

TRADE IN SERVICES AFTER BREXIT: LEGAL OPTION FOR THE UNITED KINGDOM (UK) AND EUROPEAN UNION (EU)*

Abstract

The decision made by a slight majority of voters in the United Kingdom (UK) to leave the European Union (EU) based on a non-binding referendum sent initial shockwaves across the globe. Consequently, the United Kingdom has a significant challenge ahead since it will have to renegotiate a complex web of trade agreements built up over decades and this could be a starting point of new changes on trade in services agreements. This study aims to outline some post-Brexit legal options for trade in services for United Kingdom and European Union. In doing so the paper looked at the United Kingdom legal framework for trade in services under European Union and United Kingdom trade in services with European Union under the World Trade Organization (WTO) rules. Although the long-term consequences of Brexit will not become so clear for many years, this paper seeks to make reasonable recommendations as to what can be done to better the trade in services situation in a post Brexit era that could benefit the United Kingdom, European Union and the world at large.

Keywords: Brexit, Trade in Service, United Kingdom, European Union, World Trade Organization.

1. Introduction

The world we live in is in constant change, and since it became more globalized, the changes are even more noticeable.¹ The above quote written by Charles de Gaulle reflects that these changes also affect treaties. Over the years, due to economic changes basically, not only have new agreement been created, but also those treaties which were applicable became outdated or insufficient because of the demands of the society. Therefore, it can be said that agreements, and more specifically, international agreements are continually changing. During the last century, treaties have gained in importance as a source of law. This importance has been reflected in the growing or proliferation of agreements resulting in the appearance of the so-called ‘Spaghetti Bowl’² phenomenon.³ This last phenomenon specifically happens in the European Union (EU), a multilateral organization that has competences over a wide variety of fields. For this reason, one of its members, the United Kingdom (UK), has decided to leave EU and therefore, rescind its membership from the Single Market. Brexit one of the historical events of 2016, where the majority people of United Kingdom (UK) voted to leave the European Union (EU) in the referendum held on 23 June, 2016. Such a historic event has a serious consequence including, but not limited to, agriculture, immigration, politics, domestic regulations, investments, trade and foreign relations. As a result, the UK has to shape its new trade model, first establishing a new trade agreement with the EU, also re-establish its preferential trade relations with third countries⁴, and most important its own schedules of commitments as an independent member of the World Trade Organization (WTO).

In general, the areas affected by Brexit range from immigration policies, movement of capitals to treaties related with goods and services. Nevertheless, this paper will focus only on trade in services and how to shape UK’s new trade model in this area. Trade in services is one of the most critical sectors in the UK and London is considered the financial hub of Europe. As was stated by Jo Valentine, Chief Executive of London, First, ‘While we may not see ‘made in Britain’ stamped on the bottom of much, UK is the second largest exporter of services in the world.’⁵ Compared with trade in goods, trade in services is still an area not that well-regulated both internationally and at the European level but is gaining importance.

The union of the words ‘Britain’ and ‘exit’ is the nickname for a British exit of the European Union after the referendum that took place the 23 of June of 2016. In the referendum, the question ‘Should the United Kingdom remain a member of the European Union or leave the European Union?’⁶ was asked. One part of the UK alleges that EU membership is a significant barrier to trade with China and other third countries, affirming that the UK was being held back by the EU which imposed too many expensive rules on business. Also, the UK wanted to make its laws again, rather than being created through shared decision making with other EU countries. This is

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¹Quote from Charles de Gaulle, ex-president of France, https://www.brainyquote.com/quotes/charles_de_gaulle_111694, (Accessed 12 May 2022)

² Also known as the Noodle Bowl

³U.S. Trade Policy: The Infatuation with Free Trade Agreements. 2006, https://www.rieti.go.jp/en/columns/a01_0193.html, (Accessed 12 May 2022).

⁴P, McClean., ‘After Brexit: the UK will need to renegotiate at least 759 treaties. *Financial Times*, (2016), <https://www.ft.com/content/f1435a8e-372b-11e7-bce4-9023f8c0fd2e>, (Accessed 12 May 2022).

⁵ J, Valentine., ‘Leaving the EU: an assessment of its impact on services and trade’, *London First*, (2016), p. 3.

⁶EU Referendum: Brexit Vote Results’, *Bloomberg*, 2018, <https://www.bloomberg.com/graphics/2016-brexit-referendum/> (Accessed 15 May 2022).

some of the reasons, among others, that motivated the UK to rescind the EU obligations and create its path. On the other side, the opponents to Brexit pleaded first, the risk of losing trade benefits of being inside the single market, second, the UK would be a less attractive destination, and therefore, the Foreign Direct Investment (FDI) would be diminished, and third, London would no longer be the EU's financial hub among other reasons. The final result was that; 51.9% voted to leave whereas 48.1% who voted to remain in the EU. Based on those results, and on the 9th March of 2017 the UK government triggered the Article 50 of TFEU to end the UK's membership of the EU. With the application of this Article starts a two-year period of negotiations on the terms of the withdrawal agreement. The Brexit will affect many different aspects, from migration policies, social security to trade and business. In this case, the focus will be on services trade since a significant portion of the UK's exports are services. However, UK is not just financial services, but also transport, travel, scientific and technical services, and business services such as law, accounting, architecture, etc. Therefore, any agreement with the EU will need to take trade issues into account, specifically, trade in services into account to protect its economic interests.

The UK has voted to leave the European Union. This leads to the UK being at a crossroads, on one hand, leaving the EU will benefit their relations with third countries, on the other hand, the risk of losing access to the single market and therefore, the no possibility of providing financial services to other EU Members. The European Commission published on the 28th of February 2018 the draft of the Article 50 Withdrawal Agreement which translates into legal terms the progress achieved during the negotiations and addresses what are the arrangements for the withdrawal and the transition. The aspect on trade in services will be subject to other specific agreement. The Withdrawal Agreement needs to be approved for the EU institutions, member states and ratified for the UK before the withdrawal date. But this is a complicated legal instrument and will take time for the parties to revise it profoundly and amend all the provisions, mainly for the UK since the Draft Agreement has been produced in the EU side.

2. United Kingdom Legal Framework for Trade in Services under European Union

The EU membership form is the baseline of the Brexit scenario. It defines the trade relationship of the UK with the other 27 Member States. Under EU law, all economic sectors and trade barriers are covered by negative integration in the shape of the fundamental freedoms prohibiting not only discrimination based on the nationality or the origin of a product but also nondiscriminatory restrictions making cross-border trade less attractive. A country joining the EU needs to implement and enforce all the EU rules or *acquis*. In the case of the UK, it was on January 1st of 1973 when it joined the EC. Once the UK got the membership, it could enjoy full access to the internal market and its freedoms. For that, the UK harmonized its law according to the EU and incorporated the directives and regulations into its domestic law. Furthermore, under the EU membership, there is secure access to justice, as well as the coherent interpretation and application of EU law by the Court of Justice of the European Union. In the context of the EU, all these elements are considered a *conditio sine qua non* for having full access to the internal market formed by the EU Member States. In the EU, every institution has its own role to play. The European Commission is the organ that proposes new legislation, the Council and Parliament pass the laws. The rules for the decision-making in the EU are laid down in the treaties. The articles of these treaties are the legal basis that determines which legislative procedure the EU has to follow to propose a new European law. The procedures can be resumed in: consultation, assent, and co-decisions. Apart from the Membership in the European Union, the UK also belongs to the European Economic Area. This is an area created in 1994 and brings together the EU Member States and three other states: Iceland, Liechtenstein and Norway in a Single Market. The EEA agreement guarantees the same rights and obligations within the Single Market for all the countries in the EEA. This area provides for the inclusion of EU legislation covering four freedoms throughout the 31 EEA States. Furthermore, this Agreement covers cooperation in other important areas such as research and development, education, social policy, the environment, consumer protection, tourism, and culture.⁷

Trade in services applies to direct discrimination where the applicant is treated by the host state authorities or employers, less favorably than the latter treats or would have treated, in the same circumstances. Also, trade in services applies to indirect discrimination where the host state authorities or employers apply a condition, criterion or procedure which, although apparently impartial, in practice operates to the particular detriment of non-host state citizens. This can be reflected in Article 56 of TFEU that emphasizes:

The person providing a service may temporarily pursue his activity in the Member State where the service is provided, under the same conditions as are imposed by that Member State on its own nationals.⁸ The freedom of establishment of companies is a right still not entirely free as

⁷ EEA Agreement, <http://www.efta.int/eea/eea-agreement>, (Accessed 15 May 2022)

⁸ Ibid

the rest of rights. The main problem is that there is not a single transfer regime across the EU Member States.

It is important to bear in mind one of the essential principles of the EU that allows the cross-border movement of services: the principle of mutual recognition. In general, requirements to exercise a professional qualification represent an obstacle to provide service. For that, EU legislation either harmonizes standards and regulations across all Member States or ensures that the Member States mutually accept each other's rules and standards as being equivalent to their own. This is regulated under the Professional Qualification Directive (2005/36/EC)⁹, which allow individuals or businesses to provide a service in another host Member State, as long as they meet the required standards in their own Member State. This directive also applies to the EEA Member States. There are also specific directives, for example, for lawyers dealing with the establishment in another EU country and the cross-border provision of this specific service. Moreover, it is important to note the possibility of the consumer to move to the location of the services is supported by the free movement of people established under the Citizen's Directive (2004/38/EC).¹⁰ This directive is the one that provides the European citizens the right to move temporary or long-term across the different Member States of the EU.

Nevertheless, even though the efforts made by the EU with the development of different directives, trade in services is less integrated compared with trade in goods. There are still too many aspects to harmonize about trade in services within the EU framework but is a matter of time. Trade in goods within the European Countries started to be regulated with the Custom Union that was established in 1958. For that time, trade in services was not in anyone mind. However, currently the efforts are focus on trade in services and this can be reflected in the new strategies of the EU; the Digital Single Market strategy (DSM). This Strategy is built to first, improve access to goods, services and content; second, creating the appropriate legal framework for digital networks and services, and third reaping the benefits of a data-based economy and covers some aspects as digital marketing, E-commerce, and telecommunication.

3. United Kingdom Trade with European Union under the World Trade Organization Rules

The World Trade Organization (WTO), is the most successful multilateral trading system. It operates on the principle of non-discrimination, reciprocity and negotiation. It aims to reduce trade barriers, liberalize trade and provide assistance to developing and least developed countries to open up their markets to trade. Contrary to popular belief, leaving the EU does not require UK to apply for new accession for membership in the WTO. UK is a member of the WTO in its own rights. The difficulty is to determine whether membership of the WTO would allow UK have unhindered trade and whether UK could continue with the existing trading rules on market access for its imports and exports.¹¹

To analyze UK's trading future with EU and rest of the world, it is first essential that we establish whether UK is a member of WTO. Article XI of the Marrakesh Agreement provides for the terms of original membership in the WTO.¹² As per the text of the Article XI (1), a state has to accept the Marrakesh Agreement as a whole and have its schedule of specific commitments under GATT 1994 and GATS annexed to become the member of WTO. UK has been a member of the WTO since 1 January, 1995 and a member of GATT, 1947 since 1 January, 1948.¹³ During the formation of the WTO, UK was already a member of EU. Since EU is a customs union, there was no separate schedule of commitments but one single commitment on behalf of the members of the customs union. Nevertheless, every member of the EU and EU itself as an entity, are the original members of the WTO. Bossche argued that the reason for EU itself and all its members to be individually members of the WTO lies in the way the EU constitution was structured.¹⁴ He further argues that during the time of accession into the WTO,

⁹Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications.

¹⁰ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

¹¹C. Häberli, 'Brexit without WTO-Problems: For the UK? The EU? Global Business?' (2017). *Global Trade and Customs Journal*, Volume 12, Issue 3.

¹² Article XI, Marrakesh Agreement. This article states that, 'The contracting parties to GATT 1947 as of the date of entry into force of this Agreement, and the European Communities, which accept this Agreement and the Multilateral Trade Agreements and for which Schedules of Concessions and Commitments are annexed to GATT 1994 and for which Schedules of Specific Commitments are annexed to GATS shall become original Members of the WTO.

¹³United Kingdom and the WTO, https://www.wto.org/english/thewto_e/countries_e/united_kingdom_e.htm, (last visited on 18 May 2022).

¹⁴ Peter. V.D Bossche, *The Law and Policy of the World Trade Organization: Text, Cases and Materials*, (2008). Cambridge University Press, 2nd edition, 2008) page – 20-40.

it was unclear whether the EU had the necessary competency to enter into Marrakesh Agreement on behalf of all its members. Therefore, both the EU and all its members are full members of the WTO and all the obligations of WTO apply equally to all of them.¹⁵

Bartels supports this view by drawing reference to footnote 2 of Article XI of the Marrakesh Agreement.¹⁶ It refers to the right of EU members to vote. It recognizes that EU can vote on behalf of its members, but the total number of votes of the EU and its members cannot in any case be more than that number of the states comprising the EU. It can therefore be agreed that the WTO clearly recognizes the individual rights and obligations of the EU members along with the EU under the WTO system. This view can be further confirmed by the Panel's decision in *EC/Certain MS – Airbus*.¹⁷ In this dispute a claim was initially brought by the US against Germany, France, the United Kingdom, and Spain and with the European Communities concerning measures which affect large civil aircraft trade. EU requested to remove the EU Member as respondent, making EU as the sole respondent. This request was rejected by the Panel and they stated that each of the respondents in their own rights are a member of the WTO and they have all the rights and obligations by virtue of such membership. The Panel further commented that just because under Article XI of the Marrakesh Agreement, EU gets to vote for all its members and takes responsibilities for its members, it does not take away or diminish any rights and obligations of its member from that as their WTO membership. From the WTO texts, WTO panel decision and the above discussion, it is clear that UK is an original member of the WTO in its own individual right. Therefore, UK does not need to negotiate its membership in the WTO in post Brexit era. Post Brexit, UK will represent itself in the WTO forum and performs its rights and obligations individually like any other WTO members who are not a part of EU. UK's membership and continued rights and obligation under the WTO has been established and there is not any contention with that regard, however, the terms of the UK's membership in the WTO are much contented. Can UK just continue business as usual and if that will be accepted by the WTO member?

4. Post-Brexit Legal Options for Trade in Services between the United Kingdom and the European Union

EU-UK Comprehensive Free Trade Agreement from Cut and Paste

A Free Trade Agreement (FTA) is defined as an agreement between two countries or between an international organization and nations and which primary goal is to liberalize trade in goods, and in case of a comprehensive FTA, liberalize services as well. Rather than providing freedoms, the FTAs provide preferential market access. Depending on the degree of liberalization of market access and non-tariff barriers, most of the times a comprehensive FTA can be a better option than trading under WTO rules.¹⁸ The degree of liberalization of FTAs can vary significantly. However, all the FTAs must have a 'substantial sectoral coverage' which is expressed in the Article V:1(a) of the GATS. This article imposes several conditions on economic integration agreement between WTO members for the latter to be deemed WTO-compatible. The substantial sectoral coverage is defined by an interpretive note and should be understood regarding the 'number of sectors, the volume of trade affected and modes of supply'.¹⁹ To meet this condition, a comprehensive FTA in services should not provide for the *a priori* exclusion of any mode of supply. Furthermore, Article V:1(b) of GATS also requires that a comprehensive FTA in service provides the 'absence or elimination of substantially all discriminations in the sectors covered under subparagraph (a)'.²⁰ For example, an individual sectoral trade agreement covering just tourism services outside a wider FTA, would not be legal under WTO rules. This is important to highlight because the UK was pursuing separate trade agreements for individual sectors. The above conditions constitute the price to be paid for the MFN obligation and the specific commitments to be waived by WTO members.²¹ The post-Brexit agreement between the UK and the EU has to be negotiated under Article 218 TFEU, which sets out the procedure for conducting international agreements with third countries on behalf of the EU. Generally, the EU negotiates four different FTAs, Luis Garcia from Matrix Chambers defined as: FTAs with a political dimension; FTAs with a developmental dimension, such as FTAs with the Caribbean countries or with Central America; FTAs for security and political reasons, such as the European Neighborhood Policy (ENP) with all the former Soviet countries as

¹⁵ Ibid

¹⁶ L. Bartels, 'The UK's Status in the WTO after Brexit,' (2016) page – 1-22. <https://ssrn.com/abstract=2841747>, (Accessed 19 May 2022).

¹⁷ WTO Panel Report, *EC and Certain Member States – Large Civil Aircraft (Airbus)*, WT/DS316/R, adopted 1 June 2011.

¹⁸ European Union Committee, '18th Report Brexit: Trade in Non-Financial Services', *House of Lords*, 2017, p. 21-22, <https://publications.parliament.uk/pa/ld201617/ldselect/1deucom/135/135.pdf>, (Retrieved 20 May 2022).

¹⁹ M. Aaditya, R. Sterns and G. Zanini, *A handbook of international trade in Services*, (2008). Oxford University Press, London. p. 262.

²⁰ General Agreement on Trade in Services 1995

²¹ M. Aaditya, R. Sterns and G. Zanini, *A handbook of international trade in Services*, p. 262.

Ukraine and FTAs with an economic objective, such as with Canada, Mexico, Chile.²² In case of a UK- EU comprehensive FTA, it will fall under the last type since the main objective from both sides is to keep the same economic level of liberalization.

The services aspect of an FTA can be negotiated according to a positive or a negative list. On one side, signatories of the positive list choose which sectors to list, and what commitments to make to their trading partner, understanding that no commitments are undertaken for the sectors not listed. On the other side, signatories of the negative list have to list all services sectors in where they would like to maintain restrictions towards foreign individuals and firms and what those restrictions are. The positive of a negative list increases transparency for businesses and encourages greater liberalization since the parties need to review all the legislation that affects a specific sector. However, the negotiations require more time because the signatories need to consolidate and process a vast array of information. The EU has already adopted different list approaches and also hybrid approach. Some of the most comprehensive agreements EU FTAs concluded are the Deep and Comprehensive Trade Agreement (DCFTA) with Ukraine, followed by Comprehensive Economic and Trade Agreement (CETA) with Canada, and KOREU with South Korea. CETA is a purely international agreement with no EU *acquis*.²³

Services trade agreement in DCFTA could elect to deepen its trade relationship in key service sectors such as finance transport and energy, but since DCFTA is part of the EU-Ukraine association agreement and therefore, includes most single market *acquis*. Since the UK government already stated that it does not want to be integrated with the Single Market, the following part will analyze if UK would benefit from copy and paste the previously EU- FTA. But some modes are going to be ignored, namely the Association Agreements which include The DCFTA between Europe and Ukraine, Georgia, and Moldova the reason is that this association agreement comprises most single market *acquis*. The modes that are going to be analyzed have some critical feature that likes to be in of interest to the UK for its future relation with the EU.

Trade In Services under Swiss-European Union Bilateral Agreements

The relationship between Switzerland and the EU is composed by hundreds of bilateral agreements to liberalize trade. These agreements are comprehensive enough to meet the WTO compliance for substantial sector coverage under Article V. As it was mentioned, regarding services, the EU and Switzerland do not have a specific agreement in trade in services. This is indirectly facilitated by the individual sectoral agreement under Bilateral Agreement I. This agreement covers seven sectors which are linked, so the party has to agree with all of them. Among these sectors are:²⁴ (1). Free movement of persons: The Swiss citizens and EU nationals have the same rights of working and living in both places. Even though Switzerland is a non-EU country, the bilateral agreement on the free movement of persons and its additional protocols (AFMP) establishes the basic rules for the free movement of persons between the EU and Switzerland. Therefore, the cross-border provision (mode 3) of services and the movement of persons (mode 4) is covered. Self-employed persons or employees sent by their companies can accept orders in an EU country or Switzerland for a total of 90 working days a year and can offer their services cross-borders. Also, the mutual recognition of professional qualification and the coordination of social security payments are included in this agreement. (2). Recognition of professional qualifications: The Directive 2005/36/EC of the European Parliament and of the Council applies to the EU countries and non-EU as Switzerland and the others EEA Members. A professional can provide their services in another EU country on a temporary basis. Furthermore, the directive provides three qualification recognition system for permanent establishment.²⁵ (3). Legal services: The Lawyers' Services Directive 77/249/EEC applies to Swiss lawyers in addition to lawyers qualified in the EU.²⁶ This Directive facilitates the freedom to provide services for the lawyers. (4). Air transport: This agreement is the most comprehensive agreement between Switzerland and the EU. Switzerland is included in the EU's single aviation market, and Swiss airlines have similar rights to EU airlines. In exchange, Switzerland has accepted the EU's *acquis* in this sector and the EU's rules on state aid. (5). Audiovisual media services: Trade in audiovisual media services relies on Switzerland's participation in the European Council Trans frontier Television Convention. In 2004, the second package of agreements, the Bilateral agreements II/03, was signed. Under this agreement, the implementation of Schengen agreement *acquis* was signed. Even though Switzerland is a non-EU country; this agreement removes the control

²²Luis Gonzalez, 'Brexit the option for trade', speech in the House of Lords. (2016).

<https://publications.parliament.uk/pa/ld201617/ldselect/ldcom/72/7208.htm>, (Accessed 28 May 2022).

²³ *Acquis* are the accumulated legislation, legal acts, and court decisions which constitute the body of European Union law.

²⁴ Bilateral agreement I between the European Union and Switzerland 1999.

²⁵ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications.

²⁶ Directive 77/249/EEC of the Council of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services.

at the borders facilitating the movement of Member States. At the same time, measures concerning security cooperation are included. This agreement facilitates the movement of tourist, visitors and business travelers.

Regarding financial services, the market access is limited to an agreement on the supervision of non-life insurance services, and its aim is the freedom of establishment of Swiss insurance companies active in the area of non-life around all the European Member States and vice versa. But the insurers must have personnel in the respective countries, the cross-border offering of insurance to Europe from Switzerland, for example via internet, is not permitted. The rest of financial sectors rely on the WTO/GATS terms.

Trade In Services under European Union- Korea Free Trade Agreement

The Free Trade Agreement between the Republic of Korea and the EU is the first EU agreement signed with an Asian country and is characterized by its comprehensive nature. This is reflected in the liberalization of services covering all modes of supply. The EU- Korea FTA opens the Korean services market and provides legal certainty to the EU suppliers and investors. So far, this agreement is the most ambitious one in services trade that is in force nowadays in the EU and also is the most ambitious services agreement has concluded Korea. The provisions for trade in services are found in chapter seven of this agreement. Some of the sectors that have been liberalized are telecommunications, environmental, transport, construction, financial, postal and express delivery, professional services and a large variety of other business services. The EU and Korea commit to market access liberalization in more than 100 services sectors. It is important to highlight some of the sectors²⁷: (1). Telecommunications: there is not foreign ownership requirement allowing 100% indirect ownership. Furthermore, EU satellite operators, as telephone and TV, will be able to operate directly cross-border without any further regulation and avoiding having liaised with Korean operator. (2). Transportation: the agreement provides rights of establishment and full market access for EU shipping firms in Korea. (3). Law firms: the European Law firms can open an office in South Korea and advise foreign investors on a non-Korean law. Law firms will also be able to form partnerships with Korean firms and recruit Korean lawyers to provide ‘multi-jurisdictional’ services. Plus, all lawyers are allowed to use their domestically acquired qualifications. The agreement also includes provisions on investments and movement of capital and regarding financial services, financial firms will gain substantial market access to Korea and will be able to transfer data freely from their branches and affiliates to their headquarters.

Trade in Services under European Union - Canada Free Trade Agreement (CETA)

The Comprehensive Economic and Trade Agreement, commonly known as CETA is one of the most important Free-Trade Agreements of the twenty-first century and also is the first trade agreement under the EU that has used negative list approach which means that all services are liberalized except those explicitly excluded. Regarding CETA, the EU considers this agreement as a mixed agreement because not all the provisions fall under the exclusive competences of the EU and therefore, it has to be ratified by all the EU countries also the UK. The services provisions in the new EU-Canada comprehensive agreement have been developed in different chapters²⁸: Chapter nine deals with cross-border trade in services; chapter ten makes provisions for the temporal entry and stay of natural persons for business purposes; chapter eleven lays down rules for the mutual recognition of professional qualifications. Also, there are chapters on specific sectors like transport, electronics, commerce, etc. Therefore, Services trade agreement in CETA will constitute the most comprehensive trade agreement the EU has ever concluded concerning trade in services ensuring legal certainty for the EU and Canadian services suppliers. However, some sectors have been excluded from this treaty as audiovisual, cultural services, services supplied in the exercise of governmental authority, health, education and other social services.²⁹

An area essential to highlight under CETA agreement is the movement of professional, this provision is one of the most ambitious provisions that the EU has negotiated so far. It allows temporary cross-border for all the sectors, or in other words, allow intra-corporate transferees in any sector to for up to 3 years. This is important and beneficial for companies to make an investment decision. It also permits spouses and family members to accompany a transferee. Furthermore, CETA allows services suppliers to benefit from a preferential entrance in some sectors, for example, telecommunications, postal and courier services, advisory and consultancy, etc.³⁰

²⁷ Free Trade Agreement between the European Union and Korea (EU-Korea)

²⁸ Free Trade Agreement between the European Union and Canada (CETA).

²⁹D. Webb, ‘CETA: the EU- Canada Free Trade Agreement’, *House of Common Library* (2017) p.11.

<http://researchbriefings.files.parliament.uk/documents/CBP-7492/CBP-7492.pdf>, (Retrieved 2 June 2022).

³⁰ European Commission, ‘Guide to the Comprehensive Economic and Trade Agreement (CETA)’, *The Publications Office of the European Union*, 2017, pp. 22-23, http://trade.ec.europa.eu/doclib/docs/2017/september/tradoc_156062.pdf, (Retrieved 6 June 2022).

Mutual recognition: provisions to liberalize the mobility of highly skilled professionals establishing the mutual recognition of professional qualifications and therefore, removing some limitations on citizenship and residency conditions for lawyers, accountants, architects, and engineers. Other services that have been liberalized for the first time are postal and courier services.³¹

By contrast, regarding financial services, the provisions are relatively limited. There are just a few specific types of financial service provisions, including certain types of insurance and nothing in the case of passporting. Firms may have no greater access than under the current third country equivalence regime. There is also, aviation where there is fairly good integration, but there are also more precedents for non-EU countries having access to Single European Sky and the European Common Aviation Area (ECAA).³²

5. Conclusion

After Brexit, the UK seeks to have high access to trade in goods and trade in services within the European Member States and, at the same time, rescind from the rights and obligations of the Single Market membership. Also, it desires to have its regulatory space to shape its trade policy with third countries. In other words, find a balance that maintains the flexibility in UK policy space and reduce it through a deep integration model with the EU outside the Single Market. On the other side, the EU seeks to find a deal equitable and ambitious based on the Union's interest and keeping the integrity and the function of the Single Market. This would not be easy and quick and, therefore, is clear that they are facing a big challenge. The negotiations always depend on the bargaining power of the parties involved. Then, a greater economic power equals a greater bargaining power and vice versa. The current position of the UK and the possibilities for a future trade relation between the EU in my opinion, goes beyond what has been mentioned in this paper. The relationship to be established between the UK and the EU is a new kind of relationship, and the reason to support this option is the baseline of the creation of an FTA. It does not matter if the FTA has positive, negative or hybrid list approach, or if the FTA is signed between two countries or a country and an international organization. The main goal of an FTA is to make a cooperation agreement to open markets and reduce trade barriers between the parties in order to increase a country national's welfare. In Brexit case, the starting point common to all the FTAs does not exist. Instead of departing the negotiations from zero and cooperating to get a higher level of liberalization, the negotiations between the EU and the UK are the opposite way. The point of departure is not zero but a deep integration and harmonization which strives for undo the current level of liberalization under the Single Market.

The new comprehensive FTA between the EU and UK should cover the services aspect that the UK citizenship due to their membership in the Single Market currently enjoy, for example, telecommunications broadcasting services, as the BBC channel which the main UK broadcast currently enjoy of any restriction within the EU countries. There are also the roaming regulations. To maintain inexpensive wholesale roaming services with the EU is necessary to include it in the new agreement and at the same time has substantial sectoral coverage. Otherwise, GATS/WTO rules would get in the way. If the EU offers these advantageous wholesale arrangements to a third country such the UK in the absence of a comprehensive FTA, it would likely raise WTO concerns. It is important to keep in mind that the UK has one of the most developed e-commerce markets. Therefore, in post Brexit takes effects, the e-commerce would have to comply with new regulations as new working permits or visas. Due to this, a legal development in this area would be necessary not to increase the pricing of cross-border e-commerce affecting big platforms like Amazon. Other services that would be restricted and needs to be regulated is the professional and student mobility.

Even though the negotiation of a comprehensive FTA between the EU and the UK based on a mix between CETA and Swiss Agreement is considered the best option in order not to not damage trade in services after Brexit, it is also complicated. This type of agreement is considered as a mixed agreement under the scope of CCP and need to be in compliance with the national law of EU Member States. Also, it requires to comply with rules on market access and national treatment. Moreover, provisions like the rights of establishment in some sectors, mutual recognition of some professions, as well as the free movement of persons are already covered in other FTAs signed by the EU, so it should not be a problem to negotiate on them. But the area that is completely untouched and could face serious problem for the UK is the financial services. So far, other EU agreement has not gone so far to achieve the EU system of passporting. Therefore, as a recommendation, this agreement should negotiate an equivalence of passporting right or implement some practical alternative so that it does not impact the London financial hub.

³¹ European Union Committee, '18th Report Brexit: Trade in Non- Financial Services', p.24

³²R. Rupare, 'Brexit the option for trade', speech in the House of Lords, 8 September 2016, <https://publications.parliament.uk/pa/ld201617/ldselect/1deucom/72/7208.htm>, (Accessed 28 May 2022).

In my opinion, the Brexit is a matter of protectionism vs. liberalism. Under the CCP, the EU Members cannot have more liberal policy than the EU as a whole but, at the same time, the EU has a more protectionist trade policy. In post Brexit, the UK seeks to have a more liberal trade policy by signing new trade agreements with third countries, but as a consequence, it would not join anymore from the protectionist trade of the EU.

To sum up, in post Brexit, the EU ceased to have any competence with respect to the UK. The UK automatically assumed rights and responsibilities in respect of all its relations with third countries and under WTO Agreements. The trade relation between the UK and the EU will no longer be governed by the EU treaties and as a consequence automatically will be governed by the WTO law and a replacement trade agreement between the UK and the EU. Since the UK is an original member of the WTO, it is clear that it does not need to leave this organization and re-apply for membership. In order to ensure the UK trade status, there is a high need to create the most comprehensive FTA that the EU has ever agreed. That's the reason why the Brexit is considered as the departure point of changes in services trade agreement and also as a vital test of WTO's resilience. Being realistic, the Brexit is a process and not a single event involving hundreds of difficult choices. Therefore, it is materially impossible to conclude a comprehensive FTA with such characteristics and addressing all the complex issues raised in this paper in less than two years. The writer considers that the UK's relationship with the EU is similar to the Earth relationship with the Moon. The Earth is the larger body and has more influence, yet the Moon has a powerful presence and influence in the Earth process. In this case, it is evident that the EU is the larger power with more global influence, but the EU does not run perfectly without one of its most powerful parts, the UK. A divorce is always complex, lengthy process and seldom happy, but the writer is sure post Brexit will be the starting point for an innovative model of trade agreement.