

ANTONINO ALÌ

BREXIT

JUNE 2016 – 29 MARCH 2017 – UK NOTIFICATION

On 29 March 2017, the UK notified its intention to leave the EU (Brexit), following the result of the June 2016 referendum and in accordance with Article 50 of the Treaty on European Union (TEU).

Article 50(2) TEU provides that a withdrawal agreement should set out the terms of such a separation, taking the framework of the departing state's future relationship with the Union into account. However, no other guidance is provided on the question of what this framework should look like.

JUNE 2016 – 29 MARCH 2017 – UK NOTIFICATION

On 29 April 2017, the 27 remaining EU Heads of State or Government adopted political guidelines for the Brexit negotiations, setting out a phased approach.

In the first phase, three priorities were set for the negotiation of the withdrawal agreement: the rights of EU-27 citizens in the UK and of UK citizens in the EU-27; the settlement of the financial obligations incurred by the UK; and the issue of the border between Ireland and Northern Ireland.

In a second phase – after 'sufficient progress' had been achieved – discussions would continue on possible transitional arrangements and other unsettled issues related to the withdrawal agreement, as well as on the framework for the future EU-UK relationship. After talks led to a EU-UK joint report setting out a common understanding on the withdrawal deal,¹ in December 2017, the European Council decided that sufficient progress was achieved on the first phase issues and talks therefore advanced to the second phase.² On 19 March 2018, the EU and UK negotiators announced that they had agreed a substantial part of the draft withdrawal agreement, paving the way for discussions on the future partnership.

PM MAY SPEECH FLORENCE SEPT 2017

In my speech at Lancaster House earlier this year, I set out the UK's negotiating objectives. Those still stand today. Since that speech and the triggering of Article 50 in March, the UK has published 14 papers to address the current issues in the talks and set out the building blocks of the relationship we would like to see with the EU, both as we leave, and into the future.

We have now conducted three rounds of negotiations. And while, at times, these negotiations have been tough, it is clear that, thanks to the professionalism and diligence of David Davis and Michel Barnier, we have made concrete progress on many important issues.

...

We have also made significant progress on how we look after European nationals living in the UK and British nationals living in the 27 Member States of the EU. I know this whole process has been a cause of great worry and anxiety for them and their loved ones.

But I want to repeat to the 600,000 Italians in the UK - and indeed to all EU citizens who have made their lives in our country - that we want you to stay; we value you; and we thank you for your contribution to our national life - and it has been, and remains, one of my first goals in this negotiation to ensure that you can carry on living your lives as before.

I am clear that the guarantee I am giving on your rights is real. And I doubt anyone with real experience of the UK would doubt the independence of our courts or of the rigour with which they will uphold people's legal rights.

But I know there are concerns that over time the rights of EU citizens in the UK and UK citizens overseas will diverge. I want to incorporate our agreement fully into UK law and make sure the UK courts can refer directly to it.

Where there is uncertainty around underlying EU law, I want the UK courts to be able to take into account the judgments of the European Court of Justice with a view to ensuring consistent interpretation. On this basis, I hope our teams can reach firm agreement quickly.

- SHARED FUTURE ...

PM MAY SPEECH FLORENCE SEPT 2017

ECONOMIC PARTNERSHIP

Let me start with the economic partnership.

The United Kingdom is leaving the European Union. We will no longer be members of its single market or its customs union. For we understand that the single market's four freedoms are indivisible for our European friends.

We recognise that the single market is built on a balance of rights and obligations. And we do not pretend that you can have all the benefits of membership of the single market without its obligations.

So our task is to find a new framework that allows for a close economic partnership but holds those rights and obligations in a new and different balance.

But as we work out together how to do so, we do not start with a blank sheet of paper, like other external partners negotiating a free trade deal from scratch have done.

In fact, we start from an unprecedented position. For we have the same rules and regulations as the EU - and our **EU Withdrawal Bill** will ensure they are carried over into our domestic law at the moment we leave the EU.

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So the question for us now in building a new economic partnership is not how we bring our rules and regulations closer together, but what we do when one of us wants to make changes

One way of approaching this question is to put forward a stark and unimaginative choice between two models: either something based on European Economic Area membership; or a traditional Free Trade Agreement, such as that the EU has recently negotiated with Canada.

I don't believe either of these options would be best for the UK or best for the European Union.

THERESA MAY'S BREXIT SPEECH 2ND MARCH 2018

First, the Prime Minister laid five tests for our future partnership with the EU:

1. Respect the result of the referendum;
2. Be an enduring agreement;
3. Protect people's jobs and security;
4. Deliver an outcome consistent with the kind of country we want to be;
5. Strengthen our Union of nations and bring our country back together.

THERESA MAY'S BREXIT SPEECH 2ND MARCH 2018

The existing models for co-operation between the EU and a third country would not pass these tests, and therefore would not work for the UK or the EU. **The UK will instead seek the broadest and deepest possible agreement** - covering more sectors and co-operating more fully than any Free Trade Agreement anywhere in the world today.

Our vision is of a UK that is a 'champion of free trade based on high standards' - thriving as a Global Britain which forges 'a bold and comprehensive economic partnership with our neighbours in the EU, and reaches out beyond to foster trade agreements with nations across the globe.'

THERESA MAY'S BREXIT SPEECH 2ND MARCH 2018

The PM was clear that we all need to face up to **some hard facts**:

- ▶ in certain ways, our access to each other's markets will be less than it is now;
- ▶ after we have left the jurisdiction of the ECJ, EU law and the decisions of the ECJ will continue to affect us, including respecting its remit where we agree that the UK should continue to participate in an EU agency;
- ▶ as with any trade agreement, we must accept the need for binding commitments;
- ▶ and we need to resolve the tensions between some of our key objectives - negotiating trade agreements with other countries, taking back control of our laws, **not damaging integrated supply chains** and not having a hard border between Northern Ireland and Ireland. Both the UK and the EU also need to face the fact that this is a negotiation and neither of us can have exactly what we want.

THERESA MAY'S BREXIT SPEECH 2ND MARCH 2018

And we are not going to let our departure from the European Union do anything to set back the historic progress that we have made in Northern Ireland. Our departure from the EU causes particular challenges, which is why we have consistently put the Belfast Agreement at the heart of our approach. We have ruled out any physical infrastructure at the border or any related checks and controls. It is not good enough to say, 'we won't introduce a hard border; if the EU forces Ireland to do it, that's down to them'. We chose to leave and have a responsibility to help find a solution. It is for all of us to work together, and the Taoiseach and the Prime Minister agreed that their teams and the Commission should do just that. But it would be just as unacceptable to break up the United Kingdom's own common market.

THERESA MAY'S BREXIT SPEECH 2ND MARCH 2018

To realise this ambition there are five foundations that must underpin our trading relationship:

1. Reciprocal binding commitments to ensure fair and open competition;
2. A completely independent arbitration mechanism;
3. Ongoing dialogue with the EU, in particular between our regulators;
4. An arrangement for data protection that goes beyond an adequacy agreement;
5. Maintaining the links between our people.

THERESA MAY'S BREXIT SPEECH 2ND MARCH 2018

- ▶ On goods, a fundamental principle is that the UK-EU border should be as frictionless as possible. So we are seeking a comprehensive system of mutual recognition to ensure that, as now, products only need to undergo one series of approvals in one country. This can be achieved via a commitment to ensure that the relevant UK regulatory standards remain as high as the EU's which, in practice, means that UK and EU regulatory standards will remain substantially similar in the future. Our default is that UK law may not necessarily be identical to EU law but should achieve the same outcomes. In some cases, parliament might choose to pass an identical law. The parliament of the day could decide not to achieve the same outcomes as EU law but it would be knowing that there may be consequences for our market access.
- ▶ We will also explore the terms on which the UK could opt to remain part of EU agencies, such as those for the chemicals, medicines and aerospace industries. This is the only way to meet our objective of ensuring that these products only need to undergo one series of approvals.
- ▶ Parliament could decide not to accept the rules of agencies, but with consequences for our membership of the relevant agency and linked market access rights.

THERESA MAY'S BREXIT SPEECH 2ND MARCH 2018

- ▶ So a fundamental principle in our approach on goods is that trade at the border should be as frictionless as possible, with no hard border between Northern Ireland and Ireland. We believe this can be achieved via a commitment to ensure that the relevant UK regulatory standards remain at least as high as the EU's and a customs arrangement. We realise that this would constrain our ability to lower regulatory standards for industrial goods. But, as the Prime Minister set out, in practice we are unlikely to want to reduce our standards.

THERESA MAY'S BREXIT SPEECH 2ND MARCH 2018

- ▶ **Two potential options for our future customs relationship with the EU:** a customs partnership and a highly streamlined customs arrangement, as well as some specific provisions for the unique situation in Northern Ireland. We recognise that some of these ideas depend on technology, robust systems to ensure trust and confidence, as well as goodwill - but they are serious and merit consideration.
- ▶ This approach to trade in goods is important for agriculture, foods and drinks - but here other considerations also apply. We are leaving the Common Agricultural Policy and will want to take the opportunity to reform our agriculture and fisheries management. The UK has some of the highest environmental and animal welfare standards of any nation. We fully expect that our standards will remain at least as high as the EU's. We are also leaving the Common Fisheries Policy. The UK will regain control over our domestic fisheries management rules and access to our waters. But, as part of our economic partnership, we will want to continue to work together to manage shared stocks in a sustainable way and to agree reciprocal access to waters and a fairer allocation of fishing opportunities for the UK fishing industry.
- ▶ On services, we have the opportunity to establish a broader agreement than ever before, including a labour mobility framework that enables travel to provide services to clients in person, and continued recognition of professional qualifications. **Two areas have never been covered in free trade agreements in any meaningful way before: financial services and broadcasting. We recognise that we cannot have the rights of membership of the single market, such as 'passporting' in financial services and 'country of origin' in broadcasting.** But we should not be bound by existing precedent and we have set out creative proposals. The PM also set out other areas our agreement will need to cover, including energy, transport, digital, civil judicial cooperation, a far-reaching science and innovation pact, and educational and cultural programmes.

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28 FEB 2018–19 MAR 2018 – DRAFT WITHDRAWAL AGREEMENT EU-UK

PART FOUR TRANSITION (121-126) Draft withdrawal agreement

Article 121 Transition period

There shall be a transition period, which shall start on the date of entry into force of this Agreement and end on 31 December 2020.

28 FEB 2018–19 MAR 2018 – DRAFT WITHDRAWAL AGREEMENT EU–UK

Article 122

1. Unless otherwise provided in this Agreement, Union law shall be applicable to and in the United Kingdom during the transition period.

[...]

2. Should the Union and the United Kingdom reach an agreement governing their future relationship in the area of the Common Foreign and Security Policy and the Common Security and Defence Policy which becomes applicable during the transition period, Chapter 2 of Title V of the TEU and the acts adopted on the basis of those provisions shall cease to apply to the United Kingdom from the date of application of that agreement.

3. During the transition period, the Union law applicable pursuant to paragraph 1 shall produce in respect of and in the United Kingdom the same legal effects as those which it produces within the Union and its Member States and shall be interpreted and applied in accordance with the same methods and general principles as those applicable within the Union.

19-23 MARCH 2018 – DRAFT WITHDRAWAL AGREEMENT EU-UK

Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community highlighting the progress made (coloured version) in the negotiation round with the UK of 16-19 March 2018.

In green, the text is agreed at negotiators' level and will only be subject to technical legal revisions in the coming weeks.

In yellow, the text is agreed on the policy objective but drafting changes or clarifications are still required.

In white, the text corresponds to text proposed by the Union on which discussions are ongoing as no agreement has yet been found.

19-23 MARCH 2018 – DRAFT WITHDRAWAL AGREEMENT EU-UK

The colouring of the text corresponds to the following meanings: text in green is agreed at negotiators' level, and will only be subject to technical legal revisions in the coming weeks. For text in yellow, negotiators agreed on the policy objective. Drafting changes or clarifications are still required. Text in white corresponds to text proposed by the Union on which discussions are ongoing.

With respect to the DRAFT PROTOCOL ON IRELAND/NORTHERN IRELAND, the negotiators agree that a legally operative version of the “backstop” solution for the border between Northern Ireland and Ireland, in line with paragraph 49 of the Joint Report, should be agreed as part of the legal text of the Withdrawal Agreement, to apply unless and until another solution is found.

The negotiators have reached agreement on some elements of the draft Protocol. They further agree that the full set of issues related to avoiding a hard border covered in the draft reflect those that need to be addressed in any solution. There is as yet no agreement on the right operational approach, but the negotiators agree to engage urgently in the process of examination of all relevant matters announced on 14 March and now under way.

Following the European Council's additional guidelines of March 2018, the European Union (EU) and the United Kingdom (UK) have begun discussions on their future relations, after the UK's withdrawal from the EU (Brexit).

Negotiations continue, in parallel, to agree the terms of a Withdrawal Agreement, the purpose of which is to sort out the main issues regarding the UK's separation from the EU, in accordance with Article 50 TEU on the procedure for the withdrawal of a Member State from the EU.

The negotiating teams currently aim at identifying a political framework for the future partnership, to be annexed to the Withdrawal Agreement and adopted simultaneously. **The treaty or treaties governing the future relations between the UK and the EU would only be concluded once the UK leaves the Union and becomes a third country - after the currently scheduled Brexit date of 30 March 2019.**

At EU level, the treaty or treaties would be subject to the ratification procedure for international agreements under Article 218 TFEU.

Both the EU and the UK have stated their desire for a close partnership in the future.

However, a fundamental difference has surfaced in the talks. Whereas the UK has consistently called for a special status, going further and deeper than any existing third-country relationship, the EU has instead based its approach on existing models underpinning its relations with third countries.

In particular, the EU assessed the various models used in previous EU agreements against the 'red lines' originally set by the UK government: no membership of the customs union or the internal market, no free movement of persons; no jurisdiction of the Court of Justice of the EU (CJEU); and the regaining of regulatory autonomy.

In line with those red lines, the EU has explored what could be offered, in the area of trade, within the framework of a free-trade agreement (FTA) comparable to the EU-South Korea and the EU-Canada agreements.

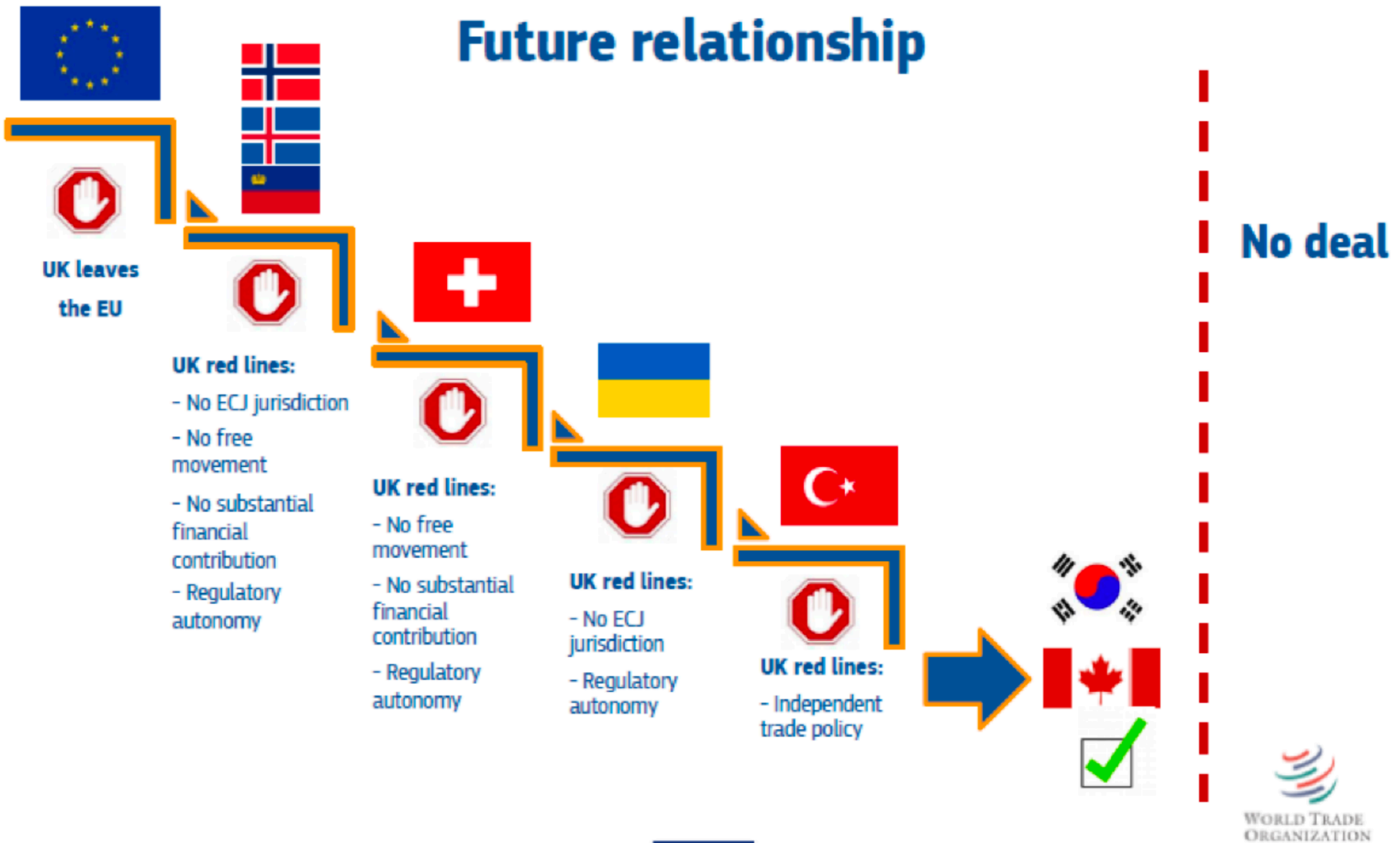
Similarly, the EU is looking at possible arrangements in the fields of justice and home affairs, and foreign policy and defence, based on how the EU cooperates with other third countries. Furthermore, several aspects of the special treatment that were requested by the UK either clash with the above-mentioned UK red lines or with the guiding principles set down in the European Council guidelines for the negotiations. These include: protection of the EU's interests; preserving the integrity of the internal market and customs union; safeguarding the EU's decision-making autonomy, including the role of the CJEU; ensuring a balance of rights and obligations and a level playing field; respecting the principle that a third country cannot have the same rights and benefits as a Member State; and safeguarding the EU's financial stability, as well as its regulatory and supervisory regime and standards. While the objectives of the negotiations might be similar on both sides, the EU and UK perspectives remain divergent, and their positions differ in many areas on the means to achieve those objectives in the context of the future partnership.

In the area of **justice and home affairs**, the UK has proposed to conclude an internal security treaty with the EU.

Such a treaty would be based on the existing EU measures regarding: exchange of information, including access to EU databases; operational cooperation through mutual recognition tools, such as the European arrest warrant; and multilateral cooperation through the EU agencies, Europol and Eurojust. This would avoid any operational gaps post-Brexit and take account of the important contribution the UK has made to date in providing intelligence and analysis under current EU tools.

The EU, however, although agreeing to the main areas of future cooperation with the UK - exchange of information; operational police cooperation and judicial cooperation in criminal matters - is offering the UK a relationship based on the model of third countries that do not participate in Schengen, rather than a special status. **The UK would thereby lose direct access to the EU's databases and participation rights in the managing bodies of the EU agencies, Europol and Eurojust. Furthermore, the EU mutual recognition instruments recognised as extremely valuable for UK law enforcement - such as the European arrest warrant - would cease to apply. Moreover, data sharing and protection arrangements would need to be agreed to allow the exchange of information to continue in the future.**

Future relationship



WHAT TRADE AGREEMENT MODEL TO APPLY?

After some discussion on the different trade models, the UK government has expressly refused to retain membership of the customs union or form a customs union with the EU (as in the Turkish model), access to the internal market (thus rejecting the EEA model), and free movement rights (thus rejecting both the Swiss model and the EEA). Considering all of these UK government red lines (including those with respect to regulatory autonomy and the CJEU), the European Commission concluded that the only viable trade agreement model for the future relations between the EU and the UK would be of the kind negotiated with Canada or South Korea.

Deep and comprehensive free trade agreements (DCFTA) of the kind negotiated with Ukraine in its association agreement would entail areas of approximation or alignment with the EU regulatory system and consequently the need to account for the CJEU role in interpreting EU law.

The Commission therefore considered DCFTAs to be incompatible with the red lines expressed by the UK government. The European Council guidelines therefore build mainly upon the FTA model. The FTA model entails exiting the customs union, the common commercial policy and the internal market. However, some of the suggestions made by Prime Minister Theresa May would indeed require to go beyond the FTA model and imply acceptance of both alignment to EU legislation and a CJEU role in some cases.

WTO ?

The common external tariff applied by the EU must respect the commitments the EU has undertaken in the World Trade Organization (WTO). Indeed, WTO members committed not to raise their applied tariffs beyond a certain 'bound' tariff rate, known as bindings. In agriculture, those bindings also cover tariff rate quotas, limits on export subsidies and some domestic support measures. Bindings are listed in schedules of commitments, which also exist in non-goods agreements in the WTO, such as the General Agreement on Trade in Services (GATS).

While the UK, as all EU Member States, is a member of the WTO in its own right,⁸¹ its schedule of commitments within the WTO is currently tied to the EU schedule as a result of the EU customs union.⁸² Although for ad valorem tariffs, this does not seem to be a problematic issue,⁸³ in the sense that the EU tariff bindings can simply be 'copied and pasted' by the UK into its new separate tariff schedule, this is not so easy for tariff rate quotas limiting market access in agricultural goods.⁸⁴ Quotas are set to satisfy the demand of 28 EU Member States and would thus be disproportionate for a single country. Therefore, as a consequence of Brexit, the UK will have to modify its bindings in the WTO. Considering that the UK is one of the major EU importers of agricultural goods and that UK import demand was taken into account when the EU first negotiated its own bindings, the EU also wishes to adapt its quotas for a reduced post-Brexit EU-27. Figure 6 shows the percentage of UK imports in total EU imports from non EU countries for selected agricultural sectors.