral options, though, rarely discuss the time needed to conclude negotiations. Yet, although the relatively straightforward Greenland exit took two years to conclude, the current round of EU-Swiss talks started in 1994 and took 16 years.^{42,43} Furthermore, the tendency is, with the progress of time, for the duration of negotiations to increase, as evidenced by the GATT/WTO rounds (table 1).⁴⁴

⁴⁰ For a full analysis of the Turkish Customs Union, see: MEDPRO Technical Report No. 9/March 2012, www.ceps.be/ceps/dld/6731/pdf, accessed 17 November 2013.

⁴¹ Leaving the euro: A practical guide, Capital Economics Limited, <http://www.policyexchange.org.uk/images/WolfsonPrize/wep%20shortlist%20essay%20-%20roger%20bootle.pdf>, accessed 6 December 2013

⁴² The only country (apart from Algeria) to exit the European Communities is Greenland – an economy a tiny fraction of the size of the UK's. Even then, with the exit referendum taking place in 1982, the treaty of withdrawal did not take effect until 1 February 1985. See: http://en.wikipedia.org/wiki/Greenland_Treaty, accessed 27 August 2013.

⁴³ European Parliament, Directorate General for Internal Policies, Internal Market beyond the EU: EEA and Switzerland, <http://www.europarl.europa.eu/document/activities/cont/201003/20100315ATT70636/20100315ATT70636EN.pdf>, accessed 3 December 2013.

⁴⁴ Moser, Christoph & Rose, Andrew K (2012), Why do trade negotiations take so long? Centre for Economic Policy Research, <http://faculty.haas.berkeley.edu/arose/ON1111.pdf>, accessed 17 January 2014.

| Round | Initiated | Completed | Participants | Duration |
|-----------|-----------|-----------|--------------|-------------|
| Geneva | Apr-1947 | Oct-1947 | 23 | 6 months |
| Annecy | Apr-1949 | Aug-1949 | 13 | 4 months |
| Torquay | Sep-1950 | Apr-1951 | 38 | 7 months |
| Geneva II | Jan-1955 | May-1956 | 26 | 16 months |
| Dillon | Sep-1960 | Jul-1962 | 26 | 22 months |
| Kennedy | May-1964 | Jun-1967 | 62 | 37 months |
| Tokyo | Sep-1973 | Nov-1979 | 102 | 74 months |
| Uruguay | Sep-1986 | Apr-1994 | 123 | 91 months |
| Doha | Nov-2001 | | 153 | >123 months |

Table 1: GATT/WTO rounds, 1947-2001, time taken to complete negotiations

With the EU, prolonged negotiations seem to be the norm. Preliminary talks on the Mexico-EU FTA started in 1995 and finished on 24 November 1999, the agreement coming into force on 1 July 2000.⁴⁵ The Colombia - Peru deal was launched in June 2007 and provisionally applied in the first trimester of 2013, nearly five years later.⁴⁶ Its 2,605-page length, with 337 articles and dozens of schedules give clues as to the complexity of the task confronting negotiators.⁴⁷

Work on the EU-Canadian Comprehensive Economic and Trade Agreement (CETA) started in June 2007 and it took until October 2013 for its key elements to be agreed.⁴⁸ Negotiations on the EU-South Korea FTA started in 2006 and the final agreement entered into force on 1 July 2011.⁴⁹ However, this was only the last stage of a process which had started in 1993.^{50,51} To deliver the current

⁴⁵ See: <http://intl.econ.cuhk.edu.hk/rta/index.php?did=30>, accessed 12 December 2013.

⁴⁶ European Services Forum: <http://www.esf.be/new/esf-eu-trade-policy/eu-free-trade-agreements/eu-peru-colombia-andean/>, accessed 16 November 2013

⁴⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:354:0003:2607:EN:PDF>, accessed 16 November 2013.

⁴⁸ See: <http://ec.europa.eu/enterprise/policies/international/facilitating-trade/free-trade/> and <http://ec.europa.eu/trade/policy/countries-and-regions/countries/canada/>, accessed 16 November 2013.

⁴⁹ Ministry of Foreign Affairs, Republic of Korea: FTA status of ROK: http://www.mofa.go.kr/ENG/policy/fta/status/effect/eu/index.jsp?menu=m_20_80_10&tabmenu=t_2&submenu=s_6, accessed 16 November 2013

⁵⁰ European Commission website: Taxation and Customs Union – Korea: http://ec.europa.eu/taxation_customs/customs/policy_issues/international_customs_agreements/korea/index_en.htm, accessed 16 November 2013

⁵¹ http://en.wikipedia.org/wiki/South_Korea%E2%80%93European_Union_relations, accessed 16 November 2013.

1,336-page trading agreement, alongside a broader-ranging 64-page framework agreement on political co-operation, took almost 18 years.⁵²

The EU-India free trade negotiations were launched in 2007 and have still to come to a conclusion seven years later.⁵³ An agreement may not be signed until 2015.⁵⁴ The putative EU-Mercosur agreement has an even more chequered history.⁵⁵ Negotiations were launched in September 1999 but, despite a re-launch in May 2010 and nine further negotiation rounds, no agreement has been reached after more than ten years. No date has been set for further negotiations.⁵⁶ Even more limited pacts can take many years. Negotiations for the Turkish readmission agreement – allowing for the return of illegal immigrants entering EU member state territories via Turkey – started in November 2002, but the agreement was not signed until 16 December 2013 – an interval of 11 years.⁵⁷

On this basis, it is highly improbable that British and EU negotiators could conclude a *de novo* bilateral agreement in less than five years, especially as there is much more than trade to deal with. Whatever their attractions in theory, the bilateral options are not viable, purely on the grounds of the time needed to negotiate them.

4.4 Protecting the Single Market

During the referendum campaign, supporters of continued EU membership of the EU will most likely have fought a negative referendum campaign, relying heavily on fear, uncertainty and doubt (known as FUD).⁵⁸ Typical of the genre is this extract from a Sunday newspaper. Leaving the EU, it says:

... will be a disaster at every level. Britain's mass car industry will head to low-cost countries that have remained in the EU. Much other manufacturing will follow; Airbus production will migrate to Germany and France ... The financial services industry will be regulated on terms set in Brussels and be powerless to resist. British farmers, who have prospered under the Common Agricultural Policy, will find they become dependent on whatever mean-

⁵² See also: http://eeas.europa.eu/korea_south/docs/framework_agreement_final_en.pdf, and <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:127:0006:1343:en:PDF>, accessed 16 November 2013.

⁵³ See: <http://ec.europa.eu/trade/policy/countries-and-regions/countries/india/>, accessed 11 December 2013.

⁵⁴ The Asian Age, 18 January 2014, "EU hopes to see FTA with India", <http://www.asianage.com/india/eu-hopes-see-fta-india-716>, accessed 18 January 2014.

⁵⁵ Argentina, Brazil, Paraguay, Uruguay and Venezuela.

⁵⁶ See: <http://ec.europa.eu/enterprise/policies/international/facilitating-trade/free-trade/#h2-2>, accessed 16 December 2013.

⁵⁷ European Commission, COM(2012) 239 final, 22 June 2012, concerning the conclusion of the Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0239:FIN:EN:PDF>, accessed 16 December 2013.

⁵⁸ See: http://en.wikipedia.org/wiki/Fear,_uncertainty_and_doubt, accessed 14 January 2014.

spirited British system of farm support that replaces it. Farms will survive by industrial farming, devastating the beloved English countryside.⁵⁹



Figure 5: Fear, Uncertainty, Doubt (FUD): scare stories about leaving the EU have become constant media fare, mostly claiming adverse economic consequences.

This FUD has been a characteristic of pro-EU campaigns, which have exploited the *status quo* effect and the vital importance to British economy of the totemic Single Market. On the other hand, the "out" campaign will have succeeded in part by offering a positive vision, emphasising high ideals such as self-determination and the restoration of democracy.⁶⁰ But, to neutralise the FUD, assurances on continued membership of the Single Market will have been needed. Irrespective of the actual merits of membership, we do not see that a campaign could have succeeded without unbreakable assurances of this nature, to "kill stone dead" the business and foreign investment case against withdrawal.⁶¹

⁵⁹ *The Observer*, 18 November 2012, "If Britain leaves Europe, we will become a renegade without economic power". <http://www.theguardian.com/commentisfree/2012/nov/18/editorial-britain-leaving-european-union>, accessed 30 November 2013.

⁶⁰ In the opinion of the Norwegian "No to EU" campaign, the British campaign has been overly focused on the economy and trade. The successful 1994 campaign in Norway was won by featuring prominently on "high ideals". Helle Hagenau, International Officer, "No to EU", personal communication, 31 July 2012.

See also: The rationale for opposing Norwegian membership in the European Union. One of the fundamental themes in the anti-EU campaign is the perception that cherished democratic values at the national as well as the local level are best retained outside the EU.

http://www.neitleu.no/articles_in_foreign_languages/the_rationale_for_opposing_norwegian_membership_in_the_european_union, accessed 18 November 2013.

⁶¹ Anthony Scholefield, The pathway to exit from the EU, 20 December 2013, *Eurofacts*.

Assurances given will have to be honoured, thus shaping the Article 50 negotiations. They add further, insurmountable obstacles to both the bilateral options (and, for that matter, the WTO option). If those options were not already untenable, the need to keep the Single Market intact would make them so.

4.5 The "Norway Option"

The best way of securing a speedy resolution to ongoing Single Market participation is continued membership of the European Economic Area (EEA) Agreement. This is the "Norway Option", so-called because Norway is the largest nation within the EFTA/EEA group.⁶²

Britain is already party to the EEA, so all the technical measures are in place. Outside the EU, though, membership of the European Free Trade Association (EFTA) would be required.^{63,64} That would have its own advantages, allowing Britain to tap into extensive consultation arrangements with the EU, and also give it access to the free trade areas to which the Association is party. Furthermore, the result would be a significant trading group, putting it fourth in the world trade league after China (\$3,642bn) and ahead of Japan (\$1,678bn). "EFTA-plus" would be a significant global player (Table 2).⁶⁵

In this option, however, there is no prospect of substantive change to the Agreement. To entertain that would extend the timescale of the negotiations and thereby defeat the object of using a ready-made option. A cut-down "EEA-lite" agreement is, therefore, wholly unrealistic.⁶⁶ The Agreement must be adopted in its entirety, or the parties must be prepared for the long-haul.

That is not to suggest that the Agreement is ideal. From the outset, as with the bilateral models, it was intended as a step towards full EU membership, having been originally devised in 1989 by Jacques Delors, then President of the European Commission.⁶⁷ It comes as no surprise, therefore, to have Wolfgang

⁶² The other two members are Iceland and Liechtenstein. To take account of the other two members, the Norway Option could also be called the NIL Option.

⁶³ Britain would have to rejoin EFTA. It was a founder-member and left to join the then EEC.

⁶⁴ There is an unresolved question of whether Britain would cease to become a member of the EEA on leaving the EU and would have to re-apply on rejoining EFTA. The text of the Agreement does not specifically exclude continued membership, possibly because, prior to the Lisbon Treaty, there was no provision for any member leaving the EU. Negotiations with all parties concerned will be needed, to resolve the issue. Personal communication, Georges Baur, Assistant Secretary General, EFTA, 14 June 2013. .

⁶⁵ WTO data, online database, Figures from 2011.

http://www.wto.org/english/res_e/statis_e/looking4_e.htm#summary, accessed 19 December 2013.

⁶⁶ *The Sunday Telegraph*, 1 December 2013, "EU: Britain is moving closer to the exit", David Campbell Bannerman, <http://www.telegraph.co.uk/comment/10485773/EU-Britain-is-moving-closer-to-the-exit.html>, accessed 1 December 2013.

⁶⁷ These then included Austria, Finland, Iceland, Liechtenstein, Norway, Sweden and Switzerland. The Agreement was signed on 2 May 1992 in Oporto and entered into force on 1 January 1994. Switzerland voted against EEA membership in December 1992 and has since

Münchau stating that, for Britain to be economically better off out, it should not immediately seek membership of the EEA.⁶⁸

| Rank | Country | Total trade (bn USD) |
|-----------------------|--------------------------|----------------------|
| 1 | European Union | 11,009 |
| 2 | United States | 3,746 |
| 3 | China | 3,642 |
| 4 | EFTA plus UK | 1,879 |
| 5 | Japan | 1,678 |
| 6 | Republic of Korea | 1,080 |
| 7 | Hong Kong China | 967 |
| 8 | Canada | 915 |
| 9 | Russian Federation | 846 |
| 10 | Singapore | 775 |
| 11 | India | 767 |
| 12 | Mexico | 711 |
| 13 | Chinese Taipei | 590 |
| 14 | Australia | 514 |
| 15 | Saudi Arabia | 496 |
| 16 | Brazil | 493 |
| 17 | United Arab Emirates | 490 |
| 18 | Thailand | 457 |
| 19 | Malaysia | 455 |
| 20 | Indonesia | 377 |
| 21 | Turkey | 376 |
| 22 | South Africa | 218 |
| 23 | Vietnam | 204 |
| 24 | Islamic Republic of Iran | 194 |
| 25 | Nigeria | 171 |
| Total of above | | 33,050 |
| World | | 33,693 |

Table 2: EFTA+ as a leader in world merchandising trade (source WTO).

Crucially, though, it would be no worse off. EEA membership protects Britain's position, more or less guaranteeing that withdrawal would be economically neutral, with no adverse effect on FDI.

maintained and developed its relationship with the EU through bilateral agreements. Since 1 January 1995, Austria, Finland and Sweden have participated in the EEA as EU Member States. Liechtenstein became a full participant on 1 May 1995. See: http://www.efta.int/media/publications/fact-sheets/EEA-factsheets/FS_EEA.pdf, accessed 4 December 2013.

⁶⁸ Financial Times, op cit.

In any event, the effect of Single Market participation on FDI is often overstated. Additional reasons cited include the English language and English law in business operations. Moreover, while in 2012, the EU reported a steep decline of 42 percent in FDI (with France falling by 35 percent and Germany declining by 87 percent), the UK secured an increase of 22 percent. Clearly, participation in the Single Market is not in itself sufficient to secure high levels of inflow.⁶⁹

Only a few changes, such as those needed to accommodate rules of origin, would be needed, allowing trade to continue uninterrupted, creating space for negotiations on the longer-term issues.⁷⁰

There is a possibility, though, that an EFTA member could veto British accession, blocking the "Norway Option". In response, Britain could retain the EEA component of the *acquis*, allowing it to opt for a "shadow EEA" without formally subscribing to the agreement.⁷¹ Perforce, it would not then benefit from EFTA's consultation arrangements, so provision would have to be made for bilateral consultations on new legislation. Thus, if the EFTA/EEA arrangement is considered sub-optimal – which we discuss below – this is even more so. But, as a short-term solution, it would be more acceptable than no trade agreement at all.

5.0 Disadvantages and remedies

Continuing Single Market participation accords with government objectives, but its official line is that it "does not think this [the Norway Option] is a suitable situation for the UK, in view of the UK's size and global influence".⁷² David Cameron believes there are overwhelming disadvantages. Mere access to the Single Market is not sufficient, he declares. "We need a say in the rules of that market". It is not in the national interest to be in the Single Market like Norway, where we: "just accept all the rules of the Single Market, pay for the privilege of being part of it and, as it were, be governed by fax rule".⁷³ Norway,

⁶⁹ See: HM Government, UK Trade & Investment, Inward Investment Report 2012/13, <http://www.ukti.gov.uk/investintheuk/investintheukhome/item/553980.html>, accessed 20 January 2014.

⁷⁰ Some companies will bear additional costs as a result of imported materials caught by ROO provisions, while there will be additional paperwork requirements for declarations of origin. However, changes which come into force from 1 January 2017, and revised "cumulation" arrangements will reduce both financial and administrative burdens. See: http://unctad.org/en/PublicationsLibrary/itedtsbmisc25rev3add1_en.pdf and <http://www.unctad.info/en/Trade-Analysis-Branch/Key-Areas/Non-Tariff-Measures/>, both accessed 30 December 2013.

⁷¹ Internal Market Directives adopted as at 01.10.2013, http://ec.europa.eu/internal_market/score/docs/relateddocs/im-directive_en.pdf, accessed 2 December 2013.

⁷² Personal communication, Nick Saunders, Future of Europe Department, Foreign and Commonwealth Office. Undated – in response to communication of 7 January 2013.

⁷³ BBC Radio 4, *Today* Programme. 14 January 2013, Author's transcript.

he was later to aver, "has no say at all in setting its rules: it just has to implement its directives".⁷⁴

That view is shared by Wolfgang Münchau and even a House of Commons library briefing note asserts that: "Norway has little influence on the EU laws and policies it adopts".⁷⁵ The Commons Foreign Affairs Committee agrees with the government. Neither the Norway nor the Swiss options, it argues, would be appropriate: they oblige Britain to adopt some or all of the body of EU Single Market law with no effective power to shape it. If it is in Britain's interest to remain in the Single Market, the Committee argues, it should either stay in the EU, or seek radical institutional change in Europe to give decision-making rights in the Single Market to all its participating states.⁷⁶



Figure 6. Mrs Anne Tvinnereim, former Norwegian State Secretary: "... we do get to influence the position ... most of the politics is done long before it [a new law] gets to the voting stage". (photo: author's collection)

The progenitor of the "fax democracy" label was Norwegian Prime Minister, Jens Stoltenberg, who coined it in February 2001.⁷⁷ He was seeking to promote full EU membership to his reluctant countrymen, who had already twice

⁷⁴ Speech, 23 January 2013, *op cit.*

⁷⁵ "Norway's relationship with the EU", <http://www.parliament.uk/briefing-papers/SN06522>, accessed 10 October 2013.

⁷⁶ HoC, The future of the European Union, *op cit.*

⁷⁷ <http://www.euromove.org.uk/index.php?id=6509>

rejected membership.⁷⁸ Later, EU-enthusiast Foreign Minister Espen Eide took up the theme, complaining that Norway in the EEA had "limited scope for influence", and was "not at the table when decisions are made".⁷⁹

This was hardly a neutral observer speaking. During the 1994 referendum on Norwegian EU membership, Eide worked in the European Movement for the "yes" campaign. He held senior positions as project manager and acting Secretary General. He is an enthusiastic supporter of the EU and a prominent campaigner for Norwegian membership, despite nearly 80 percent of his voters opposing entry.

The lack of influence was disputed by Anne Tvinnereim, former State Secretary for the Ministry of Local Government and Regional Development, and a member of the rival Centre Party. "It is true that we are not there when they vote", she said, "but we do get to influence the position". In international relations, "most of the politics is done long before it [a new law] gets to the voting stage".⁸⁰ We "totally disagree" with Eide's position. "He does not represent the Norwegian debate".⁸¹

Mrs Tvinnereim is supported by her own Foreign Ministry. It explains, in respect of Council discussions on Schengen-relevant legislation, that it does not have the right to vote at any stage of the decision-making process and does not participate in the formal adoption of legislation. But in practice, it says, "experience has shown that this is less important than the opportunities we have to influence other countries by putting forward effective, coherent arguments".

The most important stage for influencing the development of Schengen legislation is early in the Council's decision-making process, i.e. in working groups and committees under the Council, immediately after the Commission has put forward a proposal for a legal act". Schengen member states, including Norway, it adds, participate at this stage by providing expert input in the fields concerned. The extent to which the efforts of each of the countries have an impact at this stage depends largely on the quality of the expertise provided and the arguments used. Norway has the same opportunities to promote its views as the EU member states.

Mrs Tvinnereim asserts that people such as Eide are protecting their own positions. They need British EU membership to continue as "Brexit" would weaken the Norwegian establishment and vastly strengthen the "no" campaign, especially if Britain joined EFTA.⁸² Senior Icelandic politicians agree with Mrs

⁷⁸ Referendums in 1972 and 1994 both recorded "no" majorities.

⁷⁹ BBC Radio 4, *World This Weekend*. 24 December 2012. Author's transcript.

⁸⁰ See: <http://www.regjeringen.no/en/dep/ud/documents/propositions-and-reports/reports-to-the-storting/2012-2013/meld-st-5-20122013/2/4/1.html?id=732554>, accessed 12 January 2014.

⁸¹ Interview by the author: Oslo, 31 July 2013

⁸² *Ibid.*

Tvinnereim. In Iceland, similar dynamics exist, with the "elites" seeking EU membership despite popular opposition.⁸³

5.1 Norwegian/EFTA spheres of influence

Norwegian/EFTA influence stems from a complex and subtle system of decision-shaping, facilitated by formal EFTA structures and by informal bilateral measures.⁸⁴ At the heart of these is the so-called two-pillar system (fig 7). Through this, there are multiple EU-EFTA contacts, particularly at the early stages of the legislative process.⁸⁵

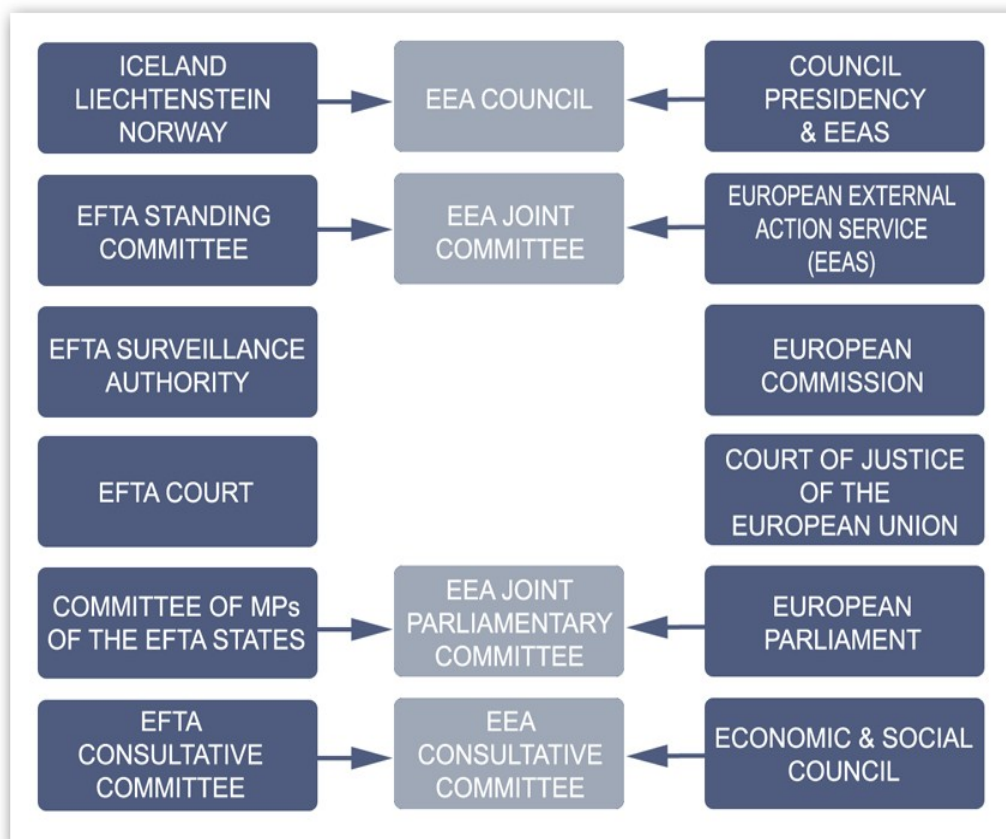


Figure 7. Two-pillar consultation structure under the EEA Agreement. The left pillar shows the EFTA States and their institutions, while the right pillar shows the EU side. The joint EEA bodies are in the middle. (Source EFTA)

Increasingly, though, the most powerful influence derives from the process of globalisation, in which much of the responsibility for trade-related regulation

⁸³ Björn Bjarnason, Interview by the author, Reykjavík 28 January 2014.

⁸⁴ This is EFTA 2013, <http://www.efta.int/sites/default/files/publications/this-is-efta/this-is-efta-2013.pdf>, accessed 19 December 2013.

⁸⁵ <http://www.efta.int/~media/Files/Publications/Bulletins/eeadecisionshaping-bulletin.pdf>, accessed 18 December 2013.

and standard-setting is shifting to a network of regional and global bodies.^{86,87} More than 80 percent of EEA policy falls within the ambit of international organisations and is potentially amenable to global regulation (fig 8).⁸⁸

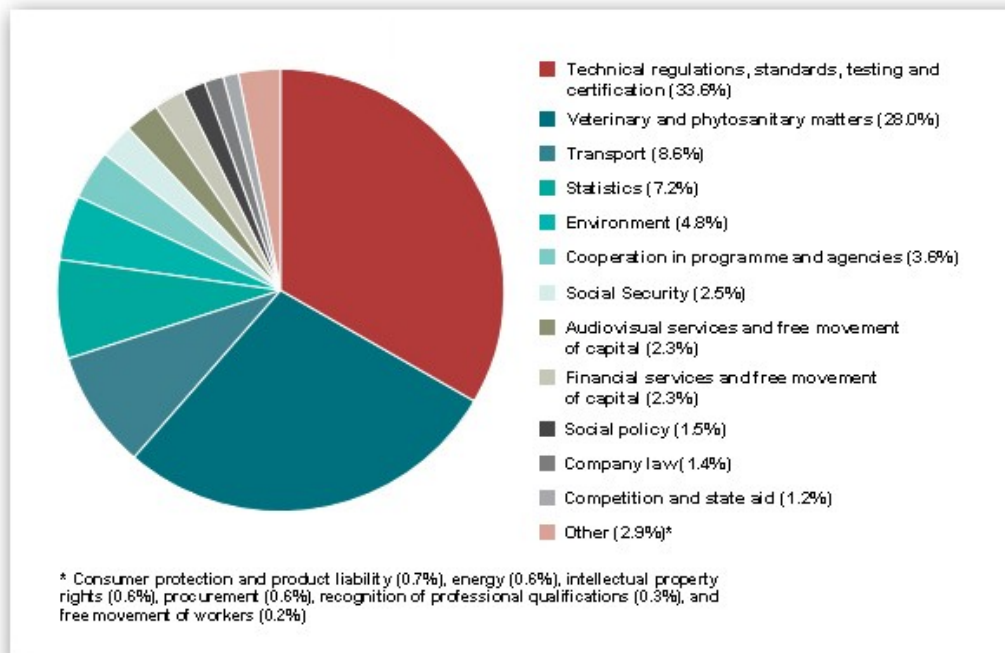


Figure 8. Breakdown by policy areas of EU legal acts in the EEA Agreement: as of December 2010 (shares of the 4,179 incorporated acts in force). Source EFTA.

A major driver of the process is the WTO TBT Agreement, incorporated into the EU *acquis* in 1994.⁸⁹ If a relevant international standards exist, or their completion is imminent the Agreement requires members to use them in preference to their own.⁹⁰ This is not optional – the Agreement uses the word "shall" (Figure 9).

⁸⁶ For a detailed treatment of this argument, see: North, Richard A E, *The Norway Option, Re-joining the EEA as an alternative membership of the European Union*. The Bruges Group, November 2013.

⁸⁷ Norwegian Ministry of Foreign Affairs, Meld. St. 5 (2012–2013) Report to the Storting (White Paper), The EEA Agreement and Norway's other agreements with the EU, http://www.regjeringen.no/upload/UD/Vedlegg/Europa/nou/MeldSt5_UD_ENG.PDF, accessed 21 December 2013.

⁸⁸ EFTA, The European Economic Area and the Single Market 20 years on, <http://www.efta.int/sites/default/files/publications/bulletins/EFTA-Bulletin-2012.pdf>. Accessed 21 December 2013.

⁸⁹ European Commission, Adoption of the WTO agreements, Council Decision 94/800/EC of 22 December 1994: http://europa.eu/legislation_summaries/external_trade/r11010_en.htm, accessed 30 December 2013.

⁹⁰ See: WTO, Agreement on Technical Barriers to Trade, Art 2.4, http://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm; and WTO, Technical Information on Technical barriers to trade, http://www.wto.org/english/tratop_e/tbt_e/tbt_info_e.htm, all accessed 30 December 2013.



URUGUAY ROUND AGREEMENT
**Agreement on Technical
Barriers to Trade**

Technical Regulations and Standards

**Article 2: Preparation, Adoption and Application of
Technical Regulations by Central Government Bodies**

2.4 Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.

Figure 9. Article 2.4 of the WTO Agreement on Technical Barriers to Trade. In time, this could be the redundancy notice for the EU's version of the Single Market. As more and more international standards are drawn up, the EU is obliged, as party to the Agreement, to use them, replacing its own laws. Eventually, the bulk of the Single Market *acquis* will comprise these international standards.

Many of the standard-setting organisations come under the aegis of the United Nations and work in association with the WTO. There are also many informal bodies which contribute to the standard-setting process. They are supplemented by international trade associations and standards organisations, typically the International Organization for Standardization (ISO).⁹¹

The collective output of these bodies is not statute law, but the root of an expanding body of "soft" law, often termed "quasi-legislation". Requiring two bodies (at least) for its implementation, such law has been termed "dual-international quasi-legislation", abbreviated to "diqule". To take effect, it must be turned into legislation and embedded in an enforcement and penalty framework.

⁹¹ <http://www.iso.org/iso/home.html>, accessed 30 December 2013.

This activity is increasingly becoming the primary role of organisations such as the EU. Thus, as the TBT Agreement bites, international bodies become the "manufacturers" of standards and the EU becomes the processor, wholesaler and distributor. However, post-withdrawal, Britain, as part of the EFTA/EEA complex, is in a position to by-pass the "middle man" and go directly to source (fig 10).

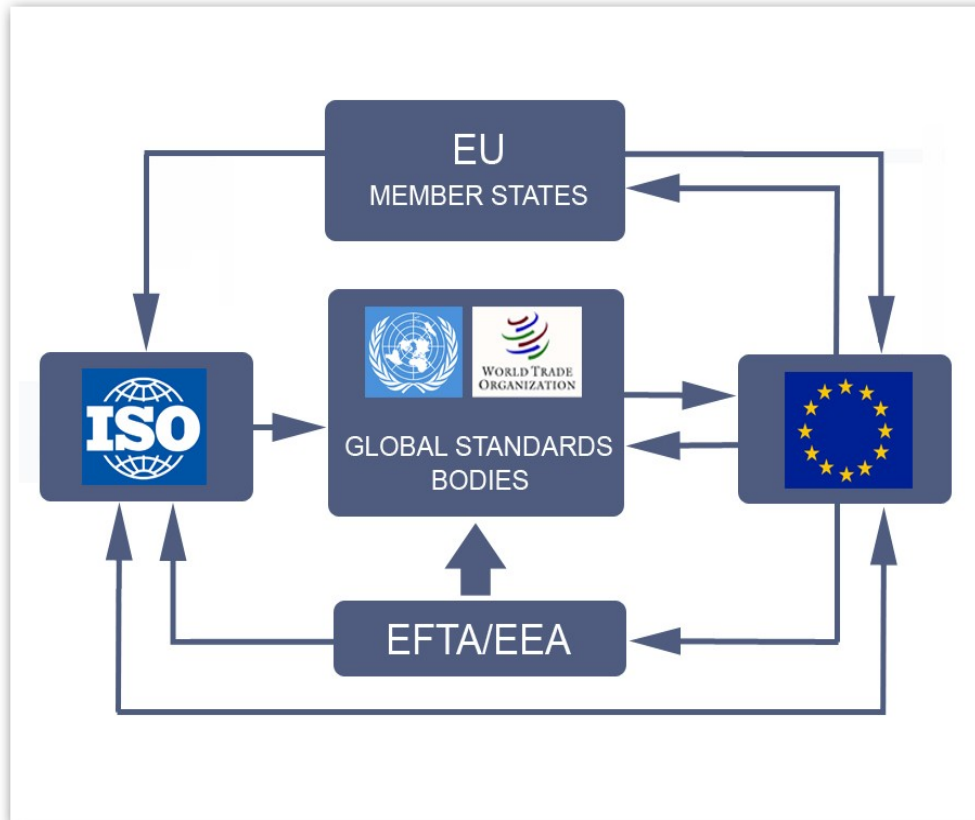


Figure 10. Single Market standard-setting: a simplified flow. Global bodies receive multiple inputs, but EU Member States work through the EU, while EFTA/EEA members are able to negotiate directly with the global bodies.

5.2 Regaining influence

As long as Britain remains within the EU, international trade negotiations are conducted by the European Commission after agreeing a "common position" with Member States via the Council.⁹² Britain is also represented by the EU on international standards-setting bodies which means that the EU decides on the [soft] law which its own (and EFTA/EEA) members will have to adopt. It also contributes to the global law-making process.

⁹² European Commission: Trade Policy. <http://ec.europa.eu/trade/policy/policy-making/>, accessed 8 December 2013.

As to Britain's influence at Mr Cameron's EU "top table", most often agreements are reached by consensus. Where a vote is called, qualified majority voting (QMV) applies. Britain has 29 votes out of 352, representing eight percent of the vote (fig 11). A qualified majority is 252 votes (73.9 percent).⁹³

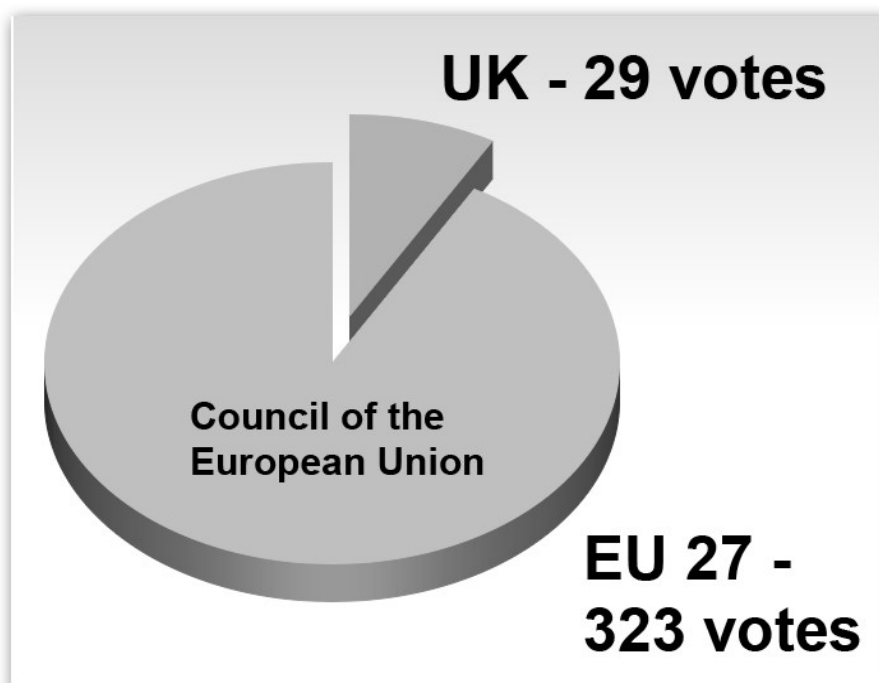


Figure 11. Council of the European Union: qualified majority voting – national vote weighting. (source: Consilium)

International standards are most often implemented by the EU as delegated legislation (Commission Regulations) using the comitology procedure.⁹⁴ Every year, more than 2,500 measures are processed via this route by 200-300 committees - approximately 30 times more measures than by the ordinary legislative procedure. The committees cannot amend or reject Commission proposals, but may refer them to the Council if they disagree with them.⁹⁵ At Council, though, 70-90 percent of decisions are made by officials in the 160-plus preparatory bodies.^{96,97} These are known as "A-points" – colloquially the "A-list" – which are adopted by Ministers without discussion or a vote.⁹⁸

⁹³ Council of the European Union – voting calculator, <http://www.consilium.europa.eu/council/voting-calculator?lang=en>, accessed 2 January 2014.

⁹⁴ European Commission, Comitology Register, <http://ec.europa.eu/transparency/regcomitology/index.cfm?do=implementing.home>, accessed 18 December 2013.

⁹⁵ Blom-Hansen, Jens (2008), The EU Comitology System: Who Guards the Guardian? Paper presented at the Fourth Pan-European Conference on EU Politics organised by the ECPR's Standing Group on the European Union, 25-27 September 2008, Riga, Latvia. <http://www.jhubc.it/ecpr-riga/virtualpaperroom/085.pdf>, accessed 2 January 2014.

⁹⁶ Council of the European Union. List of Council preparatory bodies, <http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=ST%205581%202013%20INIT&r=http%3A%2F%2Fregister.consilium.europa.eu%2Fpd%2Fen%2F13%2Fst05%2Fst05581.en13.pdf>, accessed 2 January 2014.

With Regulations made under acts passed before the Lisbon Treaty, the Council or Parliament can veto measures on certain grounds.⁹⁹ However, with Regulations made under legislation approved post-Lisbon, the veto no longer applies. The Commission only to "review" proposed regulations if there are objections, with no obligation to change them.¹⁰⁰ Via the REFIT programme, the Commission is updating pre-Lisbon legislation, eliminating the veto altogether.¹⁰¹ Britain (and Member States generally), with already limited power, are thereby weakened even more.

The post "Brexit" contrast is remarkable. Alongside Norway and other EFTA/EEA members, Britain resumes its place on the global and regional "top tables", and is able to argue its own positions. It can either veto proposed standards or opt out of them, long before they come to the European Union. Only if they get past this filter, and then have Single Market relevance, does Britain - as an EEA member – have to consider adopting them. Even then, acceptance is not automatic. More than 1,200 EU acts marked as "EEA relevant" have been contested by experts from the EEA/EFTA Member States. The States can also refuse EU law that they consider to be against their national interests^{102,103} This puts Britain a relatively powerful position, far more so than it is within the EU.

Where the policy sector is withdrawn completely, the situation improves even more. In fisheries, for instance, Britain would be working through the North East Atlantic Fisheries Commission (NEAFC), set up by the 1980 Convention on future multilateral co-operation in North-East Atlantic fisheries.¹⁰⁴ The Russian Federation, Norway, Iceland, Denmark (in respect of the Faroe Islands and

⁹⁷ Olsen, Ingvild (2010), The Council Working Groups – Advisors or de facto Decision Makers? Paper presented at the Fifth Pan-European Conference on EU Politics, Porto, Portugal - 23-26 June 2010. <http://www.jhubc.it/ecpr-porto/virtualpaperroom/100.pdf>, accessed 2 January 2014.

⁹⁸ http://www.eu-oplysningen.dk/euo_en/spsv/all/42/, accessed 2 January 2014.

⁹⁹ Regulatory Procedure with Scrutiny (RPS), Art. 5a, Council Decision 1999/486/EC, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1999D0468:20060723:EN:PDF>, accessed 18 December 2013.

¹⁰⁰ Art. 11, Regulation (EU) No 182/2011, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:055:0013:0018:EN:PDF>, accessed 18 December 2013.

¹⁰¹ European Commission, COM(2013) 685 final, 2.10.2013, Regulatory Fitness and Performance (REFIT): Results and Next Steps, http://ec.europa.eu/commission_2010-2014/president/news/archives/2013/10/pdf/20131002-refit_en.pdf, accessed 18 December 2013.

¹⁰² <http://www.efta.int/~media/Files/Publications/Bulletins/EFTA-Bulletin-2012.pdf>

¹⁰³ EFTA/EEA countries retain a "veto" – more accurately termed a "right of reservation" – set out in Article 102 of the EEA Agreement. EFTA countries in the EEA thus have something EU countries do not have - the right to opt out of new EU law. See: <http://www.efta.int/~media/Documents/legal-texts/eea/the-eea-agreement/Main%20Text%20of%20the%20Agreement/EEAagreement.pdf> and http://www.neitleu.no/articles_in_foreign_languages/the_eea_alternatives#1. Both accessed 22 December 2013.

¹⁰⁴ <http://ec.europa.eu/world/agreements/downloadFile.do?fullText=yes&treatyTransId=1337>

Greenland) and the European Union are parties.¹⁰⁵ During the recent mackerel quota dispute, Iceland officials constantly found it beneficial to be negotiating as one of five, rather than one of 28 member states.¹⁰⁶

6.0 Continuation of EU programmes

Despite its new status, Britain will need to continue working closely with some EU institutions, agencies and programmes, as in the European Defence Agency (EDA), Europol, Eurocontrol and the Single European Sky. It will also want to continue its membership of intergovernmental bodies such as the European Space Agency. Additionally, one might expect Britain to take part in the framework research programme, and in individual projects such as the Galileo global positioning system, in which Britain has a heavy financial investment.

Although outside the EU treaty framework like Norway, there would be no bar to participating in EDA programmes on a case-by-case basis, without voting rights. Similarly, Norway is an active member of the European Research Area and plays a full part in the framework programme, while Israel and India are amongst the many non-EU members with a stake in Galileo.

6.1 Financial contributions

The degree of participation would have a bearing on another crucial issue, the financial arrangements in the transitional period and after the final split. An immediate clean break would be unlikely. Within any multi-annual budgetary period, the EU would expect commitments to be honoured, and programme participation to be financially supported. Since these are agreed on a seven-year cycle, Britain might be expected to continue its full net contributions for whatever period remained of the seven years, after it had formally withdrawn.

After the expiry of that period, contributions would, perforce, be considerably less, although the exact amounts will depend on the degree of participation in EU programmes, and whether Britain would choose to channel foreign aid and solidarity funding through the EU, as does Norway.¹⁰⁷

¹⁰⁵ <http://www.neafc.org/about>, accessed 7 February 2014.

¹⁰⁶ Interview, Sigurgeir Thorgeirsson, Icelandic Ministry of Agriculture and Fisheries, Reykjavic, 29 January 2014.

¹⁰⁷ In the period 2009-14, Norway Grants supported 61 programmes in 13 countries in Europe. The Norway Grants are available to the 12 EU member countries that joined in 2004 and 2007. Under the Norway Grants, Norway has set aside €800 million for the current funding period. The decision-making body for the grant scheme is the Norwegian Ministry of Foreign Affairs. Norway also provides 95% of the funding to the EEA Grants. See: <http://eeagrants.org/Who-we-are/Norway-Grants>, accessed 10 January 2014.

6.2 Third country bilateral treaties

Although the "Norway Option" provides a partial answer to managing trade relations with the EU, there are complications arising from bilateral treaties made between the EU and third countries. There are nearly 800 of these registered on the EU treaty database.¹⁰⁸ Some of these are merely memoranda of understanding. Others are time-expired. Many, however, are substantial agreements, from which Britain gains advantages, but only by virtue of membership of the EU.

On the face of it, Britain is excluded from the terms of such treaties once it leaves the EU. Therefore, it would appear that each treaty will have to be examined and, where necessary, new treaties agreed between Britain and the relevant third countries. That would require extensive negotiations, with replacement treaties agreed and ratified before Britain withdraws from the EU. The need to carry out so many negotiations in a relatively short time would stretch diplomatic resources, risking delay in the withdrawal timetable.

A possible alternative, to cover the short-term, would be the agreement of a limited treaty of association with the EU, which gave Britain nominal membership status for the strict and exclusive purpose of taking advantage of the treaty provisions, pending selective renegotiation and/or re-enactment.

6.3 TTIP and ongoing trade negotiations

Depending on the timing of British exit negotiations, one or other series of trade negotiations may be ongoing between the EU and other parties. Currently, the most significant are the EU-US talks, known as the Transatlantic Trade and Investment Partnership (TTIP). These started in July 2013 and the European Commission claims that an agreement could boost the EU's economy by €120bn, the US economy by €90bn and the rest of the world by €100bn - an extra €545 in annual disposable income for a family of four in the EU, on average, and €655 per family in the US.^{109,110}

In the event that a deal is concluded, it is claimed that Britain outside the EU may not benefit from it.¹¹¹ But that claim might not be true. The EU and the US are already relatively open towards each other in terms of investment and trade, which is reflected in relatively low tariff levels. TTIP, therefore, addresses technical barriers to trade, often in the form of domestic regulations, on both

¹⁰⁸ See: <http://ec.europa.eu/world/agreements/default.home.do>, accessed 22 July 2013.

¹⁰⁹ See: <http://ec.europa.eu/trade/policy/in-focus/ttip/>, accessed 10 December 2013.

¹¹⁰ Reducing Transatlantic Barriers to Trade and Investment, An Economic Assessment, Centre for Economic Policy Research, London, http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150737.pdf, accessed 10 December 2013.

¹¹¹ *The Guardian*, EU exit would put US trade deal at risk, Britain warned, 27 May 2013, <http://www.theguardian.com/business/2013/may/27/eu-exit-risks-us-trade-deal>, accessed 16 December 2013.

sides of the Atlantic. It is these that are considered the important impediments to trade and investment flows.

As theory stands, even though regulation might not directly target cross-border activities, it does bear a cost on trade and investment. Nevertheless, the parties have recognised that many regulations, unlike tariffs, cannot simply be removed. They often serve important and legitimate domestic objectives like product safety and environmental protection. Thus, the aim is to reduce costs through partial regulatory convergence and cross-recognition of standards.¹¹²

Progress is not going to be easy. Within the European Parliament and elsewhere, resistance to regulatory harmonisation is building. "In America, the prevailing impression is that EU consumer protection regulations only exist to keep American products off the European market", says Green MEP Martin Häusling.¹¹³

On the other hand, when it come to such benefits as may accrue, in April 2013 EU Trade Commissioner De Gucht told Icelandic Foreign Minister Skarpheðinsson that they, "will be especially true for its closest trading partners - for example: those already operating on the internal market through the EEA Agreement" – such as Iceland.¹¹⁴ Of Switzerland, it is said that, if it liberalises its highly-protected agriculture, it too could join the TTIP.¹¹⁵ In other words, it is being readily conceded that being outside the EU is no bar to participating in the TTIP. If Britain adopts the "Norway Option", it will be able to take advantage of the partnership.

This notwithstanding, two of the major sectors earmarked for attention are the pharmaceutical and motor manufacturing industries. Auto-related sales currently account for some ten percent of total trade between the EU and the US. Under the TTIP, they would represent the largest share of auto production and sales ever covered by a single trade agreement.¹¹⁶

However, Asian interests would ensure that EU-US regulatory convergence would be quickly factored into what is being styled as the "US-EU-Asia Trade Triangle". As part of the triangle, the US is committed to completing a Trans-

¹¹² Transatlantic Barriers, *op cit.*

¹¹³ Euractiv, MEP: TTIP negotiations threaten European consumer protection, 16 December 2013, http://www.euractiv.com/trade/mep-ttip-negotiations-threaten-e-interview-532363?utm_source=RSS_Feed&utm_medium=RSS&utm_campaign=EurActivRSS, accessed 16 December 2013.

¹¹⁴ Statement following the meeting between Commissioner De Gucht and Icelandic Foreign Minister Skarpheðinsson, 9 April 2013, <http://trade.ec.europa.eu/doclib/press/index.cfm?id=884>, accessed 10 December 2013.

¹¹⁵ <http://www.europeaninstitute.org/images/stories/programs/p.nell.june4th2013.europeaninstitute.pdf>, accessed 10 December 2013.

¹¹⁶ See: http://www.uschamber.com/sites/default/files/grc/PhRMA_0.pdf and http://www.acea.be/news/news_detail/press_release_automobile_industry_welcomes_the_opening_of_eu-us_trade_talks, accessed 10 December 2013.

Pacific Partnership (TPP).¹¹⁷ It aims to bring together Asia's tiger economies (minus Hong Kong), entrenched and emerging ASEAN tigers, Latin American nations, and all three NAFTA partners (US, Canada, and Mexico).

The TPP has driven Asian-Pacific cooperation, particularly through free trade talks among the ASEAN states, and FTA partners (Australia, China, India, Japan, Korea and New Zealand). Eventually, their target is a Regional Comprehensive Economic Partnership (RCEP), a free trade area among the leading nations in East, South and Southeast Asia, plus Oceania. It will embrace more than three billion people, producing a combined GDP of some \$17trn and accounting for 40 percent of world trade.¹¹⁸

Although RCEP excludes the United States, there are cross-links between Asia and the US, and between Asia and the EU, giving the convergence process a global dimension. The eventual outcome of the TPP-TTIP-RCEP process, therefore, will result in convergence between all the trading blocs. Unavoidably, British manufacturing and services will be drawn into the slipstream of this process, which may be accelerated by the breaking of the 12-year WTO logjam.

The formal adoption of the Bali Ministerial Declaration, on 7 December 2013, opened the way for the resumption of the Doha Round with its rule-based multilateralism.¹¹⁹ Regulatory convergence will now bleed into the WTO and, with Britain able to take a direct part in the WTO process, it should not be troubled by lack of EU membership.

7.0 Managing withdrawal

The immediate consequences of withdrawal will depend on the shape of the "Brexit" settlement. If Britain chooses to remain an EEA member, it will of course be obliged to keep all Single Market regulation. Currently, the EEA *acquis* stands at 5,758 legislative acts, from 20,868 EU acts currently in force (Table 3).^{120,121}

¹¹⁷ <http://www.ustr.gov/trade-agreements/free-trade-agreements>, accessed 10 December 2013

¹¹⁸ The Emerging US-EU-Asia Trade Triangle, 14 October 2013, <http://www.chinausfocus.com/finance-economy/the-emerging-us-eu-asia-trade-triangle/>, accessed 10 December 2013.

¹¹⁹ See: http://www.wto.org/english/news_e/news13_e/mc9sum_07dec13_e.htm and <https://mc9.wto.org/draft-bali-ministerial-declaration>, accessed 10 December 2013.

¹²⁰ EC, Directory of European Union legislation in force, as at 1 December 2013, <http://eur-lex.europa.eu/en/legis/latest/index.htm>, accessed 19 December 2013.

¹²¹ The EEA Agreement of May 1992 contained 1,849 legal acts. As of January 2011 a further 6,426 acts had been incorporated, bringing the total to 8,311. Many of these replaced earlier acts which consequently became void, so the number of legal acts valid at that time was 4,502. In 2011, 373 legal acts were incorporated, 486 in 2012 and 397 in 2013. See: Official Norwegian Reports NOU 2012: 2, Outside and Inside, Norway's agreements with the EU, Unofficial translation December 2012, http://www.regjeringen.no/upload/UD/Vedlegg/eu/nou2012_2_chapter27.pdf; Annual Report of the EEA Joint Committee 2011, The Functioning of the EEA Agreement (Article 94(4)),

| Group | Category | Acts |
|-------|--|-------|
| 01 | General, financial and institutional | 1,401 |
| 02 | Customs Union & free movement of goods | 984 |
| 03 | Agriculture | 3,269 |
| 04 | Fisheries | 1,170 |
| 05 | Freedom of movement for workers and social policy | 579 |
| 06 | Right of establishment and freedom to provide services | 291 |
| 07 | Transport policy | 753 |
| 08 | Competition policy | 1,812 |
| 09 | Taxation | 190 |
| 10 | Economic and monetary policy and free movement of capital | 553 |
| 11 | External relations | 3,370 |
| 12 | Energy | 416 |
| 13 | Industrial policy and internal market | 1,643 |
| 14 | Regional policy and coordination of structural instruments | 396 |
| 15 | Environment, consumers & health protection | 1,180 |
| 16 | Science, information, education and culture | 452 |
| 17 | Law relating to undertakings | 121 |
| 18 | Common Foreign & Security Policy | 553 |
| 19 | Area of freedom, justice and security | 663 |
| 20 | People's Europe | 24 |

Table 3. European Union legislation in force (source: European Commission)

Since there would be no obligation to retain the reminder, theoretically, "Brexit" could give relief from around 15,000 acts (although by no means all are applicable to the UK).¹²² Amongst others, high profile policies such as the CFP and the CAP could be abolished.

<http://www.efta.int/media/documents/eea/eea-institutions/joint-committee-annual-report-2011-incl-annex-1.pdf>; Annual Report of the EEA Joint Committee 2012, The Functioning of the EEA Agreement (Article 94(4)), <http://www.efta.int/media/documents/eea/eea-institutions/joint-committee-annual-report-2012-incl-annex-1.pdf>. See also: EFTA online news reports, 2013, <http://www.efta.int/eea/eea-news> - provisional figures: the number of acts repealed was not stated. All sites accessed on 19 December 2013.

¹²² This *acquis* includes Directives, Regulations, Decisions and Resolutions, some of which are not addressed to the UK and from some of which the UK is excluded on geographical grounds.

Rewriting the statute book, therefore, could become a major undertaking as the Government confronts the task of unravelling more than forty years of political and economic integration, the fruits of a process that started in 1950. A task of such complexity has never before been attempted and is probably not capable of *ex ante* definition. A recent House of Commons paper stated that, "the full impact of a UK withdrawal is impossible to predict".¹²³

To formalise "Brexit", the European Communities Act - through which EU law is given effect - must be repealed. However, that repeal would raise a number of complications. Firstly, EU legislation which has been transposed into UK law would be unaffected. Law incorporated into Acts of Parliament (Statutes) and Statutory Instruments (SIs) remain in force even after the ECA had been repealed. Specific action would have to be taken by Parliament to remove such law, if it was no longer needed.

On the other hand, European Regulations rely on the force of the ECA to have effect. Any not transposed into UK law will automatically cease to apply, so those implementing Single Market requirements will have to be re-enacted. Other regulations, whether or not they have Single Market relevance, will also have to be added to the statute book if they replace and update domestic legislation. For instance, food safety requirements for all types of food premises - ranging from abattoirs to processing plants, shops and restaurants - are set out in European Regulations. Their loss would remove almost all regulatory controls over commercial food production.¹²⁴

That much applies to the bulk of environmental law, and to sectors such as consumer protection and health and safety. For instance, the original EU law on the carriage of dangerous substances replaced the Petroleum Act of 1879 and the Petroleum (Consolidation Act) of 1928.¹²⁵ Britain could not return to these outdated statutes, and chemical usage could not be left unregulated. Moreover, products such as medicines for human use, veterinary drugs, pesticides and many products rely on EU law for their market access. Authorisations are largely implemented by means of regulations.

For sectors outside the Single Market/EEA framework which are subject to EU law, where statutory controls are still deemed necessary after withdrawal, it would take time to devise and implement alternative legislation, suggesting that the some EU law would have to be kept in place until replacements had been formulated.

In the summary archive, the figure is reported as 17,770. See: <http://eur-lex.europa.eu/en/legis/available.htm>.

¹²³ House of Commons Library, Research Paper 13/42, 1 July 2013.

¹²⁴ The Food Hygiene (England) Regulations 2006, for instance, are made under the powers conferred by the European Communities Act, and simply designate "the Community Regulations", which include Regulation 852/2004, Regulation 853/2004, Regulation 854/2004, Regulation 2073/2005 and Regulation 2075/2005. No attempt has been made to transpose their provisions into UK law.

¹²⁵ <http://www.hse.gov.uk/cdg/manual/regenvirnment.htm>, accessed 15 December 2013.

This might apply especially to the CFP and CAP. These are extremely complex policies and replacement regimes would take some years to put in place. Agriculture, in particular, would find it hard to cope with the abrupt cessation of subsidies and price support, which are currently mandated by EU law. As for commercial fisheries, not only is fisheries management complex, there are major divergences of opinion on the underlying science and much uncertainty as to behaviour of stock. An agreed replacement policy might take a decade or more to devise and implement, and then to provide the necessary resources.¹²⁶



Figure 12: An Icelandic factory ship in Reykjavik harbour (now sold to Greenland). Maintaining a modern fishing fleet with healthy fish stocks requires an effective fisheries policy. It would, however, take many years from the UK to develop the sophisticated system operated by Iceland and other independent countries (photo: author's collection).

Removal of unwanted law and its replacement where necessary, and the incorporation of lapsed EU regulations, is then further complicated by the sheer volume of law involved. Various claims have been made that up to 80 percent of economic legislation, and perhaps also fiscal and social law, is of EU origin. Other data, from a House of Commons report, suggested that from 1997 to 2009, 6.8 percent of statutes and 14.1 percent of statutory instruments had a role in implementing EU obligations.

¹²⁶ When Conservative Farming and Fisheries spokesman Owen Paterson undertook a review of the CFP, it took two years. See: Consultation on a National Policy on Fisheries Management in UK Waters. A Conservative Party Green Paper. January 2005.

Those figures did not include European regulations which have direct effect without being transposed into law, and nor did they take account of cases where there was no need for new law. In some instances, EU requirements were already covered, because domestic law had anticipated EU requirements, or because laws have been introduced to implement policies agreed in the Common Foreign and Security Policy or the former Justice and Home Affairs area".

For the record, in 2013, the EU produced 2,405 new laws, comprising 68 directives, 1,429 regulations and 908 decisions. The UK, by contrast, produced 3,003 new laws, comprising 2,970 Statutory Instruments and 33 Acts. Therefore, in strict numerical terms, the EU actually produced 80 percent as many laws as did the UK. Nevertheless, it is almost impossible accurately to determine the extent of EU law in the British legislative code. There can be no dispute, though, that a very substantial body of law is involved.

Replacement of EU law presents a very specific problem. Framing sound, effective legislation is a complex and highly skilled activity, often requiring clear policy direction and input from professionals. Unfortunately, the EU has taken over much of British law-making machinery, particularly at the less visible policy-making stage. A huge amount of policy and then law comes out of the EU research framework programme, with much of the funding directed to developing a strategic policy making forum.¹²⁷ This includes co-ordination of policies between Commission, Member and Associated States in order to pool resources.

Examination of the Framework Programme 7 (FP7) suggests that 10-15 percent of research projects have direct policy relevance. Of 7,588 British-led projects, 967 had policy implications.¹²⁸ Many more projects indirectly support policy-making. Thus, from its €50bn budget, possibly €20bn supports the EU legislative programme.¹²⁹

Inevitably, this research is directed at securing "European" solutions. UK policy-makers would not only have to rebuild a national capability but also refocus on national solutions. This has significant resource implications. Taking account also of the inertia inherent in changing direction, considerable time might elapse before a significant repeal and replacement programme could get underway.

¹²⁷ For instance, see: "A review of projects funded under the TSER programme and the implications for European science, technology and innovation policy and the five-year assessment of the framework programme", http://ec.europa.eu/research/social-sciences/pdf/insights_policy_research_en.pdf, accessed 4 December 2013.

¹²⁸ The estimate was reached by means of a keyword search of all declared projects. See: http://cordis.europa.eu/fp7/home_en.html.

¹²⁹ For budget breakdown, see: http://cordis.europa.eu/fp7/budget_en.html, accessed 4 December 2013.

7.1 International agreements

There are still further complications. As we have already observed, much of the responsibility for trade-related regulation and standard-setting is shifting to regional and global standards-setting organisations and other bodies. Standards originating at global or regional level, where Britain is a party to the original agreements on which they are based, remain legally binding even after "Brexit".

The origin of such law is not always declared. For instance, in September 2013, there was media concern about a supposed "EU plan" to prohibit the use of the Union flag on retail packs of meat.¹³⁰ This was a misreading of Commission's programme to rationalise food labelling, implementing in part Codex Stan 1-1985 on country of origin labelling for packaged foods. Portions of the exact text were copied into the Regulation.¹³¹ This in turn was implementing the WTO Agreement on Rules of Origin.¹³² Neither was identified in the Regulation text.

Another example of the effect of the lack of disclosure of the ultimate origin came with the furore over new "EU rules" banning from sale, "thousands of favourite British garden plants and flowers" (fig 13).^{133,134} Without the fact being clearly identified, the EU was implementing standards initiated by the Organisation for Economic Cooperation and Development (OECD), alongside the United Nations Economic Commission Europe (UNECE) and several other bodies.^{135, 136}

In yet another example, Michelle "Clippy" McKenna, a small-scale manufacturer in Sale, Manchester, had since 2010 been marketing jams based on home-grown Bramley apples. Because they did not conform to British regulations, she was prevented from labelling them as jam.¹³⁷ The regulations, however, implemented EU law so there was a classic EU "red tape" story in the

¹³⁰ See: *Daily Express*, 17 September 2013, <http://www.express.co.uk/news/uk/430016/Fury-at-EU-plan-to-ban-Union-Flag-from-British-meat-packs>, accessed 4 December 2013. The story also appeared in *The Daily Telegraph*, the *Daily Mail* and many other newspapers.

¹³¹ Regulation (EU) No 1169/2011, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0018:0063:EN:PDF> and <http://www.fao.org/docrep/005/y2770e/y2770e02.htm>, both accessed 25 November 2013.

¹³² http://www.wto.org/english/docs_e/legal_e/22-roo_e.htm, accessed 25 November 2013.

¹³³ See: *Mail on Sunday*, 16 September 2013, <http://www.mailonsunday.co.uk/news/article-2420839/European-Commission-bid-ban-gardeners-buying-British-plants.html>, accessed 4 December 2013.

¹³⁴ European Commission, COM(2013) 262 final, 6 May 2013, Proposal for a regulation on the production and making available on the market of plant reproductive material (plant reproductive material law), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0262:FIN:EN:PDF>, accessed 15 September 2013.

¹³⁵ <http://www.oecd.org/tad/code/seeds.htm>, accessed 15 September 2013.

¹³⁶ <http://www.unece.org/trade/agr/welcome.html>, accessed 15 September 2013.

¹³⁷ Jam and Similar Products Regulations 2003.

making, heavily exploited by the media.^{138,139} Yet the originator of the standard was not the EU but the Rome-based *Codex Alimentarius* Commission.¹⁴⁰



Figure 13. Online news report, *Mail on Sunday* 15 September 2013. The provision identified as an EU proposal actually stems from the OECD.

¹³⁸ Council Directive 2001/113/EC, <http://eur-lex.europa.eu/LexUriServ/site/en/consleg/2001/L/02001L0113-20040712-en.pdf>, accessed 3 December 2013..

¹³⁹ See: *The Daily Telegraph*, 22 February 2012, <http://www.telegraph.co.uk/foodanddrink/foodanddrinknews/9099121/Couple-left-in-a-jam-by-EU-regulations.html>, accessed 4 December 2013, and *Daily Mail*, 23 February 2012, <http://www.dailymail.co.uk/news/article-2104836/Clippys-Apple-Preserves-Clippy-McKennas-spread-doesnt-qualify-jam.html>, accessed 3 December 2013.

¹⁴⁰ Codex Standard for Jams (Fruit Preserves) and Jellies – Stan 79-1981, See: http://std.gdciq.gov.cn/gssw/JiShuFaGui/CAC/CXS_079e.pdf, accessed 4 December 2013.

In fact, a national (or EU) standard that provides a greater level of protection than *Codex* is deemed to be a "trade barrier" unless the WTO decides that the stricter national standard is based on a proper "risk assessment" that demonstrates that the *Codex* standard, guideline, or recommendation does not provide sufficient protection or that the country maintaining the stricter standard has other scientific justification.¹⁴¹ Thus, most technical food standards in the EU *acquis* have been initiated by *Codex* and handed down for processing into EU law for adoption by Member States.¹⁴² Britain, though a member of *Codex*, implements its standards via the EU. Outside the EU, Britain would implement them directly, without using the EU as a middle-man.



Figure 14: Global centre of food standards and much else: the FAO headquarters office in Rome – sponsoring organisation of *Codex Alimentarius*. 1,847 professional staff are employed with 1,729 support staff; 55 percent are based at the headquarters. (photo: Wikipedia Commons)

Codex standards, in this respect, are by no means unique. The parent organisation, which comes under the aegis of the UN Food and Agriculture Organisation (FAO), is one of "three sisters" recognised by the WTO Sanitary and Phytosanitary (SPS) Agreement. The other two are the International Plant Protection Convention and the *Office International des Epizooties*.^{143,144}

¹⁴¹ CSPI International, The Impact of the TBT and SPS Agreements on Food Labelling and Safety Regulations, <http://cspinet.org/reports/codex/wtospstb.htm>, accessed 9 February 2014.

¹⁴² http://ec.europa.eu/food/international/organisations/codex_en.htm, accessed 7 February 2014.

¹⁴³ http://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm, accessed 4 December 2013.

Respectively, they generate the "international regulatory framework for the protection of plants from pests" and standards which "ensure a safe and fair trade in animals and animal products world-wide".^{145, 146}

Rather than be hosted by supranational or intergovernmental institutions, standards can be generated by single issue, or sector-specific, organisations (or groups of organisations). One example is the convention on transboundary movements of hazardous waste. This originated as the Basel Convention, hosted by an *ad hoc* body set up in response to a public outcry over exports of toxic waste to Africa and other developing countries. The convention entered into force in 1992 and was adopted by the EU, then to be incorporated into the EEA *acquis*.^{147, 148}

Another example is the law on the classification, packaging and labelling of dangerous substances, which was originally defined by the EU for its own member states.¹⁴⁹ In 1992, the legislative lead was transferred to the UN Conference on Environment and Development (UNCED), through which eventually emerged as the Globally Harmonised System of Classification and Labelling of Chemicals (GHS). The first version of the code was formally approved in December 2002 and published in 2003.¹⁵⁰ This, plus revised editions, has been adopted as EU law.¹⁵¹

7.2 Financial regulation

The international origin of EU law is no more evident than in the financial sector. It has been recognised that, in a few cases, the EU "uploads" its international financial rules but, in many cases, it "downloads" them from

¹⁴⁴ <http://ec.europa.eu/trade/wider-agenda/health/food-safety-and-health/>, accessed 4 December 2013.

¹⁴⁵ http://ec.europa.eu/food/plant/strategy/docs/conf_280910_ana_peralta_summary.pdf, accessed 4 December 2013.

¹⁴⁶ <http://www.oie.int/about-us/>, accessed 4 December 2013

¹⁴⁷ <http://www.basel.int/TheConvention/Overview/tabid/1271/Default.aspx>, accessed 12 December 2013.

¹⁴⁸ . See Council Decision 93/98/EEC, and on 22 September 1997 through Council Decision 97/640/EC and Regulation (EC) No 1013/2006 ... on shipments of waste , http://europa.eu/legislation_summaries/environment/waste_management/l28043_en.htm. Accessed 12 December 2013.

¹⁴⁹ Council Directive 67/548/EEC, modified by several instruments up to and including Commission Directive 86/431/EEC. See: http://europa.eu/legislation_summaries/consumers/product_labelling_and_packaging/l21276_en.htm, accessed 12 December 2013.

¹⁵⁰ Globally Harmonised System of Classification and Labelling of Chemicals (GHS), United Nations, New York and Geneva, 2011, http://www.unece.org/fileadmin/DAM/trans/danger/publi/ghs/ghs_rev04/English/ST-SG-AC10-30-Rev4e.pdf, accessed 14 December 2014.

¹⁵¹ Regulation (EC) No 1272/2008, http://europa.eu/legislation_summaries/internal_market/single_market_for_goods/chemical_products/ev0013_en.htm, accessed 14 December 2013.

international bodies.¹⁵² The EU's CRIV Package on the adequacy of banking capital implements is an example of "downloading", the source being the Basel III agreement crafted by the Basel Committee on Banking Supervision (BCBS).^{153,154} The new regulation also applies to the EEA but, outside the EU/EEA, the essence of the CRIV package would still apply to Britain as a party to the Basel III agreement. It would "download" it directly, rather than via the EU.



Figure 15: Bank of International Settlements, Basel. Host to the BCBS - one of the global regulatory centres of the financial services industry. (photo: Wikipedia Commons)

¹⁵² "Downloading" is defined as the incorporation of international "soft" rules (standards, principles, guidelines) into EU legislation. "Uploading" is defined as the incorporation of EU legislation (or parts of it) into international financial regulation. See: Quaglia, Lucia (2012), *The European Union and Global Financial Harmonisation*, European University Institute, Florence, Department of Political and Social Sciences.
http://cadmus.eui.eu/bitstream/handle/1814/22234/SPS_2012_04.pdf?sequence=1, accessed 24 December 2013.

¹⁵³ See: <http://www.eba.europa.eu/regulation-and-policy/implementing-basel-iii-europe>, accessed 27 August 2013.

¹⁵⁴ <http://www.bis.org/bcbs/basel3.htm>, accessed 21 December 2013.

The process is rarely visible to the popular media and almost entirely unknown to the general public. Only very occasionally, does a hint of the real power emerge, as in January 2014 when the Basel Committee ruled on leverage ratios for banking loans, the issue at the heart of the 2008 banking crisis.¹⁵⁵

The picture, however, is extremely mixed. Regulation does not follow a single template. For instance, "over the counter" derivative trading is regulated by the EU's European Markets Infrastructure Regulation. But even this does not work in isolation. The regulatory package stems from a commitment made in April 2009 by the G20 nations to "promote the standardisation and resilience of credit derivatives markets, in particular through the establishment of central clearing counterparties subject to effective regulation and supervision". Thus, in an industry of global reach, the EU regulation combines with elements "downloaded" from the US Dodd-Frank Act and Basel III.¹⁵⁶ Outside the EU, Britain would download from similar sources, its regulatory package looking very little different from what it is now.

On the other hand, the Alternative Investment Fund Managers Directive (AIFMD) is largely of EU origin.¹⁵⁷ It is seen as a building block of "Fortress Europe" – a more protective European market sheltered from competition. A recent survey had 68 percent of respondents believing that AIFMD will lead to fewer non-EU managers operating in the EU. Some 72 percent viewed the Directive as a business threat.¹⁵⁸ As an EEA member, Britain would have to retain its provisions - one of the many reasons why EEA membership can only be regarded as a temporary solution.

Nevertheless, simply to attribute cost to additional regulation, and then to argue for its repeal, is not a realistic approach to the problem of excessive regulation. In September 2013, Deloitte recorded that new regulations had cost the European insurance industry as much as €9bn since 2010, with each of the top 40 insurers having spent more than €200m on compliance.¹⁵⁹ Of regulation

¹⁵⁵ Sunday Telegraph, 18 January 2014, The 'too big to fail' problem just got worse, <http://www.telegraph.co.uk/finance/comment/liamhalligan/10581764/The-too-big-to-fail-problem-just-got-worse.html>, accessed 18 January 2014.

¹⁵⁶ Regulatory Reform and Collateral Management: The Impact on Major Participants in the OTC Derivatives Markets, J P Morgan, Winter 2012. https://www.jpmorgan.com/cm/BlobServer/Regulatory_Reform_and_Collateral_Managementpdf.pdf?blobkey=id&blobwhere=1320534213352&blobheader=application/pdf&blobheadername1=Cache-Control&blobheadervalue1=private&blobcol=urldata&blobtable=MungoBlobs, accessed 9 December 2013.

¹⁵⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:174:0001:01:EN:PDF>, accessed 9 December 2013.

¹⁵⁸ <http://www.deloitte.com/assets/Dcom-UnitedKingdom/Local%20Assets/Documents/Industries/Financial%20Services/uk-fs-aifmd-survey-responding-new-reality.pdf>, accessed 9 December 2013.

¹⁵⁹ Deloitte, Cost of regulation weighs on insurers, http://www.deloitte.com/view/en_GB/uk/news/news-in-focus/c8e8a7e92bde0410VgnVCM2000003356f70aRCRD.htm, Reuters, 5 September 2013, European insurers spent 9 billion euros on regulation - report:

deemed to have a major impact, 36 percent was of national origin. The rest came from the EU or international sources.

Instruments such as the "Solvency II" package, on capital requirements, have international dimensions. Specifically, Directive 2009/138/EC implements recommendations from the International Association of Insurance Supervisors, the International Accounting Standards Board, the International Actuarial Association and nine other agencies alongside the World Bank and the IMF. At a European level, all of these work with the EU's Frankfurt-based European Insurance and Occupational Pension Authority, and with Member State regulatory bodies.

The global dimensions again mean that "Brexit" would not afford any significant relief. Costs would still be incurred. An alternative stratagem is suggested by the consultancy KPMG which argues that significant costs arise from duplication and the lack of a consistent measure of insurers' financial solvency. It estimates the global industry could save up to \$25 billion per year from harmonised, consistent regulation. Solvency II is seen as a start, part of a global initiative alongside the Solvency Modernisation Initiative in the US and recent ERM enhancements in China.¹⁶⁰

Indicative of future expectations, a commentary in *Reuters* complained that one of the great disappointments in the raft of regulatory changes emerging from the financial crisis of 2008 had been the failure of regulators to agree a common framework. A greater role was proposed for the International Organisation of Securities Commissions (IOSCO), the acknowledged global standard-setter for the securities sector.¹⁶¹ The way forward was seen as regulatory convergence, regarded as inevitable for global markets.¹⁶²

Clearly, UK regulators are not ill-disposed to this idea. The chief executive of the Financial Conduct Authority, Martin Wheatley, has his authority intending to "reflect on and embrace" the international nature of markets. Of its approach, he talks of a "new regulatory landscape" and of driving changes in regulation, infrastructure and culture, as a body at the "heart of international regulation". His view is that the regulator exists "to drive forward a changing global agenda". "You will witness first-hand how we share priorities with our EU and US counterparts, and how we are at the forefront of discussions to address cross-border risks", he says.¹⁶³

<http://uk.reuters.com/article/2013/09/04/uk-europe-insurance-regulation-idUKBRE9831A520130904>, accessed 8 December 2013.

¹⁶⁰ <http://www.icaew.com/en/technical/financial-services/financial-services-faculty/harmonised-rules-could-save-insurers-billions>, accessed 9 December 2013.

¹⁶¹ <http://www.iosco.org/about/>, accessed 19 December 2013.

¹⁶² <http://blogs.reuters.com/great-debate-uk/2013/11/11/regulatory-convergence-is-inevitable-for-global-markets/>, accessed 9 December 2013.

¹⁶³ CityAM, FCA proclaims position at heart of global markets regulation, 19 November 2013, <http://www.cityam.com/blog/1384864406/fca-proclaims-position-heart-global-markets-regulation>, accessed 11 December 2013.

Such discussions require access at the highest level. And despite it being positioned as such by David Cameron, the "top table" is not the EU. Occupying that position globally is the G20. Thus, when the EU sought to adopt a Financial Transaction Tax (FTT) against British wishes, invoking the enhanced co-operation procedure, it was to the G20 that the financial markets representative bodies turned.^{164,165}

On financial matters, the G20 works through the Financial Stability Board (FSB), founded in April 2009, with a mandate, "to coordinate at the international level the work of national financial authorities and international standard setting bodies and to develop and promote the implementation of effective regulatory, supervisory and other financial sector policies". It brings together national authorities, international financial institutions, sector-specific international groupings of regulators and supervisors and committees of central bank experts.

Significantly, the FSB is chaired by Mark Carney, Governor of the Bank of England. Its secretariat is hosted by the Bank for International Settlements in Basel, Switzerland.¹⁶⁶

7.3 Repatriating EU law

Taking the cue from the situation confronting the global financial industry, "convergence" can be expected to become the dominant theme in regulatory affairs. By this means, domestic law will increasingly be shaped by international agreements.

Nevertheless, there is a school of thought that would have it that, when we leave the EU, only our exporters will need to observe "EU regulations" and, by inference, international law. For domestic actors, it is held, such regulations would cease to be relevant. We could relieve ourselves of a massive regulatory burden and benefit from huge savings in regulatory costs.¹⁶⁷

Even if this was feasible, it would mean that only goods and services intended for export would be regulated, leaving a free-for-all in the domestic market.¹⁶⁸ Alternatively, there would be a two-tier regulatory code, with lower (or

¹⁶⁴ European Commission, Proposal for a Council Directive implementing enhanced cooperation in the area of financial transaction tax, COM(2013) 71 final, Brussels, 14.2.2013, http://ec.europa.eu/taxation_customs/resources/documents/taxation/com_2013_71_en.pdf, accessed 14 January 2014.

¹⁶⁵ *Daily Telegraph*, Financial transaction tax contravenes G20 agreements, warn global markets bodies, 18 April 2013, <http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/10004288/Financial-transaction-tax-contravenes-G20-agreements-warn-global-markets-bodies.html>, accessed 14 January 2014.

¹⁶⁶ See: <http://www.financialstabilityboard.org/about/history.htm>, accessed 12 December 2013.

¹⁶⁷ Minford, Patrick (2013), Balance of Competences Review – Setting Business Free: Into the Global Economy. Hampden Trust and The Freedom Association, p.12.

¹⁶⁸ This has been proposed by the lobby group Business for Britain, as the "British Option", <http://forbritain.org/140113-the-british-option.pdf>, accessed 14 January 2014.

different) standards applied nationally. Such a position pertains in many LDCs, but would be less acceptable in the more advanced British economy. Domestic regulation long pre-dates export standards, in some cases by centuries. Credible regulation and enforcement is seen as important mechanisms in maintaining consumer confidence, and for "levelling the playing field", equalising the cost of regulatory compliance between competing businesses.

In the meat industry, for example, meat inspection is now heavily regulated by EU law. However, a uniform system in Britain was first mooted in 1922 at the behest of the industry. The call came after problems with the "considerable diversity" as to "the amount of meat inspection actually carried out in different districts" and "the standards of judgement and practice of individual inspectors". The lack of uniformity imposed "unequal liabilities" on traders. Where no inspection was carried out, "serious embarrassment" to honest traders was caused, "owing to the absence of any check on unscrupulous traders".¹⁶⁹



Figure 16. Regulation is not always imposed, or considered undesirable. In 1922, the British meat industry lobbied for regulation to improve customer confidence.

For similar reasons, modern businesses often seek out regulation. Those supplying supermarkets and retail chains find the absence of regulation renders them prey to different contract standards applied by their powerful customers. Statutory codes relieve them of this pressure. In many cases, businesses prefer a single standard, even if it is over-rigorous, as a price of trading certainty. Those preparing goods for export do not always know from the outset the destination

¹⁶⁹ Ministry of Health, Circular 282: "Circular letter and memorandum on a system of meat inspection... for adoption by local authorities and their officers". Author's collection.

of any particular batch and production to different standards is expensive.¹⁷⁰ Furthermore, those which do not export directly may produce components or ingredients for customers who do. They will normally adopt the export standard for all their customers.

Even businesses without overseas links may still have to adopt "export standards" if they are higher than their domestic equivalents, making imported goods seem more desirable. Supermarkets and other multiples will want to avoid stocking produce conforming to different standards, and will usually opt for the higher set. Where "due diligence" certification is necessary for insurance and product liability purposes, again the higher "export" standards will often be applied.

That is not to exclude, however, the possibility of *de minimis* provisions or "derogations" applying to existing and new legislation to take account of the special needs of SMEs. Reduced structural standards for small slaughterhouses and traditional cheesemakers are already a feature of EU law and, when only local markets are served, the principle could be extended to a wide range of enterprises.^{171,172}

To allow time for revisions of the statutory code, a holding process will be needed. The best option is to repatriate the entire body of EU law, converting it *en bloc* into British law (by a device similar to the ECA). This has been done by colonies which have become independent nations, which have adopted the legal instruments enacted by their colonial masters.

In India, on independence, the Constitution stipulated the continuation of pre-Constitution Laws (Article 372) until they were amended or repealed. There was then established in 1955 a Central Law Commission to recommend revision and updating of the inherited laws to serve the changing needs of the country.¹⁷³ The government might then, in conjunction with Parliament, set out an ordered programme of repeal and amendment, if necessary appointing a special body to assist with the process. In the short to-medium term, though, there might be fewer changes to the regulatory code than expected, and very few opportunities for cost savings.

¹⁷⁰ Bjorn Knudtsen, Chairman of the Fish and Fisheries Product Committee, *Codex Alimentarius*. Interviewed by the author on 24 June 2013.

¹⁷¹ European Commission, Staff Working Document, on the understanding of certain provisions on flexibility provided in the Hygiene Package, SEC(2010) 985 final, Brussels, 12.8.2010, http://ec.europa.eu/food/food/biosafety/hygienelegislation/docs/faq_all_business_en.pdf, accessed 12 January 2014

¹⁷² There are already two-tier reporting systems for limited companies, and reduced financial reporting requirements for SMEs. Further relaxations in accounting standards have been proposed. See: <http://www.accountancyage.com/aa/news/2046115/baker-tilly-favours-tier-accounting-standards>, accessed 14 January 2014.

¹⁷³ See: <http://www.lawcommissionofindia.nic.in/main.htm>, accessed 2 January 2014.

8.0 Looking at the longer-term

Although the "Norway Option" provides a short-term solution for trade matters, there is scope during the negotiations for EFTA members to lay down a marker, to the effect that further talks will be sought after the conclusion of the Article 50 agreement, with a view to renegotiating the entire EEA Agreement.

For the "No to EU" coalition in Norway, this would be a welcome development. There is considerable antipathy towards the EEA Agreement and a determination to replace it with a free trade agreement.¹⁷⁴ Here, British membership of EFTA is seen as increasing the negotiating power of the bloc. That position may be strengthened by other member states which may wish to leave the EU. In the context of Greece leaving the euro, it was argued that a departure from the single currency might trigger a re-alignment of eurozone countries, with perhaps the formation of a Northern core.¹⁷⁵ "Brexit" might have a similar effect on the EU as a whole.

One obvious candidate might be the Republic of Ireland, although its departure could be complicated by its membership of the euro. Another possibility might be Denmark, which is amongst the most Eurosceptic of EU members. Sweden, Finland and the Baltic states might follow, joining with Switzerland to become part of the "EFTA-plus" grouping. It would consolidate its fourth place in the world trade league, with an overall trading volume of \$2,636bn (2011).¹⁷⁶

"Brexit", though, affords multiple opportunities to re-order the global trading environment, and there is also the opportunity to resolve the EU's legislative monopoly for the entire EEA (as well as Switzerland and Turkey). Even though EFTA/EEA members already have considerable influence in framing Single Market rules, final decisions are seen to rest with EU institutions. Even if just on presentational grounds, this is unacceptable.

8.1 Global problems and solutions

In becoming an active member of the standard-setting community in its own right, Britain will be abandoning long-standing and familiar arrangements, causing considerable disruption to normal diplomatic and administrative procedures.

Currently, Britain is not well equipped for the change, lacking sufficient numbers of skilled negotiators, diplomats and trade experts. While the EU's diplomatic service (the European External Action Service) has expanded, the FCO establishment has declined. Since 2006-7, staffing has been cut from

¹⁷⁴ The Alternative Report: Alternatives To The Current EEA Agreement, Oslo, 9 March 2012, www.neitleu.no/content/.../2/file/Alternativrapporten+Engelsk+02.pdf, accessed 21 December 2013.

¹⁷⁵ Leaving the euro: A practical guide, *op cit*.

¹⁷⁶ WTO, online database, *op cit*.

7,005 to 4,450 currently, and is planned to fall to 4,285 by 2014-15. Administrative costs are projected to fall to £904 million, cutting over £100 million from the budget.^{177, 178}

As already indicated, the civil service and diplomatic corps will need to re-orientate procedures and rebuild the capability to act within the global regulatory system. Government, as also indicated, will have to enhance and to a degree repatriate its policy-making. Some of the cuts made to the FCO establishment will have to be reversed, in recognition of the greater workload – a process that will not be without expense.

Being independent, however, does not preclude Britain taking collective action. There are sometimes gains to be made from negotiating as part of a bloc, not least for the protection afforded in times of financial crisis, and routinely on matters of common interest, as a means of spreading the administrative burden. This was emphasised by an Icelandic Agriculture and Fisheries official, whose own ministry was often hard put to field staff to attend all international meetings of interest. Thus, his ministry worked closely with the Nordic bloc, and especially with Norway, sharing the load. The added strength and resource of the UK in this process was seen as potentially advantageous.¹⁷⁹

However, there are also disadvantages, so the government will need to keep its options open. It needs the flexibility to make arrangements which give it the advantages of EU membership while minimising the disadvantages, at the same time avoiding the disadvantages it might suffer as an independent actor. Analysis of global trade patterns (fig 17) certainly suggests that the greatest growth potential lies in Asia, compared with US-Europe trade which has declined nearly 40 percent in 20 years.¹⁸⁰

In this context, it should be noted that, despite the high-profile intervention of successive British prime ministers, the EU has been unable to formalise a trade agreement with China, while Iceland concluded an agreement in 2013, the first European country to do so, followed by Switzerland in the same year.^{181, 182}

¹⁷⁷ Foreign and Commonwealth Office, Annual Report and Accounts 2011-12 (For the year ended 31 March 2012), <http://www.official-documents.gov.uk/document/hc1213/hc00/0059/0059.pdf>, accessed 8 December 2013.

¹⁷⁸ European Commission, Draft budget 2013, Section X, European External Action Service, <http://eur-lex.europa.eu/budget/data/DB2014/EN/SEC10.pdf>, accessed 8 December 2013.

¹⁷⁹ Interview with Sigurgeir Thorgeirsson, *op cit*.

¹⁸⁰ World Trade Report 2013, http://www.wto.org/english/res_e/booksp_e/wtr13-2b_e.pdf, accessed 15 January 2014.

¹⁸¹ Daily Telegraph, 15 April 2013, Iceland first European country to sign free trade agreement with China, <http://www.telegraph.co.uk/finance/economics/9995525/Iceland-first-European-country-to-sign-free-trade-agreement-with-China.html>, accessed 18 January 2014.

¹⁸² Reuters, China, Switzerland sign free trade agreement, 6 July 2013, <http://www.reuters.com/article/2013/07/06/us-china-trade-idUSBRE96503E20130706>, accessed 18 January 2014.

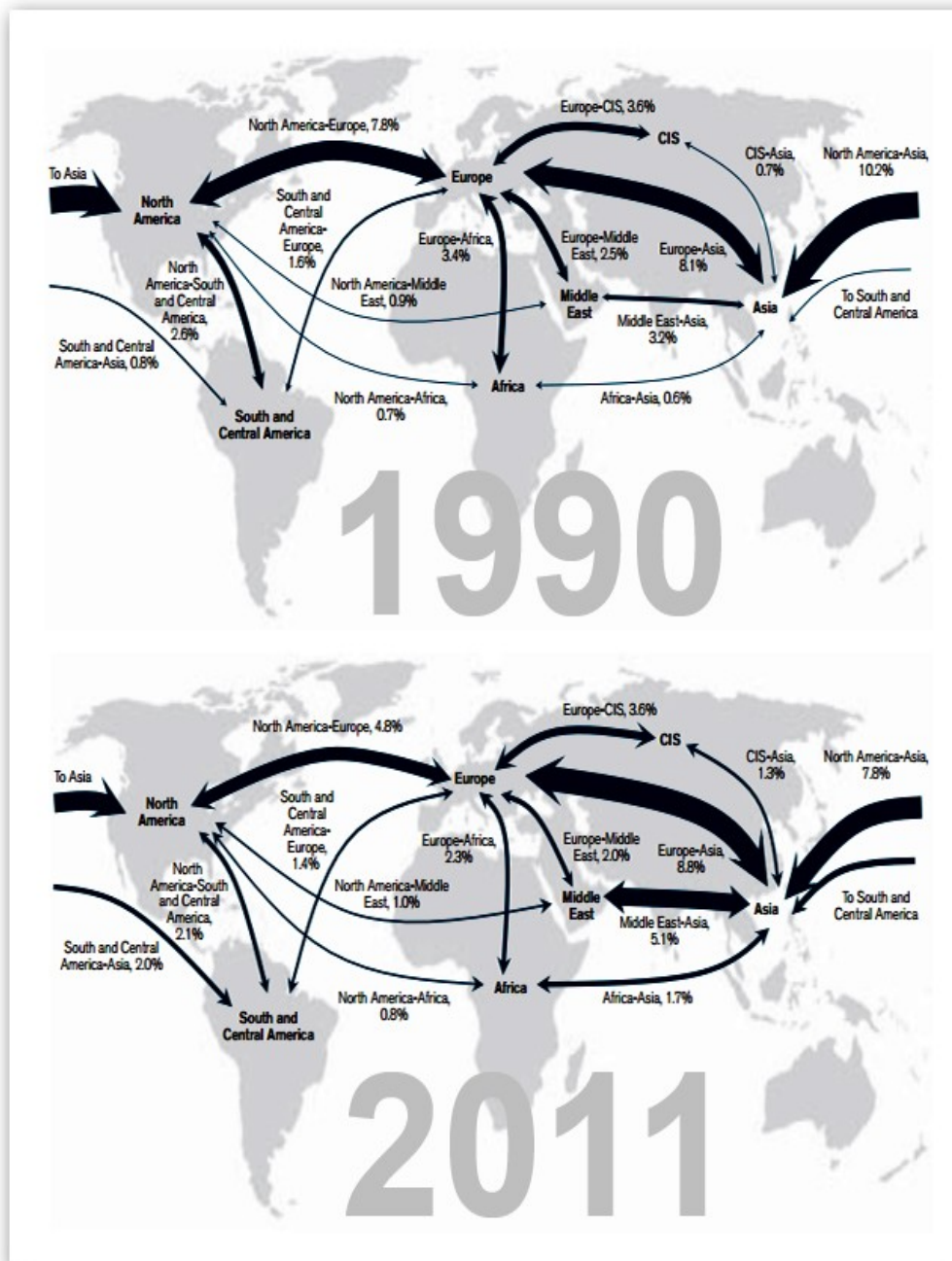


Figure 17. Share of total trade between geographical regions in world trade: 1990-2011 (percentage). Source: World Trade Report 2013. WTO Secretariat.

Arrangements do not necessarily have to be fixed for all time. Nor do they have to be geographically-orientated. They could involve *ad hoc* alliances, such as the Cairns Group, described as: "a unique coalition of 19 developed and developing agricultural exporting countries with a commitment to achieving free trade in agriculture".¹⁸³ It could be a useful ally in WTO talks. There are also particular advantages to be gained from closer ties with the Anglosphere and with Commonwealth members (some of which are Cairns Group

¹⁸³ See: http://cairnsgroup.org/Pages/wto_negotiations.aspx, accessed 16 December 2013.

members), reversing the tide of "institutional contempt" displayed by successive governments.¹⁸⁴

The modern Commonwealth, with its 53 members and about a third of the world's population, connects at least half a dozen of the world's fastest-growing and most dynamic economies, accounting for some 20 percent of world trade. The grouping offers new consumer markets and generates investment capital from its high saving societies. In Africa, massive hydrocarbon resources are becoming commercially recoverable and transforming the prospects of countries across the continent.

According to Lord Howell, chair of the Council of Commonwealth Societies, none of this means that the Commonwealth can replace the EU. He avers that the two worlds complement each other, and a Britain that is alert and agile is ideally placed to work both systems to its benefit.¹⁸⁵ However, those opportunities exist outside the EU. At the recent Commonwealth Business Council Forum gathering in Sri Lanka, China reportedly sent a 70-strong delegation. Japan and several Gulf states also turned up with large contingents. They sense the business opportunity which policy makers in an independent Britain might also seek to exploit.

Nevertheless, rejoining the global system as it stands is not the whole – or even any – answer for Britain. Over the last decades, there has been an unprecedented increase in the speed of communications, movement of goods and people, but there have not been commensurate improvements in global and regional institutions and organisations. The structures and modes of operation of organisations are very far from optimal, nor even coherent. There is no geographical consistency, standard structures nor uniform legal base. Accountability is often poor, and visibility is next to nil.

It would be tempting to ignore these structures, and even discontinue membership or support for some of them. Some would even entertain secession from the United Nations. Yet, according to an unprecedented joint study by the US National Intelligence Council and the EU's Institute for Security Studies, three effects of rapid globalisation are driving demands for more effective global governance.¹⁸⁶ The rise of China, India, Brazil and other fast-growing economies, its report says,

... has taken economic interdependence to a new level. The multiple links among climate change and resources issues, the economic crisis, and state

¹⁸⁴ *The Daily Telegraph*, 30 October 2013, Ministers are still treating the Commonwealth with contempt, <http://www.telegraph.co.uk/comment/10415127/Ministers-are-still-treating-the-Commonwealth-with-contempt.html>, accessed 8 December 2013.

¹⁸⁵ We've neglected the Commonwealth and Britain's prosperity has suffered, CityAM, 11 December 2013, <http://www.cityam.com/article/1386727043/we-ve-neglected-commonwealth-and-britain-s-prosperity-has-suffered>, accessed 11 December 2013.

¹⁸⁶ Global Governance 2025: At a Critical Juncture, EU, Institute for Security Studies, Paris November 2010, http://www.iss.europa.eu/uploads/media/Global_Governance_2025.pdf, accessed 9 December 2013.

fragility – "hubs" of risks for the future – illustrate the interconnected nature of the challenges on the international agenda today. Many of the issues cited above involve interwoven domestic and foreign challenges. Domestic politics creates tight constraints on international cooperation and reduces the scope for compromise.

The shift to a multipolar world is complicating the prospects for effective global governance over the next ten years. The expanding economic clout of emerging powers increases their political influence well beyond their borders. Power is not only shifting from established powers to rising countries and, to some extent, the developing world, but also towards non-state actors. Diverse perspectives on and suspicions about global governance, which is seen as a Western concept, will add to the difficulties of effectively mastering the growing number of challenges.

To remain an influential player, Britain will need to work with the global community to improve arrangements for dealing with trade and other matters in this "multipolar world". But arrangements must be compatible with Britain's new-found status, and be politically sustainable. The assumption is that negotiators will aim for a greater degree of autonomy in dealing with global agencies while seeking to retain the benefits of existing economic and trade agreements with other countries or other groups of countries outside the EU/EEA.

In this respect, the government may find itself confronting major reforms in foreign and trade relations that are heavily influenced by domestic policy. This may become a crunch issue. If the essence of the EU is that legislation agreed in Brussels is binding on national and local governments and is superior to national law, negotiators will be expected to do more than conclude agreements which replace the existing structures with something very similar. The longstanding antipathy to the EU's supranational power will require that new relationships are based on an intergovernmental model, with any formal trading agreements relying on free trade area templates rather than the more rigid customs union.

Whatever provisions are made, Britain will remain party to a bewildering multiplicity of agreements, which deliver actionable instruments. These will then have to be processed into useable law. As an independent nation, Britain will no longer be able to rely on the EU to do the job and, in the absence of alternative arrangements, will be committed to expensive, time-consuming duplication. That carries the risk of divergence from standards applied elsewhere in the same region.

8.2 Regional solutions

To resolve the EEA "legislative monopoly" problem, and generally to improve regional cohesion outside the framework of the EU, the idea of an entirely new, pan-European organisation was recently offered by the Alliance of European Conservatives and Reformists. It proposed a European Common Market, based

on the concept of a pan-European free trade area open to all states on the continent, including those within the EU. This left open the possibility of Britain being an associate member of the EU, while having fully sovereign parliaments (with control of their own borders).¹⁸⁷

Previously, Dutch MEP Michiel Van Hulten has offered a European Area of Freedom, Security and Prosperity. It would comprise all EU and EFTA member states, as well as all existing EU candidate countries (including Turkey) and even Russia. The idea was a free trade area with a common foreign and security policy, adopting the EU's existing internal market rules after reviewing and, if necessary, amending them. It would co-operate on cross-border issues such as transport and the environment, but would have no role in education, social and taxation policy and justice and home affairs.¹⁸⁸

A drawback of such ideas is that they cut across a well-established global hierarchical structure which goes back to 1948. Then, Winston Churchill, with others, argued for the United Nations to be the "paramount authority". Regional bodies would be "august but subordinate", becoming "the massive pillars upon which the world organisation would be founded in majesty and calm".¹⁸⁹ Effectively, a New World Order would comprise three tiers – national, regional and global. Reinventing the wheel might be regarded as a step backward. A better idea might be to build on what already exists.

Within the existing hierarchical structure are five UN regional commissions.¹⁹⁰ The European body, already briefly mentioned, is UNECE. Based in Geneva, it was established in 1947 and reports to the UN Economic and Social Council (ECOSOC). It has 56 members, including most continental European countries, Canada, the Central Asian republics, Israel and the USA. Its key objective is to foster economic integration at sub-regional and regional level.¹⁹¹

UNECE is responsible, *inter alia*, for most of the technical standardisation of transport, including docks, railways and road networks.¹⁹² With the United Nations Environment Programme (UNEP), it administers pollution and climate change issues, and hosts five environmental conventions covering issues ranging from transboundary air pollution to the Aarhus Convention.^{193,194} Its

¹⁸⁷ Iain Martin, *The Sunday Telegraph*, 1 December 2013, "This is the Common Market Europe needs", <http://blogs.telegraph.co.uk/news/ianmartin1/100248497/this-is-the-common-market-europe-needs/>, accessed 1 December 2013.

¹⁸⁸ European Council on Foreign Relations, 22 November 2011, http://ecfr.eu/content/entry/commentary_to_get_out_of_this_crisis_we_need_to_rebuild_europe_from_scratch, accessed 21 December 2013.

¹⁸⁹ Speech to the Congress of Europe, The Hague, 7 May 1948. The Churchill Society, <http://www.churchill-society-london.org.uk/WSCHague.html>, accessed 8 November 2013

¹⁹⁰ The other four are: United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), Economic Commission for Latin America (ECLAC), United Nations Economic Commission for Africa (ECA) and United Nations Economic and Social Commission for Western Asia (UNESWA).

¹⁹¹ http://www.regionalcommissions.org/?page_id=20, accessed 21 November 2013.

¹⁹² <http://www.unece.org/leginstr/trans.html>, accessed 2 December 2013.

¹⁹³ <http://www.unece.org/unece/welcome.html>, accessed 9 December 2013.

remit includes "sustainable housing" and agricultural quality standards.^{195,196} It is also a key body in the development of the global harmonised system (GHS) for the classification and labeling of chemicals.¹⁹⁷

Of great relevance here, the UNECE Transport Division provides a secretariat for the World Forum for the Harmonisation of Vehicle Regulations (WP.29), establishing a regulatory framework for vehicles safety and environment impact.¹⁹⁸ Its work is based on two agreements, made in 1958 and 1998, the totality providing a legal framework whereby participating countries agree type approvals for vehicles and components. There are currently 57 signatories to the agreements, including the EU. Non-EU countries include the major vehicle manufacturing countries of Japan and South Korea.¹⁹⁹



Figure 18: Although often attributed to the EU, vehicle construction standards are increasingly determined by UNECE in Geneva, with the EU adopting "UN Regulations" as its own. (photo: Wikipedia Commons)

¹⁹⁴ UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. See: UNECE Environmental Policy, <http://www.unece.org/env/welcome.html>, accessed 2 December 2013.

¹⁹⁵ <http://www.unece.org/housing-and-land-management/about-us/working-group-on-a-possible-framework-convention-on-sustainable-housing.html>, accessed 2 December 2013.

¹⁹⁶ <http://www.unece.org/leginstr/agri.html>, accessed 2 December 2013.

¹⁹⁷ http://www.unece.org/trans/danger/publi/ghs/ghs_welcome_e.html, accessed 24 December 2013.

¹⁹⁸ <http://www.unece.org/trans/main/welcwp29.html>, accessed 9 December 2013.

¹⁹⁹ Council Decisions 1997/836/EC of 27 November 1997 and 2000/125/EC of 31 January 2000, http://ec.europa.eu/enterprise/sectors/automotive/files/unece/sec-2011-0689_en.pdf, accessed 27 November 2013

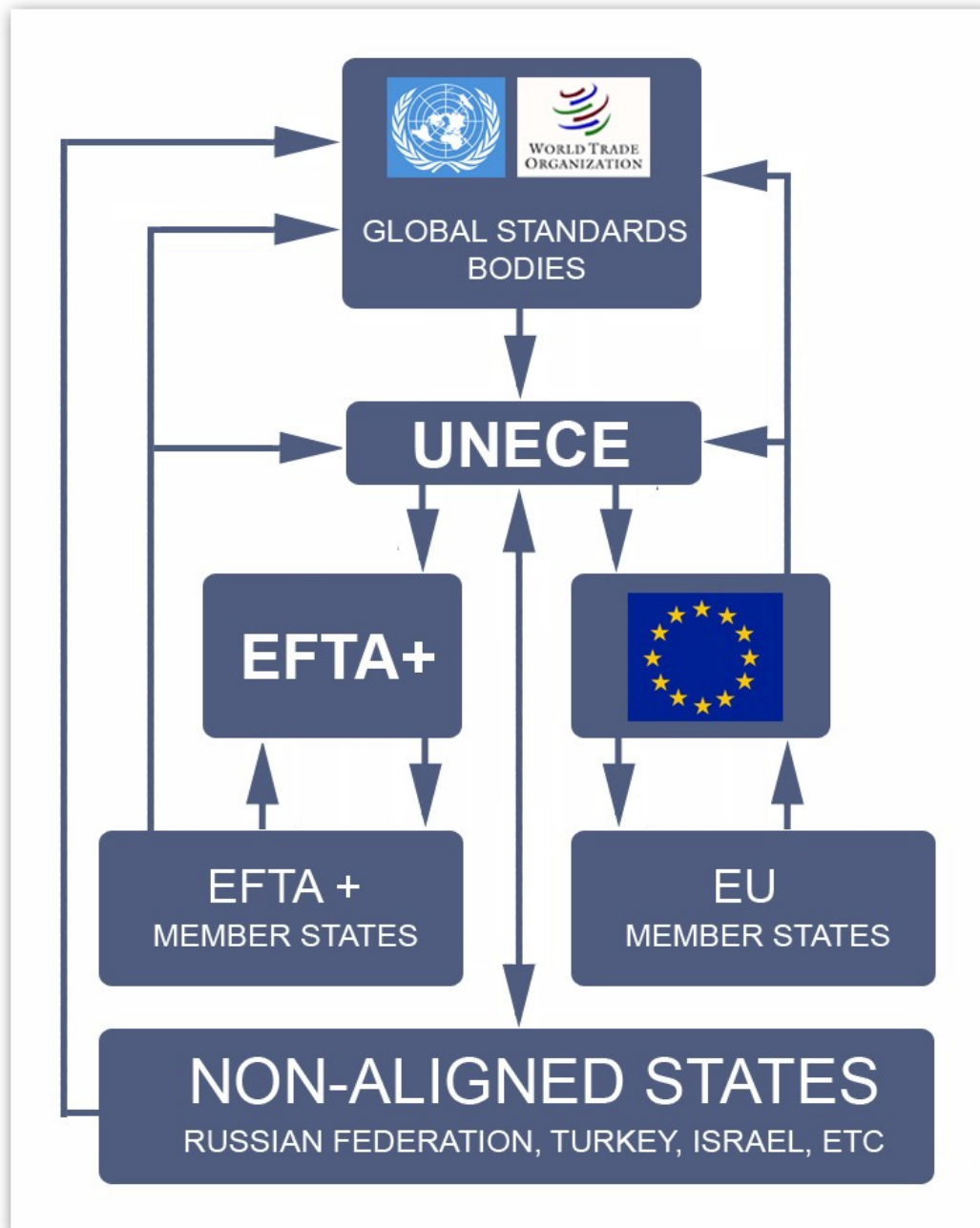


Figure 19. A pan-European single market based on UNECE as the co-ordinating body (simplified lines of communication shown).

UNECE instruments, called "UN Regulations", permit mutual recognition of each member country's type approvals.²⁰⁰ As of 2012, there were 128 UN Regulations appended to the Agreements. Most cover a single vehicle component or technology.²⁰¹ Importantly, the EU has transferred lead regulatory authority on vehicle standards to UNECE, allowing that, "only

²⁰⁰ http://en.wikipedia.org/wiki/World_Forum_for_Harmonization_of_Vehicle_Regulations

²⁰¹ Wikipedia, *op cit*.

UNECE documents determine the applicable law".²⁰² There is, therefore, "a very strong correlation between EU legislation and UNECE regulations".

Working within the aegis of the WTO's TBT Agreement, it would be ideally equipped to coordinate the production of single market instruments for the whole of Europe. It would replace the EU as the dominant body, thereby involving all European countries in the decision-making process, not just EU Member States.

This is perhaps a better option than that offered by Lord Leach of Fairford, who has advocated attempting "to redefine the EU as the Single Market" rather than as "a vague aspiration to political union".²⁰³ Such a scenario would conform with the Foreign Affairs Committee's idea of "radical institutional change" to give decision-making rights in the Single Market to all its participating states.²⁰⁴

8.3 Regulatory system design

All the above notwithstanding, simply moving home and attaching to new institutional structures does not in any way assist in tackling over-regulation and its increasing complexity. But a new house also affords an opportunity to change the furniture. The key issue – and a driver of "Brexit" – therefore, is to revisit the basic philosophy of regulation, and to devise new and better ways of doing things.

Regulatory philosophy is not by any means an academic issue. For instance, recent controversy over proposed European Commission rules on airline pilots' hours centred on adoption of a prescriptive code which met Chicago Convention obligations on aviation safety.²⁰⁵ The code, which sought to harmonise flying hour rules throughout the EU, was strongly resisted by the British airline pilots' union, BALPA, on the grounds that it represented a drop in standards for Britain.²⁰⁶

The regulatory code was mandated by the Montreal-based International Civil Aviation Organisation (ICAO), but also available from the same source was the

²⁰² European Commission website: Reference documents - Application of UNECE Regulations: <http://ec.europa.eu/enterprise/sectors/automotive/documents/unece/application/>, accessed 21 November 2013.

²⁰³ Open Europe Blog, *Lord Leach: EU reform is the best option, even for us sceptics*, 14 May 2013, <http://openeuropeblog.blogspot.co.uk/2013/05/lord-leach-eu-reform-is-best-option.html>, accessed 28 November 2013.

²⁰⁴ HoC, *The future of the European Union*, *op cit*.

²⁰⁵ European Commission, COM(2013) 409 final, Proposal for a Regulation ... amending Regulation (EC) No 216/2008 in the field of aerodromes, air traffic management and air navigation services, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0409:FIN:EN:PDF>, accessed 2 December 2013

²⁰⁶ *The Independent*, Passenger safety at risk after EU rejects changes to pilots' hours, transport official warns, 30 September 2013, <http://www.independent.co.uk/news/uk/home-news/passenger-safety-at-risk-after-eu-rejects-changes-to-pilots-hours-transport-official-warns-8849467.html>, accessed 2 December 2013.

more up-to-date "Fatigue Risk Management Systems" (FRMS). They allow operators to manage risks specific to their operations in ways most suited to their needs.²⁰⁷



Figure 20: The global regulatory body for aviation safety, including pilots' flying hours, is the International Civil Aviation Organisation (ICAO), based in Montreal, Canada. It sets the parameters which regional bodies such as the EU must follow. (photo: Wikipedia Commons)

These systems, though, were regarded as too complex for relatively unsophisticated regulatory authorities in the recently enlarged EU member states. A "one-size-fits all" regime has thus been adopted by the EU which prevents the experienced British regulator adopting flexible regulation.²⁰⁸ By dealing directly with international standards-setters, Britain could conform to best standards yet capitalise on efficiencies available from using enhanced regulatory models.

Here, what is not generally appreciated is that regulation, especially at global level, is not settled art. Models are constantly under development and considerable investment on research is ongoing in many different sectors.²⁰⁹

²⁰⁷ Doc 9966, Fatigue Risk Management Systems — Manual for Regulators, ICAO 2012, <http://www.icao.int/safety/fatiguemanagement/frms%20tools/doc%209966%20-%20frms%20manual%20for%20regulators.pdf>, accessed 2 December 2013.

²⁰⁸ House of Commons Transport Committee, Flight time limitations, First Report of Session 2012–13, <http://www.parliament.uk/documents/TSO-PDF/committee-reports/164.pdf>, accessed 2 December 2013.

²⁰⁹ See, for instance, Glasgow University website: <http://www.bank-reg.co.uk/>, and http://www.sniffer.org.uk/files/4413/4183/7990/ER13_Phase_1_report_Apr11.pdf, both accessed 11 December 2013.

Local and international regulators, therefore, are not always confronting proven systems. To an extent, they are sailing in uncharted waters. Nevertheless, it is anticipated that more risk-based and results-orientated regulation will emerge, in many cases providing alternatives to traditional prescriptive codes.^{210,211}

By their very nature, risk-based regimes carry with them the risk of failure. This may be manageable in terms of normal operations but many sectors are also exposed to systematic fraud. Examples are the horsemeat, breast implant and CE marking incidents. In the financial sector, there have been the Lehman Brothers, Enron, Bernie Madoff and Libor scandals, amongst many others, including VAT or "carousel" fraud.²¹² The range of costs is wide but some represent only the tip of an iceberg. The horsemeat fraud was part of the larger, global problem of food fraud estimated to cost traders and customers \$49 billion annually.²¹³ At the other end of the scale, the breast implant scandal cost the British taxpayer some £3 million.²¹⁴

Regulation, *per se*, is no proof against criminality, which may also include corruption and bribery with associated money laundering which bleeds into illegal drugs trading and even terrorism. The enforcement and penalty framework simply permits action to be taken against known offenders. Bribery and corruption are already significant barriers to trade, and in some less developed countries account for 18.6 percent of the value of goods transported.²¹⁵ Collusion and corruption in public procurement can also have a significant effect in distorting trade.²¹⁶

Globalisation is exacerbating the problem, not least in dealing with fraud. In the food trade, it is considered to be epidemic.^{217,218} The industry is believed to be a

²¹⁰ Anon (2012), Risk Management in Regulatory Frameworks: Towards a Better Management of Risks. UNECE, Geneva.

http://www.unece.org/fileadmin/DAM/trade/Publications/WP6_ECE_TRADE_390.pdf, accessed 3 January 2014.

²¹¹ Hutter, Bridget M (2005). The attractions of risk-based regulation: accounting for the emergence of risk ideas in regulation. ESCR Centre for Analysis of Risk and Regulation. London School of Economics.

²¹² For a comprehensive list, see the Exeter University website:

<http://projects.exeter.ac.uk/RDavies/arian/scandals/classic.html>, accessed 3 January 2014.

²¹³ <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2012-006265&language=EN>, accessed 3 January 2014.

²¹⁴ *Daily Telegraph*, "Breast implant scandal 'has cost taxpayer £3m'", 15 June 2012. <http://www.telegraph.co.uk/health/healthnews/9334459/Breast-implant-scandal-has-cost-taxpayer-3m.html>, accessed 3 January 2014.

²¹⁵ Anon (2012), Bribery as a non-tariff barrier to trade. Transparency International. <http://www.trademarka.com/wp-content/uploads/2012/11/Bribery-as-a-Non-Tariff-Barrier-to-Trade.pdf>, accessed 4 January 2014.

²¹⁶ Anon (2010), Global Forum on Competition - Collusion and Corruption in Public Procurement, OECD. <http://www.oecd.org/competition/cartels/46235884.pdf>, accessed 4 January 2014.

²¹⁷ *New York Times*, Counterfeit Food More Widespread Than Suspected, 26 June 2013. http://www.nytimes.com/2013/06/27/business/food-fraud-more-widespread-than-suspected.html?_r=0, accessed 27 December 2013.

"soft touch for criminals".²¹⁹ Part of the problem, which became very evident during the horsemeat scandal, was the EU's paper-based system of control, relying on HACCP to replace physical checks.²²⁰ As long as the paperwork was in order, not only were physical checks considered unnecessary, they were treated as barriers to internal trade and actively discouraged. As a result, reputable companies ended up using hundreds if not thousands of tons of horsemeat in processed meat products.²²¹

The same dynamic applies to CE marking, which relies on paper-based certification as a substitute for cross-border checks and further checks at the point of use. This was manifest when, in the wake of the PIP breast implant scandal, the entire system used for medical devices was branded "seriously flawed". The French manufacturer had evaded checks because prior notice had been given. Yet the British regulator had no power to check devices until a failure had been reported.^{222,223}

Despite this, there is no case for reverting to checks on all goods entering Britain, or for routine supervision of commercial enterprises, even service-providers. But enforcement agencies must be allowed to make checks if considered necessary which, to be effective, must be timely and targeted. This requires good intelligence, which in turn requires close liaison between national criminal agencies across the world, and with international agencies such as Europol and Interpol.²²⁴

Criminal law, however, is rooted in national governments. Only these have the power to exact the ultimate penalties such as imprisonment and confiscation of assets. Therefore, enforcement has to be national – there is no alternative without incurring massive losses of national sovereignty. Then, decisions must be taken at operational level. A system which requires permissions from a central authority, and a lengthy legislative response to changes in circumstances

²¹⁸ See: <http://www.newfoodmagazine.com/wp-content/uploads/NSF-Whitepaper.pdf>, accessed 27 December 2013.

²¹⁹ *Reuters*, UK supermarkets should be criminally liable for food fraud – report, 12 December 2013, <http://uk.reuters.com/article/2013/12/12/uk-britain-horsemeat-supermarkets-idUKBRE9BB0RV20131212>, accessed 12 December 2013.

²²⁰ Hazard Analysis and Critical Control Points.

²²¹ Owen Paterson, Official Report (HOC), 13 February 2013, Col. 740.

<http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130212/debtext/130212-0002.htm>. The complaint was by no means confined to the UK. After a major fraud in Germany involving intensively produced eggs mislabeled as "organic", complaints were made that inspectors were too paperwork-orientated. Controls had made it easy to farmers who wanted to cheat. *Die Zeit, Auch Öko-Kontrollen haben Schwachstellen*, 25 February 2013, <http://www.zeit.de/wissen/umwelt/2013-02/Bio-Eier-Kontrollen-Betrug/komplettansicht>. Both accessed 27 December 2013.

²²² The Medicines and Healthcare Products Regulatory Agency (MHRA).

²²³ *The Independent*, Implant danger extends to all medical devices, 18 January 2012, <http://www.independent.co.uk/life-style/health-and-families/health-news/implant-danger-extends-to-all-medical-devices-6291116.html>, accessed 27 January 2013.

²²⁴ See, for instance Operation Opsom: "Tonnes of illicit foods seized across Europe in INTERPOL-Europol led operation", 6 December 2011, <http://www.interpol.int/en/News-and-media/News-media-releases/2011/PR101>. Accessed 26 December 2013.

– as with the CE system - cannot possibly succeed. The very idea of controls vested in a supranational authority is irredeemably flawed.

8.4 Transnational organised crime

The regulatory failures discussed above have brought with them some recognition that free trade has costs, in terms of transnational organised crime. The problems are widespread. The proliferation of free trade zones, for instance, facilitates crime and tax avoidance. FTAs are also responsible for increased cross-border crime. Yet relatively little attention is being given to the problems.^{225,226} Here, there is an interesting contrast between TTIP, which aims to "boost" the global economy by around €310bn, and TOC income estimated at more than \$3trn a year.^{227,228} International trade in counterfeited goods and piracy alone is estimated to grow from \$360bn (based on 2008 data) to as much as \$960bn by 2015.²²⁹

It is germane to ask whether the advantages of systems currently adopted are being outweighed by disadvantages. One commentator suggested that the very essence of democracy was under threat.²³⁰ To what extent the situation can be improved by the efforts of a single country is questionable. Nevertheless, an independent Britain will have greater freedom to raise issues in global forums than as part of the EU, where the "common position" dictates the line taken. Where the balance of advantage lies is unknown, but there is a debate which must be had before Britain can determine the priorities and direction of its post-exit settlement.

8.5 Dispute settlement

In some quarters, there is fundamental disagreement with the notion that, as the world becomes more complex, we need more and more regulation at higher and higher levels. This might especially apply to financial services, where it has

²²⁵ World Economic Forum, Global Agenda Council on Organised Crime, Organised Crime Enablers, July 2012, http://www3.weforum.org/docs/WEF_GAC_OrganizedCrimeEnablers_Report_2012.pdf, accessed 27 December 2013.

²²⁶ Transnational organized crime, terrorism, and criminalized states in Latin America: an emerging tier-one national security priority. Strategic Studies Institute Monograph, 2012, <http://www.strategicstudiesinstitute.army.mil/pdffiles/PUB1117.pdf>, accessed 27 December 2013.

²²⁷ <http://ec.europa.eu/trade/policy/in-focus/ttip/>, *op cit*.

²²⁸ Millennium Project, State of the Future, 2012 (Executive Summary), <http://www.millennium-project.org/millennium/SOF2012-English.pdf>, accessed 27 December 2013.

²²⁹ International Chamber of Commerce, Global Impacts Study, <http://www.iccwbo.org/Advocacy-Codes-and-Rules/BASCAP/BASCAP-Research/Economic-impact/Global-Impacts-Study/>, accessed 27 December 2013.

²³⁰ *The Guardian*, Organised crime: the \$2 trillion threat to the world's security, 12 September 2007, <http://www.theguardian.com/world/2007/sep/12/topstories3.mainsection>, accessed 27 December 2013.

been suggested that the efforts should be directed at the co-ordination of resolution mechanisms.²³¹

Dispute resolution, to use the generic term, is becoming the fault line between advocates of bilateral free trade agreements and the WTO/UN-administered multilateral rule-based system. It is argued that effort devoted to improved dispute resolution could be more cost-effective than effort devoted to regulatory convergence and harmonisation. Nevertheless, this is a contentious area, in particular the transition to dispute settlement between states and corporate entities – the issue of investor-state dispute settlement (ISDS).²³²

Some bilaterals, such as the TTIP and TPP, rely on ISDS, which is regarded as an improvement on WTO procedures. But it is also described disparagingly as "a sort of offshore tribunal whereby private investors will be able to sue either the EU or US in front of a tribunal made up of fellow corporate lawyers if those jurisdictions introduce laws that could result in a loss of investment".²³³ This, plus other secretive aspects of the TPP agreement has a Bloomberg opinion-writer dismissing it as a "corporatist power grab".²³⁴

NGOs have an active role in making EU law and, through the United Nations system, in brokering environmental agreements. To facilitate this, they receive official recognition and considerable funding from the EU and member state governments.²³⁵ They see ISDS as a threat to the ability of European legislators "to set their own environmental standards, as well as standards protecting consumers, workers, public health etc", and "very useful for companies seeking to reverse regulations that protect the environment and people at the expense of corporate profits".^{236,237}

These issues are far from straightforward, leading UNCTAD to offer ideas for reform, while the European Commission has felt obliged to suspend TTIP talks

²³¹ Booth, Philip, *International regulation - institutionalising systemic risk*, <http://www.iea.org.uk/blog/international-regulation-institutionalising-systemic-risk>, accessed 27 October 2013.

²³² See: http://trade.ec.europa.eu/doclib/docs/2013/october/tradoc_151791.pdf, accessed 11 December 2013.

²³³ European Environmental Bureau, Newsletter # 70, December 2013, <http://www.eeb.org/EEB/?LinkServID=CADFCE19-5056-B741-DBA130A08A0A11D0&showMeta=0>, accessed 17 December 2013.

²³⁴ <http://www.bloomberg.com/news/2013-12-19/pacific-trade-deal-needs-more-wikileaks.html>, accessed 21 December 2013.

²³⁵ European Commission, COM(2011) 874 final, 2.12.2011. Proposal for a Regulation ... on the establishment of a Programme for the Environment and Climate Action (LIFE), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0874:FIN:EN:PDF>, accessed 17 December 2013.

²³⁶ European Environmental Bureau, *op cit.* <http://www.eeb.org/EEB/?LinkServID=CADFCE19-5056-B741-DBA130A08A0A11D0&showMeta=0>, accessed 17 December 2013.

²³⁷ Friends of the Earth Europe, The TTIP of the anti-democracy iceberg, http://www.foeeurope.org/sites/default/files/foee_factsheet_isds_oct13.pdf, accessed 21 December 2013.

pro temp, pending a period of consultation on dispute procedures.^{238,239} But, whether it is the ECJ, the EFTA court, the WTO dispute procedure, the UNECE compliance committee, the Court of Human Rights, or ISDS, each system has strengths and weaknesses (see fig.4). The book is not closed on which system offers the best potential, and the issues are wide open to debate. An independent Britain would be able to take an active part in that very necessary debate.

8.6 Unbundling

High-profile initiatives such as TTIP seek to deliver value by dealing simultaneously with multiple issues, aiming for agreements between nations and geographically-anchored entities. Arguably, many of these are too ambitious and not realisable within the timescales set.²⁴⁰ An alternative approach is to settle for sector or subject-specific agreements with global reach, unconstrained by geography.²⁴¹ As seen with GHS, narrowly framed technical barriers might be the target. This is "unbundling" - sometimes known as the "single undertaking" approach.²⁴² The prospects for success seem more assured.

Pharmaceuticals and cosmetics, motor vehicle manufacturing, insurance, telecommunications, biotechnology and chemicals are particularly suitable for sector-specific agreements, or for intra-sector TBT agreements. Such deals are less likely to create gaps for organised crime to exploit, as they focus on technical issues. They also pose less of a challenge to sovereign entities.

Treating sectors separately mean that cross-cutting synergies are lost, but agreements are easier to reach, with speedier delivery of results. Speed is of the essence. If a deal is to succeed, one observer remarked, "it needs to do so quickly. If it is to fail, it needs to do so even more quickly".²⁴³ TTIP, on the other hand, is set to absorb years of effort. And despite the huge range of products and potentially billions-worth of savings, it has to address such issues as the controversial US practices of chlorinating chicken carcasses or administering growth hormones to beef cattle.²⁴⁴ Unless agreement can be

²³⁸ http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d4_en.pdf, accessed 21 December 2013.

²³⁹ Commission to consult European public on provisions in EU-US trade deal on investment and investor-state dispute settlement, 21 January 2014, http://europa.eu/rapid/press-release_IP-14-56_en.htm, accessed 11 February 2014.

²⁴⁰ Karmakar, Suparna, Prospects for regulatory convergence under TTIP, October 2013, Breugel, <http://www.bruegel.org/publications/publication-detail/publication/800-prospects-for-regulatory-convergence-under-ttip/>, accessed 27 December 2013.

²⁴¹ Globally Harmonised System of Classification and Labelling of Chemicals (GHS), *op cit*.

²⁴² http://www.academia.edu/4940136/Sub-Federal_Governance_and_Global_Harmonisation_of_Policies_Some_Issues_for_Consideration accessed 24 December 2013.

²⁴³ <http://www.raps.org/focus-online/news/news-article-view/article/2478/regulators-industry-discuss-potential-impact-of-imdrf.aspx>

²⁴⁴ Congressional Research Service, U.S.-EU Poultry Dispute on the Use of Pathogen Reduction Treatments (PRTs), <https://www.fas.org/sgp/crs/misc/R40199.pdf>, accessed 24 December 2013.

reached on these, the entire deal might founder after many years of endeavour.²⁴⁵

Britain, as a major player in most of the arenas covered by TTIP, is in an excellent position, with its transatlantic "special relationship" to argue for less ambitious but ultimately more successful sector-specific agreements.

9.0 Dealing with the freedoms

Within the EEA Agreement, the "four freedoms" in the EU treaties are repeated. These are the free movement of goods, people (and the right of establishment), capital, and services. As long as Britain remains a member of the EEA, therefore, these freedoms will continue to apply.²⁴⁶ Those applying to goods and services are largely uncontentious but, in the longer-term, application of the freedoms concerning people and capital will have to be reviewed.

9.1 Freedom of movement – immigration

Free movement of people (and right of establishment) has the highest profile, causing considerable controversy over the influx of migrants from central and eastern European states after the 2004 enlargement (EU8), and over the expected rush of migrants from Bulgaria and Romania.

However, the EU regards its "freedoms" as a non-negotiable part of the Single Market *acquis*. This was uncompromisingly reaffirmed by Viviane Reding, a Commission vice-president., who recently stated: "if Britain wants to stay a part of the Single Market, free movement applies".²⁴⁷ Within the EEA, Britain would be obliged to permit immigration from the entire area.

Even Swiss bilateral agreements have afforded little relief. On 21 June 1999, the EU and Switzerland signed an Agreement on the Free Movement of Persons, which came into force on 1 June 2002. This extended the right of free movement to citizens of EEA Member States, and was complemented by the mutual recognition of professional qualifications, the right to buy property, and the coordination of social security systems.²⁴⁸

²⁴⁵ Greenpeace, EU-US trade deal poses potential threat to European food safety and environment standards, <http://www.greenpeace.org/eu-unit/en/News/2013/Transatlantic-Trade-and-Investment-Partnership-TTIP-A-Threat-for-European-Food-Safety-and-Environment-Standards/>, accessed 24 December 2013.

²⁴⁶ EC website: Single Market – General Policy Framework, http://ec.europa.eu/internal_market/top_layer/index_en.htm, accessed 6 December 2013.

²⁴⁷ *Reuters*, 27 November 2013, <http://www.reuters.com/article/2013/11/27/us-britain-immigration-ec-idUSBRE9AQ0WZ20131127>, accessed 4 December 2013.

²⁴⁸ Swiss Confederation, Federal Office of Migration, Free Movement of Persons Switzerland – EU/EFTA, https://www.bfm.admin.ch/content/bfm/en/home/themen/fza_schweiz-eu-efta.html, accessed 1 December 2013.

By the end of 2012, 23.3 percent of the 8,039,060 population was foreign, compared with 13 percent (7.5 million) in England and Wales. Of the 1,869,969 foreigners in Switzerland, 85.1 percent were European. Three-quarters were nationals of an EU or EFTA member state.^{249, 250} This was despite additional protocols restricting the movement rights of the 2004 enlargement bloc (EU8), and Romanians and Bulgarians. These protocols introduced a "safeguard clause" that permitted quotas on residence permits. EU8 citizens were granted unrestricted free movement rights only on 1 May 2011 while Bulgarian and Romanians will remain restricted until 31 May 2016.²⁵¹

Such has been the increase in immigration that in 2013, responding to increasing public concern, quotas were reapplied to EU8 citizens and then to nationals of all the other EU states.²⁵² The restrictions were due to last one year but the Swiss People's Party (SVP) forced a referendum, held on 9 February 2014, on whether they should continue. Before the vote, Foreign Minister Didier Burkhalter argued that it "would jeopardise ... relations with the European Union" and "test Swiss treaty obligations".²⁵³ Contrary to an assertion that the Swiss model is "the only way to regain control of our borders", Ueli Maurer, Swiss president of the SVP, declared that "Switzerland has given up its freedom to be able to determine its own policies".^{254, 255} On the day, 50.3 percent voted to continue the quotas, putting at risk the entire raft of bilateral agreements under a guillotine clause, actionable if any one agreement was broken.²⁵⁶

These developments have significant implications for British negotiators. Firstly, the original Agreement and protocols demonstrated that flexibility in negotiations from outside the EU is possible: the Swiss obtained a better

²⁴⁹ The largest group is Italian (15.6 percent), followed by nationals of Germany (15.2 percent), Portugal (12.7 percent) and Serbia (5.3 percent). The proportion of non-European nationals has doubled since 1980 to reach 14.8 percent in 2012. Swiss Confederation website, Migration statistics, <http://www.bfs.admin.ch/bfs/portal/en/index/themen/01/07/blank/key/01/01.html>, accessed 22 December 2013.

²⁵⁰ British figures apply to usual residents of England and Wales: ONS, UK census 2011. <http://www.ons.gov.uk/ons/rel/census/2011-census/key-statistics-for-local-authorities-in-england-and-wales/rpt-international-migrants.html>, accessed 23 December 2013.

²⁵¹ see FAQs: https://www.bfm.admin.ch/content/bfm/en/home/themen/fza_schweiz-eu-efta/faq_faq_0.html#a_faq_0, accessed 29 November 2013

²⁵² *The Local*, EU citizens face Swiss residence quotas, 16 May 2013, <http://www.thelocal.ch/20130516/eu-citizens-face-swiss-residence-quotas>, accessed 23 December 2013.

²⁵³ *Reuters*, 25 November 2013, "Swiss government urges voters to reject immigration quota plan", <http://www.reuters.com/article/2013/11/25/us-swiss-immigration-idUSBRE9A00IN20131125>, accessed 29 November 2013.

²⁵⁴ *Daily Telegraph*, David Campbell Bannerman, The only way is Swiss: how we can regain control of our borders, 23 December 2013, <http://www.telegraph.co.uk/news/worldnews/europe/switzerland/10535146/The-only-way-is-Swiss-how-we-can-regain-control-of-our-borders.html>, accessed 23 December 2013.

²⁵⁵ *The Local*, op cit.

²⁵⁶ *The Local*, 9 February 2014, Swiss voters narrowly back immigration curbs <http://www.thelocal.ch/20140209/swiss-vote-on-curbing-eu-immigration>, accessed 9 February 2014.

transitional deal on accession countries than did EU/EEA members. Secondly, as the Swiss are finding, there is a growing mismatch between what governments agree and what their citizens are prepared to accept.

Thus, while the British negotiators will be under pressure to accept freedom of movement provisions, these might not be acceptable to the electorate. In one recent poll, 61 percent of swing voters in an EU referendum poll (20 percent of the total) saw EU immigration as the most important issue in any renegotiation, compared with 34 percent who saw freer trade with non-EU countries as important (fig 21).²⁵⁷ Another poll reaffirmed the importance of immigration.²⁵⁸

Following completion of the Article 50 negotiations, the public may well demand a referendum on the agreement. Negotiators, therefore, will have to take account of what is politically possible, as well as that which seems essential to conclude the agreement. Unrestricted free movement of people could be a deal breaker, forcing Britain to pull out of the EEA and consider other, less attractive options.

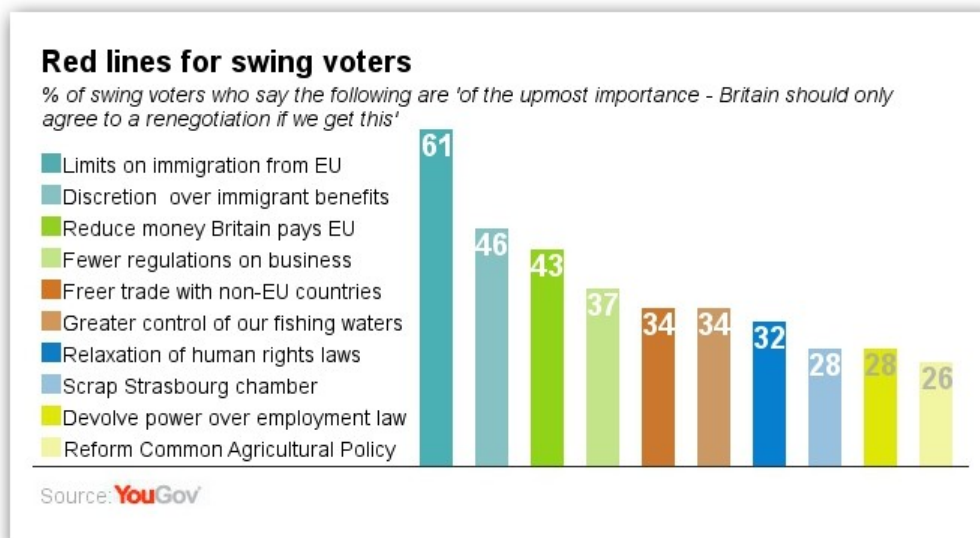


Figure 21. YouGov poll findings: issues of the utmost importance to swing voters in EU renegotiations (Dec 2013).

The situation is further complicated by the estimated 1.4 million Britons resident in EU territories.²⁵⁹ While they might benefit from acquired rights, this area of international law is highly contentious. It cannot be assumed that they

²⁵⁷ YouGov, EU referendum: the red lines for swing voters, 18 December 2013, <http://yougov.co.uk/news/2013/12/18/eu-referendum-red-lines-swing-voters/>. For full results, see here: http://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/go1cq5ulbg/YG-Archive-131209-The-Sun-Euro-Results.pdf. Both accessed 6 January 2014.

²⁵⁸ Survation poll on immigration, 4 January 2-14, http://survation.com/wp-content/uploads/2014/01/FINAL_New_Years_Immigration_Poll_Weighted_Jan04.pdf, accessed 6 January 2014.

²⁵⁹ <http://migrationobservatory.ox.ac.uk/commentary/eu-shuffle-how-does-freedom-movement-eu-affect-migration-and-uk>, accessed 8 December 2013.

would enjoy a problem-free transition. Negotiators would have to protect their interests, as well as the needs of business, student and academic movements, and the tourist trade.

This notwithstanding, the greater proportion of immigration comes from non-EU countries, the largest group coming from India.²⁶⁰ Even from within the EU, though, some immigration is mandated by non-EU instruments, such as family reunification which accounts for 17 percent of UK totals.²⁶¹ Although the provisions are set out in Directive 2003/86/EC, the EU is implementing a right recognised in the European Convention of Human Rights (ECHR), to which Britain is a party,²⁶² In order to relieve itself of this obligation, Britain might have to reconsider its membership of the Council of Europe, which is the sponsoring body of the ECHR.

This illustrates the need to coordinate domestic and international policies, but there are limits even to this. Migration is by no means a creature of regulation – greater forces trigger population movements and, to an extent, government intervention simply shapes and directs flows. Solutions, therefore, may not lie in release from treaty obligations but in reducing the impact of "pull factors" and by addressing the more complex "push factors" which drive migrants from their homes.

In this, Britain can work with EU member states, which might reasonably expect contributions towards joint measures. For instance, where Turkey has agreed to act as a "safe" country for the return of illegal immigrants, in exchange for visa-free entry of Turkish citizens, these arrangements might also benefit Britain. Thus British taxpayers might be asked to defray costs of migrants' shelters and border security in Turkey.²⁶³

Where movement controls are applied, there is always the risk of unintended consequences. For instance, "workers' remittances" sent to extended families back home are an important if unacknowledged source of development aid, involving significant cash transfers. In 2012 the total for the EU27 was €38.8bn. Almost three quarters (€28.4bn) went outside the EU.²⁶⁴ Disrupting

²⁶⁰ ONS, Migration Statistics Quarterly Report, November 2013, http://www.ons.gov.uk/ons/dcp171778_335330.pdf, accessed 8 December 2013.

²⁶¹ Blinder, Scott (2013), Non-European Migration to the UK: Family and Dependents, The Migration Observatory, <http://www.migrationobservatory.ox.ac.uk/sites/files/migobs/Briefing%20-%20Family%20and%20Dependents.pdf>, accessed 7 January 2014.

²⁶² Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification. See recital 2. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:251:0012:0018:EN:PDF>, accessed 7 January 2014.

²⁶³ European Commission press release, Cecilia Malmström signs the Readmission Agreement and launches the Visa Liberalisation Dialogue with Turkey, 16 December 2013, http://europa.eu/rapid/press-release_IP-13-1259_en.htm?locale=en, accessed 16 December 2013.

²⁶⁴ FOCUS News Agency, 11 December 2013, Bulgarians working abroad transferred EUR 490 billion to Bulgaria in 2012, <http://www.focus->

these transfers can cause instability and economic hardship, potentially requiring direct and more expensive intervention in terms of international aid and even military action. In some senses, worker mobility is a very precisely targeted form of aid. Changes in arrangements need to be managed with care.

For Britain, though, there is little merit in the EU's common immigration policy. This stems from the European Council at Tampere in October 1999, which has sought to address these immigration in the context of political, human rights and development issues in countries and regions of origin and transit.²⁶⁵ Around that time, it had been recognised that restrictive admission practices had reduced legal immigration to Europe, but had been accompanied by a sharp rise in the number of asylum seekers and of illegal immigrants, and by the growth of smuggling and trafficking.²⁶⁶

In 2005, EU political leaders proclaimed the “Global Approach to Migration” as a response to the desperate attempts of immigrants to cross the EU’s southern frontiers. This was then redefined in 2011 as the “Global Approach to Migration and Mobility”, by which time there were an estimated 214 million international migrants worldwide and another 740 million internal migrants. There were 44 million forcibly displaced people and an estimated 50 million living and working abroad with irregular status.²⁶⁷

In the period following Tampere, it has been generally recognised that the EU policy lacks bite, leading to multiple complaints, not least concerning the ability to deal with such issues as the Roma.²⁶⁸ Given also the international obligations imposed by UN treaties, and the global scope of the problem, there has been a tendency to move beyond the geographically-limited forum of the EU and look for global solutions.²⁶⁹ The OECD, the ILO and the G20 have all taken active roles in the development of policy and since 2007 we have seen the emergence of the Global Forum on Migration and Development, a UN initiative intended "to address the migration and development interconnections in practical and

fen.net/?id=n320805&utm_content=buffer00fc1&utm_source=buffer&utm_medium=twitter&utm_campaign=Buffer, accessed 11 December 2013.

²⁶⁵ Presidency Conclusions, Tampere European Council, 15 And 16 October 1999, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/00200-r1.en9.htm, accessed 9 January 2014.

²⁶⁶ European Commission, António Vitorino, Towards a common migration policy for the European Union, Conference "Migrations. Scenarios for the 21 century", Rome, 12 July 2000, http://europa.eu/rapid/press-release_SPEECH-00-267_en.htm, accessed 9 January 2014.

²⁶⁷ European Commission Communication: The Global Approach to Migration and Mobility, COM(2011) 743 final, Brussels, 18 November 2011, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0743:FIN:EN:PDF>, accessed 9 January 2014.

²⁶⁸ The Plight of the Roma: Europe's Unwanted People, *Spiegel International*, 7 January 2014, <http://www.spiegel.de/international/europe/europe-failing-to-protect-roma-from-discrimination-and-poverty-a-942057.html>, accessed 9 January 2014.

²⁶⁹ In particular the 1951 Convention on Refugees and the 1967 Protocol. See <http://www.unhcr.org/pages/49da0e466.html>, accessed 9 January 2014.

action-oriented ways".²⁷⁰ Currently, there are suggestions that we need a World Migration Organisation analogous to the WTO.²⁷¹

It is thus becoming increasingly evident that the problem of mass migration needs a global rather than regional perspective. On this, as with other issues, Britain needs to be part of the global dialogue, with freedom to take local action in support of the national interest.

9.2 Free movement of capital and payments

The other problematic freedom is the "free movement of capital". Originating in the 1957 Treaty of Rome, it has been re-enacted and revised, the current treaty (TFEU Article 63) declaring that: "all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited". Furthermore, the article states that: "all restrictions on payments between Member States and between Member States and third countries shall be prohibited".

Britain, thereby, is deprived of a considerable element of tax sovereignty. It cannot, for instance, demand that corporate earnings are retained in this country until tax has been paid on them. Companies trading in Britain can offshore their money and if, by so doing, can convert it or manipulate it in some way as to exempt it from taxation, they are free to do so.

Outside the EU, movement is facilitated by the OECD with its 1961 Code of Liberalisation of Capital Movements, to which all 34 members adhere.^{272,273} However, within the territories of EU member states, only EU law can give binding force to the commitments endorsed in the code. Therefore, it is only used externally by the EU as the basis of third party agreements, applying it to such countries as Turkey. Furthermore, the EU provisions are "appreciably stricter than those in the OECD", making the EU "one of the world's most open capital movement regimes".²⁷⁴

However, for the first time in over half a century, the major economic powers are questioning whether to reapply controls over capital movement. G20 is taking the global lead, working on a multilateral basis with UNCTAD.²⁷⁵ The

²⁷⁰ See: <https://www.gfmd.org/en/process/background>, accessed 9 January 2014.

²⁷¹ See, for instance, http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/tp/TS8b.pdf, accessed 9 January 2014.

²⁷² This has been amended and extended, the current version (2013) running to 173 pages. See: http://www.oecd.org/daf/inv/investment-policy/CapitalMovements_WebEnglish.pdf, accessed 11 December 2013.

²⁷³ These include the United States, Britain and most EU members, Switzerland and Turkey. The code has been extended to all members of the IMF and on 28 June 2012 the OECD made it open to adherence by all interested countries.

²⁷⁴ See: http://ec.europa.eu/internal_market/capital/docs/reports/120203_market-monitoring-working-document_en.pdf, accessed 11 December 2013.

²⁷⁵ United Nations Conference on Trade and Development.

aim is to resuscitate the IMF's Articles of Agreement of 27 December 1945, which allow that "members may exercise such controls as are necessary to regulate international capital movements". The G20/UNCTAD report notes that experience with the current financial crisis challenges the conventional wisdom that dismantling all obstacles to cross-border private capital flows is the best recipe for economic development.²⁷⁶

Within the EEA, Britain could not unilaterally implement any G20/UNCTAD recommendations and re-impose capital controls – under normal conditions.²⁷⁷ Outside, it would be caught by the OECD Code, to which it is a party. This again brings into high profile the increasing globalisation of regulation. Removing one level simply exposes another.

One can compare Britain with the victim in a horror movie, trapped alive in an as-yet-unburied coffin. Having broken through the lid in a bid to escape, he finds to his consternation that there is another lid over the first. This "double lid" in respect of capital movement is on the one hand the EU treaty obligations and, on the other, the OECD code. The main effect of breaking through the EU/EEA legislative layer is to reveal the second "lid". The most optimistic outcome is that G20/UNCTAD recommendations end with revisions to the OECD code, allowing for more flexibility in controlling capital movements.

10.0 Political co-operation

Within the EU, significant areas of policy co-ordination are still managed outside the treaty framework, on an intergovernmental basis. Since the 1970 Davignon Report, there have been regular meetings of (then) EEC foreign ministers, with the formation of the European Political Committee (EPC).²⁷⁸ These have been further extended to meetings of justice and home affairs ministers, where national co-ordination is discussed. In parallel, there have developed routine meetings of heads of state and governments – now institutionalised as the European Council.

In other policy areas, meetings used what is known as the "open method of coordination" (OMC). This is described as a form of EU soft law, a process of policymaking which does not lead to binding legislative measures or require

²⁷⁶ G20 Working Group on the Reform of the International Monetary System, Contribution by the UNCTAD Secretariat to Subgroup I: Capital Flow Management, March 2011. http://unctad.org/en/Docs/webgds2011_g20d06_en.pdf, accessed 8 December 2013.

²⁷⁷ EFTA/EEA members are entitled to take exceptional measures under Art 43.4 of the EEA Agreement, in order to protect their balance of payments. This option was adopted by Iceland at the end of 2008 in response to its financial crisis, an action which was subsequently approved by the EFTA Court. See: http://www.eftacourt.int/uploads/tx_nvcases/3_11_Judgment_EN.pdf, accessed 20 January 2014.

²⁷⁸ Report by the Foreign Minister of the Member States on the problems of political unification, Luxembourg, 27 October 1970. Bulletin of the European Communities No. 11, 1970, pp. 9-14. [EU Council of the EU Document], http://aei.pitt.edu/4543/1/epc_first_report_oct_1970.pdf, accessed 4 December 2013.

Member States to change their law.²⁷⁹ It has been used particularly to develop employment policy, but is not restricted to that sphere. It includes research and development, enterprise and immigration, and all areas of social policy.²⁸⁰

Generally, the OMC works in stages. The Council of Ministers agrees on policy goals, Member States translate them into national and regional policies and then specific benchmarks and indicators to measure best practice are agreed upon.

Although the system was devised as an intergovernmental tool for policy areas reserved for national governments, it was sometimes seen as a way for the Commission to "put its foot in the door". Outside the EU, pressure to conform to EU policy initiatives would be reduced and OMC could no longer be used as a "back door" for Community encroachment. Then, because it is an established way for ministers and officials to communicate across a wide range of issues, it could have some value to a post-exit Britain, allowing for EU-UK co-ordination when necessary.

Here, existing EFTA arrangements can be exploited. The extensive consultation system is well-established and much of the communication is structured through OMC.²⁸¹ It enables ongoing and largely cordial relations to be maintained with EU member states and institutions.

Additionally, high-level contacts should be fostered. Better to manage relations and to facilitate ongoing dialogue, it might be advantageous to establish formal bilateral structures at ministerial levels, along the lines of the EPC, with provision for formal "summits" of heads of state and governments at regular intervals, to make up for the loss of contact through the European Council. This might be especially appropriate for communications on matters of defence not covered by NATO, foreign policy and macro-economics. The G8/20 forums also provide adequate means of continuing dialogue with the EU and its members.

11.0 Discussion and conclusions

Building on our analyses, we have identified two short-term priorities for the "Brexit" negotiators – continuation of the Single Market and a speedy conclusion to negotiations. The most practical way of achieving this, we argue, is the "Norway Option", accompanied by block repatriation of EU law and a mechanism for continuing third-country agreements.

²⁷⁹ Eurofound, Open method of coordination, <http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/openmethodofcoordination.htm>, accessed 4 December 2013.

²⁸⁰ Ibid.

²⁸¹ EFTA bulletin: decision shaping in the European Economic Area, 2009, <http://www.efta.int/sites/default/files/publications/bulletins/eeadecisionshaping-bulletin.pdf>, accessed 1 January 2014.

The disadvantages of the "Norway Option", are much overstated, primarily by those who seek continued British membership of the EU, most of whom stress the loss of influence involved. However, decision-shaping opportunities and the high-level access to global and regional bodies gives Britain far greater influence than is generally acknowledged, more than compensating for the reduced access to EU institutions.

Rather than dwelling on problems – which are inherent in all systems and all solutions – we assert that "Brexit" offers exciting opportunities, not least to cement relations with new partners. Therefore, we have suggested that negotiators set up further talks, with the aim of replacing the EEA Agreement with an expanded free trade area and agreements on political co-operation. In order then to remove the EU law-making monopoly over the entire EEA, we have proposed a different way of administering a single market, covering the whole of continental Europe and some adjacent states.

These proposals go beyond the Article 50 process and would require talks with regional and global players and non-state actors. To accommodate this, we have suggested a twin-track approach in which short term political matters necessary to secure withdrawal are decoupled from the longer-term needs. We have identified the need to secure an economically neutral transition, and argue for pursuing the longer-term issues outside the Article 50 framework.²⁸²

The exit agreement, therefore, must include a commitment to ongoing talks, an option that would give negotiators more flexibility in the event of a referendum on the Article 50 settlement. Preferably, any talks should continue without a break, to keep up the momentum. The fact of ongoing talks, though, would convert "Brexit" from an event into a process, not dissimilar to the progressive nature of European integration.

To that extent, we are dealing with something new. In its analysis of British options, the think-tank *Open Europe* argued that none of the commonly argued possibilities for leaving the EU are workable, including the "Norway Option".²⁸³ But, although our initial strategy is built around that option, it is used only as an opening gambit – in the sense of the word used in chess.

From there, we have crafted a series of flexible responses and then suggest a doctrine of continuous development. None of the responses is unique, in the sense that there is nothing new under the sun, but we believe that the combination of measures in our solution is entirely new.

²⁸² There is something of a precedent for two-stage negotiations in the Anglo-Irish Treaty of 6 December 1921, in which the Irish Free State gained its independence. As part of the treaty, the Irish ceded to Britain three deep water ports on the Irish mainland, called "Treaty Ports". These were not returned until 1938 under a separate agreement with the Dublin government. This illustrates that independence can be achieved, with further negotiations on outstanding issues resumed at a later date.

²⁸³ *Open Europe*, Trading places: Is EU membership still the best option for UK trade? June 2012, http://www.openeurope.org.uk/Content/Documents/2012EUTrade_new.pdf, accessed 10 December 2013.

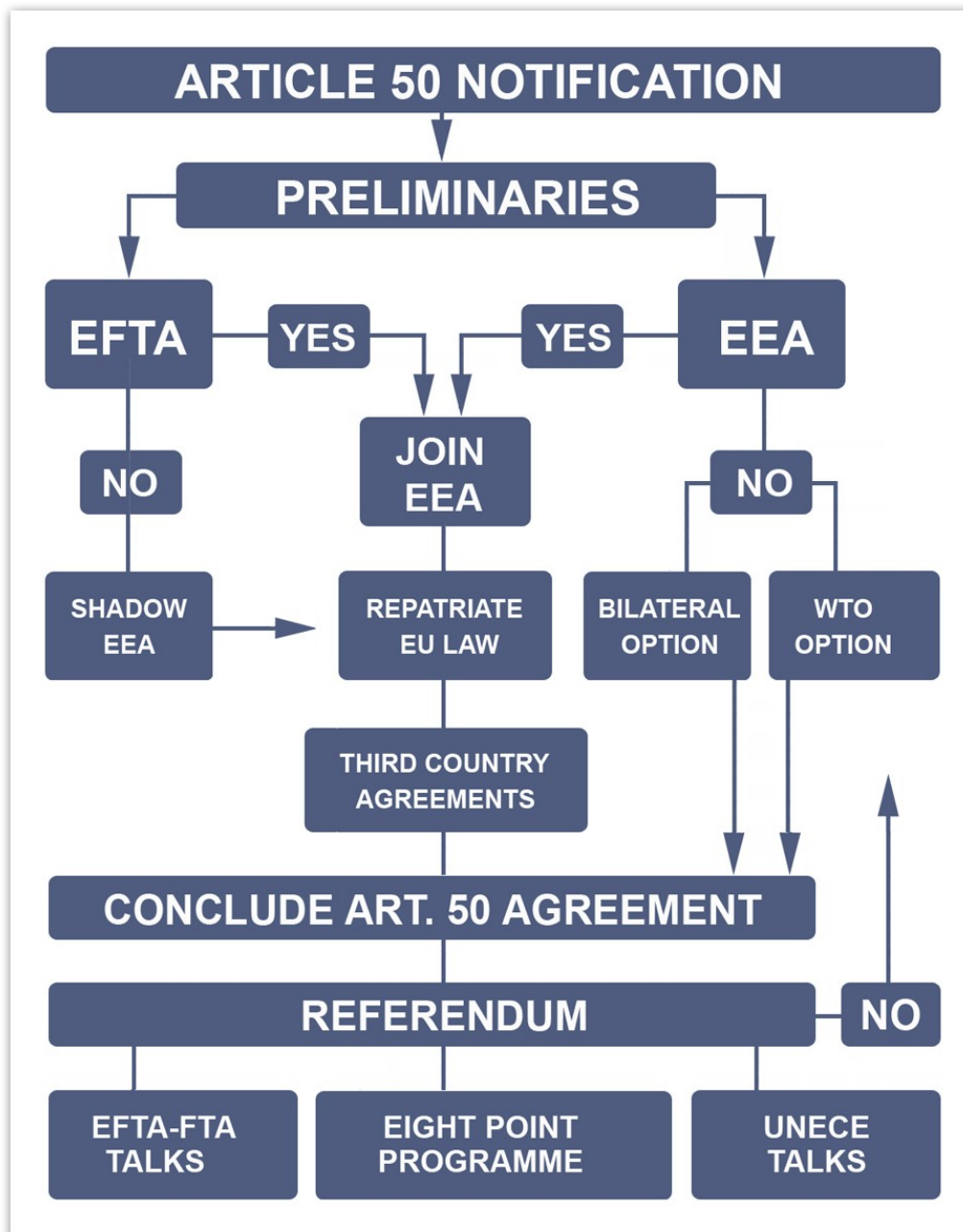


Figure 22. The FLexCit process showing trade relations: the steps are based initially on seeking the "Norway Option", followed by renegotiation of the EEA Agreement and its replacement with a free trade area, removal of the EU law-making monopoly by expanding the role of UNECE, and implementation of an eight point programme for further development.

Thus, we are not advocating the "Norway Option", *per se*, but something entirely original. In short, our solution to "Brexit" is "FLexCit" – FFlexible response and Continuous development, a process rather than an event. That is the essence of our submission.

The immediate objectives of leaving are essentially political: the freedom to manage our own affairs and make our own decisions. However, we have drawn attention to the "double coffin-lid" phenomenon, whereby Britain breaks through "little Europe" only to discover another layer of control. Thus, withdrawal will expose Britain to the full rigors of globalisation, making it more visible and giving it a higher public profile. It will have to remake and strengthen its presence on global bodies.

As to making its own decisions, the ability to transcend the narrow remit of the EU and to deal directly with global institutions is the difference between working with doctrinaire supranationality and flexible intergovernmentalism. The latter permits agreements to be accepted or rejected on their merits, unlike the "all or nothing" approach of the EU.

But, where there are choices, there are consequences. Britain will make its choices on the global stage and will be able to see what follows from them. It will no longer need to hide behind the EU, blaming it for unpopular decisions which would have to be taken anyway.

11.1 The "FLexCit" dividends

In terms of more tangible dividends, much has been made of the reduced burden of regulation that might be expected. Our analyses suggest that expectations might be unrealised in the short-term. Much of the existing legislation will have to be maintained, either because of EEA membership, domestic regulatory requirements or international obligations. The dividend, we believe, will not come from "big bang" deregulation, but from continuous development, majoring on the issues we have raised.

When we assemble the main points, eight key targets emerge (Table 4). Firstly, we have posited that withdrawal from agriculture, fishing, regional and other policy areas will eventually allow for the repeal of some measures and their replacement with more efficient policies. Secondly, we argue that better regulation, with risk-related measures, could yield significant economies, especially when combined with better, more timely intelligence.

Then, we aver that greater attention must be given to system vulnerabilities and to improved enforcement if growth in transnational organised crime is to be contained. Fourth, the process of convergence, leading to global regulatory harmonisation and the elimination of duplication, could have a substantial effect in reducing costs. On the other hand, between markedly different regulatory environments, hysteresis can negate beneficial effects.²⁸⁴ Convergence, in those instances, might best take second place to expending resources on improving enforcement.

²⁸⁴ Christensen, Hans B; Hail Luzi and Leuz, Christian (2011). Capital-Market Effects of Securities Regulation: Hysteresis, Implementation, and Enforcement. Online version: <https://bspa.berkeley.edu/access/content/group/e675b947-6067-425e-adbf-10e8922547b9/CHL%20Enforcement.pdf>, accessed 28 December 2013.

| | Actions | Target |
|----|--|---|
| 1. | Regulatory repeal and replacement | Agriculture, fisheries and regional policy - more efficient/localised and less regulation |
| 2. | Better regulatory systems | Risk-related measures; targeted outcomes; emphasis on functionality; better, more timely intelligence |
| 3. | Tackling transnational organised crime | Emphasis on total effect of trade deals; focus on vulnerabilities to crime improved enforcement |
| 4. | Convergence and harmonisation | Targeted activity; high value sectors recognition of regulatory hysteresis; emphasis on cost-benefit |
| 5. | Improved dispute resolution | Development and reform of Investor State Dispute Resolution: greater transparency |
| 6. | Unbundling | Sector-specific deals to reduce TBTs rather than relying on FTAs ... sub-sector deals, if appropriate |
| 7. | Modifying freedom of movement | Development of global policy on migration; global co-ordination on "push" and "pull" factors |
| 8. | Capital and payments control | Restoration of tax sovereignty; reduced money laundering and corruption |

Table 4. FLexCit – the eight-point programme for continuous development

Fifth, better dispute resolution would secure more uniform implementation. Sixth, there is the prospect of "unbundling", seeking sector-specific solutions, rather than relying on grandiose free trade agreements that promise much and deliver little. Seventh, there are openings for more constructive ways of dealing with freedom of movement – especially on a global level - and, finally, we address the issue of free movement of capital and payments.

11.2 Potential savings

The totality of savings from reduced regulation, or gains from increased trading, is impossible to estimate with any accuracy, or at all, evidenced by the prestigious Institute of International Finance calling upon the FSB to

"commission academic work on the economic costs and benefits" of international regulation.²⁸⁵ The absence of firm data suggests that analysts should avoid seeking to impose certainty where none exists. Certainly, estimates of projected savings should be treated with considerable suspicion, especially as so much of regulation is of global origin, and increasingly so²⁸⁶.

Nor should it be forgotten that the purpose of regulation is often to prevent catastrophic failure or major fraud. The cost of the world financial crisis was estimated by the IMF to be \$11.9trn (USD) and while some have argued that poor regulation was in part responsible, the current round of regulation is most definitely aimed at preventing another crisis.²⁸⁷

In respect of carousel fraud, regulation is being shaped by the need to prevent criminals exploiting the VAT system, in an attempt to stem multi-billion annual losses.²⁸⁸ Estimated at 12 percent of total VAT revenue, EU-wide fraud may have cost €90-113bn a year in the period 2000-2006 and more than €100bn in 2012, accounting for over €1trn in just over a decade.^{289,290} As such, regulation might be considered as insurance – its "premiums" as part of the cost of doing business. Furthermore, regulatory convergence is not necessarily intended to improve local efficiency, *per se*, but to improve the ability of global supervisory bodies to detect early signs of market failure or fraudulent activity.²⁹¹ This is easier to do when common standards are in place.²⁹²

Some argue that greater shareholder governance would be more effective than additional regulation, calling for institutional shareholders to exercise their power responsibly.²⁹³ There can certainly be little argument that functionality is more important than volume and, where functionality can be maintained or

²⁸⁵ Anon, Institute of International Finance (IIF), (June 2013), Promoting Greater International Regulatory Consistency, <http://www.iif.com/download.php?id=ck5cytlYNBw>, accessed 29 December 2013.

²⁸⁶ See Appendix 3 for some further examples.

²⁸⁷ *The Daily Telegraph*, IMF puts total cost of crisis at £7.1 trillion, <http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/5995810/IMF-puts-total-cost-of-crisis-at-7.1-trillion.html>, accessed 30 December 2013.

²⁸⁸ Council of the EU, 22 July 2013, Council approves measures to tackle VAT fraud, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/138239.pdf, accessed 12 January 2014.

²⁸⁹ *Finfacts*, European Union continuing to struggle in fight to reduce VAT fraud, Michael Hennigan, 3 September 2013, http://www.finfacts.ie/irishfinancenews/article_1026481.shtml, accessed 3 January 2014.

²⁹⁰ Eurostat, Tax revenue in the European Union, http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-12-002/EN/KS-SF-12-002-EN.PDF, accessed 3 January 2014.

²⁹¹ <http://www.publications.parliament.uk/pa/ld200809/ldselect/ldcom/106/10611.htm>

²⁹² House of Lords, European Union Committee, The role of the EU in global supervision and regulation, <http://www.publications.parliament.uk/pa/ld200809/ldselect/ldcom/106/10611.htm>, accessed 30 December 2013.

²⁹³ *Citywire*, 11 March 2010, Bootle: greater shareholder governance is more effective than regulation, <http://citywire.co.uk/money/bootle-greater-shareholder-governance-is-more-effective-than-regulation/a387219>, accessed 20 November 2013.

enhanced, there is considerable value in regulatory reform. KPMG argues that the global insurance industry could save "up to" \$25 billion annually from harmonised regulation and consistent requirements.²⁹⁴

Overall, NTMs are estimated to add more than 20 percent to trade costs, and cutting those costs by a quarter is considered realistic.^{295,296} Applied to the global pharmaceutical industry, with a turnover worth close to one trillion USD by 2014, that could deliver annual savings in the order of \$50bn.²⁹⁷ In the healthcare industry there is \$0.5trn (USD) tied up in inventory. Better global standards could reduce obsolescence and inventory redundancy, while also cutting storage costs, potentially saving \$90-135 billion (USD).²⁹⁸

Crucially, this is little more than informed guesswork. Actual deliverables depend on many things, including political will and sector politics. Here, the example of EU-US relations is not encouraging. These trading partners have been discussing regulatory harmonisation in key traded products/sectors for over two decades, since the adoption of the Transatlantic Declaration in 1990. Their continued inability to reduce NTMs implies that many of the projected gains from TTIP may remain unrealised.^{299,300} Some of the claims made seem to belong in the realms of political propaganda rather than economics.

11.3 A different approach

This might suggest a different approach. Rather than promoting geographically anchored deals and then seeking to justify them with estimated (and often exaggerated) gains, potential savings might be identified by sector, with the more valuable targeted first. Currently, motor vehicles, electrical machinery, chemicals, financial services, government procurement and intellectual property rights are thought to be the most promising.³⁰¹ Relying on unbundling as the way forward, prioritising these sectors and aiming for limited but clearly defined reductions in very specific NTMs could deliver more tangible results.

²⁹⁴ <http://www.icaew.com/en/technical/financial-services/financial-services-faculty/harmonised-rules-could-save-insurers-billions>, *op cit*.

²⁹⁵ Anon, Non-Tariff Measures in EU-US Trade and Investment – An Economic Analysis, ECORYS Nederland BV, 11 December 2009, http://trade.ec.europa.eu/doclib/docs/2009/december/tradoc_145613.pdf, accessed 27 December 2013.

²⁹⁶ ECORYS, *op cit*. A 25% alignment of NTMs and regulatory convergence is assumed to be realistic.

²⁹⁷ <http://www.abpi.org.uk/industry-info/knowledge-hub/global-industry/Pages/industry-market.aspx>, accessed 24 December 2013.

²⁹⁸ Strength in unity: The promise of global standards in healthcare. McKinsey & Company 2012. http://www.gs1.org/docs/healthcare/McKinsey_Healthcare_Report_Strength_in_Unity.pdf, accessed 24 December 2013.

²⁹⁹ http://eeas.europa.eu/us/docs/trans_declaration_90_en.pdf, accessed 27 December 2013.

³⁰⁰ Karmakar, *op cit*.

³⁰¹ ECORYS, *op cit*.

Adopting such an targeted approach, aiming at, say, saving \$250 billion annually from the global regulatory bill in ten uncontentious sectors, could be more productive than seeking to unite Europe and the United States over chlorine-washed chickens and hormones in beef as a condition of reaching an all-embracing trade deal. With an expanded EFTA as its power base, renewed and improved links with the Commonwealth, relations with the Cairns Group, and a trading partnership with the EU, plus its special relationship with the US, a "networked" Britain would be in a unique position to broker agreements on potential targets and priorities.

In dealing with the global system, though, Britain will have to come to terms with its chaotic nature. Sooner or later, the intrinsic (or perceived) discontinuity between bilateralism and rule-based multilateralism will have to be resolved. Britain could lend powerful support to rationalisation, helping to shape stable institutions, while improving their visibility and accountability.

From an entirely different perspective, while it is true to say that the global system is chaotic, with no unified structure, that is not necessarily a bad thing. It prevents any one body acquiring too much power. Britain can adopt a *laissez faire* response to this global disorder and work with it. The contrast with the EU obsession with institutional structures would make a refreshing change.

That notwithstanding, we see merit in getting closer to the original Churchillian hierarchy. National, sub-regional, regional and global entities allow for a logical division of responsibilities, and a more easily understandable architecture. Britain as part of an FTA, feeding into UNECE which thence feeds into global institutions, and *vice versa*, has a certain symmetry.

"Brexit", however, must be more than a matter of seeking a new economic order. The driver for change must be the search for more democracy. "Originally", as Dr David Starkey put it, "membership of the European Union was presented to the electorate as the panacea for our supposed ills. Instead, it has turned out to be a fundamental and probably irreversible betrayal of the primary principle of Churchill's whole life and career: that no foreign power should ever be able to tell the British people what to do".³⁰²

Fortunately, EU membership is far from irreversible. Its end would represent a decisive rejection of supranationalism and a return to co-operation between sovereign governments, a celebration of nationalism and independent government. Vitally important though trade, economics and allied matters may be, they must always be the servants of the people, never their masters. "FLexCit" is intended to take us closer to that state.

³⁰² *Daily Mail*, 17 August 2012, <http://www.dailymail.co.uk/debate/article-2190031/What-colossus-teach-today-s-political-pygmyies-facing-harsh-realities.html#ixzz2nZQq71vE>, accessed 16 December 2013.

Appendix 1 - Abbreviations

| | |
|--------|--|
| AIFMD | Alternative Investment Fund Managers Directive |
| ASEAN | Association of Southeast Asian Nations |
| BCBS | Basel Committee on Banking Supervision |
| BIP | Border Inspection Post |
| CAP | Common Agricultural Policy |
| CBI | Confederation of British Industry |
| CETA | Comprehensive Economic and Trade Agreement |
| CFP | Common Fisheries Policy |
| ECA | European Communities Act |
| ECJ | European Court of Justice |
| ECHR | European Convention of Human Rights |
| ECOSOC | Economic and Social Council (UN) |
| EDA | European Defence Agency |
| EEA | European Economic Area |
| EFTA | European Free Trade Association |
| FAO | Food and Agriculture Organisation (UN) |
| FATF | Financial Action Task Force |
| FDI | Foreign Direct Investment |
| FSB | Financial Stability Board |
| FTA | Free Trade Area |
| FTT | Financial Transaction Tax |
| FUD | Fear, Uncertainty, Doubt |
| GAMM | Global Approach to Migration and Mobility |
| GSP | Generalised Scheme of Preferences |
| HACCP | Hazard Analysis and Critical Control Points |
| IAS | International Accounting Standards |
| ICAO | International Civil Aviation Organisation |
| IGC | Intergovernmental Conference |
| ILO | International Labour Organisation |
| IOSCO | International Organisation of Securities Commissions |
| IPPC | International Plant Protection Convention |
| ISDS | Investor-State Dispute Settlement |
| ISO | International Organisation for Standardization |
| LDC | Less Developed Country |
| NTM | Non-tariff measure |
| OECD | Organisation of Economic Cooperation and Development |
| OMC | Open Method of Coordination |
| OSCE | Organization for Security and Co-operation in Europe |
| QMV | Qualified Majority Voting |
| RCEP | Regional Comprehensive Economic Partnership |
| SME | Small and Medium Enterprise |
| SPS | Sanitary and PhytoSanitary measures |
| SVP | Swiss Peoples Party |
| TBT | Technical Barriers to Trade |
| TEU | Treaty of the European Union |

| | |
|--------|---|
| TFEU | Treaty on the Functioning of the European Union |
| TOC | Transnational organised crime |
| TPP | Trans-Pacific Partnership |
| TTIP | Transatlantic Trade and Investment Partnership |
| UNCED | UN Conference on Environment and Development |
| UNCTAD | UN Conference on Trade And Development |
| UNECE | UN Economic Commission Europe |
| UNEP | UN Environment Programme |
| WTO | World Trade Organisation |

Appendix 2

The Globalisation of Regulation

Some further examples of the relationship between EU and international standards, illustrating the strengthening role of international standard-setting, replacing or supplementing EU initiatives.

1. Climate change: Although climate change law is a central part of EU policy, the Kyoto Protocol, which follows the United Nations Framework Convention on Climate Change, is one of the chief instruments for tackling climate change and is the driver of EU law.

The Convention contains the undertakings entered into by the industrialised countries to reduce their emissions of certain greenhouse gases which are responsible for global warming. The total emissions of the developed countries are to be reduced by at least five percent over the period 2008-2012 compared with 1990 levels.

Council Decision 2002/358/EC of 25 April 2002 concerns the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder.

The European Community ratified the Framework Convention by Decision 94/69/EC of 15 December 1993. The Framework Convention entered into force on 21 March 1994.³⁰³

2. Labour regulations: EU law on employment and general labour issues is increasingly framed in concert with the International Labour Organisation (ILO) Convention, not least working time provisions.³⁰⁴ The latest instrument concerns "fair and decent work for domestic workers" (Convention No. 189), was adopted in March 2013.

This requires Member States to ensure that domestic workers receive equal treatment with other workers as regards compensation and benefits. For example, in the case of maternity, they must be informed of the terms and

³⁰³

http://europa.eu/legislation_summaries/environment/tackling_climate_change/128060_en.htm, accessed 7 February 2014.

³⁰⁴ International Labour Standards on Working time, <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/working-time/lang--en/index.htm>, accessed 12 February 2014.

details of their employment, protected against discrimination, offered decent living conditions and have easy access to complaint mechanisms. The Convention also sets out rules regarding foreign recruitment, which are supported by judgements from the Court of Human Rights.³⁰⁵

EU legislation, such as Directives on health and safety, workers' rights, gender equality, trafficking and asylum, already addresses some aspects covered by the ILO Convention. The provisions of the Convention share the same approach as this legislation and are broadly consistent.

On many issues, EU law is more protective than the Convention. However, the Convention is more precise than EU law on the coverage of domestic workers by legislation and in other particular aspects of domestic work.³⁰⁶

3. Habitats regulation: The EU's primary control is Council Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora, known as the Habitats Directive, was adopted in 1992. The Directive is the means by which the European Union meets its obligations under the Convention on the Conservation of European Wildlife and Natural Habitats (The Berne Convention).

The main aim of the Habitats Directive is to promote the maintenance of biodiversity by requiring Member States to take measures to maintain or restore natural habitats and wild species listed on the Annexes to the Directive at a favourable conservation status, introducing robust protection for those habitats and species of European importance. In applying these measures Member States are required to take account of economic, social and cultural requirements, as well as regional and local characteristics.³⁰⁷

4. Money laundering: EU controls are currently based on Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC. However, these are currently under revision with a new proposal for a directive on the "prevention of the use of the financial system for the purpose of money laundering and terrorist financing" currently going through the ordinary decision procedure.

The new EU rules "are to a large extent based on international standards adopted by the Financial Action Task Force (FATF) and, as the Directive

³⁰⁵ http://fra.europa.eu/sites/default/files/fra_uploads/1668-FRA-report-domestic-workers-2011_EN.pdf, accessed 8 February 2014.

³⁰⁶ Working conditions: time for Member States to implement the ILO domestic workers convention, <http://ec.europa.eu/social/main.jsp?langId=en&catId=706&newsId=2024&furtherNews=yes>, accessed 8 February 2014.

³⁰⁷ <http://jncc.defra.gov.uk/page-1374>, accessed 8 February 2014.

follows a minimum harmonisation approach, the framework is completed by rules adopted at national level".³⁰⁸

FATF is an intergovernmental body set up by the G7 at its summit held in Paris in 1989. It currently has 36 members, and participates with 180 countries. It is recognised as the global standard-setter for measures to combat money-laundering, terrorist financing, and (most recently) the financing of proliferation.

Its purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing. For its legal base, it relies, *inter alia*, on the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) and the 2000 United Nations Convention on Transnational Organized Crime (the Palermo Convention).

Working in Paris with a secretariat provided by the OECD, it has produced 40 recommendations for countering money laundering and terrorist financing, augmented by a further nine, providing the framework which is in the process of being adopted by the EU.³⁰⁹

5. Wildlife trade regulation: the protection of species of wild fauna and flora by regulating trade is facilitated at EU level by the EU Wildlife Trade Regulations. Currently these are Council Regulation (EC) No 338/97 (the Basic Regulation), Commission Regulation (EC) No 865/2006 (as amended by Commission Regulation (EC) No 100/2008, Commission Regulation (EU) No 791/2012 and Commission Implementing Regulation (EU) No 792/2012)) and Commission Implementing Regulation (EU) No 792/2012 of 23 August 2012 laying down rules for the design of permits, certificates and other documents provided for in Council Regulation (EC) No 338/97. In addition, a Suspensions Regulation is in place to suspend the introduction into the EU of particular species from certain countries.

In addition to this core legislation, a Commission Recommendation to Member States (Commission Recommendation No 2007/425/EC identifying a set of actions for the enforcement of Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein, commonly referred to as the "EU Enforcement Action Plan") specifies further the measures that should be taken for enforcement of the EU Wildlife Trade Regulations.³¹⁰

³⁰⁸ European Commission, COM(2013) 45 final of 5 February 2013, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0045:FIN:EN:PDF>, accessed 8 February 2014.

³⁰⁹ See http://www.journal-iostudies.org/sites/journal-iostudies.org/files/JIOS201121final_5.pdf, <http://www.oecd.org/newsroom/2789371.pdf> and http://europa.eu/rapid/press-release_MEMO-12-113_en.htm?locale=en, accessed 9 February 2014.

³¹⁰ http://ec.europa.eu/environment/cites/legislation_en.htm, accessed 9 February 2014

However, the Commission readily acknowledges that this legislation has been enacted to implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), signed in 1973. It aims to ensure that international trade in specimens of wild animals and plants does not threaten their survival. It accords varying degrees of protection to more than 30,000 species of animals and plants. CITES works by making international trade in specimens of selected species subject to certain controls. These include a licensing system that requires the authorization of the import and (re-)export of species covered by the Convention.³¹¹

6. Control of occupational exposure to asbestos: at EU level, occupational risk of exposure to all types of asbestos is regulated by Directive 2009/148/EC on the protection of workers from the risks related to exposure to asbestos at work.³¹²

Coming into force in the UK as the Control of Asbestos Regulations 2012, the main cost arises from the lack of distinction between the more dangerous forms of asbestos (amphibole) and the relatively less dangerous white asbestos (chrysotile). All types are treated as a single, generic product, with no distinction as to treatment.

As a result, farmers are particularly exposed to control costs, because some 50,000 British farms have buildings containing asbestos cement, made from white asbestos, which must eventually be replaced. Total cost to industry is estimated at £6 billion. However, the reason why no distinction is made between types is because, along with other types, white asbestos is classified by the World Health Organisation (WHO) as a "Class 1 carcinogen".

WHO, though, is not the organisation of record when it comes to risk assessment. This devolves to the International Agency for Research on Cancer (IARC). Based in Lyon, France, with an annual core budget of €41 million, it is the specialised cancer agency of the WHO.³¹³ This agency, through its "working groups", sets out the basis for policy in its Monograph 100, the full version of which runs to 526 pages.³¹⁴

It is this work which justifies the classification of all types of asbestos as a "Class 1 carcinogen" and the IARC classification stands as the most authoritative statement.

The EU law is further "informed" by the ILO, which has produced its own code of practice on asbestos, which is constantly updated, and used as a model for

³¹¹ http://ec.europa.eu/environment/cites/home_en.htm, accessed 9 February 2014.

³¹² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:330:0028:0036:EN:PDF>, accessed 9 February 2014.

³¹³ <http://www.iarc.fr/en/about/index.php>, accessed 9 February 2014.

³¹⁴ <http://monographs.iarc.fr/ENG/Monographs/vol100C/mono100C.pdf>, accessed 9 February 2014.

national (and regional) regulatory systems.³¹⁵ The ILO, in turn, is "informed" by the International Commission on Occupational Health (ICOH). Founded in 1906 in Milan as the Permanent Commission on Occupational Health, it is now recognised by the United Nations as a non-governmental organisation (NGO) and has close working relationships with ILO, WHO, UNEP and ISSA.³¹⁶

The policy of the ICOH is to support "a global ban on the mining, sale and use of all forms of asbestos ... to accomplish the elimination of asbestos-related diseases". There, it links back to the IARC monograph which asserts that chrysotile causes malignancies of the lung, pleura and peritoneum. Therefore, it says, amphibole-only bans are inadequate; asbestos bans need to include chrysotile (white asbestos) as well.³¹⁷

By such means is the loop closed, with EU law driven by a number of international bodies which, collectively, define the provisions of the current directive.

7. Pressure vessels: equipment such as pressurised storage containers, heat exchangers, steam generators, boilers, industrial piping, safety devices and pressure accessories is widely used in the process industries (oil & gas, chemical, pharmaceutical, plastics and rubber and the food and beverage industry), high temperature process industry (glass, paper and board), energy production and in the supply of utilities, heating, air conditioning and gas storage and transportation.

Such safety critical equipment could not be used without conformity with the highest level of regulatory approval, not least in order to secure insurance cover. In Europe, equipment must conform to the Pressure Equipment Directive 97/23/EC (the PED), which initially came into force on 29 November 1999. From that date until 29 May 2002, manufacturers had a choice between applying the PED or applying existing national legislation.

From 30 May 2002 the PED became obligatory throughout the EU, together with the directives related to simple pressure vessels (2009/105/EC), transportable pressure equipment (99/36/EC) and Aerosol Dispensers (75/324/EEC).

The PED arises from the European Community's Programme for the elimination of technical barriers to trade and is formulated under the "New Approach to Technical Harmonisation and Standards". Its purpose is to harmonise national laws of Member States regarding the design, manufacture,

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http://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@safework/documents/normativeinstrument/wcms_107843.pdf, accessed 9 February 2014.

³¹⁶ http://www.icohweb.org/site_new/ico_about.asp, accessed 9 February 2014.

³¹⁷

http://www.icohweb.org/site_new/multimedia/news/pdf/ICOH%20Statement%20on%20global%20asbestos%20ban.pdf, accessed 9 February 2014.

testing and conformity assessment of pressure equipment and assemblies of pressure equipment.

It therefore aims to ensure the free placing on the market and putting into service of the equipment within the EU and the EEA. Formulated under the New Approach the directive provides for a flexible regulatory environment that does not impose any detailed technical solution. This approach allows European industry to develop new techniques thereby increasing international competitiveness.³¹⁸

When it comes to an "international code", the American Society of Mechanical Engineers (ASME) describes the "ASME Boiler and Pressure Vessel Code" as precisely that.³¹⁹ It is certainly considered to be a *de facto* international code, by virtue of it being adopted by US-owned or affiliated fabricators around the world. And it is also the basis of many companies' specifications, such as international oil companies, who base their contracts on specifications that require use of the ASME code.

The specifics of the code are such that conformity covers the basic principles of the PED, which effectively means that, short of relatively minor variations, the ASME and PED codes cover the same ground.

Overlaying these codes, though are two ISO standards ISO 16528-1 Boilers and Pressure Vessels, Part 1: Performance Requirements; and ISO 16528-2 Boilers and Pressure Vessels, Part 2: Procedures for Fulfilling the Requirements of ISO 16528-1. Conformity with these ensures basic cross-compliance with either standard.³²⁰

To complicate matters further, conformity with the European harmonised standard EN 13445 (Unfired Pressure Vessels) is accepted as demonstrating conformity to the Essential Safety Requirements of the PED.

Differences between the US and European codes, however, are assessed in terms of offering "a technically and economically competitive design route for most types of equipment", although it was also noted that in some cases the reported cost differences for different manufactures were larger than the cost

³¹⁸ European Commission, DG Enterprise and Industry, Pressure Equipment Directive (PED): overview, <http://ec.europa.eu/enterprise/sectors/pressure-and-gas/documents/ped/>, accessed 9 February 2014.

³¹⁹ ASME Boiler and Pressure Vessel Code (BPVC) 2013, https://www.asme.org/getmedia/1adfc3df-7dab-44bf-a078-8b1c7d60bf0d/ASME_BPVC_2013-Brochure.aspx, accessed 9 February 2014.

³²⁰ US National Board of Boiler and Pressure Vessel Inspectors, 80th General Meeting Presentation: Joe Brzuszkiewicz, 9 June 2011, <http://www.nationalboard.org/NationaBoardNews.aspx?NewsPageID=312>, accessed 9 February 2014.

differences resulting from the application of the various codes.³²¹

What this amounts to is that, to all intents and purposes, the ASME code can serve as a global standard. In the absence of the PED, European (including British) manufacturers would be adopting the US code. No savings would accrue from abolition of the Directive.

8. Environmental impact assessments: these are procedures that ensure that the environmental implications of decisions are taken into account before the decisions are made.

They can be undertaken for individual projects, such as a dam, motorway, airport or factory, on the basis of Directive 2011/92/EU (known as "Environmental Impact Assessment" – EIA Directive) or for public plans or programmes on the basis of Directive 2001/42/EC (known as "Strategic Environmental Assessment" – SEA Directive).

The common principle of both Directives is to ensure that plans, programmes and projects likely to have significant effects on the environment are made subject to an environmental assessment, prior to their approval or authorisation. Consultation with the public is a key feature of environmental assessment procedures.³²²

The recitals to the Directives themselves, however, readily attest as to their origin, as does the COM final setting out proposals for an amending directive. The existing legislation, says the COM, sets minimum requirements for the environmental assessment of projects throughout the EU and aims to comply with international conventions (e.g. Espoo, Aarhus, Convention on Biological Diversity).³²³

These are the Convention on Environmental Impact Assessment in a Transboundary Context, the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, and the Berne Convention.

Reference is also made though to the Rio Declaration on Environment and Development framed during the 1992 Earth Summit, and specifically to Principles 17 and 19.

³²¹ European Commission, Summary "Comparative Study on Pressure Equipment Standards", http://ec.europa.eu/enterprise/sectors/pressure-and-gas/files/comparative_study_summary_07_2004_en.pdf, accessed 9 January 2014.

³²² European Commission, Environment, <http://ec.europa.eu/environment/eia/home.htm>, accessed 10 February 2014.

³²³ European Commission, COM(2012) 628 final of 26 October 2012, on a proposal for an amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment. http://ec.europa.eu/environment/eia/pdf/com_628/1_EN_ACT_part1_v7.pdf, accessed 10 February 2014.

Respectively, these require environmental impact assessment, as a national instrument, to be undertaken for "proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority", and "prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect".³²⁴

Thus, the provisions of the diverse Directives satisfy international obligations to which the UK is party, and which would continue to apply even if the UK left the EU.

9. Accounting standards: common accounting standards are an important element in the Single Market. At EU level, they are used to underwrite core EU legislation such as Council Directives 78/660/EEC, 83/349/EEC on consolidated accounts, Directive 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and Directive 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings – as amended by Directive 2013/34/EU.³²⁵

However, these standards are not generated by EU institutions. Rather, via Regulation (EC) No 1606/2002 (the "IAS Regulation"), the International Financial Reporting Standards (IFRS) is used, a mandatory requirement for companies with securities listed on a regulated market in the EU. IFRS are issued by the International Accounting Standards Board (IASB) and related interpretations by the International Financial Reporting Interpretations Committee (IFRIC), two bodies of the International Accounting Standards Committee Foundation (IASCF).³²⁶

The sponsoring organisation for the standards board is the IFRS Foundation, "an independent, not-for-profit private sector organisation working in the public interest". The governance and oversight of the activities undertaken by the IFRS Foundation and its standard-setting body rests with its Trustees, who are also responsible for safeguarding the independence of the IASB and ensuring the financing of the organisation.³²⁷

IFRS are used alongside the standards of the US Public Company Accounting Oversight Board (PCAOB), the two standards effectively providing the global

³²⁴ Report of the United Nations Conference on Environment and Development, Rio De Janeiro, 3-14 June 1992, <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>, accessed 10 February 2014.

³²⁵ European Commission: EU Single Market, Directive on statutory audit, http://ec.europa.eu/internal_market/auditing/directives/index_en.htm, accessed 10 February 2014.

³²⁶ Regulation (EC) No 1606/2002 of 19 July 2002 on the application of international accounting standards, http://www.esma.europa.eu/system/files/Reg_1606_02.pdf; European Commission: EU Single Market, International Standards on Auditing (ISAs), http://ec.europa.eu/internal_market/auditing/isa/index_en.htm, 10 February 2014.

³²⁷ About the IFRS Foundation and the IASB, <http://www.ifrs.org/The-organisation/Pages/IFRS-Foundation-and-the-IASB.aspx>, accessed 10 February 2014.

base for company reporting. As of August 2008, more than 113 countries around the world, including all of Europe, currently require or permit IFRS reporting and 85 require IFRS reporting for all domestic, listed companies. Currently, profiles are completed for 122 jurisdictions, including all of the G20 jurisdictions plus 102 others.³²⁸

Interestingly, the growth economies such as China, Korea and Brazil are very supportive of the IASB work, seeing IFRS as "an opportunity to secure a seat at the top table of global financial reporting". For example, China provides the secretariat for the IASB's emerging economies group.³²⁹

10. Pesticide residues: a huge list of legislation produced by the European Commission testifies to the immense level of regulatory activity in defining the various pesticides used for plant protection and, to protect public health, the maximum residues permitted in various circumstances, especially in food and water.³³⁰

Currently, via the European Food Safety Authority, the EU is undergoing a process of harmonising pesticide Maximum Residue Levels (MRLs) and replaced the previous legislation concerning MRLs for about 250 active substances, as envisaged in Regulation (EC) No 396/2005. For the remaining compounds, which are still in use either in or outside the EU, Member States had established specific national MRLs. Temporary EU-level MRLs have been set for these substances as a first step in the harmonisation programme.³³¹

Behind what appears to be this exclusive EU activity, however, is the Joint FAO/WHO Meeting on Pesticide Residues (JMPR). With *Codex Alimentarius*, this body has since the 1963 been providing panels of scientific experts to help harmonise the key endpoints for substances in use.³³² With little or no public acknowledgement, the European Commission is now utilising this facility, via the Codex Committee on Pesticide Residues, to produce MRLs which will enable the EU to complete its legislative harmonisation programme.³³³

³²⁸ IFRS around the world, <http://www.ifrs.org/Use-around-the-world/Pages/Jurisdiction-profiles.aspx>, accessed 10 February 2014.

³²⁹ Hans Hoogervorst, LSE, November 2012, <http://www.ifrs.org/Alerts/Conference/Documents/HH-LSE-November-2012.pdf>, accessed 11 February 2014.

³³⁰ European Commission, Health and Consumers, Pesticide Residues, http://ec.europa.eu/food/plant/protection/pesticides/legislation_en.htm, accessed 11 February 2014.

³³¹ European Food Safety Authority, Pesticide MRL harmonisation programme, <http://www.efsa.europa.eu/en/mrls/mrlharmonisation.htm>, accessed 11 February 2014.

³³² The Joint FAO/WHO Meeting on Pesticide Residues (JMPR), <http://www.fao.org/agriculture/crops/thematic-sitemap/theme/pests/jmpr/en/>, accessed 11 February 2014.

³³³ Scientific support for preparing an EU position in the 44th Session of the Codex Committee on Pesticide Residues (CCPR), <http://www.efsa.europa.eu/en/efsajournal/doc/2859.pdf>, accessed 11 February 2014.

Interestingly, the programme is also being assisted by the OECD which is working on the preparation of standardised testing guidelines and which, through its Environment Directorate, and its Joint Meeting of the Chemicals Committee and the Working Party on Chemicals, Pesticides and Biotechnology, has produced detailed technical guidelines on the testing and assessment of pesticide residues.³³⁴

These, as well as guidelines on a wider range of guidelines dealing with chemicals falling within the registration provisions of the REAC directive, have been adopted by the European Commission as the definitive analytical standards.³³⁵

Although some national authorities (such as the US) retain their own standards for local application, the JMPR guidelines have, for the purpose of international trade, become the de facto global standards, and the basis of EU legislation.

³³⁴ OECD, ENV/JM/MONO(2007)17, [http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=env/jm/mono\(2007\)17&doclanguage=en](http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=env/jm/mono(2007)17&doclanguage=en), accessed 11 February 2014.

³³⁵ European Commission, Directorate General Health and Consumer Protection, SANCO/3029/99 rev.4, http://ec.europa.eu/food/plant/protection/evaluation/guidance/wrkd012_en.pdf, accessed 11 February 2014.

Appendix 3

Article 50

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
2. A Member State which decides to withdraw shall notify the European Council of its intention.

In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.
4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.

5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.

Appendix 4

EU-Swiss relations

Text of the press release of the European Commission, of 10 February 2014, following the referendum of the previous day.³³⁶

Switzerland is a very close neighbour of the EU – geographically, politically, economically and culturally. It is the EU's third largest economic partner (trade in goods and services taken together), after the US and China, ahead of Russia and Japan. In turn, the EU is by far the most important trading partner for Switzerland, accounting for 78% of its imports and 57% of its exports in goods in 2011. In commercial services and foreign direct investments, the EU's share is equally dominant. This is to the mutual benefit, and Switzerland has a policy of promoting itself as a stepping stone to the EU, thanks to the significant degree of integration it has with the EU internal market.

Furthermore, over a million EU citizens live in Switzerland and another 230,000 cross the border daily for work. About 430,000 Swiss live in the EU.

The cornerstone of EU-Swiss relations is the free trade agreement of 1972. As a consequence of the rejection of EEA membership in 1992 by the Swiss people, Switzerland and the EU agreed on a package of seven sectoral agreements signed in 1999 (known in Switzerland as "Bilaterals I"). These include: free movement of persons, technical trade barriers, public procurement, agriculture and air and land transport (road and rail). In addition, a scientific research agreement fully associated Switzerland into the EU's framework research programmes.

A further set of sectoral agreements was signed in 2004 (known as "Bilaterals II") covering, *inter alia*, Switzerland's participation in Schengen and Dublin, and agreements on taxation of savings, processed agricultural products, statistics, combating fraud, participation in the EU Media Programme, the Environment Agency, and Swiss financial contributions to economic and social cohesion in the new EU Member States. In 2010 an agreement was signed on

³³⁶ http://europa.eu/rapid/press-release_MEMO-14-100_en.htm, accessed 12 February 2014.

Swiss participation in EU education, professional training and youth programmes³³⁷.

Current key issues

Swiss referendum on mass immigration, 9 February 2014: Free movement of persons is a central pillar of our relations with Switzerland, and part of our overall package of ties.

The popular vote in Switzerland of 9 February 2014 in favour of an introduction of annual quantitative limits to "immigration" (this includes cross-border commuters, asylum seekers, job seekers from the EU and third countries) calls into question the EU-Swiss agreement on the free movement of persons, requesting that the Swiss Federal Council "renegotiate" this agreement with the EU. Implementing legislation for this initiative will now have to be enacted by the Federal Council within three years. The Federal Council has indicated that the first stage of the legislative process (*Vernehmlassung*, comparable to a Green Paper) is to be expected this year.

Institutional and horizontal questions

The EU and Switzerland are bound by more than hundred bilateral agreements. The Council of the European Union has made the conclusion of any further agreements giving Switzerland access to the internal market – the world's largest – subject to the solution of longstanding institutional issues notably regarding better surveillance and dispute-settlement mechanisms. Negotiations on an institutional framework were scheduled to start following adoption of the mandate.

Pending negotiations currently ongoing concern the EU-Swiss electricity agreement, participation in the Horizon 2020 Framework Programme for Research and Erasmus+ (Education, Training, Youth and Sport) programme, with negotiations planned for participation in the Creative Europe (culture and audio-visual) programme.

While the EU Single Market law is clearly an evolving instrument, Switzerland considers that it has signed international agreements only as covered by the law existing at the time of signature. This leads to a reoccurring question of how to deal with post-agreement developments of the *acquis*, including interpretations by the Court of Justice of the European Union (ECJ). At the same time, insufficient surveillance and dispute settlement procedures exacerbated this issue.

The ensuing incoherence of internal market rules creates discrimination issues for investors, businesses and citizens, a structural challenge that the EU seeks to

³³⁷ See http://eeas.europa.eu/switzerland/index_en.htm for more details. To this day, the EU and Switzerland have concluded over 120 bilateral agreements. The highly complex relationship is managed by dozens of joint committees and subgroups.

remedy. In the Council Conclusions on relations with EFTA countries of December 2012, Member States reiterated the position already taken in 2008 and 2010 that the present system of "bilateral" agreements had "clearly reached its limits and needs to be reconsidered". The horizontal issues related to the dynamic adaptation of all agreements to the evolving acquis, the homogenous interpretation of the agreements, but equally the need for independent surveillance, judicial enforcement and dispute settlement need to be reflected in EU-Switzerland agreements.

A resolution of these horizontal issues is necessary before the EU is ready to conclude new agreements giving Switzerland access to further areas of the Single Market (e.g. on electricity). On the basis of a common non-paper of January 2013, both sides have prepared their negotiating directives for a new institutional framework that should address these issues, covering current and future agreements. The Swiss mandate was adopted in December 2013, while the EU mandate is still under discussion in Council.

Free movement of workers and right to supply services freely between the EU and Switzerland has existed since 2002, to clear mutual benefit.³³⁸ However, the extension of the agreement to Croatia is now being questioned with yesterday's acceptance of the mass immigration initiative.

In addition, problems persist with some flanking measures that Switzerland introduced unilaterally in 2006 to protect its labour market. The EU considers a number of restrictions imposed as manifestly incompatible with existing agreements. In 2012 and 2013, Switzerland also re-introduced quota on long-term permits for nationals specifically from eight new Member States (plus 15 Member States in 2013) via the activation of the so-called "safeguard clause". This has prompted strong criticism from the EU for their discriminatory effect and incompatibility with the EU-Swiss agreement.

Further problems may arise in the implementation of the initiative to "expel criminal foreigners", adopted by referendum in 2010 for the implementation of which a draft law will be discussed by Parliament shortly.

Tax Transparency: Since 2005, there has been an EU-Swiss agreement on the taxation of savings, with a withholding tax on the savings income of EU residents for which a Swiss bank acts as paying agent. In May, the Commission was given the mandate to re-negotiate this agreement with Switzerland, with a view to broadening its scope and reflecting international developments in the field of tax transparency, including the global shift towards automatic exchange of information. These negotiations were launched in Bern on 17 January 2014,

³³⁸ It was extended to the new Member States by protocols signed in 2004 and 2008 respectively. For the EU-15 plus Cyprus and Malta, the transition period came to an end in 2007. For Member States that acceded to the EU in 2004, the transition period ended in 2011. Switzerland has in both cases the possibility to take safeguard measures until 2014. For Bulgaria and Romania the end dates are in 2016 and 2019, respectively.

very soon after Switzerland received its own mandate to participate in these talks.

Fair tax competition and respect of state aid rules: The Commission has been in a dialogue with Switzerland to promote EU principles of tax good governance and address cases of harmful tax competition. The aim is to secure a Swiss commitment and timetable to phase out certain harmful regimes that do not comply with fair tax competition standards. Progress will be reported to Member States in June 2014.

As with other third countries, negotiations were concluded on a co-operation agreement in competition law enforcement (exchange of information), and are underway on the emission trading scheme (ETS). The EU and Switzerland recently concluded negotiations on Swiss participation in the GALILEO satellite navigation system. This agreement was signed in December 2013.