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Keep Calm and Negotiate On: The United Kingdom's Withdrawal from the European Union and Suggestions for a Smooth Departure

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**Keep Calm and Negotiate On:
The United Kingdom's Withdrawal from the European
Union and Suggestions for a Smooth Departure**

By: Aryanah Yasmine Eghbal

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Introduction

After a forty-three year relationship, the United Kingdom (UK) finally decided to call it quits on its often-tumultuous relationship with the European Union (EU). Entered into with skepticism, and strife with disagreements, their bond was weakened over the decades by a mounting desire for a stronger “British” identity, a growing contempt for forced immigration quotas, and a constant power struggle for greater sovereignty.¹

On June 23, 2015, the citizens of England, Scotland, Wales, and Northern Ireland voted on whether to stay within the EU as a member state or leave, and defer back to their pre-EU, full independence.² The referendum had a large voter turnout with 72.2% of the population taking part, and the outcome mirrored the growing sentiment of unrest throughout the UK.³ The final tally showed that 51.9% of UK voters aspired to leave the EU, while 48.1% preferred to remain within it.⁴

To the surprise and dismay of Prime Minister David Cameron (Cameron), the campaign for Brexit (the adopted shorthand for “British Exit”) had succeeded.⁵ With the UK’s rapidly diminishing control within the EU, many voters concluded that they needed to regain their past sovereignty, and the only possible way to do that would be through severing ties with the EU.⁶ Cameron was not convinced that the referendum would pass; thus, he put it forth as a way to pacify a seemingly insignificant, yet prominent, minority within the governing Conservative Party.⁷ Although Brexit appeared impossible in months prior, the results triggered a chain reaction of panic and

¹ Macer Hall, *Damning Report: EU Dissatisfaction Reaches New High Level After Brexit Vote*, EXPRESS (June 28, 2017), <http://www.express.co.uk/news/politics/822014/EU-dissatisfaction-Brexit-vote-NEW-HIGH-level-BRUSSELS>.

² Alex Hunt & Brian Wheeler, *Brexit: All You Need to Know About the UK Leaving the EU*, BBC (Oct. 26, 2017), <http://www.bbc.com/news/uk-politics-32810887>.

³ *EU Referendum: Results*, BBC, http://www.bbc.com/news/politics/eu_referendum/results (last visited Nov. 10, 2016); Macer Hall, *Damning Report: EU Dissatisfaction Reaches New High Level After Brexit Vote*, EXPRESS (June 28, 2017), <http://www.express.co.uk/news/politics/822014/EU-dissatisfaction-Brexit-vote-NEW-HIGH-level-BRUSSELS>.

⁴ *Id.*

⁵ Hunt & Wheeler, *supra* note 2.

⁶ *Id.*

⁷ See Rowena Mason et. al., *EU Referendum to Take Place on 23 June, David Cameron confirms*, THE GUARDIAN (Feb. 20, 2016), <https://www.theguardian.com/politics/2016/feb/20/cameron-set-to-name-eu-referendum-date-after-cabinet-meeting>.

uncertainty around the country.⁸ The UK is the first member state to have a vote that resulted in a decision to leave,⁹ and no one, UK citizens and those beyond their borders, knows quite what it means for the country and its relations, not only with the EU but also with the world at large.¹⁰

The primary concern remains how the UK will negotiate its exit and future. If and when the UK officially withdraws from the EU, forty-two years of trade deals and treaties will unravel, and the UK will essentially be forced to start anew. The UK currently has access to a third of the world's markets by value, as well as "preferential market access to over [fifty] countries outside the EU."¹¹ The EU opened these doors, and they will close upon the UK's final day of EU membership. Some proponents of the leave campaign stressed that the UK could break into new markets that the EU was never able to; however, countries working alone, like Canada and Australia, have been unable to do so.¹² Independent countries have significantly less bargaining power, as seen through Switzerland's 2014 bilateral deal with China.¹³ China is a prominent world economic power and has negotiated immediate tariff-free entry of Chinese products into the Swiss markets, while the Swiss have to wait nearly fifteen years to have their products enter the Chinese market.¹⁴

The formal and legal process of leaving the EU has not yet commenced, but once it does, the final plans may not only need to have been formulated but must immediately be set into action by enacting Article 50 of the Lisbon Treaty (Article 50).¹⁵ This article will attempt to both examine the ramifications of the UK's decision to leave the EU, as well as determine a path to begin the process of renegotiating trade deals with the EU and other

⁸ Peter S. Goodman, *Turbulence and Uncertainty for the Market After 'Brexit'*, N.Y. TIMES (June 23, 2016), <https://www.nytimes.com/2016/06/25/business/international/brexit-financial-economic-impact-leave.html>.

⁹ Steven Erlanger, *Britain Votes to Leave E.U.; Cameron Plans to Step Down*, N.Y. TIMES (June 23, 2016), <https://www.nytimes.com/2016/06/25/world/europe/britain-brexit-european-union-referendum.html>.

¹⁰ Europe and the world pondered what this meant for the future of the EU. Specifically, would such a withdrawal initiate a chain reaction amongst other disgruntled countries? This may only be seen in years to come.

¹¹ *10 Facts About EU Trade Deals*, CBI, <http://www.cbi.org.uk/business-issues/uk-and-the-european-union/eu-business-facts/10-facts-about-eu-trade-deals-pdf/> (last visited Oct. 25, 2017).

¹² *Id.*

¹³ See Alicia Garcia-Herrero & Jianwei Xu, *UK-China Agreement on Trade in Services Is no Substitute for a UK-EU Deal*, BRUEGEL (Dec. 6, 2016), <http://bruegel.org/2016/12/uk-china-agreement-on-trade-in-services-is-no-substitute-for-a-uk-eu-deal/>.

¹⁴ *10 Facts About EU Trade Deals*, *supra* note 11.

¹⁵ See Hunt & Wheeler, *supra* note 2.

countries throughout the world. *Part I* will begin by providing a brief historical overview of the formation of the EU and a focus on how and when the UK joined the EU. *Part II* will present the stages of leaving the EU, specifically introducing Article 50 and how it is used. *Part III* will provide an understanding of what trade deals are, how they work within the EU, and what will be necessary for the UK to prioritize in preparing for negotiating new trade deals. *Part IV* will examine some of the trade models currently used around the world, as well as if and how the UK may employ such a model. *Part V* will offer some conclusory remarks, as well as outline a suitable model for a UK trade model to begin negotiations that may provide the optimal conditions for a smooth departure and a fresh start.

I. Background

a. *The Formation of the European Union*

With a cohesive, stronger Europe in mind, a number of 20th century European leaders formulated a framework for the aptly named European Union; a coalition that could both protect their collective interests and promote their individual economic viability. There were eleven founding fathers of the EU, including Robert Schuman, the French foreign minister from 1948 to 1952; Konrad Adenauer, the first Chancellor of the Federal Republic of Germany from 1949 to 1963; and Winston Churchill (Churchill), the former British Prime Minister.¹⁶ Churchill, the Prime Minister twice between 1940 and 1951, led the crusade for a “United States of Europe” and spent the majority of his time in office working to eradicate post-World War II nationalism while prioritizing a continent-wide democracy.¹⁷

After World War II, France and Germany actively worked to maintain their newfound relationship and created a forward-looking alliance through the European Coal and Steel Community (ECSC) in 1951.¹⁸ The ECSC was designed to aid the economies and industries of the six countries, while raising

¹⁶ *The Founding Fathers of the EU*, EUROPA, https://europa.eu/european-union/about-eu/history/founding-fathers_en#box_9 (last updated Oct. 24, 2017).

¹⁷ *Winston Churchill: Calling for a United States of Europe*, EUROPA 1, 1, https://europa.eu/european-union/sites/europaeu/files/docs/body/winston_churchill_en.pdf (Oct. 25, 2017).

¹⁸ *European Coal and Steel Community*, HARV. BUS. SCH. LIBR., https://www.library.hbs.edu/hc/lehman/chrono.html?company=european_coal_and_steel_community (last visited Oct. 25, 2017).

the standard of living.¹⁹ This would eventually be viewed as a precursor to the EU.²⁰ Similarly, Belgium, France, Germany, Italy, Luxembourg, and the Netherlands then created a European Economic Community (EEC) at the end of the 1950s, creating a common market amongst themselves.²¹ Denmark, Ireland, and the UK followed suit, joining the EEC in 1973, while the last far right-wing dictatorships in Europe collapsed, ending with General Francisco Franco's death in Spain (1975).²² The Single European Act was then signed in 1986, furthering the strategic relationships forming within Europe through opening borders and creating a single market amongst all signatories.²³

The fall of communism brought down both the Berlin Wall and the barriers preventing a deeper relationship between several EU countries.²⁴ Upon recognizing this benefit, the Single European Act implemented plans to ensure four freedoms: movement of goods, services, money, and people.²⁵ While the EU was a product of prior coalitions that simply evolved, like the ECSC, the signing of the Maastricht Treaty in 1993 is widely regarded to have solidified the coalition.²⁶ It led to the creation of a single currency, the Euro, and was followed by the Treaty of Amsterdam in 1999, which resulted in an agreement by EU countries to give some traditional, strictly governmental powers over to the EU Parliament.²⁷ These two treaties attracted signatories and enthusiasm, perhaps particularly at the prospect of shared resources through simplified trade.²⁸ Even more relevant to the citizens and growing immigrant population: communication was simplified, cross-border travel

¹⁹ *Treaty Establishing the European Coal and Steel Community, ECSC Treaty*, EUROPA, <http://eur-lex.europa.eu/legal-content/RO/TXT/?uri=URISERV:xy0022> (last updated Oct. 15, 2010).

²⁰ *A Brief History Of The EU*, NPR, <http://www.npr.org/templates/story/story.php?storyId=128389419> (last visited Oct. 30, 2017).

²¹ *A Peaceful Europe – The Beginnings of Cooperation*, EUROPA, https://europa.eu/european-union/about-eu/history/1945-1959_en (last updated Oct. 24, 2017).

²² *The History of the European Union*, EUROPA, https://europa.eu/european-union/about-eu/history_en (last updated Oct. 24, 2017).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *See Treaty of Maastricht on European Union*, EUROPA, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Axy0026> (last updated Oct. 15, 2010). The Treaty of Maastricht, designed to further unify a broken Europe, was created with a few notable aspirations, including strengthening and unifying European institutions, establishing a common currency, and fortifying foreign policy.

²⁷ *The History of the European Union*, *supra* note 22.

²⁸ *See 2.6. The Treaties as Instruments of Progress*, EUROPEDIA, http://www.europedia.moussis.eu/books/Book_2/2/2/6/?all=1 (last visited Oct. 30, 2017).

became more accessible, and the door to an intercontinental education was opened for European students.²⁹

The 2000s welcomed even more members and solidified the Euro as the currency for most EU members.³⁰ It has, however, dealt the EU many crises, including the global economic crisis,³¹ growing environmental concerns,³² and the mass migration from Syria and Northern Africa into Europe,³³ all happenings that shook the foundations upon which the EU was built.

Today, after a tedious and difficult beginning with six founding countries, the EU is comprised of twenty-eight member states.³⁴ Applications from more countries are awaiting approval, including Albania, Montenegro, Macedonia, Serbia, and Turkey (whose application has been pending for nearly twenty years).³⁵ The approval rating of the EU has faltered throughout the years, with countries expressing regret and criticism of their inability to control their own currency, governmental decisions, and growing unemployment rates.³⁶ The lofty, original objective of creating communal prosperity has proven more easily said than done and has been overshadowed by a somewhat divided Europe.³⁷

²⁹ See STEFANIA BARIATTI, CASES AND MATERIALS ON EU PRIVATE INTERNATIONAL LAW 13 (2011); MICHAEL BYRAM & ANWEI FENG, LIVING AND STUDYING ABROAD 1 (Michael Byram & Anwei Feng eds., illustrated ed. 2006); Conor Gaffey, *Five Things You Need to Know About the Schengen Agreement*, NEWSWEEK (Sept. 14, 2015, 1:55 PM).

³⁰ *The History of the European Union*, supra note 22. The Euro was developed by the Economic and Monetary Union as a way to further integrate EU economies. Presently, only nineteen of the twenty-eight EU countries have adopted the Euro and together create the "Eurozone." *The Euro*, EUROPA, http://europa.eu/european-union/about-eu/money/euro_en (last updated Oct. 24, 2017).

³¹ See Mark Landler, *The U.S. Financial Crisis Is Spreading to Europe*, N.Y. TIMES (Sept. 30, 2008), <http://www.nytimes.com/2008/10/01/business/worldbusiness/01global.html>.

³² See *Almost 600,000 Deaths Due to Air Pollution in Europe: New WHO Global eReport*, WHO (Mar. 25, 2014), <http://www.euro.who.int/en/health-topics/environment-and-health/air-quality/news/news/2014/03/almost-600-000-deaths-due-to-air-pollution-in-europe-new-who-global-report>.

³³ See Rod Nordland, *A Mass Migration Crisis, and It May Yet Get Worse*, N.Y. TIMES (Oct. 31, 2015), <https://www.nytimes.com/2015/11/01/world/europe/a-mass-migration-crisis-and-it-may-yet-get-worse.html>; see also *Migrant Crisis: Migration to Europe Explained in Seven Charts*, BBC (Mar. 4, 2016), <http://www.bbc.com/news/world-europe-34131911>.

³⁴ *EU Member Countries in Brief*, EUROPA, https://europa.eu/european-union/about-eu/countries/member-countries_en (last updated Oct. 24, 2017).

³⁵ Alice Foster, *EU Expansion: Which Countries Are Waiting to JOIN?*, EXPRESS <http://www.express.co.uk/news/world/664966/EU-Which-Countries-Waiting-to-Join-European-Union-Turkey-Balkan-States> (last updated June 22, 2016, at 3:19 PM).

³⁶ See Bill Lee, *The European Union: A Failed Experiment*, HARV. BUS. REV. (June 4, 2013) <https://hbr.org/2013/06/the-european-union-a-failed-ex>.

³⁷ Lee, supra note 36.

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b. Focusing in on the United Kingdom's Relationship with the European Union

As countries wrestled to join the ECSC after its founding, the UK chose to remain independent in an attempt to protect its rising GDP. The UK opted to conduct its trade under the European Free Trade Association (EFTA), which was originally founded by the UK and six other European countries to ensure free trade within Europe, as well as encourage economic cooperation.³⁸ By 1973, however, the UK left the EFTA to join the EEC.³⁹ It had first applied and was denied (under French President Charles de Gaulle's authority) admittance into the EEC in 1963.⁴⁰ Once de Gaulle retired in 1969, the UK reapplied and was eventually admitted in 1973.⁴¹ By 1975, the UK government was prepared to leave after being disappointed with the lackluster benefits, yet a referendum by the people proved the majority preferred to stay within the allegiance.⁴² The following decades were rife with economic problems and a constant struggle for greater UK control within the now modern EU.⁴³ France and the UK consistently clashed over everything from Mad Cow Disease and the selling of British beef in mainland Europe to the restriction of London's banks and financial sector.⁴⁴ In her 2003 book, the former Prime Minister of the UK, Margaret Thatcher, noted that:

[I]t is highly questionable whether when 'Europe speaks with one voice', as we are so often told it is doing, anyone is really listening. Europe's reputation as a serious player in international affairs is

³⁸ *EFTA Through the Years*, EFTA, <http://www.efta.int/about-efta/history> (last visited Nov. 15, 2016).

³⁹ See *EFTA Through the Years*, *supra* note 38; 1973: *Britain Joins the EEC*, BBC, http://news.bbc.co.uk/onthisday/hi/dates/stories/january/1/newsid_2459000/2459167.stm (last visited Oct. 20, 2017).

⁴⁰ *Britain's 40 Year Relationship with the EU*, TELEGRAPH (June 16, 2016, 3:01 PM), <http://www.telegraph.co.uk/news/2016/06/16/britains-40-year-relationship-with-the-eu/>. At the time of the UK's first application, France was finally leading Europe through prosperous times. De Gaulle noted that "l'Angleterre, ce n'est plus grand chose," translating to "English is not much anymore." Kathryn Hadley, *Back when Britain was Banging on Europe's Door*, THE GUARDIAN (Oct. 13, 2012), <https://www.theguardian.com/commentisfree/2012/oct/13/britain-europe-david-cameron-eu>.

⁴¹ *Britain's 40 Year Relationship with the EU*, *supra* note 40.

⁴² *Id.*

⁴³ See *Id.*

⁴⁴ *Id.*

unenviable. It is a feeble giant whose desperate attempts to be taken seriously are largely risible. It has a sluggish inflexible economy, still much reliant on hidden protectionism. It has a shrinking, ageing, population and, with the exception of Britain, rather unimpressive armed forces and, not excepting Britain, muddled diplomacy.⁴⁵

After support for the governing Conservative Party of the UK wavered in 2013, Cameron finally addressed the growing instability felt around Europe, and in particular the UK, and identified three specific areas of conflict within the EU: (1) the Eurozone, (2) European competitiveness, and (3) the growing gap between the EU's purpose and its failed realization for its citizens.⁴⁶ The UK's concerns stemmed from a budding sense of nationalism and a longing for more individual member-state control.⁴⁷ Average UK citizens felt their lives had been impacted by the effects of the Euro, the regulations inhibiting small business expansion, and the cross-border migration of workers.⁴⁸ These concerns were echoed by a minority within the Conservative Party.⁴⁹

Cameron recognized this growing anxiety and chose to address it on a national level. He decided to turn the decision over to the people, to establish once and for all, that the minority's disdain for the EU was not shared by the country at large.⁵⁰ Cameron stated that a referendum would be offered, in which the United Kingdom's citizens would make the decision of remaining in the EU or opting out and moving forward alone (called a vote to "stay" or a vote to "leave" in the media).⁵¹ Cameron stressed, while introducing the referendum and in the months that followed, that this decision should not be rushed.⁵² Without waiting for the conclusion of the Eurozone crisis and

⁴⁵ Margaret Thatcher, *STATECRAFT: STRATEGIES FOR A CHANGING WORLD* 395 (Harper Perennial ed 2003).

⁴⁶ *David Cameron's EU Speech - Full Text*, THE GUARDIAN (Jan. 23, 2013),

<https://www.theguardian.com/politics/2013/jan/23/david-cameron-eu-speech-referendum>.

⁴⁷ Paul Whitely & Harold D. Clarke, *Brexit: Why Did Older Voters Choose to Leave the EU?*, INDEPENDENT (June 26, 2016), <http://www.independent.co.uk/news/uk/politics/brexit-why-did-old-people-vote-leave-young-voters-remain-eu-referendum-a7103996.html>.

⁴⁸ See Marilyn Geewax, *Circle June 23. A Vote that Day in the U.K. Could Affect Your Wallet*, NPR (June 10, 2016, 8:01 AM), <https://www.npr.org/sections/thetwo-way/2016/06/10/481424109/circle-june-23-a-vote-that-day-in-the-u-k-could-affect-your-wallet>.

⁴⁹ Steven Erlanger, *Cameron Acts Like the Front-Runner He Would Like to Be*, N.Y. TIMES (Oct. 5, 2014), <https://www.nytimes.com/2014/10/06/world/europe/polls-david-cameron-election-conservative-united-kingdom.html>.

⁵⁰ *David Cameron's EU Speech - Full Text*, *supra* note 46.

⁵¹ *Id.*

⁵² *Id.*

gathering a full understanding, on both a national and an individual level, of the ramifications of a vote to leave, the referendum should not occur. Of course, the Eurozone crisis eventually ended, and the media, government, and citizen-based groups scrambled to inform the public on what a vote to stay or leave actually meant.⁵³ The referendum was introduced as a method to silence critics and prove a united front, and once Cameron promised it would occur, his hands were tied.

Departing the EU may give the UK the benefits of large immediate monetary savings (in the amount of nearly £8.5 billion), more jobs available for UK citizens, and, in time, full sovereignty for the country.⁵⁴ The losses to the UK, however, could include plummeting investments within the UK due to uncertainty of the new situation, immigration restrictions on UK citizens living abroad within Europe, and, most importantly, the loss of the use of a single market, which goes hand-in-hand with the established trade deals between the EU and the world at large.⁵⁵ The minority that persuaded Cameron to host the vote insisted that they did not desire increased nationalism but more independence.⁵⁶ While the EU has functioned successfully as a voice for smaller countries, it has also managed to control larger nations, like the UK, France, and Germany, by essentially creating a multi-country brotherhood of nations that work not just with, but also for, each other.⁵⁷ Over the past thirty years, the UK's relationship with the EU has been fragile and uneasy, and those who turned to Brexit for a cure will determine in due time if independence from the EU was the right answer.

II. Stages of Leaving the European Union

On June 23, 2016, 51.9% of the voters elected to leave the EU.⁵⁸ During the referendum, Cameron promised to step down immediately if the Leave campaign succeeded.⁵⁹ His decision to hold the referendum with hopes of

⁵³ *Id.*

⁵⁴ Ashley Kirk, *EU Referendum: The Claims that Won it for Brexit, Fact Checked*, THE TELEGRAPH (March 13, 2017), <http://www.telegraph.co.uk/news/0/eu-referendum-claims-won-brexit-fact-checked/>.

⁵⁵ See *EU Referendum: What are the Pros and Cons of Brexit?*, THE WEEK (June 27, 2017), <http://www.theweek.co.uk/brexit-0>.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *EU Referendum: Results*, *supra* note 3.

⁵⁹ Tom McTague, *David Cameron Must Renege on Promise to Step Down Before General Election, Says Senior Tory*, INDEPENDENT (Feb. 13, 2016),

demonstrating a united Conservative Party and silencing a growing minority had backfired. Upon the results confirming Brexit, Cameron announced his departure from Parliament and withdrawal as Prime Minister.⁶⁰ Theresa May immediately announced her candidacy for leader of the Conservative Party and Prime Minister.⁶¹ Within two weeks of Cameron's resignation, once her only competitor, Andrea Leadsom, withdrew from the race, May was the de facto winner, becoming the second female Prime Minister in the UK's history.⁶²

Throughout the Brexit campaign, May had been a weak proponent of the "Remain" party, softly urging the UK to stay within the EU.⁶³ As soon as the votes came in, however, she iterated her support to respect the wishes of the people and has continued to do so since taking the position, emphasizing, "Brexit means Brexit, and we are going to make a success of it."⁶⁴

Holding the referendum was a precondition met for leaving the EU, yet there remains a number of steps to be taken prior to full sovereignty. First of all, there were two paths the UK could have chosen to pursue: (1) it could follow EU treaties that created a passage way for countries leaving the EU, or (2) it could completely disregard EU law and simply opt out of the designated pathway (by repealing the European Communities Act of 1972, which integrates EU law into national law).⁶⁵ The second option was highly undesirable and undiplomatic, as it would immediately disrupt markets around the world, including the UK's.⁶⁶ Furthermore, it would have left the UK segregated and without a necessary flow of resources for an indefinite amount of time.⁶⁷ To put it bluntly, the UK needs the EU more than the EU

<http://www.independent.co.uk/news/uk/politics/david-cameron-must-renege-on-promise-to-step-down-before-general-election-says-senior-tory-a6872441.html>.

⁶⁰ James Masters, *David Cameron Resigns from UK Parliament*, CNN (Sept. 12, 2016, 12:21 PM), <http://www.cnn.com/2016/09/12/europe/david-cameron-resigns/>.

⁶¹ Paul Dallison, *Theresa May Takes over as British Prime Minister*, POLITICO (July 14, 2016, 06:08 AM) <http://www.politico.eu/article/theresa-may-takes-over-as-british-prime-minister/>.

⁶² *Id.*

⁶³ Hunt & Wheeler, *supra* note 2.

⁶⁴ Griff Witte, *Theresa May to Become British Prime Minister in Fast-Track Political Transition*, THE WASH. POST (July 11, 2016), https://www.washingtonpost.com/world/andrea-leadsom-quits-race-for-british-prime-minister-clearing-way-for-theresa-may/2016/07/11/3b7259df-fe04-4f92-93a0-27ffeb3a835b_story.html. This is a phrase that been regularly repeated by May throughout the last few months.

⁶⁵ Hunt & Wheeler, *supra* note 2.

⁶⁶ See Alexandra Sims, *What is the Great Repeal Bill? The Brexit Law to End all EU Laws (That We Don't Like)*, INDEPENDENT (Oct. 3, 2016), <http://www.independent.co.uk/news/uk/politics/great-repeal-bill-brexite-law-eu-law-theresa-may-david-davis-a7343256.html> (Oct. 30, 2017).

⁶⁷ *Id.*

needs the UK. As such, the first path has been chosen, a preferable means to ensure a future relationship between the UK and the EU.

The process of a formal departure was first outlined in Article 50 of the Treaty of Lisbon, which entered into force on December 1, 2009. Prior to the Treaty of Lisbon's enactment, there were no clear guidelines in any EU treaties of how a country would leave the EU. Withdrawal before 2009 was an unclear matter, but not impossible, as the Vienna Convention on the Law of Treaties (VCLT) allowed parties to withdraw from a treaty if the treaty is silent on the issue of withdrawal and parties intended to include such a right, or where there is such a fundamental change of circumstances such that the obligations of the treaty are transformed.⁶⁸

Article 50 allows member states to notify the EU of their withdrawal.⁶⁹ The article states:

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.

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

3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.⁷⁰

⁶⁸ Phoebus Athanassiou, *Withdrawal and Expulsion from the EU and EMU*, EUR. CENT. BANK 1, 12-13 (2009), <https://www.ecb.europa.eu/pub/pdf/scplps/ecblwp10.pdf>.

⁶⁹ See Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, art. 50, Dec. 13, 2007, 2007 O.J. (C 306) 1 [hereinafter *The Lisbon Treaty*].

⁷⁰ *The Lisbon Treaty*

Once a member state has notified the European Council of its desire to secede, a withdrawal agreement will be negotiated between the EU and the state.⁷¹ After Article 50 is triggered, the member state and the EU have two years to negotiate a transitional agreement and formulate plans for a future relationship.⁷² The two-year requirement may be extended, but only early in the negotiations and by a unanimous vote by all 27 EU member states, otherwise the UK is immediately removed with no applicable agreement and WTO rules would come into effect.⁷³ Throughout the negotiations, EU law would continue to be applicable to the UK, while the only aspect changing in the relationships would be denial from internal EU communications.⁷⁴ The European Commission would then draw up the agreement defining the UK withdrawal and future relationship with the EU after extensive communications with EU governments—after they reach a majority resolution.⁷⁵ Finalizing the agreement is a highly detailed matter: all current EU treaties must be appropriately modified to mirror the removal of the UK.⁷⁶ The agreement must cover a number of issues, including separating the UK's financial services from that of the EU and deciding how to proceed with highly sensitive security issues.⁷⁷ After the agreement has been drawn, EU leaders, European parliament, and national parliaments must ratify it by a majority vote.⁷⁸

The advantage of triggering Article 50 is that the UK can spearhead the change it desires without requiring approval from other member states. The only approval needed is the majority ratification of the final agreement.⁷⁹ On the other hand, once Article 50 is triggered, it may not be rescinded at any point.⁸⁰ Furthermore, the EU essentially runs the process and controls the negotiations, leaving the UK with little say in the matter, except in deciding when to trigger Article 50 and whether to accept or deny the final agreement.⁸¹

⁷¹ Hunt & Wheeler, *supra* note 2.

⁷² Raoul Ruparel, *The Mechanics of Leaving the EU – Explaining Article 50*, OPEN EUROPE (Feb. 22, 2015), <http://openeurope.org.uk/today/blog/the-mechanics-of-leaving-the-eu-explaining-article-50/>.

⁷³ Valentina Pop & Gabriele Steinhauser, *Brexit: What is Article 50?*, WALLSTREET JOURNAL (Oct. 2, 2016, 2:02 PM), <http://www.wsj.com/articles/brexit-what-is-article-50-1475410524?mg=id-wsj>.

⁷⁴ Ruparel, *supra* note 72.

⁷⁵ *Id.*

⁷⁶ Paul McClean et. al., *The Brexit Treaty Renegotiation Checklist*, FINANCIAL TIMES (Aug. 20, 2016), <https://ig.ft.com/brexit-treaty-database/>.

⁷⁷ Pop & Steinhauser, *supra* note 73.

⁷⁸ Ruparel, *supra* note 72.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

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Because of this, some have argued that the UK should pursue the first path originally mentioned: unilaterally repeal the European Communities Act of 1972, which would immediately end the applicability of EU law to the UK.⁸²

After two months in office, May announced she would follow the public's wishes and initiate the formal proceedings of triggering Article 50 by the end of March 2017, thus beginning the two-year process.⁸³

III. Negotiating Trade Deals

a. Trade Deals within the European Union

A trade agreement, bilateral or multilateral, is designed to create agreements on taxes, tariffs, and trade to strengthen an economy and generate jobs.⁸⁴ A range of issues may be covered, including: (a) removing and lowering customs duties on exports, (b) eliminating quotas of exports, (c) permitting EU business, regardless of size, to provide services and openly bid for open contracts, and (d) simplifying exportation regulations; while keeping necessarily high health, safety, and environmental protections.⁸⁵

The World Trade Organization (WTO) operates as the facilitator of trade between all countries.⁸⁶ The organization is run by its member states; however, they must follow a number of guidelines outlined by the WTO Secretariat.⁸⁷ This includes commitments to lower customs tariffs and trade barriers, as well as aiding in agreements to a dispute settlement process in the case of cross-country clashes.⁸⁸ The EU trade agreements are negotiated in accordance with the WTO guidelines, and the global economy is able to continue adapting to change by working with fellow member states.⁸⁹

Upon formation, the EU worked to ensure trade soared, and has negotiated trade deals with countries and blocs around the world to compete

⁸² J.P., *How to Leave the European Union*, THE ECONOMIST (June 27, 2016), <http://www.economist.com/blogs/economist-explains/2016/06/economist-explains-24>.

⁸³ *Brexit: Theresa May to Trigger Article 50 by End of March*, BBC (Oct. 2, 2016), <http://www.bbc.com/news/uk-politics-37532364>.

⁸⁴ *Negotiations and Agreements*, European Commission, <http://ec.europa.eu/trade/policy/countries-and-regions/agreements/> (last visited Nov. 5, 2016).

⁸⁵ *Id.*

⁸⁶ *See generally* World Trade Organization, <https://www.wto.org> (last visited Oct. 30, 2017).

⁸⁷ *Understanding the WTO: What We Do*, World Trade Organization, https://www.wto.org/english/thewto_e/whatis_e/what_we_do_e.htm (last visited Nov. 10, 2016).

⁸⁸ *Id.*

⁸⁹ *Trade*, European Commission, https://europa.eu/european-union/topics/trade_en (last visited Oct. 30, 2017).

as effectively as possible with other regions.⁹⁰ As of today, the EU remains the world's most prominent trader, with 16.5% of the world's imports and exports.⁹¹ Furthermore, trade aids access to raw materials, giving customers a wider selection of products at a lower price than otherwise available.⁹² Trade deals go beyond simple exchanges and may include clauses requiring human rights' advancement, labor rights monitoring, and an addressing of environmental concerns.⁹³ It appears that one of the greatest benefits gained by the UK, as well as all other countries within the EU, is the simplified system of trade negotiations. People, services, money, and goods flow freely over open borders with no tariffs levied.

b. Capitalizing on Strengths while Identifying Weaknesses

The future of the British economy relies on a favorable model being chosen. Once the UK is omitted from all EU trade deals, it has over one hundred negotiations to commence, with the EU discussions as perhaps the most pressing. The EU and UK's current interactions present an obvious reluctance for working with one another, perhaps most easily represented through the EU refusing to commence negotiations until after Article 50 is triggered by the UK (which by most analysts is simply seen as too late).⁹⁴ The EU's foreign affairs commissioner Federica Mogherini stated, "[i]t's absolutely clear on the EU side that as long as a country is a member state of the EU, which is something the UK is at the moment, there are no negotiations bilaterally on any trade agreement with third parties . . . until the very last day."⁹⁵ Brexit lacks a comprehensive framework. However, with some EU support, they could simplify the process and mutually work to uncover interests and possible ways for both to profit from this division. Facilitating negotiators on both sides could keep the parties on track working towards a common goal: joint gain.

⁹⁰ See *Negotiations and Agreements*, *supra* note 84.

⁹¹ *Trade*, *supra* note 89

⁹² *Negotiations and Agreements*, *supra* note 84.

⁹³ *Id.*

⁹⁴ William Turvill, "Our Aim Certainly Is not to Punish the UK," *Insists Brussels' Financial Services Commissioner*, CITY A.M. (Feb. 8, 2017, 10:00 PM), <http://www.cityam.com/258713/our-aim-certainly-not-punish-uk-insists-brussels-financial>.

⁹⁵ Adam Payne, *EU Leaders: 'It's Absolutely Clear' UK Cannot Negotiate Trade Deals with Other Countries Until After Brexit*, BUSINESS INSIDER (Jan. 23, 2017, 5:12 AM), <http://www.businessinsider.com/eu-warns-theresa-may-about-post-brex-it-trade-deal-with-trump-usa-2017-1>.

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There will be a number of immediate issues that need to be addressed, including: (1) finding negotiators, (2) time pressures, and (3) accentuating bargaining power. Until Article 50 is triggered, no negotiations may begin. However, the UK should begin immediate strategizing on how it intends to proceed in the above three issues.

i. Negotiators

The first step to take is finding negotiators. As of September 2016, the UK has no trade negotiators.⁹⁶ Over the past thirty years, British negotiators have worked for and through the EU, leaving the UK in dire need of support.⁹⁷ Negotiators generally come from the private sector, thus criteria needs to be set for what is needed of a governmental negotiator, who would possess, at the very least, international expertise, particularly in trade.⁹⁸ Perhaps more importantly, it may be fundamental to ensure that the negotiators involved have no direct or indirect interest in the outcome, as to ensure that the negotiations proceed smoothly without emotional reactions and demands.

Ambassador Tommy Koh (Koh) of Singapore is a prime example of the type of negotiator Brexit may be looking for.⁹⁹ Having partaken in international negotiations worldwide, Koh emphasizes the necessary awareness of focusing on a win-win solution, an idea that the UK and the EU need to keep in mind.¹⁰⁰ While he has dealt with Singaporean trade deals in the past, he has also worked extensively with the UN and taught what he believes are the fundamentals of negotiations at summits around the world.¹⁰¹ Another such example may be William Ury, who has negotiated conflicts from Kentucky coal mine strikes to helping end civil war in Indonesia.¹⁰² Through finding a third party with extensive experience such as these individuals that can lead a team of other skilled negotiators, Brexit may be

⁹⁶ Henry Mance, *The UK Has no Trade Negotiators, Says Former Brexit Minister*, FINANCIAL TIMES (July 15, 2016), <https://www.ft.com/content/bbbdf998-4a6c-11e6-8d68-72e9211e86ab>.

⁹⁷ Josh May, *The UK Government Has No Trade Negotiators, Former Brexit Minister, REVEALS* POLITICSHOME.COM (2016), <https://www.politicshome.com/news/europe/eu-policy-agenda/brexit/news/77311/uk-government-has-no-trade-negotiators-former-brexit> (last visited Oct 24, 2017).

⁹⁸ Mance, *supra* note 96.

⁹⁹ James K. Sebenius, *A Great Negotiator's Essential Advice*, HARVARD BUS. REV. (July 9, 2014), <https://hbr.org/2014/07/a-great-negotiators-essential-advice>.

¹⁰⁰ Sebenius, *supra* note 99.

¹⁰¹ *Id.*

¹⁰² William Ury, PROGRAM ON NEG., <http://www.pon.harvard.edu/faculty/william-ury/> (accessed on Feb. 1, 2017).

able to be negotiated in a way that either benefits both parties or at least prevents substantial harm to either economy. However, despite evidence of the success of a foreign negotiator, the UK has emphasized that it is fearful and suspicious of confidentiality breaches, and as such would like to keep its negotiators British.¹⁰³

The EU has already chosen its chief negotiator: Michel Barnier (Barnier), a former French foreign minister who has worked with the EU for years on key pieces of legislation.¹⁰⁴ There is discomfort with the EU's decision to place him at the head of its side of the table, primarily due to his strong allegiances with both France and the UK, and the growing worry that he may not be able to work successfully with the UK.¹⁰⁵ While both parties should place their priorities first, Brexit will only succeed through the parties working together, and Barnier may be too personally vested in the outcome to appropriately negotiate with the UK. He noted, "[T]he single market and four freedoms are indivisible. Cherry-picking is not an option . . . Unity is the strength of the EU and [we] are determined to preserve the unity and interest of the EU-27 in the Brexit negotiations."¹⁰⁶ While the UK could choose to counterattack and find a similarly involved negotiator, it may be in the country's best interest to focus on the quality of the potential deals and as such, work with the EU and not against them.

ii. Time Pressures

As past trade deals have shown, two years has rarely proven long enough to sort out a single trade deal, let alone hundreds.¹⁰⁷ May had been under pressure for months to not only release an official date for Brexit but also to

¹⁰³ *Building the Brexit Team*, ECONOMIST (July 16, 2016), <http://www.economist.com/news/britain/21702229-bureaucratic-marathon-lies-ahead-does-britain-have-enough-pen-pushers-building-brexit>. Furthermore, a Whitehall source (the central government administration) claims that they are looking only for those negotiators with both "extensive experience" and a "personal reputation of the highest order among global trade professionals."

¹⁰⁴ James Crisp, *Who is the EU's Chief Brexit Negotiator Michel Barnier?*, NEW STATESMAN (Dec. 6, 2016), <http://www.newstatesman.com/politics/brexit/2016/12/who-eus-chief-brexit-negotiator-michel-barnier>.

¹⁰⁵ Alastair Macdonald, *Monsieur Brexit - EU's Barnier braces for baffling Brits*, REUTERS (Feb. 13, 2017), <http://uk.reuters.com/article/uk-britain-eu-barnier-idUKKBN15R09W>.

¹⁰⁶ Crisp, *supra* note 104.

¹⁰⁷ Rosamond Hutt, *With Brexit in Mind, Just How Long Do Trade Deals Take to Agree?*, WORLD ECONOMIC FORUM (July 22, 2016), <https://www.weforum.org/agenda/2016/07/how-long-do-trade-deals-take-after-brexit/>.

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simply reveal all the details of what Brexit means.¹⁰⁸ Through averting clear answers with statements such “Brexit means Brexit,” and the UK desires the “best possible deal” with the EU, May avoided topics such as free trade, the Customs Union, and many other factors that the public (and the EU) has been waiting to understand.¹⁰⁹ Finally, in mid-January 2017, after months of the EU reminding the UK that it cannot stay within the single market and enjoy free movement, May revealed that the UK would be following through with a thorough Brexit, meaning it would leave the single market and alter its relationship with the Customs Union.¹¹⁰ She clarified that she aimed not to undermine the EU, but if the EU failed to work with the UK, it would be “calamitous self-harm for the countries of Europe and it would not be the act of a friend.”¹¹¹

Barnier has clarified that the UK will officially have “less than 18 months to negotiate” once the discussions begin, due to the formal procedures that begin and end the talks.¹¹² Originally, this would have just occurred on the EU’s side, but in November 2016, the British Parliament ruled that they must approve the final deal as well, simply adding to the time needed.¹¹³ The UK has remained rather tight-lipped about the negotiations it desires, and yet this may be to its detriment because, upon Article 50 being triggered, it will need to lay all of its cards out on the table and already have a clear understanding of its interests.¹¹⁴ Transparency is necessary at this time if the UK wishes to reach a satisfactory deal with the EU, otherwise, time is simply being wasted.

¹⁰⁸ Robert Hutton, *May Under Pressure from Labour and EU as Brexit Talks Resume*, BLOOMBERG (Aug. 27, 2017, 4:00 PM), <https://www.bloomberg.com/news/articles/2017-08-27/may-under-pressure-from-labour-and-eu-as-brexit-talks-resume>.

¹⁰⁹ Jenny Gross & Nicholas Winning, *U.K.’s Brexit Committee Adds to Pressure on Prime Minister May*, WALL ST. J. (Jan. 13, 2017), <https://www.wsj.com/articles/u-k-s-brexit-committee-adds-to-pressure-on-prime-minister-may-1484352115>.

¹¹⁰ *Brexit: UK to Leave Single Market, Says Theresa May*, BBC (Jan. 17, 2017), <http://www.bbc.com/news/uk-politics-38641208>.

¹¹¹ *Id.*

¹¹² Pan Pylas, *EU’s Brexit Negotiator Puts Time Pressure on Britain*, AP (Dec. 6, 2016), <http://bigstory.ap.org/article/f8a1bf852d6449eeb01337d4fe8a59a8/uk-finance-minister-stresses-londons-importance-eu>. The formal procedures would include processes like parliamentary approvals that occur at the end of the discussion, which could take months to officially approve. *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

iii. Bargaining Power

There are three major requests that the Leave campaign figuratively highlighted: (1) ensuring that EU law is no longer dominant over UK law; (2) establishing further UK control over its own dealings, particularly in regards to the consistently fluctuating labor movement from the EU and in the form of payments to the EU; and (3) enable the UK to create its own trade deals.¹¹⁵ In order to obtain these results, the UK needs to negotiate based on its advantages, and determine what leverage it may have, as well as what leverage the EU may have. While the focus here is on the bargaining power of the UK and EU, the UK's leverage may be applicable in negotiations with other parties worldwide.

While the UK maintains some rather strong demands as a result of its departure, it does have a few key points of influence over the EU, including its economic impact, its control over the triggering of Article 50, and other EU priorities.¹¹⁶ *Firstly*, around 44% of UK goods are exported directly to the EU.¹¹⁷ Presently, these goods are able to enter without substantial barriers in the way of high tariffs, but they could possibly be subject to such obstacles if no deal is met.¹¹⁸ While this may be a disadvantage to the UK, it could prove even more burdensome for the EU, who would be forced to find a new supplier for these goods, and may simply end up being forced to create a new relationship and pay more due to importation costs from suppliers at a much greater distance than the UK.¹¹⁹ *Secondly*, the balance of trade between the individual states of the EU and UK leans strongly in favor of some states, such as Germany, which has long been a significant issue.¹²⁰ Of the twenty-seven EU member states, only six import more from the UK than they export to the UK.¹²¹ Germany, most notably, exports nearly £30 billion more worth of

¹¹⁵ See *Why Vote Leave*, WHY VOTE LEAVE,

http://www.votetakecontrol.org/why_vote_leave.html (last visited Nov. 1, 2017).

¹¹⁶ See *Everything You Might Want to Know About the UK's Trade with the EU*, FULL FACT (Nov. 2, 2017), <https://fullfact.org/europe/uk-eu-trade/>.

¹¹⁷ *Id.*

¹¹⁸ Peter Foster, *What Will Brexit Mean for British Trade?*, THE TELEGRAPH (Feb. 24, 2017, 10:21 AM), <http://www.telegraph.co.uk/news/0/what-would-brexit-mean-for-british-trade/>.

¹¹⁹ Ben Chapman, *Brexit: Almost Half of EU Businesses Already Looking to Cut Ties with UK Suppliers*,

THE TELEGRAPH (May 15, 2017), <http://www.independent.co.uk/news/business/news/brexit-latest-eu-businesses-cut-ties-uk-suppliers-european-union-a7736056.html>.

¹²⁰ Deepak Malhotra, *A Definitive Guide to the Brexit Negotiations*, HARV. BUS. REV. (Aug. 5, 2016), <https://hbr.org/2016/08/a-definitive-guide-to-the-brexit-negotiations>.

¹²¹ *Everything You Might Want to Know About the UK's Trade with the EU*, *supra* note 116.

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goods to the UK than the UK sends to Germany.¹²² This gives the UK a significant advantage, considering Germany will likely want to continue this profitable trend. *Thirdly*, the UK maintains a strong amount of leverage over the EU due to its control of invoking Article 50, and its ability to agree or disagree on a range of issues, thus manipulating a deal in its favor. As of now, the EU has been pushing for negotiations to begin, however, the UK has resisted, probably to develop a strategy and determine what it wants from negotiations.¹²³ Additionally, ensuring the lines of communication between the UK and EU remain strong and transparent in issues such as security and immigration is necessary and the UK could always claim it wants full sovereignty and will refuse to maintain this transparency unless some of its demands are met.¹²⁴ This approach would, however, be detrimental to relations and perhaps security for all, thus would be ill advised.¹²⁵

The EU, on the other hand, maintains a fair amount of leverage, which includes the actual amount of trade the EU obtains from the UK, the ability to veto any unsatisfactory deal, and the established precedents of other trade models outside the EU.¹²⁶ *Firstly*, as indicated previously, 44% of UK goods are sent directly to the EU, the EU only sends around 10% of its exports to the UK.¹²⁷ Although the EU exports nearly £290 billion to the UK and the UK only exports around £240 billion to the EU, the EU's amount is a substantially smaller percentage of its total exports than the UK's, ensuring that if deals fall through with the UK, the EU's economy will not be catastrophically devastated.¹²⁸ *Secondly*, the EU as a whole retains the power to approve or deny the agreement.¹²⁹ The EU must agree by a qualified majority of member states,¹³⁰ which means the UK must give in to some concessions it would otherwise prefer not to. *Thirdly*, as will be discussed further, there are several possible models for the UK, however, the precedents of these models indicate there will be no "sweetheart deal" for a country that chooses to remain outside

¹²² *Id.*

¹²³ Malhotra, *supra* note 120. It should be noted that if the UK resists triggering Article 50 for a substantial amount of time, there are steps that the EU could take. Under Article 7 of the Treaty on the European Union, if the UK breaches EU values, the EU may remove the UK's voting powers. The issue for the EU, however, would be how it could define the UK's actions as a "breach."

¹²⁴ Malhotra, *supra* note 120.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Everything You Might Want to Know About the UK's Trade with the EU*, *supra* note 116.

¹²⁹ Malhotra, *supra* note 120.

¹³⁰ *Id.*

the EU. Furthermore, the EU will be working to ensure that the UK's deal does not place it in a better position than it was as a member state, specifically to perhaps discourage others from following suit.¹³¹ In doing so, the EU will likely offer a good deal but ensure the UK will lose out on a number of benefits only available to member states. Martin Schulz, the President of the European Parliament commented, "There is no intention to ensure that the UK receives a bad deal, but it is clear that there can be no better deal with the EU than EU membership."¹³²

Presently, the UK is effectively starting the negotiations with a weaker bargaining position, and its leverage over the EU does not seem substantial enough to worry the EU nor ensure agreement to UK's demands and desires. Bargaining from a position of "offense" or "hostility" will not serve the UK well. The EU will manipulate any outcome as a deterrent for other countries to vote to leave. The whole process will likely be largely symbolic: the EU will show member states the dangers of leaving, while the UK wanted the autonomy of sovereignty but failed to assess what that actually meant for trade (among other topics) in the near future.

IV. Existing Models

Now that the UK's interests and preliminary steps to begin negotiations have been established, the UK needs to consider an appropriate trade model to either replicate or draw inspiration from. While the following trade models have been successful in their respective countries or regions, they would not necessarily be able to withstand the breadth of the British economy, nor do they all offer the sovereignty that the UK voted for and desires. The mentioned models offer a number of options, from reentering the ETA or EFTA, to joining the Customs Union, to creating individual, bilateral free-trade agreements. Considering they would all fit the UK's needs differently, an attempt has been made to recognize how and if negotiations for each model would proceed.

¹³¹ *Id.*

¹³² Martin Banks, *Martin Schulz: UK Cannot Expect Better Deal with Brussels than EU Membership*, PARLIAMENT MAGAZINE (July 13, 2016), <https://www.theparliamentmagazine.eu/articles/news/martin-schulz-uk-cannot-expect-better-deal-brussels-eu-membership>. Schulz has also commented that, "The UK should not be treated as a deserter but as a family member who is still loved but has decided to go in another direction."

a. The WTO Model

While the WTO Model is being noted as the UK's first option, it simply remains the default path if the UK fails to make alternative arrangements.¹³³ The UK is already a member of the WTO through the EU, and essentially all its newly developing trade deals would be immediately governed by WTO rules.¹³⁴ Thus, while it has been viewed as a "fallback" option, it appears to be at odds with the heart of Brexit, as it would simply move the control of the UK from the EU headquarters in Brussels to the WTO headquarters in Geneva.¹³⁵

The WTO rules were formulated with a few specific goals in mind with regards to trading: (1) trading without discrimination with local or foreign businesses, (2) working towards eventual freer trade, (3) predictability for member states through binding (to begin with) and transparent negotiations, (4) promoting fair competition through non-discrimination, and (5) striving towards economic and development reform.¹³⁶ As will be discussed below, some the above goals align with UK objectives, while some are a major hindrance.

Under the WTO rules, the UK would be able to control its trade policy but would be bound by the principle of non-discrimination under the most-favored nation principle (MFN), meaning it could not treat some countries more advantageously than others, unless they have a separate agreement.¹³⁷ This is seen under Part 1, Article 1 of the General Agreement on Tariffs and Trade (GATT):

With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and

¹³³ Swati Dhingra & Thomas Sampson, *Life After BREXIT: What Are the UK's Options Outside the European Union?*, LONDON SCH. OF ECON. 7 (Feb. 2016), <http://cep.lse.ac.uk/pubs/download/brexit01.pdf>.

¹³⁴ *Id.*

¹³⁵ *The "WTO Option" for Brexit Is Far from Straightforward*, ECONOMIST (Jan. 7, 2017), <http://www.economist.com/news/finance/21713818-becoming-independent-member-wto-could-be-difficult-process>.

¹³⁶ *Understanding the WTO: What We Do*, *supra* note 87.

¹³⁷ *The WTO Option*, LAWYERS IN FOR BRITAIN, <http://lawyers-inforbritain.uk/b-m-a/the-wto-option/> (accessed on Jan. 15, 2017).

exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III,* any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.¹³⁸

This lack of freedom to discriminate between trading partners is one of the major disadvantages to working with the WTO. Furthermore, when the UK loses access to the EU and Free Trade Agreements (FTA), it will also be subject to the EU Common External Tariff, meaning it loses the competitive advantage of importing and exporting without tariffs.¹³⁹ If the UK has to pay higher tariffs on exports, prices abroad will be driven up, and sales may fall, resulting in the loss of a competitive edge.¹⁴⁰ Nearly 90% of goods exported from the UK could be subject to new, high tariffs,¹⁴¹ including 10% on automobile manufacturing, 11% for clothing, and 15% for food.¹⁴² Financial services are not even covered by the WTO model, so the UK would immediately lose access to preferential access to a single market.¹⁴³ Furthermore, goods exported from the UK to the EU must continue to conform to EU standards and regulations, despite the UK having no say in the formation of said standards and regulations.¹⁴⁴ Similarly, while UK courts could have more leniency in interpreting external law, as they would no longer be bound by EU law, it is likely that EU law would remain influential as it is so intertwined within UK legislation.

The UK's large market will be highly desirable, making it attractive to other members. The major issue is that while the UK is a member of the WTO, it has operated as a member through the EU. The UK will need to create a "schedule," meaning a list of quotas and tariffs that would be applied

¹³⁸ *The General Agreement on Tariffs and Trade (GATT 1947)*, WTO, https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm.

¹³⁹ *The WTO Option*, *supra* note 137.

¹⁴⁰ Ben Chu, *Brexit: True Cost of UK Leaving EU Without Trade Deal Revealed*, INDEPENDENT (Sept. 23, 2016), <http://www.independent.co.uk/news/business/news/brexit-latest-cost-uk-leaving-eu-without-trade-deal-exports-negotiations-david-davis-a7325326.html>.

¹⁴¹ Chu, *supra* note 140. For example, the Head of Representation at UK Steel, Dominic King, states that: "Dealing with the EU under WTO rules would be a serious blow to manufacturers, leading to new tariffs being imposed on around 90 per cent of the UK's goods exported to the EU, leading to manufactures automatically becoming less price competitive."

¹⁴² *The WTO Option*, *supra* note 137.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

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to other countries' goods entering the EU.¹⁴⁵ This may be created in two ways: the UK could look over its current trade agreements and make desired changes, in which case the new schedule would need to be negotiated within the WTO then approved by other members (modification).¹⁴⁶ On the other hand, the UK could simply take existing agreements and simply alter the title to reference the "UK" instead of the "EU," thus retaining existing agreements (rectification).¹⁴⁷ Modification, while perhaps more beneficial in establishing a new British regime of trade, could take years to complete, as the WTO approval procedure is based on consensus.¹⁴⁸ Rectification, on the other hand, may be a quicker process, taking a few months at most, as long as there are minimal objections.¹⁴⁹ While it will be ultimately up to the UK as to which path it prefers, its decision will likely be contingent on which one may give them the upper hand.¹⁵⁰

If the UK enters into negotiations with the WTO, it needs to be prepared for not only extensive discussions but also extensive discussions with all WTO members. The UK would first need to establish its own position within the WTO before it even began negotiating through the WTO with outside countries for possible free trade, creating extensive preliminary negotiations. Considering the UK would be negotiating with member states, this would include the EU (as an entity and as the individual twenty-seven member states), who will likely continue to ensure that the UK fares worse alone than with them. Because the UK's relationship with the EU is so delicate,¹⁵¹ it may be in the UK's best interests to begin negotiations with that in mind and pinpoint the possible meeting of both the EU and the UK's interests as the UK's first objective. Furthermore, the best way the UK could perhaps prepare for and anticipate delays, would be to not only identify its "non-negotiable" issues and objectives but also to work with its industries and non-governmental organizations to establish what will work for the country.

¹⁴⁵ *Id.*

¹⁴⁶ Raoul Ruparel, *Priorities for the New Department for International Trade Post-Brexit*, OPEN EUROPE (July 27, 2016), <http://openeurope.org.uk/today/blog/priorities-for-the-new-department-for-international-trade-post-brexit/>.

¹⁴⁷ Ruparel, *supra* note 146.

¹⁴⁸ *Id.* Consensus remains a major issue, as there are some countries that are historically difficult to negotiate with, including Brazil, India, and China. Additionally, some issues, like agriculture, require extensive discussions. *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Ian Morris, *A Brief History of Britain's Relationship with Europe, Starting in 6000 BCE*, HARV. BUS. REV. (June 24, 2016), <https://hbr.org/2016/06/a-brief-history-of-britains-relationship-with-europe-starting-in-6000-bce>.

Starting negotiations as early as possible is highly advisable. The UK's membership with the WTO has been through the EU;¹⁵² once they separate themselves, the UK will need to have a clear understanding of where it stands in regards to formulating new trade deals with other countries. The most effective way to begin this would be to consider sending a negotiator, ambassador, or advisor to begin formal and informal communications with the WTO.¹⁵³ This would help the UK understand the workings of the WTO so that when terms begin to be adopted, it can be sure it has a competitive advantage when compared to other countries, and moreover, it can simply establish a permanent presence at the WTO.¹⁵⁴

While falling back on the WTO would not be the best option for Brexit, it appears to be a highly probable possibility.¹⁵⁵ The UK would be able to gain back some independence, but the WTO's highly controlled trade negotiations and agreements (primarily through the use of the MFN) could hold back the UK's desire for a stronger economy and more individual control.¹⁵⁶

b. The Norway Model

Norway is a member of the EFTA and the European Economic Area (EEA), which is simply an external annex of the EU's internal market that aids in trading.¹⁵⁷ The EEA applies EU legislation in regards to "the four major freedoms - free movement of goods, services, persons, and capital" and requires aid and cooperation in other issues, including culture, education and the environment, while ensuring equal rights and obligations for all members.¹⁵⁸ Adopting the Norway Model would align the UK technically outside the EU but within the jurisdiction of EU policies on many issues.¹⁵⁹

While the EEA retains some of the benefits of the an EU market, it remains outside of the EU's Customs Union for goods, has limited access to the Single Market for agriculture and fisheries, and has no access to the EU's

¹⁵² *The WTO Option*, *supra* note 137.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ Jon Henley, *Can the UK Adopt the 'Norway Model' as Its Brexit Solution?*, *GUARDIAN* (Dec. 1, 2016, 8:42 AM), <https://www.theguardian.com/politics/2016/dec/01/can-the-uk-adopt-the-norway-model-as-its-brexit-solution>.

¹⁵⁸ *EEA Agreement*, EFTA, <http://www.efta.int/eea/eea-agreement> (last visited Jan. 13, 2016).

¹⁵⁹ Henley, *supra* note 157.

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external trade agreements.¹⁶⁰ The main issue arising from operating outside the Custom Union is that administrative costs would rise, considering the customs procedures and regulations the UK would need to adhere to would place a significant burden on the UK's quick ability to export.¹⁶¹ On the other hand, the UK would be free, like Norway to conduct its own trade deals outside the EFTA (thus outside of Europe), particularly with nations like the United States and China.¹⁶² In terms of free movement, the UK could follow Norway's example and join the Schengen border-free area, enjoying and allowing free movement over EEA and EU borders.¹⁶³

Whilst a part of the EEA, the UK would not have any sway or say in EU decisions but could still take a stance and align with EU countries.¹⁶⁴ Furthermore, its domestic law would be "required to comply with EU legislation."¹⁶⁵ Despite its submissive role, the UK would also be required to pay grants to poor EU member states every year and supply the EU with funds for research and education, essentially consistent with its historical practices as a member.¹⁶⁶

The main issue with the Norway Model is the adoption of the EEA. Continuing to contribute to the EU while retaining few of the EU benefits, as well as being required to maintain more open borders for easier migration is precisely why the UK wants to leave in the first place.¹⁶⁷ The UK could adopt a give and take strategy through its negotiations; for example, offering more funds for the EU through the EEA in place of limiting the free movement of people, but the adoption of such a result is highly unlikely, considering it violates one of the EEA's four outlined freedoms.¹⁶⁸

¹⁶⁰ *Alternatives to Membership: Possible Models for the United Kingdom Outside the European Union* 19, GOV.UK (Mar. 2, 2016), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/504604/Alternatives_to_membership_-_possible_models_for_the_UK_outside_the_EU.pdf. [hereinafter *Alternatives to Membership*].

¹⁶¹ *Id.* at 17.

¹⁶² *Id.* at 18.

¹⁶³ *Id.* This free movement would include migrants who choose to work in the UK, and would be eligible for all the same benefits as a national. *Id.*

¹⁶⁴ *Id.* at 19. So, while EU law remains influential on EEA members, the UK would have no representation nor voting power in the EU (even the citizens have no vote on EU matters) and are not even permitted to attend any EU meetings, including the European Council. *Id.*

¹⁶⁵ *Id.* Norway incorporated around 75% of EU laws into its domestic legislation, and the UK would likely be required to comply with a similar amount. This would include: sector-specific product and services rules competition policy, and intellectual property. *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *EEA Agreement*, *supra* note 158.

The Norway Model works for a country like Norway specifically because it is exporting very limited resources, namely raw materials (oil and gas), so the burden of EU regulation does not weigh heavily on its shoulders.¹⁶⁹ The UK on the other hand, is too diverse of a market to handle all the jumps and hurdles.¹⁷⁰ If the UK wants a clean break with the EU, the Norway Model may place them in a similar position to the one it is attempting to leave, thus making it an unlikely option.

c. The Switzerland Model

The Switzerland Model remains a unique option, in that it has maintained a certain level of sovereignty in trade deals individually created through ambitious and painstaking negotiations over many years.¹⁷¹ In the 1980s, Switzerland joined member states in optimistically building the groundwork for the EEA, and yet once created, it voted against joining.¹⁷² As such, Switzerland does not enjoy the privilege of the Single Market, which is why it has created more than 120 bilateral trade agreements with EU members to cover nearly every sector, with the exception of professional services and agriculture.¹⁷³

If the UK followed this model, it would essentially be starting with a blank slate. Its domestic law would not be confined to conform to EU legislation.¹⁷⁴ The UK would be outside the Customs Union, responsible for its negotiations, which, while daunting, may be beneficial.¹⁷⁵ For example, Switzerland has twenty-nine trade agreements with forty-one different countries, including the aforementioned Chinese one, which the EU has not managed to obtain.¹⁷⁶

¹⁶⁹ Henley, *supra* note 157.

¹⁷⁰ *Alternatives to Membership*, *supra* note 160, at 19.

¹⁷¹ *Brexit: The Swiss Model*, SHEPHERD & WEDDERBURN, http://www.shepwedd.com/sites/default/files/Swiss_Model_Brexit.pdf (last visited Jan. 21, 2017).

¹⁷² MARIUS VAHL & NINA GROLIMUND, *INTEGRATION WITHOUT MEMBERSHIP* 82 (Illustrated ed. 2006).

¹⁷³ *Brexit: The Swiss Model*, *supra* note 171.

¹⁷⁴ *Alternatives to Membership*, *supra* note 160, at 41-42. While it is not required to comply, the UK may still be blocked off by parts of the Single Market if it fails to adopt necessary legislation. Some examples of fields this has arisen in include competition and environmental regulations. *Id.*

¹⁷⁵ See Gemma Tetlow, *Brexit and Customs Union—What's at Stake for Britain*, FINANCIAL TIMES (Aug. 9, 2017), <https://www.ft.com/content/16bfc152-56ae-11e7-80b6-9bfa4c1f83d2>.

¹⁷⁶ *Alternatives to Membership*, *supra* note 160, at 27.

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Switzerland followed Norway's example and joined the Schengen border-free area in 2008.¹⁷⁷ This would likely not be of interest to the UK, although there are substantial advantages coupled with considerable disadvantages.¹⁷⁸ Through adopting the Schengen border-free area, Switzerland had access to a database of suspected terrorists and criminals and their locations.¹⁷⁹ Switzerland also has to aid in refugee crises either monetarily or through opening its doors and taking in a required amount of refugees.¹⁸⁰ It is not given access to voting rights with Europol (the European police), nor does it have access to past criminal records of European criminals.¹⁸¹

While negotiating under the Switzerland Model, the UK would need to prepare for disagreement regarding migration.¹⁸² In 2014, when Switzerland voted to introduce migration quotas, the EU reacted abruptly and announced it could suspend all current trade agreements under the guillotine clause: indicating that free movement is a proud and steadfast aspect of the EU.¹⁸³ If the UK wanted to announce a comparable referendum at some point in the future, it would need to expect similar backlash.¹⁸⁴

In regards to trade agreements specifically, the Switzerland Model's partial access to the Single Market and lack of access to the Customs Union would likely worry people in the UK.¹⁸⁵ Unlike Switzerland or Norway, the UK's diverse economy requires a model broad enough to sustain such an economy.¹⁸⁶ Furthermore, while not directly working with the EU, ultimately all European countries remain a pawn in the EU's workings, and if regulations changed tomorrow, domestic legislation would have to reflect it immediately:

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 28.

¹⁷⁹ *Id.* at 27.

¹⁸⁰ See Ben Antenore, *Can the Schengen Agreement Survive the EU Refugee Crisis?*, THE EUR. INST. (Feb. 18, 2016), <https://www.europeaninstitute.org/index.php/ei-blog/276-february-2016/2129-can-the-schengen-agreement-survive-the-eu-refugee-crisis-2-18>.

¹⁸¹ *Alternatives to Membership*, *supra* note 160, at 27.

¹⁸² See Jon Henley, *Swiss Blink First in EU Standoff with Striking Similarities to UK Predicament*, THE GUARDIAN (Sept. 6, 2016), <https://www.theguardian.com/world/2016/sep/06/swiss-eu-standoff-striking-similarities-uk-predicament>.

¹⁸³ Alice Baghdjian & Albert Schneider, *Swiss Vote to Set Limits on Immigration from EU*, REUTERS (Feb. 9, 2014), <https://www.reuters.com/article/us-swiss-vote-immigration/swiss-vote-to-set-limits-on-immigration-from-eu-idUSBREA180H220140209>.

¹⁸⁴ Henley, *supra* note 182. The "guillotine clause" refers to the fact if one treaty is breached, all treaties are deemed breach and thus invalid. *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Brexit: The Swiss Model*, *supra* note 171.

requiring extensive administrative work and higher costs. The UK imports are too great to be subjected to the whims of an external party, and legal, business, and financial services are simply too precarious to risk. Once again, the UK desires sovereignty, and while the Switzerland Model offers this in some regards, the EU's consistent control remains a burden in most areas.

Notably, Switzerland and Norway differ from the EU in regards to their stable economies, higher standards of living, and the benefits they enjoy because of that.¹⁸⁷ Norway supplies itself with nearly all of its energy, giving the country a substantial economic benefit enjoyed by few others.¹⁸⁸ Switzerland remains at the heart of Europe and encompassed by some of the largest economies in Europe—France, Italy, and Germany—thus remaining a pivotal location for international businesses.¹⁸⁹ The UK has neither of these advantages, and thrives on trade; thus, it needs to position itself accordingly.¹⁹⁰

The Council of the EU has appropriately explained the current EU-Swiss system of bilateral agreements as “complex and unwieldy to manage and [it] has clearly reached its limit.”¹⁹¹ While operating on a liberal yet cooperative framework, the model essentially has free range to create its trade deals as it sees necessary and fit, as long as those trade deals are compatible with current EU law.¹⁹² Swiss trade deals have taken decades to perfect, and yet they still remain controversial in regards to where the EU would like them to be.¹⁹³

If the UK decides to pursue this model, in its preparation for negotiations it needs to enter with a clear understanding of what its most important interests are, so that it may negotiate accordingly. The UK has too sizable of an economy with diversified interests to spend years creating bilateral agreements with every country it loses after leaving the EU, and as such, the Switzerland Model, while containing many attractive features, may not be the right option for the UK.

¹⁸⁷ Andrew Sentance, *Four Reasons a Post-Brexit UK Can't Copy Norway or Switzerland*, TELEGRAPH (June 10, 2016), <http://www.telegraph.co.uk/business/2016/06/10/three-reasons-a-post-brexit-uk-cant-copy-norway-or-switzerland/>.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *See Id.*

¹⁹¹ *Council Conclusions on EU Relations with EFTA Countries*, EUR. EXTERNAL ACTION SERV. (Dec. 14, 2010), https://eeas.europa.eu/sites/eeas/files/council_iceland.pdf.

¹⁹² Sabine Jenni, *Is the Swiss Model a Brexit Solution?*, THE UK IN A CHANGING EUR. (Mar. 23, 2017), <http://ukandeu.ac.uk/is-the-swiss-model-a-brexit-solution/>.

¹⁹³ *Alternatives to Membership*, *supra* note 160, at 29.

d. The Turkey Model

While the Turkey Model is pertinent to examine, it should be immediately noted that Turkey maintains an economic agreement with the EU that is coupled with its candidacy for EU membership.¹⁹⁴ Turkey has been awaiting acceptance by the EU for nearly twenty years and may be manipulating its current agreements and accords to stay in the good graces of the EU to be prepared for the changes that come with being accepted.¹⁹⁵ There are, in fact, thirty-five areas of discussion that the EU and Turkey must complete prior to acceptance, and to date, only one area has been completed.¹⁹⁶

On that note, Turkey has had a “trade-and-economic-based Association Agreement” (Ankara Agreement) with the EU since 1963 and has participated in one of the EU’s three external Customs Unions since 1995.¹⁹⁷ The Customs Union permits Turkey to conduct trade agreements with whomever it wishes, but it is required to align its tariffs with those of the EU, thus limiting its options and requiring it to open its market to those the EU creates agreements with.¹⁹⁸ Furthermore, Turkey has maintained restricted access to the EU single market and thus enforces EU standards in limited areas—industrial and processed agricultural goods but not covering raw agricultural goods.¹⁹⁹ Finally, Turkey maintains little to no control within the EU: only aligning with the EU on international issues and receiving limited funding as a candidate for membership.²⁰⁰

This model would prove a challenge for British implementation due to the fact that it was modelled with the primary focus of eventually becoming an EU member state. Similar to Norway and Switzerland, Turkey has a highly dependent economy with very few exports, whilst the UK remains too diverse to be restrained by a model that cannot handle its expanding economy. Furthermore, the UK would continue to be restrained by the Customs Union—implementing required EU legislation without a vote and with limited access

¹⁹⁴ See generally Ankara Agreement, Sept. 12, 1963.

¹⁹⁵ *Alternatives to Membership*, *supra* note 160, at 29.

¹⁹⁶ *Brexit: The Turkish Model*, SHEPHERD WEDDERBURN, https://shepwedd.com/sites/default/files/Turkish_Model_Brexit.pdf.

¹⁹⁷ *Alternatives to Membership*, *supra* note 160, at 29.

¹⁹⁸ *Id.* It should be noted that while Turkey must open its market to those the EU creates agreements with, under the EU Customs Union requirements, this is not a reciprocal action. If Turkey wants the market of the other country to open, it must create another agreement. *Id.* at 29–30.

¹⁹⁹ *Id.* at 29.

²⁰⁰ *Id.* at 30.

to most goods.²⁰¹ The lack of reciprocity remains the crucial deterrent, as the UK would be forced to open its borders to all those with whom the EU maintains agreements with and yet would not be required to do the same.²⁰² There are no negotiation tactics worth adopting considering that the Turkey Model simply deprives the UK of its primary motive for Brexit: sovereignty; and instead ties the UK back to the EU.

e. The Canadian Model

What is dubbed the “Canadian Model” is the creation of the Comprehensive Economic and Trade Agreement (CETA) and what that meant for EU and Canada relations. After around twenty-two years of discussions, CETA negotiations concluded in August 2014, and the agreement was finally signed in October 2016.²⁰³ The greatest benefit of the agreement was the lowering of trade barriers and customs duties, which opened up the EU and Canada to one another’s consumers and markets.²⁰⁴

This model may hold some significant advantages that the UK could attempt to implement. Perhaps the greatest advantages of CETA were the removal of tariff lines on fishery and industrial products (in due time) and the fact that Canada is not required to make any payments to the EU’s budget, nor is it required to agree to the free movement of people.²⁰⁵ The UK would like to keep tariffs as low (or non-existent) as possible; however, those two fields are likely not of interest. If it could manage a similar deal regarding its most prominent exports and imports, would be highly attractive.²⁰⁶

On the other hand, CETA has its drawbacks. Some imports, like agricultural products, are not covered by CETA, so are limited to smaller quantities, highlighting the EU’s long-standing strong regulations regarding

²⁰¹ *Id.*

²⁰² *Id.* Turkey not only has to lower its borders to those within the EU, but also to those whom the EU makes new trade agreements with, thus simply opening up Turkey regularly to more and more countries without reciprocal benefits.

²⁰³ Dan Roberts, *The 'Canadian Model': Why Ceta Isn't a Blueprint for Brexit*, THE GUARDIAN (Nov. 29, 2016, 8:49 EST), <https://www.theguardian.com/politics/2016/nov/29/the-canadian-model-why-ceta-isnt-a-blueprint-for-brexit>.

²⁰⁴ Roberts, *supra* note 203.

²⁰⁵ See generally *CETA Overview*, EUROPA, http://trade.ec.europa.eu/doclib/docs/2017/september/tradoc_156056.pdf.

²⁰⁶ Daniel Workman, *Highest Value UK Export Products*, WORLD’S TOP EXPORTS (Mar. 6, 2017), <http://www.worldstopexports.com/highest-value-uk-export-products/>. The UK’s highest exports are in automobiles, medication mixes in doses, and turbo-jets. *Id.*

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rules of origin.²⁰⁷ Furthermore, CETA required ratification by both parties, resulting in the agreements being stagnant for a lengthy period of time as the EU specifically maintained a number of reservations.²⁰⁸ Relations and trust between the parties struggled during that time, with the Canadian Trade Minister Chrystia Freeland noting that, “[i]t seems obvious that the EU is now not capable of having an international agreement, even with a country that shares European values such as Canada, even with a country that is so kind and patient.”²⁰⁹ The deal felt derailed for months, and many believed the deal was off the table and would never be approved by the EU. Perhaps even more importantly, CETA chose not to cover a number of fields, including services, which is a predominant issue for the UK.²¹⁰

Examining CETA appears to be an excellent starting point for preparing for Brexit negotiations. CETA managed to eliminate many trade barriers while maintaining its independence from the EU—the exact task the UK is struggling to organize. At this stage, the UK would be benefited by extensively studying the CETA negotiation strategy and perhaps recognizing what held it back for years (besides the EU’s last-minute parliamentary slow ratification hiccup). The UK’s starting block remains the need to evaluate its prominent sectors, and understand its economy and needs. The only way the UK can do this, as stated before, is to ensure open dialogues with all industries and consumer groups.

Removing customs duties, benefiting customers, and increasing cross-country investment, are part of the backbone of the Brexit.²¹¹ It should be noted, however, that while many of the other options will be used for all trade negotiations worldwide, learning from CETA may only apply to the UK’s future agreement with the EU. The UK will still need to negotiate bilateral deals with the US, China, and other countries, but could still adopt some lessons from CETA. The agreement remains broad, helps trade neutrality flourish, decreases the dependency of both the EU and Canada on the US, and finally may serve as a blueprint for future, similarly advanced economies to learn from.

²⁰⁷ Vincenzo Scarpetta, *What Could the EU-Canada Free Trade Deal Tell Us About Brexit?*, OPEN EUR. (Mar. 15, 2016), <http://openeurope.org.uk/today/blog/what-could-the-eu-canada-free-trade-deal-tell-us-about-brexite/>.

²⁰⁸ Roberts, *supra* note 203.

²⁰⁹ *Id.*

²¹⁰ Scarpetta, *supra* note 207. CETA chose to address these fields in an extensive list of reservations, essentially issues the UK and Canada failed or were unsuccessful in negotiating. *Id.*

²¹¹ *CETA Explained*, European Commission, EUROPA, <http://ec.europa.eu/trade/policy/in-focus/ceta/ceta-explained/> (last visited on Feb. 2, 2017).

V. Conclusory Remarks on an Appropriate Model and Strategic Departure

The UK is in a rather precarious situation and time is of the essence. Upon the triggering of Article 50 at the end of March 2017, the UK ensured that it had 18 months to complete full negotiations, and then hope that the British and EU parliaments agree to the deal (or an extension) within six months. If not, those negotiations will unravel, and the UK will immediately be subject to the WTO model, perhaps against its desires. The UK was thrust into the spotlight by its own accord, and in dealing with the fallout of the monumental referendum, the UK needs to not only decide what it wants from its future, but also begin the extensive preparation.

The aforementioned models offered a number of paths that the UK might choose to pursue, either fully or with some adjustment. The UK effectively has five options: (1) revert to the WTO framework; (2) join the EFTA and EEA, like Norway; (3) join the EFTA and not the EEA, but form bilateral agreements, like Switzerland; (4) enter into a Customs Union, like Turkey; or (5) end all associations with a European bloc and work towards the immediate creation of bilateral agreements, like CETA. The WTO should simply remain its fallback, but the unappealing nature of its conditions should inspire the UK to reach a better deal. The Norway, Switzerland, and Turkey models have their strengths; however, the point of Brexit was to achieve sovereignty and a separation from the EU, and these three models would place the UK back into a position of submission (specifically the Turkey model, due to its desire to enter the EU eventually, thus aligning with the EU on as many issues as possible). If the UK chose to pursue entrance into the EEA or EFTA, it should be noted that admittance is not a given; an application is necessary. While reaching a satisfactory trade deal is the final goal, the issue of immigration walks hand-in-hand with a few of the models (Norway and Switzerland). The UK has a desire to create a unique model; however, it must gather inspiration from somewhere, and I believe that may be through CETA.

Canada has managed to gain preferential access to the EU single market, thus eliminating a number of trade tariffs. Unfortunately, the UK is dissimilar to Canada, and one of CETA's major shortcomings for the UK is the lack of focus on services, which is a predominant concern for the UK economy. Furthermore, while sovereignty is the objective of Brexit, the UK will always have deep ties with the EU, and it seems impossible to imagine a time when the UK will have its legal and business ties separate from the EU. If not by contractual agreement, these ties will sustain solely due to the proximity of

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their locations and geopolitical necessity; thus, the UK version of CETA may need significant alterations. Most likely, the UK may need to reevaluate and reexamine its needs versus its desires, and ultimately take a bitter pill and compromise on some critical issues (such as immigration).

Perhaps following Canada's lead and creating a UK version of CETA that maintains a focus on services and a discussion of immigration and tariffs, may be the best possible option. Canada and the EU took years to reach full agreement, and even then, their deal omitted a number of issues. If the UK completes the three preliminary steps of gathering international negotiators, recognizing its time pressures, and identifying its leverage, then it could begin to engage in bilateral negotiations. *Brexit means Brexit*, and with proper preparation and recognition of all interests and needs, the UK can, as May has said, make a success of it.