Legal aspects of Brexit as the Brexit deadline of 29th March 2019 draws near

Dr. Gerard Conway

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This research addresses some legal aspects of the Brexit process as it enters the final six months before the deadline for withdrawal.

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Published in October 2018 by

The Bruges Group, 246 Linen Hall, 162-168 Regent Street, London W1B 5TB

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What is the legal basis in EU law for the process of withdrawal of the UK?

As is well known by now, within EU law, the legal basis for Brexit is Article 50 of the Treaty on European Union. Article 50 was introduced into the EU Treaties by the Treaty of Lisbon 2009 (the Lisbon Treaty is an amending treaty to the original Treaties, now the TEU and Treaty on the Functioning of the European Union or TFEU). Article 50 TEU provides, in its first two paragraphs:

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.

Following the Brexit referendum in June 2016, the UK government notified the European Council (the meeting of the heads of government of the EU Member States) on 29th March 2017 of the UK's decision to leave, meaning that absent a withdrawal agreement between the EU and UK, the UK will automatically leave on 29th March 2019. The effect of this will be that EU law, from the point of view of the EU legal system, will no longer have any effect on the UK unless Parliament decides, as it has done, that some parts of EU law will continue to apply. Once the UK leaves, the institutional framework within the EU system for the enforcement of EU law will not apply in the UK unless the UK Parliament accepts some aspects of it – which the government proposes to do in the European Union (Withdrawal) Act 2018. It makes sense for the UK to roll over much of EU law and then amend it later, rather than repealing EU law in an abrupt way and leaving large gaps in the UK legal system. It is unclear at present whether the UK will allow that UK courts will be able to refer disputed legal questions as to the rights of the EU citizens in the UK after the UK leaves to the Court of Justice of the EU for a limited period after the UK leaves.[1]

1 See, e.g. O. Garner, 'A Joint EU-UK Court for Citizens' Rights: A Viable Option After and Beyond Brexit?', *European Law Blog*, 3rd August 2017, at < http://europeanlawblog.eu/2017/08/03/a-joint-eu-uk-court-for-citizens-rights-a-viable-option-after-and-beyond-brexit/ > .

What will be the legal basis of the UK's relationship with the EU after the UK leaves?

After the UK leaves - assuming this does happen, as seems increasingly likely despite the very considerable internal political resistance to it in the UK since the Article 50 TEU process was triggered - it will be in a similar relationship with the EU as is any country outside of the EU (referred to in the EU Treaties as 'third States' or 'third countries'). The EU is an international organisation (although it is much closer to being like a State than other international organisations in terms of the range of EU competences and powers), with legal personality so that it can make treaties and send and receive ambassadors. The EU accepts ambassadors from third States and sends EU ambassadors to them. All EU Member States already send ambassadors to the EU, so the UK ambassador to the EU can simply continue carrying out his or her functions after Brexit, but now as the ambassador of a third State instead of as a Member State of the EU. The EU has entered into a range of agreements with third countries about trading arrangements with those countries. A high-profile example is the treaty between Canada and the UK, the Comprehensive Economic and Trade Agreement (CETA),[2] which has been concluded recently and is due to be fully ratified shortly. This has been proposed as a possible model for EU-UK relations after Brexit, including as the basis for the EU-UK withdrawal agreement. CETA is not as comprehensive as the EU Treaties themselves, naturally, but it is the most comprehensive of the EU free trade agreements and it should provide a ready basis for EU-UK relations after Brexit with adjustments to reflect that the UK already has a very high degree of alignment with the EU. The term 'Canada+' is quite apt to describe what is legally and economically feasible.

One important difference between the UK post-Brexit and other third countries that are not in the EU is that there will be a very substantial number of EU citizens in the UK who previously had considerable rights in UK law during the time the UK was in the EU. This issue of the rights of EU citizens in the UK post-Brexit will be a key issue in EU-UK relations in a way that will differentiate the UK from other non-EU Member States after Brexit. This is particularly so regarding the possibility that even if the UK does agree a deal with the EU before Brexit, the deal will be subject to a legal challenge before the Court of Justice of the EU. Such a challenge could slow up the process and generate considerable uncertainty, but could also even involve the Court of Justice striking down the withdrawal agreement as incompatible with EU law. If the Court of Justice does find a problem with the withdrawal agreement, it will likely be connected with whether the withdrawal agreement does not adequately protect the rights of EU citizens in the UK post-Brexit. Thus, even with a political agreement among the Member States (which looks somewhat more likely right now than it did even recently), a no-deal scenario is still possible because of the role of the Court of Justice (see Question 4. below).

2 30th October 2016. CETA was signed on the basis of being what is called a 'mixed agreement' in EU law, meaning it relates to competences that are not exclusive EU competences (although the Commission has disputed this). That it is a mixed agreement also means that all the Member States must individually ratify it, a process that is ongoing. The final text, including all annexes etc. comes to 1598 pages.

What is the relationship between Article 50 TEU and Articles 216-218 TFEU?

Another important legal aspect of the withdrawal process that has not received as much attention as it perhaps deserves in political commentary (apart from the possibility of a legal challenge before the Court of Justice of the EU) is the relationship between Article 50 TEU (the TEU is the Treaty on European Union) and Articles 216-218 TFEU (the TFEU is the Treaty on the Functioning of the European Union).[3] Article 50 TEU is the Treaty provision specifically on withdrawal, whereas Articles 216-218 TFEU deal with the competence of the EU to enter into agreements with third countries. Article 50 TEU will apply to the UK up until the moment the UK leaves, immediately after which Articles 216-218 TFEU will become the legal basis in EU law for EU relations with the UK. This is important, because if there is a legal challenge to any UK-EU withdrawal agreement before the Court of Justice of the EU, one of the possible issues will be whether it relies on the correct legal basis in the Treaties, i.e. Article 50 TEU or Articles 216-218 TFEU. If it is found to rely, wholly or partly, on an incorrect legal basis, the withdrawal agreement could be struck down by the Court of Justice. This is aside from the likelihood that the Court would be quite stringent on the rights of EU citizens in the UK and might strike down the agreement for not adequately projecting them. It is also likely the Court of Justice would strike down the entire agreement, rather than just striking out parts of it, as this has tended to be the approach of the Court in previous advisory opinions on draft international agreements.[4] The wording of Article 50 TEU suggest that the withdrawal agreement based on it should set out in outline the framework of the UK-EU relationship once the UK leaves. Thus, a very detailed withdrawal agreement based purely on Article 50 TEU might be problematic, since Article 50 TEU arguably does not provide a basis for this. On this point, it would make more sense for the UK and EU to put the details into a separate treaty or agreement[5] that would be adopted as soon as the UK leaves and that could be based on Articles 216-218 TFEU.

How could there be a legal challenge to the UK-EU Withdrawal Agreement?

A legal challenge could be brought before both the Court of Justice of the EU in Luxembourg and before UK courts, but the most significant would be before the Court of Justice of the EU (CJEU or ECJ) as this could lead to any withdrawal agreement being declared invalid (whereas the UK courts tend not to involve themselves in the content of international agreements or treaties due to the principle of parliamentary sovereignty).

The jurisdiction of the Court of Justice could arise under its general jurisdictional powers, as the Brexit withdrawal agreement would involve an act of the EU institutions, which can be challenged

3 Somewhat confusingly for non-lawyers (and even for lawyers), there are now two EU Treaties – the TEU and the TFEU, which do not always have a very rational distribution of subject matter between them.

4 *Opinion 1/91 EEA I* [1991] *ECR* I-6079, *Opinion 1/92 EEA II* [1992] *ECR* I-2821, *Opinion 2/13 on EU Accession to the ECHR* [2014] *ECR* I.

5 A treaty or agreement is the same thing in international law terms.

in the normal way under Article 263 TFEU for compatibility with EU law (this procedure is the EU equivalent of judicial review). It could also be challenged under Article 218(11) TFEU, which is arguably the more appropriate route as it is the jurisdictional basis more specific to the issue. The latter states:

> A Member State, the European Parliament, the Council or the Commission may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the Treaties. Where the opinion of the Court is adverse, the agreement envisaged may not enter into force unless it is amended or the Treaties are revised.

This raises an interesting question of interpretation: does the term 'agreement' in Article 218(11) TFEU only refer to international agreements, i.e. (draft) agreements between the EU and third countries, and not to the special case of a draft agreement between a departing EU Member State and the EU under Article 50 TEU? It would not take a very strained interpretation of Article 218(11) to conclude that a draft Brexit agreement did fall under it, since once adopted, the Brexit agreement would in effect become a 'normal' international agreement as soon as the UK had left. Before the UK left, it would still be an international treaty, being a treaty in the form of an agreement between a country and an international organisation of which the country was still a member. The significance of the Article 218(11) procedure, compared to 'normal' judicial review under Article 263 TFEU, is that Article 218(11) clearly arises when the agreement is in draft form, whereas this is (possibly) less obviously so under Article 263 TFEU.[6] The wording of Article 263 TFEU refers to "acts of the Council, … and of acts of the European Parliament and of the European Council intended to produce legal effects *vis-à-vis* third parties" (emphasis added), which is at least potentially broad enough to include a draft agreement under Article 50 TEU, but this is not as certain.[7] As discussed above, the two most likely contentious issues relating to the agreement will be: (i) the legal basis point discussed above (Article 50 TEU or Articles 216-218 TFEU), (ii) the rights of EU citizens in the UK post-Brexit and whether they are adequately protected.

How does the process relate to normal or general international law and relations?

After the UK leaves, the relationship of the UK with the EU will be based on international law, as opposed to the 'special' rules of EU law. Thus, in the absence of an agreement under Article 50 TEU, the relationship between the EU and UK concerning trade in goods and services will be based on the law of the World Trade Organisation (WTO), of which both the UK and EU are members as contracting States.

6 See, e .g. N. Zipperlee, *EU International Agreements: An Analysis of Direct Effect and Judicial Review Pre- and Post-Lisbon* (Springer 2017), p. 145.

7 Whether Article 218(11) TFEU or Article 263 TFEU is chosen as the basis for any case before the Court of Justice does matter in another way, however, which is that more parties are permitted to bring a case under Article 263 TFEU.

A key issue once the UK leaves the EU is how will UK-EU disputes be dealt with. It is highly unlikely that the UK would accept the jurisdiction of the Court of Justice of the EU post-Brexit (the controversial role of the Court of Justice was one of the reasons for Brexit), with or without an agreement under Article 50 EU, to deal with any EU-UK dispute (even this much is set out in the Chequers Statement). Under international law, there are two main mechanisms for dealing wit disputes (apart from questions concerning the use of force, which fall within the competence of the United Nations, albeit that States have certain rights to self-defence): (i) self-help and countermeasures, (ii) international courts and tribunals and other special methods of dispute settlement (e.g. the WTO dispute settlement mechanism). So either of these options is what the UK will be seeking to agree on in the withdrawal agreement with the EU. It is unlikely that EU law would permit the EU to accept the jurisdiction of the International Court of Justice (ICJ) in the Hague should the UK seek to use this mechanism, which is one of the mechanisms on international law for resolving disputes between States (the EU is not a State, but is is an international organisation with legal personality and could be a party to a case before the ICJ). However, there are a range of alternative models for dispute settlement procedures already contained in EU agreements with third countries, so this should not be a very problematic aspect of any withdrawal agreement, except perhaps regarding the rights of EU citizens, already referred to above. While there are good reasons for excluding the jurisdiction of the Court of Justice of the EU entirely, chiefly its tendency to expand the scope of EU law in its judgments, it might be a sensible and generous compromise to address EU concerns about citizens' rights post-Brexit to allow UK courts to refer disputed questions of law on these points to the Court of Justice of the EU for advisory opinions for at least a certain period of time. Beyond that, as the Chequers Statement quite rightly recognises, neither the UK nor EU courts could reasonably expect to be given final jurisdiction over each other post-Brexit[8] (in order to equally respect the sovereignty of each). Question 9 looks at dispute settlement post-Brexit in more detail.

Must the UK and the EU come to an agreement by 29th March 2019?

Article 50 TEU provides that the Member States may unanimously decide, with the agreement of the UK, to extend the time period for negotiations beyond the 2-year default period. Given the political tension over Brexit, both internally within the UK and in relations with the UK and the EU, extending the time limit like this could have the major political disadvantage of increasing uncertainty while not making agreement any more likely. If agreement is possible, it should be realisable by then. However, if there is a challenge to a withdrawal agreement before the Court of Justice of the EU and this cannot be concluded before the current withdrawal date, it might be worthwhile to extend the deadline until after the Court of Justice delivers its (albeit possibly negative) judgment on the withdrawal agreement.

8 Chequers Statement, part 4c.

What happens if a 'no-deal scenario' transpires?

One of the most important aspects of the Brexit is the question of a no-deal scenario. Supporters of remaining in the EU who wish to minimise the scope of Brexit suggest that a no-deal scenario would result in considerable harm to the UK. Indeed, amongst supporters of the EU, the expressions "catastrophe" or "disaster" have become common place. In support of a no-deal Brexit, however, one need not be very experienced in such negotiations to realise it is of much tactical importance in the process for the UK to be willing to walk away without a deal, for an obvious rationale: if the UK cannot walk away, it will be forced into accepting whatever deal will be proposed by the EU. This is especially likely to happen if negotiations go down to the wire, that is, until the last moment before Britain automatically leaves in March 2019. A strategy of some, including some apparently with influence on Theresa May, appears to have been to engineer just such a scenario, where the UK Parliament would be pressured at the last minute, in an atmosphere of crisis, to avoid the 'catastrophe' of a no-deal scenario and accept whatever terms then EU proposes, binding the UK as much as possible to the current arrangements and full participation in the single or internal market and possibly the customs union. The likely scenario would be that such an arrangement would be presented as temporary at first, but would drag on indefinitely. The significance of being bound to the customs union is that it would make it much more difficult post-Brexit for the UK to enter into trade deals with third countries, whereas the potential to enter such deals is a major benefit of leaving the EU. At the time of writing, statements from EU officials and others indicate a deal is now more likely before Christmas 2018 than it appeared to be before, but it makes sense to plan for the scenario of no deal, especially given the possibility of a challenge before the Court of Justice of the EU to any withdrawal agreement that is reached.

It appears the government has now begun in earnest to plan for a no-deal scenario, with the publication of a range of substantive and detailed technical notes on how specific aspects of the economy and other issues will be dealt with if there is no deal.[9] This is a very sensible approach. Naturally, planning for contingencies that are only seen as perhaps remote possibilities tends not to attract as much attention as actual policy making, but it is nonetheless an important aspect of the background work of government. Views will differ about the likelihood of a no-deal scenario, but it is a very real possibility. Firstly, it is open to doubt how much the EU (or at least the European Commission) is really interested in negotiating a compromise or is going in the end to present the UK with something like full participation in the single or internal market as the only viable option, including the custom union. The apparent course of the negotiations to date suggest this approach is a distinct possibility, and it would hardly be cynical to suggest that some elements of the remain political constituency in the UK government, as much as elsewhere, are happy to cooperate with this approach in order to produce maximum alignment between the UK and EU. However, it is actually easier to plan for a no-deal scenario at this point because a deal has not yet been reached otherwise and only about six months remain until the exit date. The WTO regime means that the UK and EU will have a well established legal framework in the event there is no deal. The UK can know now and in great detail what tariffs etc., will apply under the WTO framework if there is no deal.[10] However, it is always open to both sides to be flexible after

9 See < https://www.gov.uk/government/collections/how-to-prepare-if-the-uk-leaves-the-eu-with-no-deal > .
10 See footnote15 below.

Brexit and to permit current arrangements to contune more or less even without a binding legal framework until a more settled policy is reached that could go further than the WTO minimum both the UK and EU will be bound to accept in any case. So a no deal scenario is by no means a legal or economic vacuum.

What kind of arrangement would apply under the WTO framework in the event of a no-deal scenario?

As just observed, it is important to note that a no-deal scenario would not represent a kind of legal vacuum. If there is no withdrawal agreement or deal between the UK and EU, the legal framework of the World Trade Organisation (WTO) will automatically apply to the future UK-EU relationship. This is because both the UK and EU are members of the WTO. The WTO regulates trade on a global level. At present, the EU has exclusive competence to negotiate and conclude trade deals with third countries on behalf of all the EU Member States. It is worth noting that the acquisition of this exclusive competence by the EU arose from the caselaw of the Court of Justice or ECJ, rather than from Treaty amendments by the Member States (later Treaty amendments recognised what the Court had first done in its caselaw).[11]

The WTO operates on the basis of two main principles: (1) the Most-Favoured Nation (MFN) principle and (2) the national treatment principle (NTP). The MFN principle mean that whatever is the most generous trading agreement that a country (Country A) agrees with another country, the terms of that trading agreement must then be extended by that country (Country A) to its trading relations with all other countries in the WTO. Taken to its logical conclusion, the MFN principle would allow for a very large liberalisation of trade, since a country would automatically have to extend its most generous trade agreement all WTO members. It is important to note that the MFN principle applies to the two types of trade barriers: (i) tariffs/customs/taxes and (ii) non-tariff barriers (quotas and regulatory restrictions). What matters then is: (i) what is the starting point or minimum that is required under WTO law and then (ii) how generous a country might be in entering into any trading agreement and is thus obliged to apply it to all WTO members due to the MFN principle. WTO law to an extent determines the starting point, but not completely (and not as) much as EU law mandates freedom of trade for all EU Member States. However, WTO law does set out a progressive aim of eliminating tariffs and also prohibits quotas or quantitative restrictions, albeit that there are significant exceptions to the prohibition. Various rounds of WTO and GATT negotiations[12] have resulted in agreements to reduce tariffs substantially, if not eliminating them, and standard tariff rates are now contained in schedules to the GATT and WTO agreements. In practice, once a WTO member commits itself to some degree of trade liberalisation, the logic of the WTO system tends to result in progressive liberalisation, especially through the application of the MFN principle.

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11 Case 22/70, *Commission v. Council (ERTA)* [1971] *ECR* 263.

12 GATT is the General Agreement on Trade and Tariffs and is the original form of what is now the WTO, and the GATT is still the operative treaty governing WTO rules on trade in goods.

The second principle of GATT, the National Treatment principle in Article III, requires that WTO members not discriminate between goods, based on their origin, in internal treatment of the goods.

However, a key point for understanding the MFN principle is that there are exceptions and departures from it in the structure of the GATT, and understanding the exceptions and the structure of the GATT is key to understanding how the MFN principle in fact operates. There are express exceptions to the MFN principle, in Article XX GATT (general exceptions) and Article XXI (security exceptions), and then there are other provisions in the GATT that operate in effect as exceptions, such as Article XXIV on PTAs. In other words, a country is allowed to treat a particular country *more favourably* than the MFN standard would otherwise require. Thus, having MFN status does not literally mean a country benefits from the most advantageous terms in its trade relations with another WTO member. The most important categories of exception to the MFN principle is Preferential Trading Agreements (PTAs) or Regional Trading Agreements (RTAs). These are agreements that are permitted by the WTO and that allow a country to enter into more favourable terms than the MFN standard (PTAs are unilateral, while RTAs are reciprocal, but the term PTAs tends to be used generically to cover both types). The WTO terminology here naturally causes confusion: the MFN standard is not in fact the most favourable standard, because the PTA/RTAs a country has entered into will in fact be more favourable. This is important for understanding how Brexit would work if there was no deal. The EU itself is a PTA/RTA. If there is no deal, the UK will still be able to trade with the WTO on MFN terms, but this will be less favourable than on the terms of PTAs/RTAs entered into by the EU Member States, including the EU itself as an RTA between the EU Member States. Another example of a RTA entered into by the EU on behalf of its Member States is the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada. If the UK leaves the EU without a deal, it will be subject to the EU MFN standard. If the UK entered into a CETA-style arrangement with the EU, this would by definition be more favourable than the no-deal MFN standard. It thus does not make any sense to suggest, as Theresa May appears to have done, that a CETA-style deal would be worse than no deal.[13]

The WTO has not resulted in as much liberalisation in the sphere of services compared to goods, albeit that this can also be said of the EU. The main WTO instrument is the General Agreement on Trade in Services or GATS. In a no-deal scenario, the EU would have to accord MFN status to the UK regarding services, which means that the UK will still benefit from considerable access to the EU market, albeit not to the full extent as is currently the case.[14] However, this framework makes a no-deal scenario quite predictable from a UK point-of-view – all this can be planned for in advance, as the UK can know what access it will have from the current GATS framework. The detailed schedules for WTO member commitments are all available online.[15]

13 See N. Morris, 'Theresa May dismisses Canada-plus deal as worse tha a no-deal Brexit', *INews*, 25th September 2018, at < https://inews.co.uk/news/brexit/theresa-may-no-deal-brexit-canada-plus-un-speech-eu-trade/ > .

14 See,e .g. P. Ungphakorn, 'If the UK and EU fall back on WTO commitments what does this mean for services?', *Trade Ƃ Blog*, 4th May 2017, < https://tradebetablog.wordpress.com/2017/04/12/eu-uk-wto-services/ > .

15 See WTO Web site, 'The European Union and the WTO', at < https://www.wto.org/English/theWTO_e/countries_e/european_communities_e.htm > .

How much of the internal market would be maintained by the Chequers Statement?

The Chequers Statement represents the government's stated policy on the withdrawal negotiations, and is something to which Teresa May seems obviously very personally committed. The internal or single market consists, essentially, of two main dimensions: freedom of movement (of people, goods, services, and capital) and freedom of competition (or 'undistorted competition'). It seems broadly accepted from the context of the referendum result that unlimited free movement of people cannot continue after the Brexit. Complete free movement of goods also does not seem acceptable from a UK point of view, as it would involve the UK staying in a customs union and not being able to freely negotiate trade deals with other countries. Service are less integrated in EU law as it stands, and this should be the easiest to negotiate. Capital and payments are also less integrated, and, given goodwill on both sides, should not present major problems in the negotiations.

Concerning free movement of *goods*, the Chequers Statement sets out:

> The UK and the EU would maintain a common rulebook for all goods including agri-food, with the UK making an upfront choice to commit by treaty to ongoing harmonisation with EU rules on goods, covering only those necessary to provide for frictionless trade at the border. These rules are relatively stable, and supported by a large share of our manufacturing businesses. The UK would of course continue to play a strong role in shaping the international standards that underpin them, and Parliament would have oversight of the incorporation of these rules into the UK's legal order – with the ability to choose not to do so, recognising that this would have consequences. … (part 4a)

This statement does not distinguish between tariff (customs duties and taxes) and non-tariff barriers (production and content requirements regarding goods), to use terms from international trade law. On the face of it, it seems possible that this statement just quoted commits the UK, or at least to be open to the interpretation of committing the UK, to the common customs union, which would effectively prevent the UK from negotiating independent trade deals with third countries since the UK would have to import goods on the same basis as other EU Member States and would have not flexibility in that regard. However, more positively, the Statement goes on to note the UK would retain independence to set its own customs duties, but would facilitate EU trade through its territory and avoid customs checks with the EU (part 4c). For the sake of clarity, it would be important to note that UK intends to *fully* recover its ability to do independent trade deals with third countries (which the Chequers Statement does not do). which it cannot do as an EU Member State (the Chequers Statement goes on to note that the UK would have the ability to secure trade deals with other countries, in part 6e, but whether this would be fully unfettered is not clear and could certainly be compromised by having to commit to EU State aid rules, as is proposed elsewhere in the Chequers Statement[16]).

In other words, the Chequers Statement needs to be much more unequivocal on the extent of competence to conclude trade deals with third countries. The excerpt quoted above does leave

16 Part 4b of the Chequers Statement.

open the possibility for the UK to opt out of EU rules on goods, and this would be important in freeing up the UK to do trade deals with third countries in a less restricted way, but the Statement perhaps leaves hostages to fortune by simply noting that a departure from EU rules is recognised to "have consequences": does this mean that the UK is accepting restrictions on trade with the EU unless the UK fully complies with EU regulatory standards? From the Chequers Statement, it is not clear on the extent to which there would be acceptance of the principle of mutual recognition in the standards required of goods, i.e. accepting each others' standards, rather than having harmonised standards. The EU has developed a system that involves certain largely minimal standards of harmonisation in most areas, coupled with mutual recognition as the generally applicable rule or principle for trade in goods between Member States. Notably, the Chequers Statement only refers to harmonisation and not to mutual recognition, even though mutual recognition is widespread in EU law as it is. Depending on how much harmonisation and 'common rules' are required (which is not made clear even to an outline extent in the Chequers Statement), as Martin Howe points out in the Bruges Group blog, this could undermine UK trade deals with the US and Australia.[17]

The Chequers Statement goes on to note that:

> We would strike different arrangements for services, where it is in our interests to have regulatory flexibility, recognising the UK and the EU will not have current levels of access to each other's markets.

It is important to put this latter statement in context, in that services are less integrated than goods as matters stand in EU law: there is no principle of origin (the equivalent in the context of services of the principle of mutual recognition applicable to goods) whereby established service providers are exempt from the legal framework of the Member State to which free movement has occurred (providers from one Member State of services in another Member State on an open-ended or indefinite basis, referred to in EU law as 'establishment', must comply with the legal framework of the host Member State, not the Member State of origin - this is not the case with goods because of the principle of mutual recognition). So striking a more flexible approach on services simply reflects the existing internal market rules (which on the whole are not bad in themselves when it comes to services, as they allow for flexible trading, especially given the very large share of services in the UK economy overall).

The next part of the Chequers Statement effectively negates one of the other chief advantages of Brexit, which would be recovering the ability of the government to make strategic investments in the economy. Such investments are largely excluded under current EU law by EU 'State aid' rules. The Chequers Statement, quite remarkably, commits the UK to the current EU State aid rules ("The

UK would commit to apply a common rulebook on state aid, and establish cooperative arrangements between regulators on competition.", part 4b). The current framework of EU law on State aid, i.e. on subsidies to domestic industry, largely prevents large-scale strategic investment of national governments in the industrial base of their economies. Subsidies can be economically

17 M. Howe, Th Chequers Conclusion – Briefing Memo, *Bruges Group Blog*, 13 July 2018, para. 7, at < https://www.brugesgroup.com/blog/the-chequers-conclusionbriefing-memotmpl=component&print=1&format=print > .

harmful, e.g. when they compensate for low prices for poor quality products and a lack of competitiveness, but they can be economically very positive when they provide the necessary capital for research and development and for infrastructure building for these purposes and for start-up manufacturing that private industry cannot provide on its own.[18]

Although the government has sometimes been accused of lacking ideas on Brexit, the proposal it has made for a Facilitated Customs Arrangement (FCA) might be considered innovative, and indeed, the Chequers Statement refers to it as 'new'. The FCA would involve the UK collecting tariffs on goods that enter the UK from third countries, but that are destined for the EU and not for the UK market. The idea being that the EU would then not have to do its own checks at the UK border (Northern Ireland or, e.g. Calais). However, there is little basis for thinking that this is at all necessary, and it is not in substance new, as discussed further below. This is because of the role of what is referred to as customs transit, which is already the subject of a quite well developed EU and international framework (this is further addressed below in the discussion of the Northern Ireland border issue). Arguably, customs transit mechanisms obviate the need to go as far as the cumbersome proposal that the UK collect EU tariffs on behalf of the EU as the government's proposed FCA would involve. Martin Howe further points out that the necessary tracking of goods involved in the FCA could amount to a violation of the national treatment principle under WTO law (Article II of GATT)[19] (but much would depend on the implementation of the scheme, and it might be unwise to assume incompatibility with the WTO of all or parts of the proposal, especially given the international framework for customs transit).

10. How will dispute resolution work between the EU and the UK after Brexit?

Martin Howe indicates in his recent Bruges Group blog that posting neutral arbitration is the norm in EU trade agreements with third countries:

> … 14. The paragraph states that there shall be a dispute resolution procedure involving in many areas "binding independent arbitration". This is commendable. Indeed, as we argue in the Adjudicating Treaty Rights paper, (See previous note) a neutral and balanced (i.e. balanced between the UK and EU, with a neutral chairman) international arbitration mechanism is the normal and appropriate mechanism by which parties to international treaties agree to resolve their disagreements, and is the normal mechanism contained in the EU's own trade and association agreements with non-member states.[20]

However, EU trade agreements tend to contain both political and arbitral dispute resolution procedures such as a structured resolution process through a joint ministerial committee, with CETA being a good example. The problem with judicial dispute settlement in the EU is that it has tended to be ideologically skewed in favour of integration. It is not inevitable than an arbitration

18 The Russian aviation industry is an example of a national government investing to develop an internationally competitive aviation sector, which would not likely have occurred to anything like the same extent without State capital.

19 M. Howe, Th Chequers Conclusion – Briefing Memo, *Bruges Group Blog*, above, para. 24**.**

20 M. Howe, Th Chequers Conclusion – Briefing Memo, *Bruges Group Blog*, above, para. 14.

mechanism post-Brexit between the RU and UK would work similarly, but its use would need to be carefully considered to avoid the problem recurring. There are certainly advantages to a rule-based system, the term commonly used for a binding legal framework for trade, as opposed to a purely political approach that can lead to 'trade wars'. Experience of the EU shows how what seems to be narrowly technical rules on trade can have a very political dimension and consequence, and so the social and political legitimacy of the post-Brexit dispute settlement procedure is important to consider. Essentially, it seems desirable to balance a rule-based approach with the need for political and more accountable oversight. As Martin Howe rightly points out, the joint reference procedure indicated in the Chequers Statement (although how the reference procedure would work is not spelled out in it) would, given the caselaw of the Court of Justice, almost inevitably lead to ECJ judgments being treated as having a *de facto* binding effect.[21]

CETA is a helpful model regarding dispute settlement (and more generally, discussed below at Question 11.). It combines both judicial or quasi-judicial (similar to arbitration) and political dispute settlement.

Article 8.18-8.45 of CETA establishes an investment tribunal (the word tribunal is used rather than 'arbitration'), reflecting the development of tribunals internationally to deal with disputes between States and individuals concerning investment-related rights of the latter. Article 8.18-8.45 incorporate by reference the existing international framework of investment arbitration.[22]

The main institutional mechanism under CETA is the Joint Committee, established under Article 26.1 of the Convention. Its role is very broadly defined in Articles 26.3-4 of CETA:

3. The CETA Joint Committee is responsible for all questions concerning trade and investment between the Parties and the implementation and application of this Agreement. A Party may refer to the CETA Joint Committee any issue relating to the implementation and interpretation of this Agreement, or any other issue concerning trade and investment between the Parties.

4. The CETA Joint Committee shall:

   (a) supervise and facilitate the implementation and application of this Agreement and further its general aims;

   (b) supervise the work of all specialised committees and other bodies established under this Agreement;

   (c) without prejudice to Chapters Eight (Investment), Twenty-Two (Trade and Sustainable Development), Twenty-Three (Trade and Labour), Twenty-Four (Trade and Environment), and Twenty-Nine (Dispute Settlement), seek appropriate ways and methods of preventing problems that might arise in areas covered by this Agreement, or of resolving disputes that may arise regarding the interpretation or application of this Agreement;

21 Ibid, paras. 14-17.

22 Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington on 18 March 1965 and the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules.

(d) adopt its own rules of procedure;

(e) make decisions as set out in Article 26.3; and

(f) consider any matter of interest relating to an area covered by this Agreement.

Chapter 29 of CETA sets out the general dispute settlement procedure. It permits Canada and the EU to make make use of the WTO dispute settlement procedure or other overlapping dispute settlement procedures (which can be contrasted with the very strict application within the EU of the exclusive jurisdiction of the Court of Justice of the EU). Disputes are to be dealt with as fully as possible through an amicable process, and the text mandates a formal process of consultation (Article 29.4) and of mediation (Article 29.5 and Annex 29-C), followed by arbitration (Article 29.6-15). In the event of non-compliance with the result of the arbitration, Article 29.14 CETA provides, in a manner similar to the WTO, for the injured party to suspend obligations or receive compensation.

There are some particular provisions on dispute settlement in Chapter Thirteen regarding financial services (in Article 13.20). Overall, the CETA model seems attractive as an approach to dispute resolution because it balances political and judicial or quasi-judicial mechanisms, while providing a clear, step-by-step approach to dealing with disputes. Further, it does not exclude resort to the generally successful WTO dispute settlement procedure as an alternative.

11. How is the Good Friday Agreement relevant to Brexit?

Much has been made, including by the Irish government, of the possible negative effect of Brexit on the Irish border, because it has been supposed that Brexit might involve the re-introduction of border checks on the Northern Ireland border with the Republic of Ireland, and such border checks have been done away with as part of the peace process settlement reflected in the Good Friday Agreement. An important point to note first is that the text of the Good Friday Agreement (which is an international treaty between the UK and Ireland)[23] makes no reference to the issue of customs duties or border checks. Thus, claims about the Good Friday Agreement posing a problem for a so-called hard Brexit are based on the psychology or symbolism of having border checks. The Chequers Statement refers to "honouring the letter and the spirit of the Belfast Agreement" (part 5), but the letter of the Belfast Agreement does not address the issue of border checks.

Taking a sceptical approach, some parties in the Brexit process have sought to use the border issue to make a so-called hard Brexit, where the UK leaves both the single market and the customs union, seem more problematic than it needs to be. The proposal in the Chequers Statement for a 'new' Facilitated Customs Arrangement or FCA is a good example.

As noted above, the FCA proposal is for the UK to collect on behalf of the EU customs duties for goods destined for the EU and being transported via the UK, with the possibility of rebates being given to goods that pay the EU customs duties, but that do not ultimately then leave the UK and enter the EU market. The proposal was first explained in the Government's paper on *Future Customs Arrangements*:

23 10th April 1998.

> 39. One potential approach the UK intends to explore further with the EU would involve the UK acting in partnership with the EU to operate a regime for imports that aligns precisely with the EU's external customs border, for goods that will be consumed in the EU market, even if they are part of a supply chain in the UK first. The UK would need to apply the same tariffs as the EU, and provide the same treatment for rules of origin for those goods arriving in the UK and destined for the EU.
>
> 40. By mirroring the EU's customs approach at its external border, we could ensure that all goods entering the EU via the UK have paid the correct EU duties. This would remove the need for the UK and the EU to introduce customs processes between us, so that goods moving between the UK and the EU would be treated as they are now for customs purposes. The UK would also be able to apply its own tariffs and trade policy to UK exports and imports from other countries destined for the UK market, in line with our aspiration for an independent trade policy. We would need to explore with the EU how such an approach would fit with the other elements of our deep and special partnership.[24]

The rationale for the FCA proposal is that it would avoid having a hard a hard border in Northern Ireland whereby there would need to be customs checks because there would be no difference in the customs regime, since the UK could be collecting EU customs duties on goods that entered the UK and were transported to Northern Ireland and rebates could be paid to goods taxed for customs duties in Ireland that were then transported to the UK. Several points can be made about this proposal, but the most important is that modern customs frameworks do not depend on physical checks at borders, rather they make use of advance authorisation and certification. The European Research Group (ERG) has issued a clear and systematic report that explains how physical checks are rarely necessary for customs purposes,[25] and Michael Wood in an entry on the Bruges Group Web site has explained how electronic customs processes work to avoid the need for physical checks.[26] The ERG report sums up the Irish border issue well:

> There is already a border between Northern Ireland and the Republic of Ireland for currency, excise duties, tax, VAT and, importantly, for security. In the debate over solutions to the Northern Ireland border issue, a proper sense of scale, perspective or proportionality has been lost. The EU's objections are political not practical. The government has failed to set out what can be done to provide for customs compliance without physical checks or infrastructure on the Northern Ireland border.[27]

Moreover, the report presents the reality of the situation: the relatively small amount of physical inspections of goods that take place generally in customs procedures (e.g. in the region of 4% is the approximate figure for the UK and Italy);[28] the existence of a customs administrative structure

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24 HM Government, *Future Customs Arrangements – A Future Partnership Paper* (August 2017), paras. 39-40.

25 European Research Group, *The Border Between Northern Ireland and the Republic of Ireland post-Brexit*, 12th September 2018.

26 M. Wood, 'Electronic Customs Procedures and Brexit', *Bruges Group Blog*, 30th July 2018 at < https://www.bruges-group.com/blog/electronic-customs-procedures-and-brexit > .

27 European Research Group, *The Border Between Northern Ireland and the Republic of Ireland post-Brexit*, p. 9.

28 Ibid.

for dealing with issues such as VAT, without border checks; transit procedures beginning from the exporter's premises; and advance, electronic form-filling. In other words, the 'problems', such as they have been presented, are easily fixable.

This blog entry adds to the ERG report and blog entry by Michael Wood and agrees with the validity of their approach and conclusions by referring to the background and detail of the current EU customs framework. This further illustrates the way in which the border issue has been contrived to present an obstacle to a so-called hard Brexit that involves the UK leaving the single or internal market and the customs union.

Concerning the FCA, Alan Winters and Julia Magntorn aptly note, albeit that they perhaps overstate the novelty of the FCA proposal:

> Brexit undermines the currently wholly open border between the UK and the EU, but the FCA aims to reconstruct it by ensuring that any good entering the EU via the UK is treated *identically* to any good entering the EU directly. That is, it wants to replicate the conditions of the current customs union for UK exports to the EU while allowing the UK to negotiate different tariffs with third countries. The solution offered is ingenious at a theoretical level, but at the expense of massive complication and bureaucracy. Indeed, 'FCA' might well stand for the 'Fantastically Complicated Alternative'.[29]

A key issue that arises is the so-called tracking of a good under the FCA, whereby the UK will collect EU customs duties on behalf of the EU when goods from third countries enter the UK destined for the EU (e.g. cars imported from Japan into the UK for onward transit to the EU), so that goods do not have to be charged when they cross the UK-EU border. It is proposed that this will prevent the need to check goods crossing the Northern Ireland border into the Republic of Ireland, the UK's only land border with the EU, or presumably when goods are transported via plane, ships or rail to the continent). This will work quite easily when it is clear if goods imported into the UK are intended for onward transit to the EU. The issue has been raised as to how much goods can clearly be said to be destined for the EU and UK markets when they enter the UK, meaning, it is suggested, that cumbersome tracking of goods will be necessary at least some of the time.[30]

A number of other points need to be made about the FCA: first, the mechanism is not, in substance, new and seems to ignore that there is already a well established framework for dealing with issues such as this, in the form of what is referred to as 'customs transit'; and second, modern customs arrangements do not rely on cumbersome physical checks at borders, rather they use advance certification and authorisation, using especially electronic means to authorise and certify. The EU itself has a generally very well developed set of customs rules, contained in the Union Customs Code and the *EU Transit Manual*. In particular, the *EU Transit Manual* explains in a systematic way how EU customs transit works and how the customs framework has developed

29 L. Alan Winters & J. Magntorn, 'Decoding the Facilitated Customs Arrangement', *UK Trade Policy Observatory Blog*, 23rd July 2018, at < https://blogs.sussex.ac.uk/uktpo/2018/07/23/decoding-the-facilitated-customs-arrangement/ > .

30 Ibid. Even if the FCA were necessary, it is likely its significance would dwindle as Brexit beds down and as goods destined for the EU are increasingly less likely to be routed via the UK. The issue can be dealt with when goods destined for the UK enter the EU similarly.

away from the type of arrangement proposed in the FCA. Indeed, the definition of customs duties under the EU Treaties as interpreted by the Court of Justice of the EU is careful not to define customs duties and equivalent charges as taxes imposed at the border, but rather defines them as taxes imposed because a good crossed a border (i.e. the tax itself can be imposed at any stage in the distribution process), e.g.:

> Where the conditions which distinguish a charge having an effect equivalent to a customs duty are fulfilled, the fact that it is applied at the stage of marketing or processing of the product subsequent to its crossing the frontier is irrelevant when the product is charged solely by reason of its crossing the frontier, which factor excludes the domestic product from similar taxation.[31]

Customs transit arises whenever goods are exported and transited via a third country before arriving at the destination country: does the transit country impose customs or just allow them to pass through? There are various well-established regimes for dealing with this issue and allowing them to pass through without having to go through customs formalities in every transit jurisdiction, and the EU itself has to deal with this all the time. The Common Customs Union (CCU) of the EU addresses most issues that arise from customs transit: a single customs duty is paid upon initial entry into the EU and there is no need to impose additional duties when the goods crosses from one EU Member State into another. However, goods may enter the EU and travel through it to non-EU Member States (e.g. Antwerp in EU Member State the Netherlands is a major point of entry for goods going to many other parts of Europe, including parts not in the EU). The *EU Transit Manual* outlines the development of customs transit procedures to deal with the situation of goods passing through one customs area into another without having to have multiple customs checks and charges:

Development of a transit system	After the end of the second world war, there was a rapid growth in trade in goods in Europe. It soon became clear that lengthy and cumbersome customs procedures each time goods crossed a border put a severe strain and burden on trade. Against a background of a growing spirit of co-operation between nations, negotiations started under the auspices of the United Nations Economic Commission for Europe, with the objective of drawing up an international Agreement which would facilitate the movement of goods in Europe.

31 Case 78/76, *Firma Steinike and Weinlig v. Bundesamt für Ernährung und Forstwirtschaft* [1977] ECR 595, para. 29.

TIR Agreement	In 1949 the first TIR Agreement was drawn up. As a result of this Agreement a guarantee system was introduced in a number of European countries which would cover the duties and other charges at risk on goods moving in Europe, in the course of international trade. The success of the 1949 TIR Agreement led to the creation in 1959 of the TIR Convention. The Convention was revised in 1975and currently has 69 Contracting Parties (February 2016).
European Community	In parallel to the global development of international trade, it was found that the emerging and expanding European Community required a specific transit system to facilitate the movement of goods and customs formalities within and between its Member states.

(References omitted)[32]

The two immediately preceding paragraphs to those just quoted explain the rationale for these developments:

Movement of goods	*When goods enter a country/territory, customs will demand payment of import duties and other charges and, where appropriate, apply commercial policy measures (for example anti-dumping duties). This is the case even where the goods are only meant to pass through (to transit) that country/territory on their way to another. Under certain conditions the taxes and charges paid may be reimbursed when the goods leave that country/territory. In the next country/territory this procedure may have to be repeated. The goods may have to undergo a series of administrative procedures at border crossings before reaching their final destination.*

32 European Commission (Directorate General taxation and Customs Union), *EU Transit Manual* TAXUD/A2/TRA/003/2016-EN) (August 2016), pp. 32-33.

Main functions of transit	Transit is a customs facility available to operators who move goods across borders or territories without paying the charges due in principle when the goods enter (or leave) the territory thus requiring only one (final) customs formality. Compared to the situation described in the first paragraph, it offers an administratively simple and cost advantageous procedure to carry goods across customs territories. Transit is particularly relevant to the Union where a single customs territory is combined with a multiplicity of fiscal territories: goods can move under transit from their point of entry into the Union to the point of their final destination where, after transit has ended, the customs and the local fiscal obligations are taken care of and the goods are released for free circulation or placed under another customs suspensive procedure. Also a suspensive procedure can be ended by placing non-Union goods under transit, for example re-export from the Union customs territory.

(emphasis and underlining added)[33]

The lines italicised and underlined above involve the same process as what the Facilitated Customs Arrangement or FCA proposes to do, in substance, and it is in this sense that it is surprising that the Chequers Statement describes it as "new", as it really is just a variation of what has occurred before. It was precisely to avoid such a process that international rules on customs transit were developed. They developed under the auspices of the United Nations Economic Commission for Europe (UNECE).[34] They are now governed in Europe by the Customs Convention on the international transport of goods under cover of TIR carnets (TIR Convention) of 14th November 1975,[35] and a similar process can be used to avoid the cumbersome FCA proposal. The way the process works essentially is that the custom authorities *of departure* are involved in the first customs registration of the goods and then there is direct communication with the customs authorities of the final destination, and this avoids repeated border checks in transit. Article 4 of the TIR Convention sets out the key principles:

33 Ibid, p. 32.

34 See UNECE, 'Customs Transit', at < http://tfig.unece.org/contents/custom-transit.htm > .

35 Reproduced in Council Decision (2009/477/EC) of 28 May 2009 publishing in consolidated form the text, OJ L 165/1, 26.06.2009. Martin Howe, above, suggests it is not clear how the problem of rules of origin controls on UK manufactured goods imported into the EU will be addressed in the absence of customs controls on the UK/EU border, or how this issue can be solved compatibly with WTO rules. However, rules of origin are always an issue with trade, this would apply apart from Brexit, and the issue cannot be resolved by physical inspections at a border (how would customs officials be able to tell from looking at goods what parts come from where?).

Article 4

Goods carried under the TIR procedure shall not be subjected to the payment or deposit of import or export duties and taxes at Customs offices *en route*.

Article 5.

Goods carried under the TIR procedure in sealed road vehicles, combinations of vehicles or containers shall not as a general rule be subjected to examination at Customs offices *en route*.

However, to prevent abuses, Customs authorities may in exceptional cases, and particularly when irregularity is suspected,carry out an examination of the goods at such offices.

The system works by designating goods as soon as possible through designating them in advance of the process of transit through a system of authorisation or certification (authorisation is referred to as the issuance of a *carnet* or badge of transit). Actual checks in transit are only exceptional, e.g. intelligence information customs authorities have concerning particular goods. Breaches of customs procedures can be dealt with through checks other than at the border, including by wholesale distributors and retailers checking customs documentation and these checks being cross-referenced with advance computerised customs data. There is no reason why these processes cannot be used for goods entering the Republic of Ireland and then entering the UK across the Northern Irish border and for goods entering the UK and then crossing the Northern Irish border into the Republic of Ireland. Indeed, the Government's recently published Technical Note on *Trading with the EU if there is no Brexit deal* commits the UK to rejoining the TIR Convention.[36] The process can be accompanied by electronic completion of procedures and forms. The EU itself uses such a method for standard customs transit, which it refers to as the Standard Transit Procedure NCTS (new computerised transit system). The *EU Transit Manual* refers to the NCTS in these terms:

4.1.3. New Computerised Transit System (NCTS) In today's world, customs administrations have to adapt to the needs of trade with speed and flexibility and keep abreast of the continual changes in the business environment. The NCTS, implemented many years ago serves as a tool to manage and control the transit system. Based on the use of electronic data-processing techniques, it guarantees much more efficient management than the paper-based system.

The main objectives of the NCTS are:

– to increase the efficiency and effectiveness of transit procedures;

– to improve both the prevention and detection of fraud;

36 See HM Revenue & Customs, *Trading with the EU if there is no Brexit deal* (23 August 2018), at < https://www.gov.uk/government/publications/trading-with-the-eu-if-theres-no-brexit-deal/trading-with-the-eu-if-theres-no-brexit-deal > .

– to accelerate transactions carried out under a transit procedure and to offer security for them.

  As a general rule the NCTS is used mandatory for both external and internal Union and common transit procedure (except simplifications concerning certain modes of transport, the business continuity procedure and for travellers who can use a paper based declaration in certain situations).[37]

The use of methods such as the above reflects the arguments advanced in the ERG's report and further demonstrates the accuracy of its analysis and conclusions.

Thus, there is no reason why the Irish border issue has to be a stumbling block or particular difficulty for Brexit, despite the considerable efforts of quite a number of parties in the Brexit process to do just that, not least the Irish Government and Commissioner Michel Barnier for much of the process so far. Any issues that a rise can be easily deal with, and the real motivation for presenting the Irish border question as a problem seems to be political, with the intention of using the issue as a pressure point for limiting the UK's options in determining what type of Brexit to implement and to maximise its alignment with the EU post-Brexit. In that context, the 'backstop' proposal – the principle that in the absence of an agreement, maximum alignment should apply to Northern Ireland and the Republic of Ireland – is a fallback option that is not necessary. More critically, it could be said that it was designed to present the UK with the unpalatable option, in the absence of a withdrawal agreement, of either separating Northern Ireland from the rest of the UK for customs purposes or else forcing the UK to accept continued membership of the single or internal market *and* customs union.[38]

Is a Canada-style Free Trade Agreement desirable, including given issues said to relate to the Irish border?

As discussed above, the 'problem' with the Irish border is easily fixable. It is not necessary to have customs checks at the Irish border if a modern customs infrastructure is implemented as has already been done in the form of TIR *carnets* to enable customs transit. A Canada-style CETA between the EU and UK deal will not impact on the Irish border question in a negative way, it will actually minimise customs issues since CETA involves the almost complete abolition of customs duties between Canada and the EU. However, customs transit will need to be implemented for goods entering into Ireland destined for entry into the EU or elsewhere via the UK.

37 *EU Transit Manual*, above, pp. 42-43. Details on EU customs and transit procedures are available here: < https://ec.europa.eu/taxation_customs/business/customs-procedures/what-is-customs-transit_en > .

38 Rules of origin issues (i.e. how to classify the origin of goods with components from more than one country) have also been raised as obstacles, see .e.g. R. Van Der Jagt & L. Kanters, 'Facilitated Customs Arrangement: Does it work and at what price (17 July 2018), at < https://home.kpmg.com/nl/nl/home/social/2018/07/facilitated-customs-arrangement-does-it-work-and-at-what-price.html > . However, these are unavoidable and a result of global supply chains and they do not become any more or less difficult in themselves to manage because of Brexit. They will be dealt with on a UK-wide basis instead of an EU-wide basis after Brexit and within the WTO framework and, moreover, the system of custom transit from point of departure discussed above can also address this issue.

The main features of CETA are as follows: .

- The abolition of customs duties almost completely between Canada and the UK (customs have been abolished for 98% of goods)
- Cooperation in and rule of origin issues and in regulatory standards
- Access to each others' government procurement processes for Canada and the EU
- Work towards mutual recognition of professional qualifications (this is a straightforward example of the EU and UK already operating a very effective mutual recognition regime), but without free movement of people
- investment rights and protections
- cooperation in the form of environmental standards

An important point to realise concerning CETA as a model for an EU-UK withdrawal agreement is that the UK is already is in a position of full alignment with the EU for anything that will be dealt with in the withdrawal agreement. This makes it much easier for the EU to agree a withdrawal deal with the UK than to negotiate an FTA with another country, such as in the case of Canada and CETA. A CETA-style deal would work more easily with the UK than with Canada because, for example, the UK is in closer alignment in the areas of regulatory standards on goods and in services, but both of these aspects of the EU are quite flexible because of the principle of mutual recognition being widely used instead of harmonisation. When put in the context of the WTO, the reaction of Theresa May, cited above, to CETA as a model for Brexit does not make sense and is not accurate legally or economically.

THE BRUGES GROUP

The Bruges Group is an independent all–party think tank. Set up in February 1989, its aim was to promote the idea of a less centralised European structure than that emerging in Brussels. Its inspiration was Margaret Thatcher's Bruges speech in September 1988, in which she remarked that "We have not successfully rolled back the frontiers of the state in Britain, only to see them re–imposed at a European level…". The Bruges Group has had a major effect on public opinion and forged links with Members of Parliament as well as with similarly minded groups in other countries. The Bruges Group spearheads the intellectual battle against the notion of "ever–closer Union" in Europe. Through its ground–breaking publications and wide–ranging discussions it will continue its fight against further integration and, above all, against British involvement in a single European state.

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The Bruges Group holds regular high–profile public meetings, seminars, debates and conferences. These enable influential speakers to contribute to the European debate. Speakers are selected purely by the contribution they can make to enhance the debate.

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