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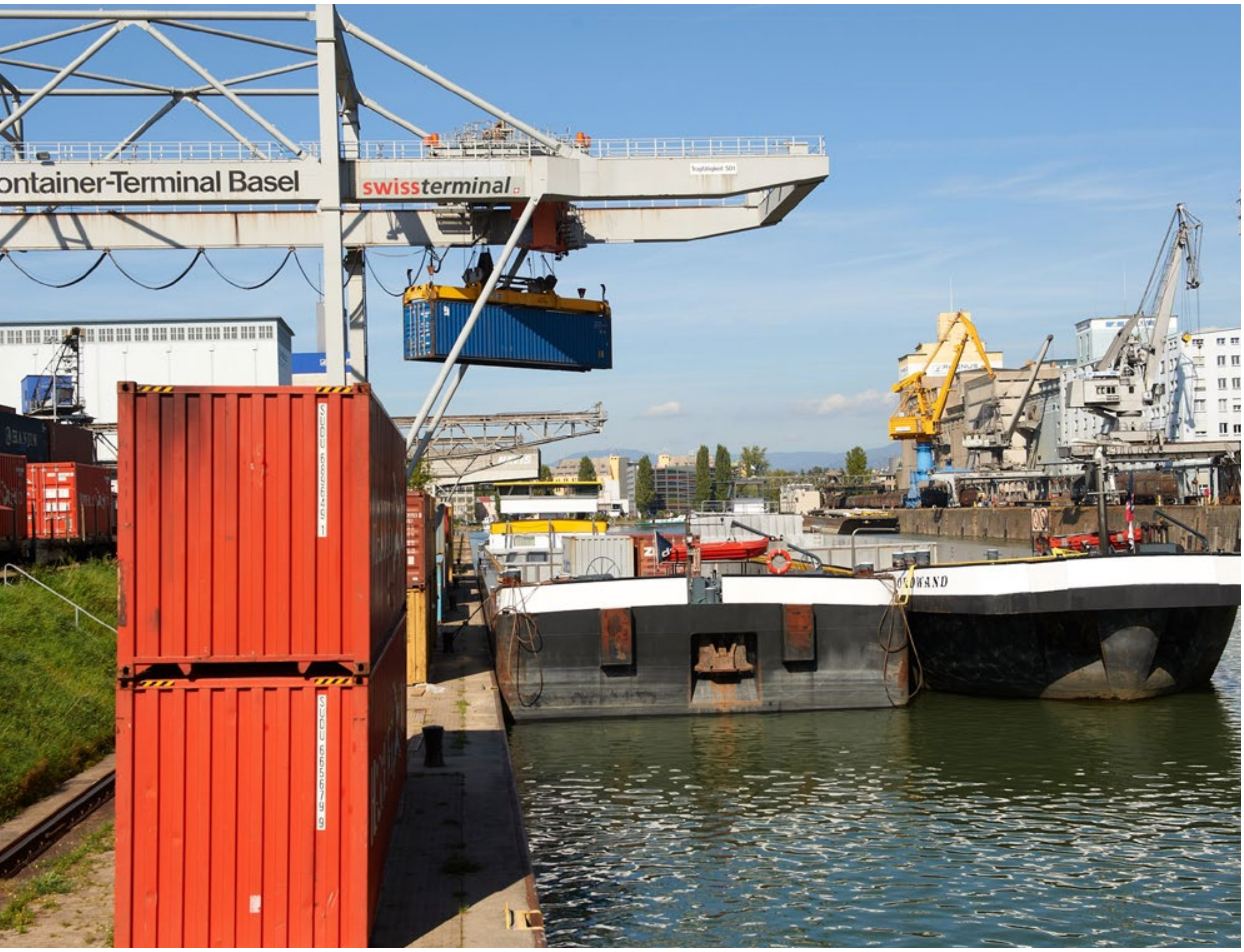
Philippe G. Nell

Brexit: What can the United Kingdom learn from Swiss-European Union Relations?



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Brexit: What can the United Kingdom learn from Swiss-European Union Relations?

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Abstract: The article highlights some of the specificities of Swiss-EU relations, the costs for Switzerland if it were to lose access to the EU Single Market and some first related implications for the UK. To begin with, the EU is a very important economic partner for both Switzerland and the UK. The challenge for the UK will clearly be to obtain free trade with selective integration in specific areas such as financial services, the automobile industry, airlines landing rights and nuclear energy. Emphasis is put on the EU position regarding a strong institutional framework, a homogeneous market and the free movement of persons. The analysis highlights the difficulty to partially join the Single Market without systematically taking over EU new legal provisions and accepting EU Court of Justice interpretations of EU pertinent law. Based on the Swiss experience, the article points to some red lines, which ought to be of interest for the UK.

Key words: Brexit, Switzerland, European Union, challenges, negotiations

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On March 29, 2017, the United Kingdom (UK) notified the European Council of its intention to leave the European Union (EU). A two-year period has been launched to negotiate a withdrawal agreement and a new relationship. What can the UK expect from the EU in terms of arrangements or flexibility? Is there going to be any margin for manoeuver on either side? Switzerland's experience with the EU may bring a unique insight, as the UK is opting for a clear-cut Brexit.[2] The EU is by far the largest partner of both countries with close-knit ties built over decades. They are also important for the EU, although far less in relative terms.

Over the past 25 years, Switzerland has undergone three delicate situations with the EU. First, the 1992 rejection of the European Economic Area Agreement (EEA) by a popular vote.[3] This led to the negotiation of seven agreements, which came into force ten years later. They represent a substantial access to the single market. The second phase started in 2010 with any new participation to the single market being blocked by the EU due to the lack of an overall institutional framework. Negotiations have been ongoing for a few years. They deal with surveillance, adaptation of the Swiss legal system to the single market's developments, interpretation of EU law incorporated in EU-Swiss bilateral agreements and dispute settlement. Third, in 2014, a popular vote has challenged the agreement on the free movement of persons. The EU Commission has refused to reopen that agreement to discuss the introduction of limitations to the movement of people and has put Switzerland in the precarious position of risking losing access to the single market.

Switzerland has a base line with the EU: the long-standing free trade agreement from 1972. While the option of a customs union was raised over the years, and in particular during the EEA negotiations, it has never been pursued. To maintain a level playing field with the EU on third country markets, Switzerland and its EFTA partners have established a worldwide network of free trade agreements.[4]

The aim of this article is to investigate some of the specificities of Swiss-EU and Swiss-third countries relations, to highlight the potential costs for Switzerland if it were to lose access to the single market and to draw first implications for the UK. Emphasis is put on the EU position

2 Speech of Prime Minister Theresa May, January 17, 2017. Accessed May 20, 2017, http://www.independent.co.uk/news/uk/home-news/full-text-theresa-may-brexit-speech-global-britain-eu-european-union-latest-a7531361.html. In the context of a clear-cut Brexit, the UK may seek some special conditions in particular in the automobile and the financial services areas.

3 For a detailed analysis of the negotiations, see: Philippe G. Nell, *Suisse – Communauté Européenne: Au Coeur des négociations sur l'Espace économique européen*, Lausanne: Economica Paris & Fondation Jean Monnet pour l'Europe, Lausanne, 2012.

4 The members of EFTA (European Free Trade Association) are Iceland, Liechtenstein, Norway and Switzerland. Except Switzerland, the other EFTA countries are members of the EEA.

regarding a strong institutional framework, a homogeneous market and the free movement of persons. The analysis will provide guidance on how to maintain outstanding competitive conditions with the EU being neither a member of the EU, nor of the EEA, nor of a customs union, and to point out some red lines. The latter ought to be of interest for the UK.

The importance of the EU for the Swiss and UK economies

In 2015, the EU was the largest trading partner for Switzerland, accounting for 53.7 percent of exports and 72.4 percent of imports of goods. For services, Swiss exports to the EU reached 63 billion and Swiss imports 84 billion euros in 2012. Switzerland registers a very large structural trade deficit with the EU. Foreign direct investment (FDI) is also impressive, with an EU stock of 650 billion francs in Switzerland and a Swiss stock of 545 billion francs in the EU, representing respectively 78 percent and 48.6 percent of total FDI. In addition, a significant number of EU citizens live in Switzerland (2015: 1.38 million) accounting for 67 percent of the foreign population (2.05 million; 24.6 percent of total population[5]). Foreigners are essential for the Swiss economy and represented 31.5 percent of the work force in 2015.[6] They play a key role in keeping the Swiss economy on a sustainable growth path.

The UK also has very important ties with the EU.[7] In 2015, exports of goods to the EU amounted to 46.9 percent of global UK exports (285 billion pounds) and imports from the EU reached 54.2 percent of total goods imports (411 billion pounds). For services, the EU is a close partner, with a share of 39.4 percent of total exports (225 billion pounds) and 49.4 percent of total imports (138 billion pounds). In 2015, the UK registered with the EU a trade deficit of 89 billion pounds in goods and a surplus of 21 billion pounds in services. The UK has a current account deficit with the EU of about six percent of GDP with deficits on trade in goods, primary and secondary income, and a surplus on services.

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5 In 2015, 396,000 foreigners were born in Switzerland and among foreigners born abroad, 44 percent had lived in Switzerland for more than ten years. Duc-Quang Nguyen, “Qui sont ces 25 pourcent d’étrangers en Suisse?” *Swissinfo*, 31 août 2016. Accessed May 20, 2017, http://www.swissinfo.ch/fre/societe/s%C3%A9rie-migration--partie-1-_deux-millions-d-%C3%A9trangers-en-suisse--mais-qui-sont-ils-/42409190.

6 Office fédéral de la statistique (OFS), *Indicateurs du marché du travail 2016 : Résultats commentés pour la période 2010-2016*, Neuchâtel, OFS, July 21, 2016, 8. Accessed May 20, 2017, https://www.bfs.admin.ch/bfs/fr/home/statistiques/travail-remuneration.assetdetail.447342.html.

7 Office for National Statistics, *The Pink Book 2016*, Chapter 9, London. Accessed May 20, 2017, https://www.ons.gov.uk/releases/unitedkingdombalanceofpaymentsthepinkbook2016.

As for foreign investment (2014), the EU accounts for 47.9 percent of FDI stock in the UK (496 billion pounds) and 39.8 percent of UK's FDI abroad (404 billion pounds).[8] Out of a population of 64.9 million, the UK has about eight million foreign residents[9] living on its territory, 2.8 million coming from the EU.[10] In turn, an estimated 5.5 million UK citizens live abroad with one million in the EU.[11] In relative terms, the foreign population in the UK (12.3 percent) is significantly less than in Switzerland.

During the 1990s, Swiss growth was one of the lowest among OECD countries.[12] As of 2002, Switzerland has progressively liberalized access to its labor market for EU citizens and strengthened relations with the EU by acceding partially to the single market. This was reflected in solid growth, outperforming the EU (2005-08; 2010-14). During the peak of the financial crisis in 2009, Switzerland faced a much less serious recession than the EU as domestic demand remained quite vigorous.[13] Swiss growth was threatened in 2011 again as the Swiss franc appreciated very significantly in the wake of the debt crises in Spain, Ireland, Greece and Italy. This led the Swiss National Bank to set a ceiling at 1.20 Swiss franc for one euro. To defend the exchange rate during the following years, the Swiss National Bank had to purchase billions of euros, thereby accumulating significant assets from euro members. This policy was changed on January 15, 2015 with the abandonment of a ceiling for the Swiss franc to the euro leading to an immediate and very strong appreciation of the Swiss franc toward the euro and a dampening of Swiss growth. After two years of weaker growth than the EU, the Swiss economy has progressively adapted to a stronger currency and is growing again at a faster pace. In order to keep its attractiveness and maintain a sustainable rate of growth, Switzerland needs not only to continue to open foreign markets and improve domestic conditions for business but also to keep its present access to the single market.

8 Alannah Breeze, "International Perspective on UK foreign direct investment (FDI): 2014," *Office for National Statistics*, August 30, 2016. Accessed May 20, 2017, https://www.ons.gov.uk/economy/nationalaccounts/balanceofpayments/articles/internationalperspectiveonukforeigndirectinvestmentfdi/2014#foreign-direct-investment-positions-in-the-uk-by-geography.

9 Andreas Hatzigeorgiou and Magnus Lodefalk, "The Brexit Trade Disruption Revisited," *Journal of International Law and Trade Policy* 17, no. 1 (2016): 49.

10 HM Government, *The United Kingdom's exit from and new partnership with the European Union*, February 2017. Accessed May 20, 2017, https://www.gov.uk/government/publications/the-united-kingdoms-exit-from-and-new-partnership-with-the-european-union-white-paper.

11 Ibid.

12 Between 1991 and 2001, Switzerland (1.2 percent) ranked 6th in terms of growth behind the USA (3.2 percent), UK (2.4 percent), the Eurozone (2.2 percent), France (2.1 percent), Germany (2.0 percent),) and ahead of Japan (1.1 percent).

13 Between 2002 and 2008, Switzerland (2.4 percent) ranked second behind the UK (2.5 percent) and ahead of the Eurozone (1.8 percent). Between 2009 and 2014, Switzerland (1.3 percent) was 2nd to the USA (1.4 percent), the Eurozone facing a recession (-0.2 percent).

Brexit has strongly affected the British pound with a 17 percent depreciation by year-end following the June 2016 popular vote.[14] While the Swiss economy has faced a significant deceleration following the steep appreciation of the franc, in 2016 the UK achieved the second-best growth performance among G-7 countries with 1.8 percent. According to the Chancellor Philip Hammond, the depreciation of the pound had a positive effect on demand for British exports outweighing the negative effects expected from rising inflation on the domestic economy.[15]

The UK choice: free trade with selective integration

In a keynote Lancaster House speech delivered on January 17, 2017, Prime Minister Theresa May clearly excluded joining the EEA or a similar type of arrangement. As a matter of fact, the disadvantages of an EEA membership for the UK have been widely discussed.[16] It would be difficult to conceive leaving the EU, just to re-enter by the back door with almost the same obligations on the single market but hardly any rights on deciding about its future course. In spite of this, the Scottish Government has pleaded to explore joining the EEA, maintaining the customs union and main aspects of EU membership even if the rest of the UK leaves.[17] The Welsh authorities have also emphasized the importance of continued participation in the single market.[18]

In the White Paper on Brexit strategy published on February 2, 2017, the UK confirms and further elaborates the policy orientations of the Lancaster House speech.[19] This entails leaving the single market and securing “the freest and most frictionless trade possible in goods and services”[20] with the EU. The UK will seek a new strategic partnership via “an ambitious and comprehensive

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14 Jean Zwahlen, former member of the Board of Directors of the Swiss National Bank, predicted the fall of the pound in case of a vote favorable for Brexit: *Suisse – Union Européenne “Je t’aime…moi non plus” + BREXIT*, speech, Club 44, La Chaux-de-Fonds, March 10, 2016. Unpublished text obtained from the author.

15 Gemma Tetlow, “UK shrugs off Brexit fears to be fastest growing G-7 economy in 2016,” Financial Times, January 26, 2017.

16 Oxford Economics, *Assessing the Economic Implications of Brexit*, London, 2015. Accessed May 20, 2017, http://www.oxfordeconomics.com/brexit.

17 Scottish Government, *Scotland’s Place in Europe*, December 2016. Accessed May 20, 2017, http://www.gov.scot/Publications/2016/12/9234.

18 Welsh Government, *Securing Wales’ Future*, January 2017. Accessed May 20, 2017, https://www.google.ch/?gws_rd=ssl#q=Welsh+Government,+Securing+Wales%E2%80%99+Future,+January+2017.&spf=1495270417036.

19 HM Government, *The United Kingdom’s exit from and new partnership with the European Union*, February 2017. Accessed May 20, 2017, https://www.gov.uk/government/publications/the-united-kingdoms-exit-from-and-new-partnership-with-the-european-union-white-paper. This document is afterwards referred to as “White Paper”.

20 Ibid. 35.

free trade agreement".[21] Existing EU law will be converted into domestic law with the Great Repeal Bill which will repeal the European Communities Act of 1972. The White Paper indicates that "wherever practical and appropriate", rules and laws will remain the same.[22] Changes will then be introduced progressively by the UK Parliament. The UK wants to get back full control of its laws and "bring an end to the jurisdiction in the UK of the Court of Justice of the European Union" (ECJ).[23] The UK will look for another dispute resolution mechanism; it could be an ad hoc arbitration panel or binding decisions by a Joint EU-UK Committee. The UK has presently a variety of dispute settlement mechanisms in international agreements. Unlike the ECJ, their decisions have no direct effect on UK legislation.[24]

Referring to the single market, the UK "may take in elements…in certain areas".[25] This implies that the UK will not opt to stand alone. Such a path could in no circumstances turn into a positive situation for either party. It would lead to some type of zero-sum game where both parties lose because the size of the pie shrinks. One party may lose more on financial services and on vehicles and the other on agriculture and manufactured products. The UK will therefore have to seek a selective integration path with specific bilateral arrangements. This road will not be an easy one because access to the single market is tied to a set of fundamental principles such as free movement of persons, homogeneity, legal security and common jurisdiction. The WTO also imposes some restrictions in terms of sectoral agreements in services. There will be no easy partial way into the single market.

The cost of losing access to key parts of the single market

During the past three years, Switzerland has been confronted with the risk of losing its access to the single market. This resulted from the acceptance in 2014 of a popular initiative, modifying the Constitution with a new article intended to reintroduce within three years quotas on EU immigration and the national preference for hiring workers. As the EU categorically refused to reopen the bilateral agreement on free movement of persons (AFMP), Switzerland faced a dilemma: enforcing restrictions and discriminatory measures would be incompatible with that agreement,

21 Ibid.
22 Ibid. 9.
23 Ibid. 13.
24 Ibid. 14.
25 Ibid. 35.

and would thus enable the EU to denounce the seven bilateral agreements[26] which have provided partial access to the single market since 2002. These agreements are linked by a so-called "guillotine clause", a precaution taken by the EU in view of potential popular votes in Switzerland on specific parts of the package.[27]

This critical situation led to detailed studies which brought to light the negative effects of losing access to the single market.[28] Their results, the Swiss international commitments under the AFMP and the refusal of the EU to renegotiate the AFMP led the Swiss Parliament to modify in December 2016 the federal law on foreigners in conformity with the AFMP; neither quotas, nor a local preference for hiring, nor a unilateral safeguard clause were introduced.[29] The new provisions were limited to activities or regions with unemployment above average; in those cases, employers have an obligation to notify vacancies first to regional employment offices, thereby temporarily restricting access to these jobs to unemployed people registered at these centers. The Parliament did not follow the proposals of the Federal Council referring to setting a ceiling to persons without any professional activity, to family reunions and to asylum.[30] The EU Council acknowledged on February 28, 2017 that the text adopted by the Swiss Parliament "can be implemented in a manner compatible with the rights of EU citizens under the AFMP if the necessary implementing ordinance clarifies outstanding open issues, such as the right to information as regards vacancies, and the procedure for the adoption of further measures, in particular with a view to guaranteeing respect for frontier workers' rights".[31] The Swiss Parliament implementation of the new constitutional article and the position of the EU Council gave way to almost three years of uncertainty over losing access to the single market.

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26 These agreements cover: free movement of persons, mutual recognition of diplomas and coordination of social insurances; technical obstacles to trade; air and road transport; government procurement; agriculture; research. For a brief presentation: *Les Accords bilatéraux Suisse – Union Européenne, Département fédéral des affaires étrangères*, Edition 2016. Accessed May 20, 2017, https://www.google.ch/?gws_rd=ssl#q=Les+Accords+bilat%C3%A9raux+Suisse+%E2%80%93+Union+Europ%C3%A9enne,+D%C3%A9partement+f%C3%A9d%C3%A9ral+des+affaires+%C3%A9trang%C3%A8res,+Edition+2016.+&spf=1495270894855.

27 A denunciation by Switzerland of the Agreement on Research would not trigger the guillotine clause. Swiss participation is based on a financial contribution.

28 BAKBASEL, *Die mittel- und langfristigen Auswirkungen eines Wegfalls der Bilateralen I auf die Schweizerische Volkswirtschaft*, Basel, November 2015. Accessed May 20, 2017, https://www.newsd.admin.ch/newsd/message/attachments/42118.pdf. ECOPLAN, V*olkswirtschaftliche Auswirkungen eines Wegfalls der Bilateralen I, Analyse mit einem Mehrländergleichgewichtsmodell*, Bern, November 2015. Accessed May 20, 2017, https://www.newsd.admin.ch/newsd/message/attachments/42119.pdf.

29 Over a 20-year period, Swiss GDP per capita would be about 36'000 francs lower. BAKBASEL, *Die mittel- und langfristigen Auswirkungen*.

30 Albrecht Dieffenbacher, "L'article sur l'immigration: l'aboutissement d'un long chemin," *La Vie Economique* 4 (2017) 17.

31 Council of the EU, *Council Conclusions on EU relations with the Swiss Confederation*, Press Release 93/17, February 28, 2017. Accessed May 20, 2017, http://www.consilium.europa.eu/en/press/press-releases/2017/02/28-conclusions-eu-swiss-confederation/.

Free movement of persons

During the EEA negotiations, free movement of persons proved to be a very sensitive issue for Switzerland. It was agreed to abolish the status of seasonal workers and to fully open the Swiss market following a five-year transition period. Despite Switzerland's insistence, no specific safeguard clause was granted and any serious problems could be addressed under the general safeguard clause of art. 112(1) of the EEA Agreement.

During the ensuing bilateral negotiations, Switzerland obtained a 12-year transition period with the possibility to invoke a special safeguard measure in case of critical problems allowing the limitation of immigration over a period of up to two years.[32] Sensing growing political pressure, the authorities invoked this safeguard clause in 2012 for the eight Central and Eastern European countries which joined the EU in 2004 and in 2013 for all the other EU States except Bulgaria and Romania, which are still under a transitional regime. Since May 2014 the agreement is fully in force. Restrictions may only be made in the framework of a consensual clause by a Joint Committee in case of massive immigration of EU citizens into Switzerland or of serious economic or social problems.[33] Measures shall disrupt the good functioning of the Agreement to the least extent possible.[34]

While EU net immigration to Switzerland was negative between 1991 and 2001 (-400 per year), it became largely positive following the progressive liberalization with the EU (2002-2013: 35,800 per year), peaked in 2013 (65,800) and fell subsequently (2015: 47,800).[35] Studies referring to the economic impact of the EEA for the Swiss economy attributed more than 50 percent of the net effects to the free movement of people. In turn, BAKBASEL has assessed that about 40 percent of the negative effect of an exclusion from the single market would be linked with a reduction of immigration.[36] With a natural rate of population growth of only 0.2 percent, Switzerland is compelled to attract foreigners to expand the work force and sustain growth. The introduction of quotas would lead to a decline in the level of activity and to a lowering of skills with a negative effect on productivity.

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32 The safeguard clause could be invoked if immigration exceeded 10 percent of the past three years' average. Immigration could then be limited to the average of the last three years plus 5 percent. Source: Conseil fédéral suisse, *Message relatif à l'approbation des accords sectoriels entre la Suisse et la CE*, June 23, 1999, 180-181. Accessed May 20, 2017, https://www.admin.ch/opc/fr/federal-gazette/1999/5440.pdf.

33 Ibid. 183.

34 Agreement on the free movement of persons, art. 14, al. 2. Accessed May 20, 2017, https://www.admin.ch/opc/fr/classified-compilation/19994648/index.html.

35 Secrétariat d'Etat à l'économie, 1*2ème Rapport de l'Observatoire sur la libre circulation des personnes entre la Suisse et l'UE : Répercussions de la libre circulation des personnes sur le marché suisse du travail*, Berne, 5 juillet 2016. Accessed May 20, 2017, https://www.seco.admin.ch/seco/fr/home/Publikationen_Dienstleistungen/Publikationen_und_Formulare/Arbeit/Personenfreizuegigkeit_und_Arbeitsbeziehungen/observatoriumsberichte/12_Bericht_Observatorium.html. The figures are also taken from the reports of previous years.

36 The model assumes a reduction of immigration of 25 percent.

The decline in the supply of labor would increase wages and may lead to systemic effects (substitution of labor with capital, or delocalization). Slower growth of private consumption and construction would ensue. Demographics would exacerbate the impact on social insurances, with additional costs due to the extinction of overall coordination of social insurances with the EU and the return to bilateral agreements on social security with each EU Member State. The management of labor quotas would incur administrative costs (25.- to 419.- Swiss francs for each procedure). Stricter conditions would also apply to service providers (permit as of 8 days; quota as of 120 days). Overall population growth (-3.4% or – 350,000 persons) and GDP (-3.1 percent to -4.5 percent) would be lower by 2035.[37] It must also be pointed out that in a scenario of selective immigration, GDP, employment, prices, investment and wages would grow slightly faster than under a regime of free movement of persons.[38]

As for the UK, immigrants have also played a key role in fostering employment and economic growth over the past years. Net annual migration to the UK has increased very significantly moving from under 100,000 (1997) to 200,000 (2003), 250,000 (2004), declining under 200,000 (2012) to increase again significantly with more than 300,000 (2014-15).[39] In the latter year, Poland (more than 900,000), Romania and Portugal (a little more than 200,000) followed by Italy and Lithuania (a little less than 200,000) had more migrants living in the UK than France, Germany or Spain.[40] Migration motivated by economic factors from a few Eastern European countries contributed to record high level of new arrivals and led to public concern over pressure on wages as well as on various services such as schools, health and infrastructure.

Between 2005 and 2015, migrants filled 2.2 million positions out of a total of 2.5 million new jobs[41] and nearly 60 percent originated from the EU. Since 2005, immigrants contributed to half of GDP growth (1.4 percent). As is the case in Switzerland, migrants mitigate the effects of a low birth rate and of an ageing population. According to the OECD, EU migrants to the UK are better educated than EU migrants to most other EU countries.[42]

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37 Limitations of the model: total substitution between workers; no more recognition of diplomas; limitation of transborder services; more difficult to hire specialized workers.

38 Stalder Peter, "Les effets de la libre circulation des personnes sur le marché de l'emploi et la croissance," *La Vie économique* 11 (2008), 7-11.

39 White Paper, 26.

40 Ibid. 30.

41 OECD, *The Economic Consequences of Brexit: a Taxing Decision*, OECD Economic Policy Paper, April 2016, no. 16, 26. Accessed May 20, 2017, https://www.oecd.org/eco/The-Economic-consequences-of-Brexit-27-april-2016.pdf.

42 Ibid.

In the future, the UK will continue to be interested in attracting immigrants in particular with high qualifications and will control immigration from the EU. Analyses will be undertaken to understand the needs of various economic sectors for labor and the impact of a policy change. The White Paper recognizes that setting up a new regime for EU nationals and the benefits they receive will be complex. The implementation may undergo various phases to avoid disruptions in the labor market.[43] Significant attention will also be paid to the 2.8 million EU residents in the UK and one million UK residents in the EU. A multi-faceted negotiation will cover *inter alia* eligibility, workers' rights, welfare access, health provisions, pensions, non-EU partners, family reunion, deportation and location of courts for challenges.[44] The UK government will aim at rapidly securing the status of EU nationals in the UK and UK nationals in the EU.

Technical standards

The single market has a significant impact on eliminating technical barriers to trade. The EU Commission has developed a strategic vision for standards, and establishes yearly programs and finances with EFTA countries' mandates to European Standard Organizations (ESO).[45] An important part of the standards are called "harmonized standards"; their fulfillment confers a presumption of conformity with EU legislation. Their share in all standards has increased from 3.55 (1989) to 25 percent (2009). They cover 11 different areas and 31 product groups with *inter alia* chemicals, construction, energy efficiency, electric and electronic engineering, healthcare engineering, mechanical engineering and transport and services. For non-harmonized areas, member States apply national technical regulations. These products can then be put in free circulation in the EU subject to the principle of Cassis de Dijon even if they do not conform with the second Member State's technical regulations. In order to avoid manufacturing different product types for the Swiss and the EU market, the Swiss government has, following the rejection of the EEA, decided to harmonize autonomously to a large extent Swiss technical regulations with those of the EU. Exceptions are possible for health, consumer or environmental protection.

43 White Paper, 27.

44 Alex Barker, "Brexit. Citizen rights. Millions of expats caught in no man's land," *Financial Times*, February 20, 2017.

45 Communication from the Commission to the European Parliament, the Council, and the European Economic and Social Committee. *A strategic vision for European standards: Moving forward to enhance and accelerate the sustainable growth of the European economy by 2020*, COM/2011/0311 final. Accessed May 20, 2017, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52011DC0311. Communication from the Commission to the European Parliament, the Council, and the European Economic and Social Committee: *The annual Union work program for European standardization for 2017.* COM/2016/0357 final. Accessed May 20, 2017, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2016:357:FIN.

To avoid multiple testing and to gain efficiency, Switzerland has concluded a bilateral agreement with the EU on the mutual recognition of conformity assessments covering 20 product categories, representing more than 25 percent of total Swiss exports to the EU.[46] For these products, Swiss conformity assessments are required in the EU, allowing manufacturers *inter alia* to attach the CE sign to its products. This also applies to products tested in the EU and exported to Switzerland. This leads to lower production costs and lower prices for consumers and facilitates Swiss firms' participation in international value chains. The Swiss export industry benefits from shorter delays and may save between 150 and 300 million francs each year. Without such an agreement, there would be a negative effect on trade links[47] and Swiss GDP may be lower in 2035 by 0.7 to 0.9 percent.[48] In addition, the incentive for harmonization may decrease in Switzerland and Swiss conformity assessment bodies would not be able to provide services for EU and Swiss firms any more. Swiss industry considers this agreement very important.

According to the British Standards Institution, Brexit will lead the UK to lose influence over EU regulatory framework for standardization, EU legislation relying on standards, European Commission requests to standardization organizations[49] and references of harmonized standards conferring a presumption of conformity with EU legislation or rejecting such a presumption.[50] Presently, the UK participates actively in the International Organization for Standardization (ISO)[51] and in the International Electro-technical Commission (IEC)[52] as well in the key European organizations – European Telecommunications Standards Institute (ETSI), European Committee for Standardization (CEN) and European Committee for Electronical Standardization (CENELEC) - setting technical standards. Membership in ISO, IEC and ETSI is on a worldwide basis while CEN and CENELEC are reserved for EU and EFTA countries as well as candidates to EU accession.[53] CEN also offers a statute of affiliate for countries which are not members but which

46 These categories cover *inter alia*: machines, medical products (prostheses…), motor vehicles, tractors, toys, good manufacturing practices for pharmaceuticals, construction equipment, radio and telecommunications appliances, boilers and gas burners etc.

47 Response of Swiss exports to a 1 percent increase of EU imports would decrease from 0.6 to 0.3 percent.

48 BAKBASEL, *Die mittel- und langfristigen Auswirkungen eines Wegfalls der Bilateralen I* (2015). In addition, econometric studies have assessed the impact of standards on economic growth at 1 percent for Germany, 0.8 percent for France and 0.3 percent for the UK. Source: Communication from the Commission to the European Parliament, the Council, and the European Economic and Social Committee. *A strategic vision for European standards.*

49 About 25 percent of published European standards have been developed upon requests from the EU Commission. Source: The White Paper, 40.

50 British Standards Institution, *European Standards and the UK*, London, 2016, 12. Accessed May 20, 2017, https://www.bsigroup.com/LocalFiles/en-GB/EUREF.pdf.

51 ISO has 157 members.

52 IEC has 61 members and 23 associate members.

53 Presently, Turkey and Macedonia.

are close to the EEA. They must accept *inter alia* to implement some EU directives referring to European standards; they can become signatory of these standards and incorporate them in their national legislation.

In order to continue to shape European standards, the UK would need to obtain special status in CEN and CENELEC from its members. This would require the commitment to adopt all European standards on a voluntary basis, to accept that there is only one standard in use in the UK and the single market and that once work on a standard begins, work on the same topic may neither start nor continue domestically.[54] Furthermore, once a new standard is published, CEN and CENELEC members must implement it and withdraw any conflicting existing standard.

The UK will have to establish a new relationship with the EU. A mutual recognition of assessments -similar to the Swiss one- for a list of specific products might be beneficial for both parties. It might however require a constant harmonization of UK technical regulations to those of the EU. For products in free circulation not covered by any arrangement, UK competitiveness on the EU market and value chains would be affected and vice versa for the EU on the UK market. An arrangement would lead to a win-win situation but could be politically sensitive both in the UK -taking on EU legislation- and in the EU, due to access to the single market without free movement of people.

Government procurement

EU countries spend approximately 2,400 billion euros per year on procurement. Liberalization efforts have contributed to open markets significantly. The EU has played a key role and placed government procurement high up on the agenda of the single market. Competition can lead to significant savings for public authorities, stimulate innovation and increase efficiency of producers. With some countries, the EU has achieved a substantial liberalization under the Government Procurement Agreement (GPA) of the World Trade Organization (WTO). This plurilateral agreement has opened up procurement evaluated at 1.7 trillion dollars per year to competition. Based on specific thresholds and coverage, EU tenders for GPA partners were evaluated at 237.2 billion euros in 2011.[55]

54 British Standards Institution, *European standards and the UK* (2016).
55 WTO, *Trade Policy Review, Report by the Secretariat, The European Union*, 2015, 94. Accessed May 20, 2017, https://www.wto.org/english/tratop_e/tpr_e/tp417_e.htm.

To become a GPA member, the UK would have to negotiate separately with each party including the EU, the US, Canada, Japan and Switzerland.[56] Such negotiations cover levels of government, purchasing entities, types of procurement - goods, services, construction-, and exceptions; they are complex, may take time and are subject to national ratification procedures. The UK would nevertheless have a very good basis with its national lists included under the market schedules and the commitments of the EU.

In addition, the UK would also have to consider whether to follow up on the EU's additional government procurement liberalization with various partners, some being GPA members[57] and others not.[58] This could be envisaged as part of comprehensive trade, cooperation or association agreements. With Switzerland, the EU has concluded a bilateral agreement for entities and sectors not covered by the GPA. This includes municipalities, rail transport as well as the areas of water, electricity, local transport and airports where some private and public firms holding exclusive concessions must also tender their contracts. The bilateral agreement refers to the rules of the GPA which are considered equivalent to the EU's; legislative harmonization is therefore not required. This agreement has an impact on competition in various sectors, on prices, on exports and on procurement costs. According to estimates, without that agreement, Swiss GDP could be reduced by 0.1 to 0.2 percent by 2035.[59]

Civil aviation

Switzerland has aimed at a full participation in the EU internal aviation market since the late 1980s; this was achieved with the EEA Agreement. Following the negative vote of the Swiss population on the EEA December 6, 1992, the Swiss government included civil aviation in a list of proposals submitted to the EU for negotiation. As the talks progressed very slowly, Swissair embarked on a strategy to acquire substantial positions in several EU airlines including Sabena, the Belgian national carrier. Losses from these participations led to the bankruptcy of Swissair in 2001. A new company, Swiss International Airlines, emerged; unable to be profitable, it was purchased by Lufthansa in 2005 and integrated in Star Alliance.[60]'

56 The GPA has 19 parties comprising 47 WTO members and 29 observers. Nine are presently negotiating accession.
57 Canada, Israel, Republic of Korea and Switzerland.
58 Partners include Albania, Bosnia and Herzegovina, Chile, Colombia, Jordan, Mexico, South Africa, Peru.
59 BAKBASEL, *Die mittel- und langfristigen Auswirkungen eines Wegfalls der Bilateralen I* (2015).
60 Lufthansa paid 70 million francs and an additional 269 million francs in 2008. Following the founding of Swissair in 2001, the Swiss government paid a net amount of 1.7 billion francs.

Civil aviation is an area where Switzerland has achieved one of the highest levels of integration with the EU. A bilateral agreement extends EU law to Switzerland and provides mutual access to aviation markets for airlines. Switzerland systematically takes over all new EU legal acts; they refer essentially to technical norms and provisions on technical security, flight safety or security controls on persons and cargo. The European Commission and the EU Court of Justice undertake the surveillance of competition rules on the EU and Swiss markets. They do not, however, cover state aids and landing rights restrictions linked to environmental needs in Switzerland. Since the entry into force of the agreement, Switzerland has become member of the European Aviation Safety Agency (EASA), which is in charge of airworthiness and environmental certification of aircraft and components as well as the approval of organizations involved in the design, manufacture and maintenance of aeronautical products. In 2008, its competences were extended to aerodromes, air traffic management and air navigation services.[61] Switzerland has also joined the Single European Sky (SES), an initiative of the European Commission to create a Union regulator for air traffic management within the EU, Norway and Switzerland. The aim of “the Union regulator is to organize this airspace uniformly, with air traffic control areas based on operational efficiency, not national borders and to integrate civil and military air traffic management”.[62]

Swiss airlines enjoy nearly the same competitive conditions as EU airlines and benefit from seven freedoms.[63] Negotiations on the eighth and ninth freedoms were finalized in 2011. Entry into force is subject to the conclusion of an institutional agreement and linking the EU and the Swiss scheme for emissions trading to reduce the production of greenhouse gases where it is most cost effective. Switzerland also has the right of establishment and of investment. Moreover, a Swiss airline can become majority shareholder of an EU airline without the latter losing its EU character and relevant rights.

The civil aviation agreement is essential; if Switzerland were to go back to the pre-1999 bilateral agreements with separate EU member states, its attainability would decline by 2.2 percent after five years.[64] Losses would be smaller for Basel, Geneva and Lugano with the possibility to use

61 European Aviation Safety Agency (EASA). Accessed May 20, 2017, https://www.easa.europa.eu/. Sky.

62 Ibid.

63 1. Right to fly over an EU country. 2. Right to refuel or carry out maintenance in an EU country without embarking or disembarking passengers or cargo. 3 and 4 Right to fly to an EU destination and vice versa. 5. Right to fly between two EU countries and embark passengers or cargo (Zurich-Vienna-Rome), provided the flight originates or ends in one’s own country. 6. Right to fly between two EU countries with stop-over in Switzerland to embark passengers (London-Zurich-Berlin). 7. Right to fly between two EU countries (Paris-Brussels). 8. Right to fly to two destinations in an EU country starting from Switzerland. 9. Right to fly to two destinations in an EU country.

64 BAKBASEL, *Die mittel- und langfristigen Auswirkungen eines Wegfalls der Bilateralen I* (2015).

a neighboring airport in France, Germany or Italy. A reduction of attainability of one percent would lead to a reduction of the growth potential of the economy of 0.58 percent. In turn, the loss of competitiveness would reduce exports and investments and the labor market would have a negative effect on private consumption. During the first five years, real GDP would be reduced by 0.2 percent per year. By 2035, alternative solutions would have been developed and the reduction of attainability is estimated at 1.1 percent or 0.6 percent of GDP. The analysis does not include the negative effects for tourism in terms of direct flights to and from Switzerland.

Frequencies and time slots are also affected. Airlines operating from Switzerland, airports and services' firms would register turnover losses. In addition, Switzerland would lose its membership in EASA, investment and establishment in the EU would become restricted, investments undertaken thus far being protected. Swiss manufacturers and maintenance firms would also face competitive disadvantages. Certification costs would increase (exclusion of EASA). With the UK, Switzerland will need to replace a bilateral air traffic agreement dating from 1950.

UK airlines have benefitted to a large extent from the single market. During the past 20 years, they have expanded significantly low-cost carriers using the right to establishment anywhere to minimize costs and to operate without limitations on pricing, frequency and capacity.[65]

A bilateral air transport agreement similar to the Swiss-EU one could be difficult to negotiate because it might imply adopting EU legislation (35 pieces), remaining under the common regulator EASA, foreseeing a surveillance regime for competition rules, and disputing settlement by the ECJ including for discrimination cases against carriers.[66] In addition, Spain may oppose any agreement applicable to the airport of Gibraltar because that would indirectly mean the recognition of the UK's legal right to the territory. Due to the size of its airports and industry, the UK may not have the same capacity for flexibility as Switzerland.

In its White Paper, the UK government points to the need to maintain good conditions for travelers in terms of price and access and to further develop the networks. The UK might seek an "Open Skies" agreement with the EU which will be more restrictive than the present regime. It must be

65 Norton Rose Fulbright, Law firm, Impact of Brexit on the Transport Sector, 2016. Accessed May 20, 2017, http://www.nortonrosefulbright.com/knowledge/publications/136984/impact-of-brexit-on-the-transport-sector.

66 The same issues would be raised for the UK continuing participation in the European Medicines Agency or the EU's Rapid Alert System for Food and Feed. Source: House of Lords, *Brexit: trade in goods*, European Union Committee, 16h Report Session 2016-17, March 14, 2017, 52-55. Accessed 20 May, 2017, https://www.publications.parliament.uk/pa/ld201617/ldselect/ldeucom/129/129.pdf.

noted that major EU standards would still need to be met with *inter alia* air operator's certificates[67], ground handling directives for airport operators, airline computerized reservation systems directives and airline consumer protection.[68] EasyJet is preparing for Brexit by establishing operations in the EU27 to keep full market access.[69] In addition Ryanair and EasyJet could lose their current free access to any airport in Europe because their EU ownership would fall from 60 to 40 percent for the former and from 84 to 49 percent for the latter.[70] However, the statutes of both airlines foresee that they may force non-EU stockholders to sell their shares on the basis of a restricted share notice in order to permit the airline to maintain its EU status. The airlines could also negotiate a stock purchase with stockholders to adapt their ownership structure in order to maintain their EU airline status.

Road and rail transport

For overland transport, a Swiss-EU agreement opens up the market for the transport of persons and goods by road and rail and provides a contractual basis for the introduction of a heavy goods vehicle tax. The maximum weight for lorries is increased in Swiss law from 28 to 40 tons and the use of the rail to move cargo through the Alps from Basel to Mendrisio is promoted. The agreement enables road cabotage, avoids empty trucks on the way back affecting costs, prices, margins and logistics. The Swiss truck industry is very active abroad, generating 16 percent of turnover. With empty returns, turnover would decline by one third. Switzerland would also risk a deceleration in the growth of the share of railroad transport through the Alps. Coordination for the heavy goods vehicle tax could be more difficult. The transport system would also be affected by the extinction of mutual recognition of technical norms and of drivers' licenses and authorizations for railroad transport. According to estimates, GDP would be 0.1 to 0.2 percent lower by 2035. [71]

The UK faces the same issues as with air transport. The EU has a framework regulating the carriage of goods in the single market covering drivers licenses and work conditions, cabotage and market access. The geographical location of the UK implies that 99 percent of international road transport takes place with the EU. It is to be noted that 80 percent of cross-border movement of goods is undertaken by foreign trucks. [72]

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67 Approval to an airline to operate for commercial purposes.

68 KPMG, *Brexit Brief: Transport Sector Perspective*, 2016. Accessed May 20, 2017, https://assets.kpmg.com/content/dam/kpmg/pdf/2016/07/jp-en-brexit-transport.pdf.

69 Paul Mcclean and Alex Barker, "UK airlines brought to earth by Brexit." *Financial Times*, February 13, 2017.

70 Robert Van Apeldoorn, "Un 'Brexit dur' pourrait causer de gros soucis à Ryanair et EasyJet." T*rends-Tendances*, February 2, 2017.

71 BAKBASEL, *Die mittel- und langfristigen Auswirkungen eines Wegfalls der Bilateralen I (2015).*

72 The White Paper, 44.

For rail transport, UK operators should keep the possibility to participate in tenders for franchises in the EU provided they comply with the regulatory framework with technology and safety rules and vice versa in the UK for EU operators.[73] Referring to economic and safety regulations, the Office of Rail and Road is not likely to diverge from EU regulations applied to all European rail networks. It may however promote more on-rail competition with a differentiation of charges by Network Rail for different operators. The UK is likely to maintain its role of regulator in the field of environmental or health and safety through its membership in the Channel Tunnel Intergovernmental Commission and organizations such as the International Organization for International Carriage by Rail and the European Railway Agency.

Agriculture and fishing

With regard to agriculture, Switzerland and the EU have facilitated mutual market access with several important bilateral agreements. In 2002, under the first set of bilateral agreements,[74] duties were reduced or tariff-rate quotas[75] established for dried meat, fruit, vegetables, olive oil, cut flowers and ornamental plants; reciprocal free trade for cheese was also progressively introduced and fully realized as of June 1, 2007. Technical barriers to trade were also addressed with the mutual recognition of the equivalence of rules referring to product prescriptions and homologation procedures. In the veterinary area, the equivalence of prescriptions was recognized for animal health, cattle raising and animal protection covering trade of live animals and of animal products. Veterinary controls at the Swiss and EU borders were fully abolished on January 1, 2009. For plants, mutual recognition covers feedstuffs, seeds, organic products as well as prescriptions for the commercialization of wine or quality standards for fruit and vegetables. This implies that Swiss vegetable producers may export to the EU with a Swiss certificate; no further examination is required in the EU.

In 2005, under the second set of bilateral agreements,[76] significant improvements for trade in processed agricultural products were achieved with the simplification of a pre-existing export subsidy and import tax system aiming at adjusting prices at the border with the difference between

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73 Norton Rose Fulbright, *Impact of Brexit on the Transport Sector (2016).*

74 For the list of agreements, see footnote 26.

75 A tariff-rate quota offers the possibility to import a given quantity at a zero or low tariff. Subsequent quantities pay a much higher tariff.

76 The second set of bilateral agreements was signed on October 26, 2004 and included nine agreements. For a brief presentation: *Les Accords bilatéraux Suisse – Union Européenne, Département fédéral des affaires étrangères*, Edition 2016.

Switzerland and the EU for certain basic agricultural inputs (flour, milk components…).[77] The product coverage was also extended by adding *inter alia* coffee, food supplements and phytopharmaceuticals. The EU fully eliminated its duties on imports and subsidies on exports, while Switzerland made significant savings by reducing the level of export refunds allocated to exports to the EU.[78] In addition, Switzerland and the EU have concluded an Agreement on the mutual protection of geographical indications.

The EU is the major export market (58 percent) and supplier (72 percent of imports) for Switzerland for agricultural products and registers a substantial trade surplus. The EU accounts also for a large share of UK farm exports (60-65 percent) and imports (70 percent). The UK is a net importer of agricultural, fish and food products from the EU with imports valued at 28 billion pounds (2015) and exports at 11 billion pounds.[79] The comparison between the two countries stops there. Overall, except for cheese and some processed food products, market opening has remained very limited between Switzerland and the EU due to the strong Swiss protection of its agricultural sector through domestic support and border measures. The UK is in a totally different situation because it implements the common agricultural policy, trades agricultural products freely with the EU under the single market, benefits from preferential access to various markets through EU free trade agreements and is part of the EU schedule of commitments at the WTO.[80]

The consequences of Brexit have been analyzed under various scenarios.[81] The income of UK farmers will depend *inter alia* on the level of subsidies that the UK may maintain; presently they make up 55 percent of farmers' income for an annual total of 3.8 billion euros.[82] The new relationship with the EU and with WTO members will determine the impact on the UK.

With the WTO, key issues to negotiate will cover *inter alia* domestic support, non-tariff barriers and market access. If the UK takes over its proportion of the EU Schedule of commitments,

77 Protocol 2 on processed agricultural products, Free Trade Agreement between the EEC and Switzerland, 1972. Accessed May 20, 2017, https://www.admin.ch/opc/fr/classified-compilation/19720195/index.html.
78 The system of export refunds for processed agricultural products will be phased out by the end of 2020, in accordance with the WTO Nairobi Ministerial Declaration.
79 White Paper, 41.
80 For a good discussion of these aspects, see: House of Lords, *Brexit: agriculture*, European Committee, 20th Report of Session 2016-17, May 3, 2017. Accessed May 20, 2017, https://www.publications.parliament.uk/pa/ld201617/ldselect/ldeucom/169/169.pdf.
81 S. van Berkum, R.A. Jongeneel, HJ C. V. Vrolijk, M.G.A. von Leeuwen, J.H. Jager, I*mplications of a UK exit from the EU for British agriculture, Study for the National Farmers Union, Warwickshire, UK*, LEI Wageningen UR, 2016, http://dx.doi.org/10.18174/377860. Yorkshire Agricultural Society, *The Implications of "Brexit" for UK agriculture*, 2016. Accessed May 20, 2017, http://yas.co.uk/uploads/files/YAS_FSN_Brexit_-_Full_Report.pdf.
82 The annual contribution of the UK to the EU Common agricultural policy is 7.3 billion euros.

questions referring to the quality of the concessions will be addressed, because WTO members will lose flexibility for market allocation under tariff-rate quotas (TRQ). It is to be noted that today, the UK absorbs a very large share of EU imports under TRQs for some products. Overall, the UK's share in total EU imports under TRQs reaches 53 percent for sheep and goat meat, 33 percent for poultry meat, 24 percent for butter and 16 percent for cheese. The EU will have to adapt TRQs for access to its market for WTO members who will do likewise for EU access to their markets. The UK will also need to negotiate TRQs with other WTO members keeping today's bilateral trade level to the extent possible. Some particular situations will have to be addressed. For instance, Scotland is presently presumably using the whole TRQ for "Angus Beef" granted by Korea to the EU. As an out-of-quota export may not be competitive, a renegotiation between the UK, the EU and Korea will be necessary.[83] There is no doubt that the EU and the UK will have to conduct very complex and time-consuming negotiations at the WTO.

Fisheries may also raise delicate issues. EU fleets have been catching much more fish in UK waters (683'000 tons, 2015) than UK fishermen in EU waters (111'000 tons, 2015).[84] The right to fish in EU waters is a very important element of the single market and was also extended to the EFTA/EEA members to also cover EFTA countries' territorial waters. This turned out to be one of the most difficult issues of the negotiations, and was only settled at the very end.

The new EU-UK relationship will have to address requirements referring to food safety, animal and plant health and the environment. As an EU Member State, the UK is member of the Codex Alimentarius Commission, the World Organization for Animal Health and contracting party to the International Plant Protection Convention. At the beginning of Brexit, the UK should have the same legislation as the EU under the Great Repeal Bill which will initially preserve EU regulations in UK law. The delicate issue to negotiate will be the adoption by the UK of future EU Directives and Regulation changes. Acceptance of US regimes for hormone beef or products based on genetically modified organisms within a free trade agreement could raise significant difficulties with the EU.

83 House of Lords, *Brexit: agriculture*, May 2017, 20.
84 The White Paper, 41.

Research and Euratom

Research is also a very important area of cooperation between Switzerland and the EU. With the conclusion of a bilateral agreement in 1999, Switzerland has been able to take part fully in the EU 6th (2003-2006) and 7th (2007-2013) research programs. Under the former, Switzerland contributed 775 million francs, participated in numerous projects and obtained EU contributions amounting to 794 million francs; under the latter, funds attributed to Swiss researchers (2.26 billion francs) exceeded the Swiss financial engagement by 219 million francs. These programs aimed at coordinating research efforts in particular in the areas of information technology and communication, health, energy, nanotechnologies, space and environment. Under full participation, Swiss researchers obtain funding directly from the EU Commission; they can launch and coordinate projects, and have access to the results of other projects. During the past seven years, Switzerland has ranked first in the Global Innovation index.[85] This illustrates the very dynamic environment for basic and applied research. Full participation in the EU program offers excellent research and international cooperation opportunities for universities, institutes and firms. It also contributes to attracting first-class professors and researchers to Swiss universities.

In February 2014, the EU broke off negotiations to extend the 8th research program to Switzerland because, with the acceptance of an initiative to restrict immigration, Switzerland could not sign a protocol extending the AFMP to Croatia. A partial arrangement could be found in December 2014 with a continuation of Swiss participation in Euratom's research projects and in only one segment of Horizon 2020 (called "Scientific Excellence") until December 2016. For the other pillars "Industrial Leadership" and "Societal Challenges", Switzerland was granted third-country status. This had serious consequences as the share of total funding attributed to Swiss researchers decreased from 4.2 percent (2007-13) to 2.2 percent (2014-15) and from 3.9 percent to 0.3 percent for the coordination of projects. In December 2016, following the ratification of the protocol extending the AFMP to Croatia, Switzerland obtained full participation at Horizon 2020.

Research programs have a dynamic effect on the economy. According to an EU study, for each euro invested, an increase in GDP of 6.5 euro can be expected within 20 years. About 15 to 20 percent of the benefit comes from international externalities through networks and cooperation. A non-participation of Switzerland in EU research programs leads to a loss of attractiveness for foreign researchers and the private sector has access to fewer resources to support advanced

85 Johnson Cornell University, INSEAD, and World Intellectual Property Organization, T*he Global Innovation Index 2016: Winning with Global Innovation*, 2016. Accessed May 20, 2017, https://www.globalinnovationindex.org/.

research projects. In turn, the GDP efficiency of other Swiss R&D programs declines by 4 percent. By 2035, the GDP would be 0.5 percent lower.[86]

The White Paper recognizes the importance of science, research and technology. Researchers should continue to participate actively in EU research programs until Brexit and then get funding from the UK government up to completion of the projects. The government will work with scientists, higher education institutions and business to establish a new framework enabling the UK to maintain its leading role, as proven by its third place on the 2016 Global Innovation Index. The UK government is committed to substantially increase its contribution to research with an additional two billion pounds by 2020/21 for a new Industrial Strategy Challenge Fund focusing *inter alia* on robotics and biotechnology. The objective is to "turn strengths in research into a global industrial and commercial lead".[87]

Switzerland has participated in Euratom's research programs in the area of thermonuclear fusion and plasma physics since 1978. Switzerland has the same rights and obligations as EU Member States with respect to the work plan, financial contributions, sharing of knowledge, contracts for industry and participation in committees. The two main Swiss partners are the Federal Polytechnical School of Lausanne (EPFL) and the Paul-Scherrer Institute. Switzerland provides one of the largest European Labs and in 2015, a new Swiss plasma center was opened at EPFL. It focuses on controlled nuclear fusion as a source of energy and is an important national and international research institution.

The UK is a leader in nuclear research and hosts in Oxfordshire the biggest fusion experiment, a Joint European Project, and the largest stockpile of civil plutonium in the world; the latter and uranium enrichment activities as well as nuclear waste are overseen by EU inspectors.[88] The UK will have to leave Euratom, a separate Treaty for "civil nuclear power generation and radioactive waste management"[89] governed by EU institutions.

The UK will need to establish a new regulatory regime to uphold safety standards and to negotiate international agreements in order to maintain access to nuclear technology and to ensure the

86 BAKBASEL, *Die mittel- und langfristigen Auswirkungen eines Wegfalls der Bilateralen I* (2015).
87 White Paper, 58.
88 Andrew Ward and Alex Barker, "Regulation of the nuclear industry after Britain leaves the EU will loom large in exit talks. Energy security, scientific research and medicine, as well as safeguarding of stockpiles of plutonium, will be at stake," *Financial Times*, March 3, 2017.
89 White Paper, 44.

movement of materials, intellectual property and services. Partners including the US and Japan will have to be satisfied with the UK's regulatory regime. It will be necessary for trading and transportation of nuclear materials ranging from fuel for reactors to medical isotopes used in cancer radiotherapy. The tasks ahead are very complex and require expertise that is very limited in the UK.[90] This implies that the UK may have to negotiate a transition period with Euratom and remain temporarily under the surveillance of the EU and the jurisdiction of the ECJ.

Financial services

Thus far, Switzerland has not concluded any sectoral agreement on financial services with the EU. The Swiss State Secretariat for international financial matters has however initiated talks with the EU Commission.[91] Presently, firms established in Switzerland do not have the opportunity to provide financial services across the EU with an authorization from the Swiss regulator; in other words, the Swiss financial industry does not benefit from the so-called financial passports.[92]

Switzerland could seek to reach an equivalence of EU regulations and of surveillance. It closely follows EU legislative developments and has taken over substantial parts with *inter alia* the Markets in Financial Instruments Directive (MiFID II) and the Prospectus Directive as well as the European Market Infrastructure Regulation (EMIR) and the Market Abuse Directive.[93] Equivalence would depend on an assessment by the European Commission and would require constant adaptation of domestic legislation.

Lacking a sectoral agreement or equivalence means that the large Swiss banks and insurance companies have established subsidiaries in the City of London with thousands of employees to provide services to clients across the EU, and also to benefit from the single market. London plays an important role as an entry point to the single market for funds from non-EU countries, a

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90 Ward and Barker, "Regulation of the nuclear industry".

91 Jacques de Watteville, "La prestation de services en matière financière entre la Suisse et l'Union européenne: perspective de la Confédération," in *Services financiers: Suisse et Union européenne*, edited by Christine Kaddous and Sylvain Matthey, Zürich: Schulthess, 2016, 1-8.

92 The notion of a financial passport comes from the second banking directive which allowed banks to operate branches throughout the EU while remaining mostly under the supervision of their home state. Source: Directorate-General for Internal Policies, European Parliament, *Briefing, Brexit: The United Kingdom and EU financial services*, December 9, 2016. Accessed May 20, 2017,
http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/587384/IPOL_BRI(2016)587384_EN.pdf.

93 CMS Cameron McKenna, *Brexit: 5 Things that the UK can learn from the Swiss experience – A perspective from CMS Switzerland*, October 2016. Accessed May 20, 2017, http://www.lexology.com/library/detail.aspx?g=6122454e-d85b-4e43-afcd-38274e48a8f6.

business center for large European banks and a key location for insurers. The consequences of Brexit for the Swiss financial industry will depend heavily on the UK's future access to the single market.

In 2016, London ranked first among global financial centers around the world ahead of New York, Singapore, Hong Kong and Tokyo. Zurich ranked 11th as second European location. [94] In the UK, one million people work in the financial sector and 1.1 million in related services. Half of the business (11 percent of GDP) relates to international activities. This represents about 24 percent of all EU financial services.[95]

For the UK, leaving the single market without obtaining equivalence rights could put 40 to 50 percent of EU-related activity at risk. This would entail about 18 billion pounds in revenue, 10.5 billion pounds in value-added, 3.5 billion pounds of tax revenues and about 30,000 jobs.[96]

Banking

In banking, 80 percent of the activity is oriented toward the local economy with retail and business services.[97] About 35 percent of EU-related banking activity -issuing and trading debt and equity securities, foreign exchange trading and derivatives- amounting to 17 percent (1.8 trillion euros) of all UK banking assets[98] and an estimate of 5 billion pounds of revenues[99], could be at risk of relocation. Banks would incur higher costs due to reorganization and potential establishment of subsidiaries in the EU; for investment banks, overall costs could increase from 3 to 8 percent depending on the operational model. The shift of jobs towards the EU27 would depend on business considerations and on requirements for licensing procedures referring to management, staff and internal controls. As a matter of fact, the share of work force involved in the back office may remain in London.[100]

94 China Development Institute (CDI), and Z/Yen, *Global Financial Centres Index 21*, March 2017. Accessed May 20, 2017, http://www.finance-montreal.com/sites/default/files/publications/gfci_21_0.pdf.

95 Directorate-General for Internal Policies, European Parliament, *Briefing, Brexit: The United Kingdom and EU financial services*, December 9, 2016.

96 Oliver Wyman, *The Impact of the UK's exit from the EU on the UK-based financial services sector*, 2016. Accessed May 20, 2017, http://www.oliverwyman.com/content/dam/oliver-wyman/global/en/2016/oct/Brexit_POV.PDF.

97 Boston Consulting Group in Directorate-General for Internal Policies, European Parliament, *Briefing, Brexit: The United Kingdom and EU financial services*, December 9, 2016.

98 André Sapir, Dirk Schoenmaker and Nicolas Véron, *Making the Best of Brexit for the EU-27 Financial System*. Peterson Institute for International Economics, 2017. Accessed May 20, 2017, http://bruegel.org/wp-content/uploads/2017/02/Bruegel_Policy_Brief-2017_01-090217.pdf.

99 Boston Consulting Group in *Briefing, Brexit* (2016).

100 Sapir, Schoenmaker and Véron, *Making the Best of Brexit (2017).*

For clearing transactions, the UK may be considered a third country by the EU. Euro clearing activities could be partially relocated in the Eurozone. About half of the business (6 billion pounds) may get lost to competitors and costs may increase for clients owing to lower efficiency. Asset management relies on the EU for about 25 percent of revenue (6 billion pounds).

Without regulatory equivalence, passports rights for UK funds sold in the EU, and vice versa for EU funds, would be lost and UK-based asset managers may have to establish subsidiaries across the EU entailing higher costs for customers. This could impact about one-third of this business (2 to 3 billion pounds).

Several banks are contemplating a substantial reduction of jobs in London. Credit Suisse estimates that revenue could decline by 750 million dollars with the loss of the EU passport and no equivalent replacement regime. The bank has started to diminish its activities in London with a reduction of 2,700 jobs in investment banking which could be followed by an additional 1,500 jobs this year. Dublin and Luxemburg are being considered as private banking hubs. UBS has chosen Frankfurt as its main European location for wealth management.[101]

Insurance

In the insurance and reinsurance sector, a large part of the cross-border business is undertaken by subsidiaries in EU Member States. About 10 percent of the sector's revenue (4 billion pounds) may be impacted by Brexit as it is obtained from EU-related business. As 75 percent of this revenue comes from EU subsidiaries, only one billion pounds may be lost to competitors.[102] It remains that a large number of insurers active in the 60 billion pound insurance market use EU passporting rights. They are looking to establish subsidiaries in countries with regulatory flexibility such as the Netherlands, Luxembourg, Ireland or Malta. An application may take three to six months and include a negotiation with the regulator on the activities of the subsidiary. It may take up to 15 months if the subsidiary has to write new policies. The industry is also concerned about how to pay claims made on cross-border policies written before Brexit.[103]

101 Finews, Credit Suisse. "So viel kostet ein Brexit die Bank." Accessed February 24, 2017, http://www.finews.ch/news/banken/26358-credit-suisse-brexit-david-mathers-kosten.

102 Oliver Wyman, *The Impact of the UK's exit from the EU (2016).*

103 Oliver Ralph, "UK insurers race to set up EU subsidiaries." *Financial Times*, February 20, 2017.

Auxiliary services

Brexit would also have an effect on activities providing services to the financial sector such as auditing, accounting, legal services, management consultancy and other business services. These auxiliary services are important intermediate inputs for banking and insurance. Revenue losses could range from 8 to 35 billion pounds, the latter being based on the use of intermediate services by the financial sector.[104] The effects of Brexit could however be smaller than feared, in particular if the UK attracts new business with lower taxation, introduces more business-friendly regulations and continues to be a magnet for the successful development of new financial instruments. [105]

The UK will aim for "the freest possible trade in financial services" [106] with a "strong cooperative oversight arrangement".[107] A common set of rules under a single authorization from a regulator should continue to permit 5,000 UK firms and 8,000 EU firms to carry out respectively UK-EU and EU-UK cross-border activity for financial services.[108] According to the EU's present position this would imply the UK's participation in the single market with common rules and equivalent supervisory regimes as well as no control on EU immigration.

If the UK were to lose its passport rights to the single market, the cost of capital for EU households and corporations would increase.[109] In order to mitigate these effects, the EU should create a fully integrated financial market by strengthening the European Securities and Markets Authority with a single supervision for EU capital markets, reinforcing the banking union and improving oversight of the financial system infrastructure - in particular the regulatory relationship with third countries for clearing houses.[110]

104 Oliver Wyman, *The Impact of the UK's exit from the EU.*

105 Simeon Djankov, *Will the City of London Lose Business after Brexit?* Paper part of a larger research project, Finance Department, London School of Economics, January 18, 2017. Accessed May 20, 2017, http://www.lse.ac.uk/fmg/dp/discussionPapers/fmgdps/DP762.pdf.

106 The White Paper, 42.

107 Ibid.

108 Ibid.

109 Households: mortgage and consumer credit, + 5 to 6 base points, 12 billion euros per year. Corporations: cost estimated at 0.05 to 0.01 percent of EU27 GDP. Sapir, Schoenmaker, and Véron, *Making the Best of Brexit* (2017).

110 Ibid.

Free trade and customs cooperation

The UK government did not retain the option of a customs union in the White Paper. It is of no surprise. It had been assessed critically in several studies because it would entail adopting the EU common external tariff, EU trade policy including anti-dumping and safeguard actions, and EU third country policy. At the WTO, the UK would not be able to present independent positions but would have to follow suit with the EU Commission.[111]

The White Paper refers to seeking a comprehensive free trade agreement. Customs duties on all manufactured products ought to be eliminated. British producers would however need to meet origin rules; specific processing rules, or a classification shift within the Harmonized System, or value-added rules, in order to qualify for free trade status.[112] They could use EU materials but would face constraints with third-country inputs. Some value chains may be affected. UK exporters would also need to fulfill EU technical standards.

For agriculture, the extent of liberalization would depend on the UK's domestic support for farmers, sanitary and phytosanitary rules and specific national interests. Maintaining free trade would be of the utmost importance as for several product categories the EU accounts for more than 80 percent of UK total exports (sheep meat, oil seeds, cereals, beef) or more than 70 percent (poultry, diary, pig meat). EU tariff for beef (more than 50 percent) and pigs makes non-EU exports uncompetitive. Without free trade, the imposition of EU tariffs would imply a significant disruption of exports without any possibility of a rapid reallocation to other markets.[113] Implications would be significant for Scotland, the EU being its major export market for sheep and cattle.[114] As important as tariffs, the UK would also have to maintain over time the present level of harmonization and mutual recognition of regulatory standards to avoid technical barriers to trade.

The UK could also address the basic policy choice of continuing to protect agriculture or to open the sector to world competition.[115] Reforming the farming sector would lead to lower food

111 The EU Commission represents EU member States at the WTO except in the budget committee.

112 The Harmonized System (HS) is a classification system for goods comprising 21 Sections, 96 Chapters and 1,241 headings (4-digit level). Some headings are sub-divided into sub-headings (6-digit level), which are further sub-divided at a national level into two-dash sub-headings (8-digit level). The HS includes 5,018 separate categories of classification of goods. It is implemented by the international Convention on the Harmonized Commodity Description and Coding System of 1 January 1988. It is now employed in the customs tariffs and trade statistical nomenclatures of nearly one hundred and twenty countries. For more details, see Hironori Asakura, "The Harmonized System and Rules of Origin," *J.W.T.* 27(4) (1993): 5-21.

113 House of Lords, *Brexit: agriculture*, May 2017, 13. Accessed May 20, 2017, https://www.publications.parliament.uk/pa/ld201617/ldselect/ldeucom/169/169.pdf.

114 Ibid. 29.

115 "A chance to liberalize British agriculture. Brexit and new trade deals could provide bracing competition," *Financial Times*, January 22, 2017.

prices and facilitate the negotiation of free trade agreements, in particular with the United States. Farmers could still obtain income support and retribution for environmental activities. Government payments would not, however, compensate the loss of competitiveness.

Referring to EU trade defense measures towards third countries, the UK should not continue to apply them. This means that the EU provisional and definitive anti-dumping (96: end 2016) and countervailing measures (12: end 2016) will cease to apply for imports into the UK.[116] In addition, the UK will not be involved in ongoing EU investigations, including re-openings (51: end of 2016). The UK will have to undertake its own investigations. In 2016, the EU Commission initiated 22 new investigations against 13 trading partners.[117]

Apart from free trade, the White Paper refers to establishing a relationship with the EU through a "new customs agreement". It is to be expected that the UK will keep most of the Community customs code (CCC). This could lead to the conclusion of various arrangements. The CCC includes for instance the authorized economic operator (AEO) status which enhances international supply chain security. Economic actors commit to complying with customs legislation and taxation rules and to not committing criminal offences related to the economic activity, to keeping appropriate records, to financial solvency, to proven practical standards of competence, and to appropriate security and safety measures. They benefit from priority and simplified treatment in customs procedures. The EU has concluded mutual recognition agreements on AEOs with Andorra, China, Japan, Norway, Switzerland and the United States. Under such arrangements, customs administrations recognize the AEO authorization issued under the other program and provide reciprocal benefits to firms certified under AEOs or similar programs of partners.[118] This results in fewer security controls at the border. [119]

In order to avoid filing electronic Entry Summary Declarations prior to each import arriving at the EU border, the UK may consider negotiating a security agreement with the EU, similar to Norway, Switzerland, Liechtenstein and Andorra. The UK will also have to decide whether to continue to

116 European Commission, *Anti-dumping, anti-subsidy, safeguard, statistics covering the first 12 months of 2016*, February 28, 2017. Accessed May 20, 2017, http://trade.ec.europa.eu/doclib/docs/2017/january/tradoc_155243.pdf.

117 Ibid.

118 European Commission, Taxation and Customs Union, "Authorized Economic Operator (AEO)". Accessed May 20, 2017, http://ec.europa.eu/taxation_customs/general-information-customs/customs-security/authorised-economic-operator-aeo/authorised-economic-operator-aeo_en#what_is.

119 WTO, *Trade Policy Review, The European Union* (2015) 37.

cooperate with the EU on projects such as the Automatic Export System and the Single Window aiming at improving the efficiency and effectiveness of customs procedures.

The UK could also envisage concluding an agreement with the EU on customs cooperation and mutual administrative assistance in customs matters. The EU has 72 such agreements including with Switzerland and also with the latter an agreement to avoid smuggling and fraud in the field of indirect taxation. This agreement complements the 1997 Switzerland-EU additional Protocol to the free trade agreement on mutual assistance in customs matters.[120] It strengthens mutual cooperation in combating offences in the area of indirect taxes (value-added tax, specific excise duties on alcohol, tobacco, gas), subsidies and public procurement. It aims at speeding cooperation between Swiss and EU customs, tax and judicial authorities. Under this agreement Switzerland has accepted new obligations providing legal and administrative assistance in the area of indirect taxes, and legal assistance for money laundering if the assets arise from tax fraud or commercial smuggling. Switzerland will take coercive measures not only in legal but also in administrative assistance and will use the same tools -coercive measures- in dealings with the EU authorities as under Swiss law.

Customs cooperation could also cover *inter alia* transit, customs warehousing, inward processing, processing under customs control, temporary admission, outward processing, and exportation. The re-establishment of a border with the EU including between Northern Ireland and Ireland may mean adapting infrastructure and personnel to EU-UK trade. This is a very sensitive political issue which may have substantial social implications and which will require close scrutiny by the EU and the UK.

Referring to customs duties, the UK has indicated that it may adopt the EU tariff and register it with the WTO.[121] This would greatly simplify WTO negotiations with major partners. UK exporters of manufactured products will face higher costs with the EU for border procedures and potentially also customs duties. According to the WTO, agricultural imports face complex tariff structures such as entry price systems and non ad valorem regimes.

120 This protocol has the same content as Protocol 11 of the EEA.

121 The EU common external tariff is 6.4 percent (simple average), 14.4 percent for agricultural products and 4.4 percent for non-agricultural products. The highest rates in agriculture are for dairy products (36.1 percent), sugars and confectionary (25.7 percent) and animals and products thereof (20.2 percent). In manufacturing, the highest rates are for clothing (11.6 percent), textiles (6.6 percent), transport equipment (5 percent) and chemicals (4.4 percent). Source: WTO, *Trade Policy Review, The European Union* (2015), 43.

Third-country policy

The UK has set a very clear position in the White Paper aiming at becoming a "champion of free trade" by way of bilateral free trade agreements. The UK will have to rebuild a network composed of 37 regional trade agreements presently in force.[122] They are likely to serve as a reference for market access, in particular for agriculture. As long as the UK has not reestablished these preferential ties, UK importers will lose access to low price agricultural products and UK exporters may lose markets as they may not benefit any more from preferential tariff-rate quotas.

Some free trade agreements of the EU are highly comprehensive and interlinked. For example, with its European and Mediterranean partners, the EU has established a large free-trade system through a regional Convention on pan-Euro-Mediterranean preferential rules of origin.

All countries have adopted the same rules of origin and customs procedures; in addition, inputs from countries linked by a free trade agreement can be used to meet origin requirements to be granted preferences. For example, Switzerland may use originating inputs from all the countries which have concluded FTAs with both EFTA countries and the EU. Signatories of the Convention include the European Union, the EFTA States (Iceland, Norway, Liechtenstein, Switzerland), the participants of the Barcelona Process (Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Syria, Tunisia, Turkey, Palestine) and the Faroe Islands. The participants in the Stabilization and Association Process (Albania, Bosnia and Herzegovina, Macedonia, Montenegro and Serbia, as well as Kosovo under United Nations Security Council Resolution 1244/99) are also part of the system. The EU has also concluded an agreement with Ukraine.

The EU has also been very active on other continents. In the Southern part of Africa, the EU has established free trade relations with the South African Development Community Members.[123] In North America, a broad agreement was signed with Canada in 2016 and the agreement with Mexico is presently subject to expansion and modernization. The EU has also concluded an Association Agreement with the Central American Region (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama). This agreement covers political dialogue, cooperation and trade. The latter includes tariff concessions, services, SPS measures, government procurement, and protection of intellectual property rights including geographical indications. With Colombia, Ecuador and Peru, the FTA additionally includes trade and sustainable development as well as a comprehensive dispute resolution mechanism. The EU has been in negotiations with Mercosur

122 Ibid.
123 Botswana, Lesotho, Mozambique, Namibia, South Africa, Swaziland.

since 2000.[124] The UK will face the same difficult issues referring to the opening of its market for agricultural products and of Mercosur's for manufactured products, services and government procurement. In Asia, the EU has concluded an agreement with Singapore, South Korea and Vietnam, and is currently in negotiations with Japan, Thailand, India, Indonesia, Malaysia and the Philippines. In 2013, the EU launched negotiations with the United States for a transatlantic trade and investment partnership. They could not be concluded under President B. Obama. His successor, President D. Trump, has not yet taken a position on the continuation of the negotiations. He has significantly changed the orientation of US trade policy, setting an emphasis on the protection of local workers against foreign competition, prioritizing the US for investment and the relocalization of industry in the United States.

The EU has also developed Economic Partnership Agreements (EPA) with seven regional groups covering the Caribbean, the Pacific, East, Central, Southern and West Africa.[125] Countries not under EPA may benefit from the EU General System of Preferences (GSP), which provides tariff preferences to developing countries under a standard GSP, a GSP+ offering additional tariff reductions to vulnerable countries ratifying and implementing core conventions in the fields of human and labor rights, environmental protection and good governance. The least developed countries are granted duty-free and quota-free access to the EU market for all products except arms and ammunitions under the Everything but Arms arrangement of the GSP.

The UK will need several years to establish a network of agreements comparable to the EU's. Each agreement will have to be negotiated and undergo national approval procedures. In the meantime, UK firms will be at a competitive disadvantage compared to EU member states. Whether the UK can succeed with the US will depend on UK's sensitivity for issues such as dispute settlement resolution for investment, liberalization for agriculture, rules referring to hormone beef and genetically modified organisms, technical norms, US liberalization of government procurement at the State and city level and Buy American provisions, as well as geographical indications.

124 Argentina, Brazil, Paraguay, Uruguay.
125 WTO, T*rade Policy Review, The European Union* (2015).

The road ahead

The Swiss experience with the EU over more than half a century clearly shows that integration spurs growth and disintegration slows down growth. European integration had a positive effect on Switzerland because it stimulated domestic reforms, efficiency, openness and exposure to more competition. A larger market enabled a better use of comparative advantages and the realization of economies of scales. Integration also faced resistance; the liberalization of Swiss agriculture has lacked political support thus far. Integration was also at risk when the EU's key principles, such as free movement of persons, were questioned. For Switzerland and the UK, highly dependent on the EU market, integration is necessary but not sufficient for economic success. They need, in addition, good framework conditions for business, excellent infrastructure, a skilled manpower, a flexible labor market, quick adaptation to new technologies, high productivity, top-level education, outstanding research facilities and competitive tax regimes.

In the next couple of years, the UK will have to settle the conditions of leaving the EU with the EU27 and create a new framework for cooperation. In the March 29, 2017 letter triggering Art. 50 of the Lisbon Treaty[126], the UK puts emphasison developing a "new, deep and special partnership". The UK "does not seek membership of the single market: we understand and respect your position that the four freedoms of the single market are indivisible and there can be no cherry picking". The UK nevertheless suggests a "bold and ambitious Free Trade Agreement" which should have a "greater scope and ambition than any such agreement before it so that it covers sectors crucial to our linked economies such as financial services and network industries". On standards, the letter mentions that there is a "need to prioritise how to manage the evolution of our regulatory framework, maintain a fair and open trading environment, and how we resolve disputes". The UK also pleads for negotiating in parallel the withdrawal from the EU and the terms of the new partnership.

According to the guidelines adopted by the EU Council at the April 29, 2017 Summit held in Brussels, the EU will first focus on the conditions of an orderly withdrawal.[127] Key topics to be addressed will include EU citizens' rights to acquire permanent residence after five years of continuous legal residence, a financial settlement covering all commitments and liabilities, arrangements for the transfer of EU agencies located in the UK to the EU, procedures pending before the ECJ, the EU Commission and EU agencies involving the UK or natural or legal persons in the

126 Letter: Costas Pittas, "Text – UK letter to EU's Tusk triggering Brexit process," *Business Mail*, March 29, 2017. Accessed May 20, 2017, http://cyprusbusinessmail.com/?p=42849.

127 European Council, *European Council (Art. 50) guidelines for Brexit negotiations*, Press Release, April, 29 2017. Accessed May 20, 2017, http://www.consilium.europa.eu/en/press/press-releases/2017/04/29-euco-brexit-guidelines/.

UK and dispute settlement and enforcement mechanisms regarding the withdrawal agreement. During this first phase the UE will also deal with third countries issues seeking solutions to avoid a hard border on the island of Ireland, arrangements regarding the Sovereign Base Areas of the UK in Cyprus and UK obligations referring to international agreements whereby the EU will keep its rights and obligations.[128]

Subject to sufficient progress on the withdrawal negotiations, the EU will then engage on future relations. Responding to the UK's interest, the EU will negotiate an ambitious free trade agreement to be finalized after the UK will have left the EU; participation in any part of the single market is excluded because it would affect its integrity and functioning. Enforcement and dispute settlement will have to be devised without impacting on EU autonomy and decision-making. Cooperation in other areas such as the fight against terrorism and international crime, security, defense and foreign policy could also be envisaged. In addition, the Council points to the fact that any EU-UK agreement applying to Gibraltar will require an agreement between Spain and the UK. In the case that implementation of EU acquis would be extended until the entry into force of the new relationship, EU regulatory, budgetary, supervisory, judiciary and enforcement instruments and structures would continue to apply.[129]

Analyses of Swiss and UK integration processes show that integration benefits both sides, not least the EU which gains significant trade surpluses with both partners and has a far larger number of its residents in their country than vice versa. Why would the EU risk that by moving backward on integration across the board?

The answer is very simple. The EU has red lines. The UK knows them very well, not least because of having applied them to Switzerland. They include free movement of persons as well as ensuring homogeneity and legal security for business and for individuals.[130] They have been repeated by the EU Council to Switzerland in February 2017. Furthermore, the EU has conditioned any additional participation of Switzerland in the single market to an overarching institutional agreement including surveillance, adaptation of the Swiss legal framework to new EU rules, interpretation of pertinent EU law by the ECJ and dispute settlement. This would also apply to the UK.

128 Ibid.
129 Ibid.
130 Council of the EU, *Council conclusions on EU relations with the Swiss Confederation* (2017).

The Swiss experience suggests that an EU à la carte, with for instance passport rights for financial services or full access to EU airports for UK airlines, may prove very difficult to achieve. On the one hand, the EU Council negotiating guidelines adopted on April 29, 2017 clearly exclude a sectoral approach. On the other hand, the UK may not be able to commit adopting future EU legislation in specific areas without participating in the decision-making process, or to accept ECJ jurisdiction.

An EU-UK free trade agreement (FTA) should be at the center of future economic relations. It should eliminate customs duties for manufactured goods and liberalize agricultural trade to the largest possible extent. Other issues such as technical barriers to trade, sanitary and phytosanitary measures, services, government procurement, investment and intellectual property could also be included as in other FTAs; they would however rely significantly on WTO Agreements. Provisions on workers' rights and on the environment, as well as the pursuit of various cooperation programs linked to education, research, customs and security, could also be envisaged. The City of London would lose passport rights, the car industry might reconsider investments in the UK, trade in manufactured and agricultural products would face additional costs to meet rules of origin and customs controls procedures, airlines, trucks and railroads would face limitations in market access.

In the coming years, the UK integration level with the EU should decline and negatively affect UK economic growth. The only way to avoid this scenario would require the EU to take a pragmatic approach on some of its key principles. This may lead other EU members to opt for a more flexible integration scheme creating a new set of circles around the EU with tailor-made relations. As a matter of fact, the EU has already accepted the concept of variable geometry *inter alia* for the euro, the Schengen area and its new members. In addition, on March 1, 2017 the European Commission launched a broad reflection on the future of the EU27 focusing on five scenarios.[131] They refer to maintaining the present course, focusing on the single market while giving up some areas or letting some groups of members put more emphasis on some sectors, increase efficiency in some areas (innovation, trade, migration) while doing less in others (public health, regional development) and deepen integration by sharing more power, resources and decision-making. The various options cover the intensity and the areas of integration and are fully consistent with the EU Council negotiating guidelines for Brexit.

131 European Commission, *White Paper on the Future of Europe. Reflections and scenarios for the EU27 by 2025*, COM (2017)2025, March 1, 2017. Accessed May 20, 2017, http://europa.eu/rapid/press-release_IP-17-385_en.htm.

This initiative of the EU Commission clearly shows that the EU is at a crossroads and is ready to consider a broad range of possibilities. The core principles of homogeneity, legal security, ECJ competence and free movement of persons are untouched. Although this is unlikely to change in the near future and avoid a clear-cut Brexit, it is worth mentioning that the EU was always meant to be an integration scheme meeting the aspirations of the people. The UK is a challenge, too large not to be addressed carefully, and also an opportunity to consider the major sensitivities of its large and diverse membership. The UK and the EU face the significant task of laying the foundations for a prosperous UK and EU27 whilst continuing to play a leading role in world affairs.

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