



TONY BLAIR  
INSTITUTE  
FOR GLOBAL  
CHANGE

# Brexit: The Realities of “Taking Back Control”

# Contents

“Taking Back Control”: Trade **3**

“Taking Back Control”: Law **31**

“Taking Back Control”: Immigration **43**

## “TAKING BACK CONTROL”: TRADE

The UK Government has indicated that Britain will leave the European Single Market and the EU Customs Union after Brexit. The Single Market and the Customs Union are distinct although related entities. Norway is part of the Single Market but is not part of the EU or the Customs Union, while Turkey has a customs union with the EU for most goods but is not a member of the EU or the Single Market.

**The further the UK diverges from EU single market and customs union, the greater the economic pain. The closer the trading relationship, the more the UK will have to abide by European regulation.**

---

### **The European Single Market**

#### *Background*

The European Single Market means that UK goods and services can compete with goods and services from all other EU countries on a level playing field. It is based on the four freedoms of movement of goods, services, capital and people.

EU treaties have set out the general principles structuring the Single Market around the principle of free movement. Member states must avoid both direct and indirect discrimination to reduce barriers to trade. EU law protects the rights of all EU citizens and businesses, regardless of their state of origin.

The Single Market initially came into force in the early 1990s and remains a work in progress. Building on the common market

created by the Treaty of Rome in 1957, the Single Market has helped to lessen the differences in regulation between EU states. The Single Market is the largest trading bloc in the world and has gone further than any other trade agreement in lowering trade costs by creating a shared or harmonised regulatory regime.

#### *How the Single Market Differs From a Traditional Free-Trade Agreement*

The Single Market differs significantly from both a conventional free-trade agreement (FTA) and the Customs Union. A free-trade agreement is predominantly concerned with eliminating or reducing trade tariffs on goods.

The purpose of the Single Market, however, is to lower trade costs. It seeks to tackle national rules and behaviours such as the creation of monopolies or cartels. A Customs Union, on the other hand, does not address so-called nontariff barriers—the differences in national regulations that affect trade in services.

Analysis by the London School of Economics has shown that leaving the EU Single Market would lead to reduced trade and foreign investment ([http://cep.lse.ac.uk/pubs/download/brexit08\\_book.pdf](http://cep.lse.ac.uk/pubs/download/brexit08_book.pdf)) as well as a fall in living standards.

### **The EU Customs Union**

#### *Background*

The EU Customs Union was first established in 1968 on four principles:

- no customs duties at internal borders between EU member states;
- common customs duties on imports from outside the EU;
- common rules of origin for products from outside the EU;
- a common definition of customs value.

Wherever goods are imported into the EU, the same rules are applied. The following legal framework was also established:

- ensuring that the common tariff is applied in the same way all along the EU's external borders;
- facilitating movements of goods in customs transit;
- replacing the wide variety of customs documents with a single administrative document.

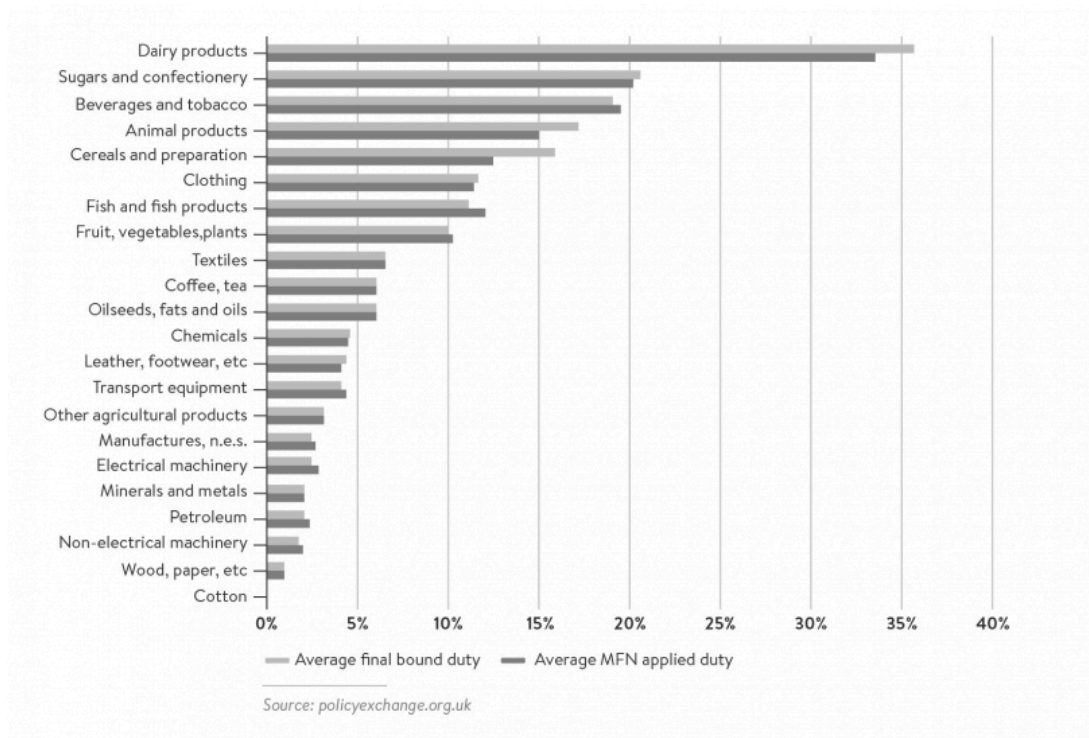
The Community Customs Code was adopted in 1992. The Customs Union includes all 28 EU member states. The EU also has customs union agreements in place with Turkey, Andorra and San Marino.

Goods from countries outside the Customs Union face the same tariff on entering the Customs Union. A customs union differs from a free-trade agreement because an FTA does not have these common tariffs.

Tariffs are a levy on the export and import of goods crossing from one customs territory to another. They are the most visible barrier to trade. The average EU import tariff is around 4.5 per cent. Cars imported into the EU Customs Union face a tariff of close to 10 per cent. The UK motor industry calculates the imposition of EU tariffs on the UK would put £1,500 on the price of a new car imported to the UK from the EU.

Average tariffs on food products are often far higher (see figure 1). The EU is the UK's single largest trading partner for food and other agricultural products, accounting for 60 per cent of exports and 70 per cent of imports.

Figure 1: EU Tariffs by World Trade Organisation Product Group



A stipulation of membership of the Customs Union is that the European Commission is responsible for negotiating all international trade deals. The director general of the Confederation of British Industry (CBI), Carolyn Fairbairn, backed by other business groups, wants the UK to remain in a customs union with the EU. She argues that the [value of a customs union \(http://cbi.typepad.com/files/carolyn-fairbairn-director-general-cbi---university-of-warwick-speech-press-release.pdf\)](http://cbi.typepad.com/files/carolyn-fairbairn-director-general-cbi---university-of-warwick-speech-press-release.pdf) with the EU outweighs the UK's ability to set its own independent trade policies.

#### *Importance of the EU Customs Union to the UK*

If the UK were outside the EU Customs Union, imports at EU borders would face greater border checks and paperwork, especially in regulated sectors such as agriculture, chemicals and pharmaceuticals.

The UK is a highly interdependent economy. The majority of cross-border trade is made up of raw materials and internal transactions between companies.

If the UK leaves the EU Customs Union, HM Revenue & Customs estimates that the number of annual customs declarations ([https://www.instituteforgovernment.org.uk/sites/default/files/publications/IfG\\_Brexit\\_customs\\_WEB\\_0.pdf](https://www.instituteforgovernment.org.uk/sites/default/files/publications/IfG_Brexit_customs_WEB_0.pdf)) will rise from 55 million to 255 million. 180,000 traders will have to make customs declarations, which will cost in the region of £4 billion a year, according to the Institute for Government.

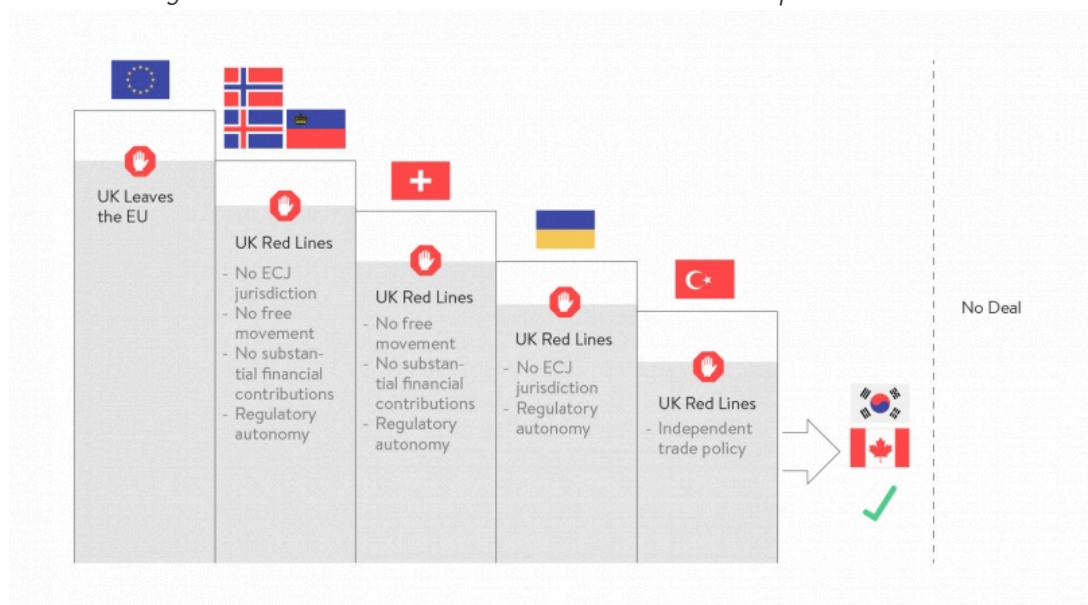
As the Institute of Fiscal Studies has argued, the UK is inextricably linked to EU-wide supply chains. Seventy per cent of UK exports to EU are classed as inputs into the final production of goods and services. More than a fifth of the UK's supply chain (<https://www.ifs.org/>) is in the rest of the EU.

As a result, EU businesses may not be able to use UK components in exports to the rest of the world. Rules of origin stipulate that a certain percentage of the product or service must come from the exporting country. Under the EU trade deal with South Korea, a product exported from the EU only qualifies if less than 45 per cent of the value of the inputs (<http://ukandeu.ac.uk/firms-supply-chains-form-an-important-part-of-uk-eu-trade-what-does-this-mean-for-future-trade-policy/>) is imported.

### **The Future UK-EU Trade Relationship**

A graphic produced by the European Commission sets out the options it believes are available to the UK in a future trading relationship with the EU (see figure 2). EU negotiators state that in light of the UK's negotiating redlines, the UK faces the option of either securing a Canada-style FTA or reverting to trading under World Trade Organisation (WTO) rules.

Figure 2: Scenarios for the Future UK-EU Relationship



A Canada Plus deal would allow the UK to agree international trade deals and end freedom of movement and ECJ jurisdiction. But it would also create border controls and restrict the UK's trade in services. It does not resolve how to prevent a hard border between Northern Ireland and the Republic of Ireland.

It would entail lower living standards

([https://www.instituteforgovernment.org.uk/sites/default/files/publications/IFGJ5896-Brexit-Report-171214-final\\_0.pdf](https://www.instituteforgovernment.org.uk/sites/default/files/publications/IFGJ5896-Brexit-Report-171214-final_0.pdf)) in the UK and “significant economic disruption”, according to the Institute for Government. The CBI has predicted a loss of 3.1 per cent of GDP to the UK economy by 2020, while the Organisation for Economic Cooperation and Development (OECD) has forecast a loss of over 5 per cent of GDP (<http://cer.eu/insights/uk-eu-canada>) by 2030.

Christophe Bondy, the legal counsel for Canada during the trade negotiations with the EU, has rejected the idea that such a deal could ever deliver the same benefits to the UK as membership of the Single Market and Customs Union.

A UK-EU trade deal similar to the Swiss model would, over ten years, lead to a 1.3 per cent reduction in UK income per head, according to Swati Dhingra of the London School of Economics.



This is equivalent to £850 per household (<http://cep.lse.ac.uk/pubs/download/ea040.pdf>).

The same analysis estimates that if the UK were to adopt the Norwegian model, which would preserve access for UK businesses to the European Single Market, [UK trade with the EU](http://cep.lse.ac.uk/pubs/download/brexit02.pdf) (<http://cep.lse.ac.uk/pubs/download/brexit02.pdf>) would have fallen by up to a quarter a decade after the UK's departure from the EU.

#### *Partial Customs Union Proposal*

The Institute of Directors has advocated that the UK becomes part of a partial customs union ([https://www.iod.com/Portals/0/PDFs/Campaigns and Reports/Europe and trade/IOD-Customising-Brexit.pdf?ver=2018-02-15-083137-800](https://www.iod.com/Portals/0/PDFs/Campaigns%20and%20Reports/Europe%20and%20trade/IOD-Customising-Brexit.pdf?ver=2018-02-15-083137-800)) with the EU covering industrial goods and processed agricultural goods, similar to the arrangements the EU currently has with Turkey.

The UK and the EU would apply the same external tariffs as the EU to imported goods from third countries. There would be no tariff between the UK and the EU. This would reduce the border costs associated with trade, but it would not remove the customs requirements for a border between Northern Ireland and the Republic of Ireland, as raw agricultural goods and other raw materials would be outside the agreement.

The UK would be able to reduce tariffs on agricultural imports from third countries if it wished to do so. Yet it is not clear why the EU would agree to the UK getting preferential access for some products to EU markets and the EU not getting preferential access for its agricultural goods.

As the UK would have its own trade deals with third countries where UK and EU companies used inputs such as raw materials that were not covered by their joint customs union, companies would need to provide rules-of-origin certificates to show that goods and processed agricultural products had sufficient UK or EU value to cross tariff free.

A customs union does not necessarily imply full harmonisation of regulatory standards. The Turkey-EU Customs Union relies on mutual recognition of conformity assessment—that Turkish

exporters are able to demonstrate that goods exported to the EU are produced to EU standards (and vice versa). However, for the UK to move to a customs union with the EU and remain compliant with WTO rules, there would have to be a wider FTA with the EU, and the terms and conditions of such an FTA are yet to be determined.

While a customs union would theoretically allow the UK to pursue some kind of independent trade policy, it would be unable to vary the tariffs relating to products covered by the partial customs union with the EU, which might also make reaching trade agreements less of a priority for some other countries. The interaction between the relative size of the UK and the EU markets, the common external tariff and third-country FTAs might also affect the prioritisation of deals by third countries with the UK. Any good covered in an FTA between the third country and the EU would be free to circulate from the EU into the UK once the common external tariff had been paid for the good to enter the EU, assuming it met UK regulatory standards (which might be aligned on EU standards in any event). UK goods would not have direct access to the third country unless and until an FTA was directly signed between the UK and the third country.

#### *Three Baskets*

There has been media speculation that the UK Government may seek a three-basket approach (<http://www.bbc.co.uk/news/uk-politics-43149831>) to the future regulatory trading relationship with the EU.

This proposal is based on the fact that there is already complete convergence between the EU and the UK.

1. Full alignment: This would mean that the UK would opt into EU law by default. Sectors under active consideration for inclusion are believed to be the motor industry and rules on data sharing, VAT and aviation safety rules.
2. Mutual recognition: This would allow the UK to diverge from EU rules to achieve the same outcomes. Financial services could be one area being considered.
3. Outer tier: This would allow the UK to diverge from EU rules. Sectors under active consideration by the UK Government for

the outer tier are thought to include agriculture.

On 21 February 2018, the European Commission outlined its own negotiating stance for the upcoming phase of Brexit negotiations. The commission position paper rejects this approach as “not compatible with the principles in the European Commission guidelines”.

- It states that it is not possible for the UK and the EU to take “co-decisions” on regulation.
- It rejects a sector-by-sector approach to the internal market, stating that it is vital to preserve its integrity.
- It highlights the danger of upsetting existing relations with third countries ([https://ec.europa.eu/commission/brexit-negotiations/negotiating-documents-article-50-negotiations-united-kingdom\\_en?utm\\_source=POLITICO.EU&utm\\_campaign=418f731e03-EMAIL\\_CAMPAIGN\\_2018](https://ec.europa.eu/commission/brexit-negotiations/negotiating-documents-article-50-negotiations-united-kingdom_en?utm_source=POLITICO.EU&utm_campaign=418f731e03-EMAIL_CAMPAIGN_2018)) .

The Institute for Government (IFG) has also said such an approach would create a complex legal landscape, “potentially deterring investment”. The IFG notes this approach is not based on any relationship ([https://www.instituteforgovernment.org.uk/sites/default/files/publications/IFGJ5896-Brexit-Report-171214-final\\_0.pdf](https://www.instituteforgovernment.org.uk/sites/default/files/publications/IFGJ5896-Brexit-Report-171214-final_0.pdf)) the EU currently has with any other country.

### **Foreign Direct Investment Into the UK**

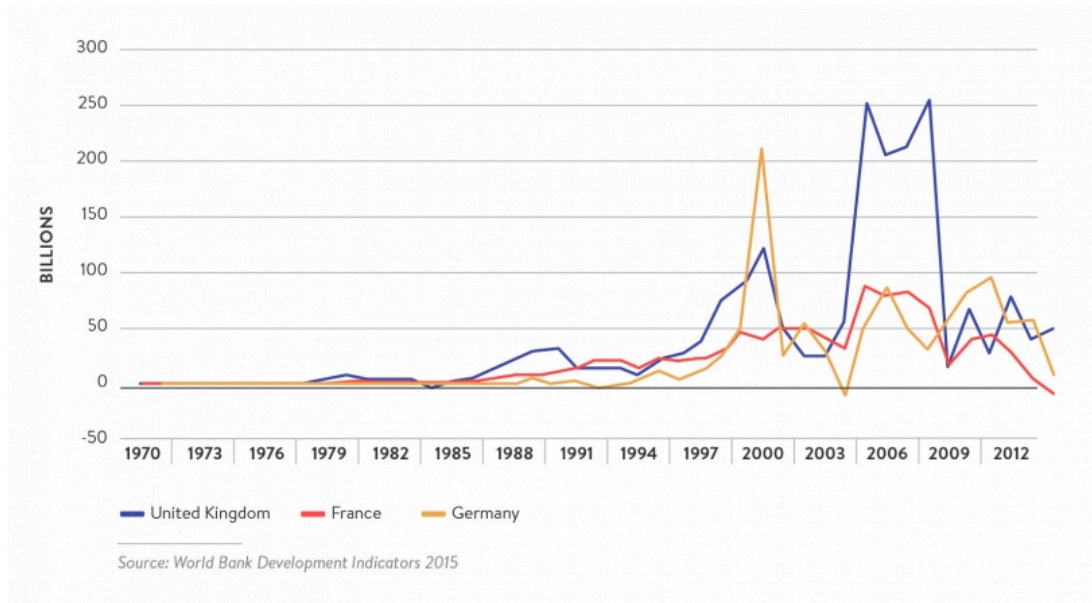
Research undertaken by the London School of Economics has found that EU membership has raised foreign direct investment (FDI) in the UK by more than a quarter. The UK has an FDI stock of over £1 trillion, about half of which is from other members of the European Union. Foreign-owned affiliates account for 14 per cent of all private-sector employment (<http://onlinelibrary.wiley.com/doi/10.1111/pirs.12345/full>) in the UK.

Leaving the EU is forecast to cut foreign investment in the UK by more than a quarter over the next decade, leading to a decline in real income of about £2,200 per household. This impact is bigger

than the London School of Economics assessment of losses from Brexit to the UK economy due to lower trade ([http://cep.lse.ac.uk/pubs/download/brexit08\\_book.pdf](http://cep.lse.ac.uk/pubs/download/brexit08_book.pdf)).

The UK has experienced significantly greater inflows of foreign investment (<https://voxeu.org/article/fdi-premium-eu-membership>) over the past 20 years than fellow EU member states France or Germany (see figure 3).

Figure 3: Foreign Direct Investment in France, Germany and the UK, 1970–2014



Net inflows, billions of pounds

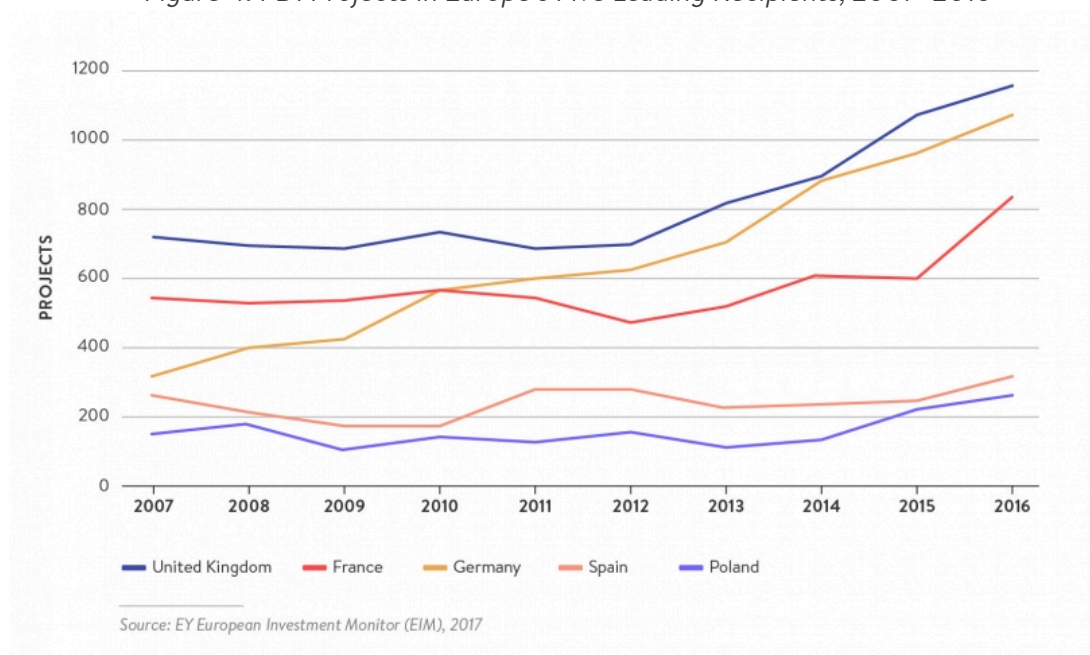
According to the US Bureau of Economic Analysis, US affiliates in Europe (<http://onlinelibrary.wiley.com/doi/10.1111/pirs.12345/full>) sell on average only half their output in their host country while exporting a quarter to the Single Market. The remaining 25 per cent is exported to the rest of the world.

The UK's net FDI position has fallen from £50.8 billion in 2015 to £12.5 billion in 2016. That is the lowest net position since records began in 1997, according to the Office for National Statistics. The EU is the region with which the UK has the greatest cross-border investments in the world. The size of UK assets in the EU (<https://www.ons.gov.uk/economy/nationalaccounts/balanceofpayments/articles/>

[ukforeigndirectinvestmenttrendsandanalysis/january2018](#)) was around twice as large as North America's.

Over the past decade, the UK has attracted a larger number of FDI projects than other major EU states. But in May 2017, the consultancy EY's [UK Attractiveness Survey](http://www.ey.com/uk/en/issues/business-environment/ey-uk-attractiveness-survey) (<http://www.ey.com/uk/en/issues/business-environment/ey-uk-attractiveness-survey>) recorded that the UK's share of European research and development (R&D) projects fell from 26 per cent to 16 per cent, its lowest level since 2011 (see figure 4).

Figure 4: FDI Projects in Europe's Five Leading Recipients, 2007–2016



The public policy research group the Rand Corporation has calculated that even if the UK reaches a deep and comprehensive free-trade deal with the EU, FDI is predicted to fall by about 9 per cent.<sup>1</sup>

### Long-Term Benefits of the EU to the UK Economy

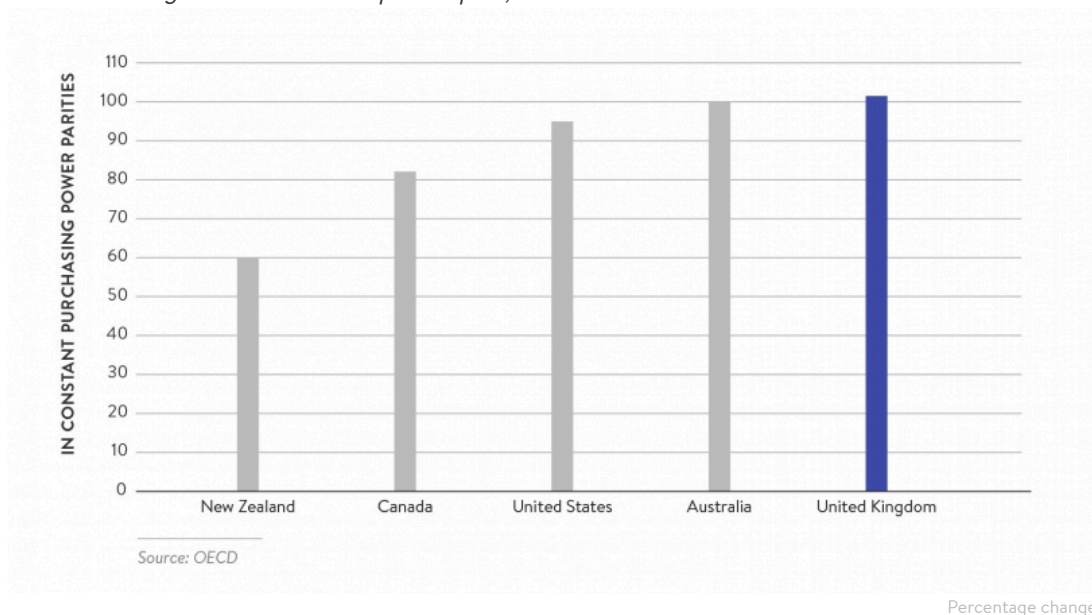
Since the UK joined the European Economic Community in 1973, the relative growth performance of the UK compared with other major European economies has improved.

<sup>1</sup> Rand- After Brexit (Nov/Dec 2017)

Professor Nicholas Crafts of the University of Warwick has calculated that membership of the EU has also raised UK income levels significantly. The total cumulative effect (<http://www.smf.co.uk/wp-content/uploads/2016/04/SMF-CAGE-The-Growth-Effects-of-EU-Membership-for-the-UK-a-Review-of-the-Evidence-.pdf>) is close to an income rise per person of a quarter.

International comparisons over the past 40 years also indicate that membership of the EU has boosted UK individual incomes (<http://www.oecd.org/economy/the-economic-consequences-of-brex-it-a-taxing-decision.htm>) relative to other developed economies, according to the OECD (see figure 5).

Figure 5: Real GDP per Capita, 1973–2014



### Importance of UK Trade With the EU

Seven of the top ten UK export markets (<https://visual.ons.gov.uk/uk-perspectives-2016-trade-with-the-eu-and-beyond/>) for goods and services are EU countries. Over 200,000 UK businesses trade with the EU. In 2016, trade between the UK and EU was valued at £520 billion, accounting for 47 per cent of the UK's total trade with all countries. The US, the UK's next-biggest trading partner, accounted for 16 per cent of the total.

Europe's importance to the UK as a trade partner is growing. In 2016 the value of UK goods exports to the EU rose by 4.8 per cent, a faster rate of growth than with the rest of the world.<sup>2</sup> Nearly half of UK exports of goods are destined for the EU. UK trade with the EU is dominated by car manufacturing, clothing and footwear, aerospace, aviation, electrical equipment, and machinery.

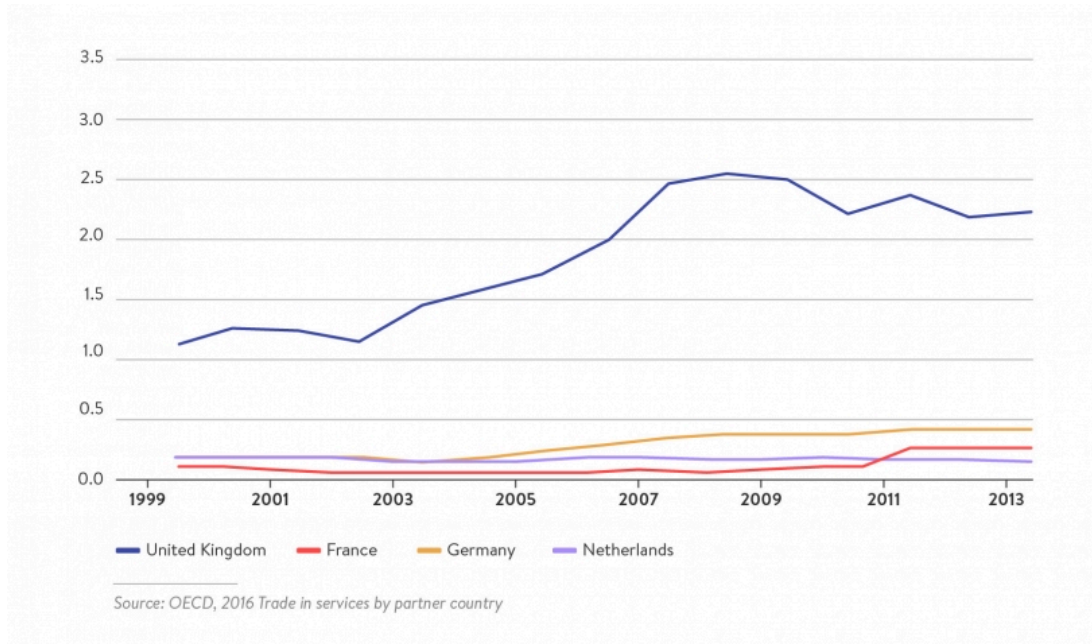
### **Importance of the UK Services Sector**

The UK is the second-largest exporter of services ([https://www.wto.org/english/res\\_e/statis\\_e/wts2017\\_e/WTO\\_Chapter\\_09\\_tables\\_e.pdf](https://www.wto.org/english/res_e/statis_e/wts2017_e/WTO_Chapter_09_tables_e.pdf)) worldwide, according to both the OECD and WTO. Services make up 80 per cent of the UK economy and represent more than 40 per cent of total UK trade (<https://www.ons.gov.uk/businessindustryandtrade/internationaltrade/bulletins/internationaltradeinservices/2016>).

Growth in UK services exports in 2016 was 15.8 per cent, the biggest rise ever recorded in percentage terms. For decades the UK has had a large deficit in the trade in goods but a surplus in services. In 2016 the UK had a £92 billion trade surplus in services (<https://secondreading.parliament.uk/blog/economy-blog/uk-trade-a-deficit-in-goods-but-a-surplus-in-services/>) compared with a deficit of £135 billion in goods.

In 2016, UK financial services exports grew by almost a quarter, year on year. Over the past 20 years UK financial services exports ([https://stats.oecd.org/Index.aspx?DataSetCode=TISP\\_EBOPS2010](https://stats.oecd.org/Index.aspx?DataSetCode=TISP_EBOPS2010)) have seen a significant rise both as a percentage of GDP and in comparison with other major European countries (see figure 6).

Figure 6: Exports of Four EU Countries, 2000–2013

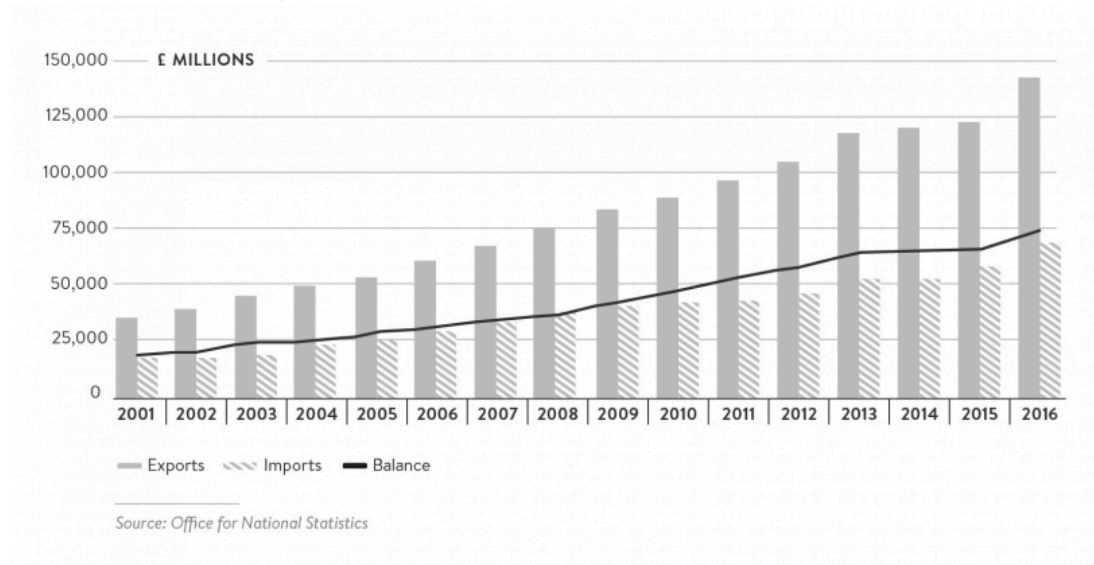


Extended balance of payments services classification

According to the Office for National Statistics, over the past 15 years there has been significant growth in the UK's international trade in the three UK service sectors of legal, engineering and science (see figure 7).



Figure 7: Total UK International Trade in Services (Excluding Travel, Transport and Banking), 2001–2



Millions of pounds

The UK Chancellor Philip Hammond has declared that “a deal that includes goods (<https://www.gov.uk/government/speeches/davos-2018-chancellors-speech-at-the-cbis-british-business-leaders-lunch>), but didn’t include services could never be fair, could never be attractive to the UK”. Yet in the opinion of the Financial Times, “there is not a free trade deal in the world that contains a deep and comprehensive agreement on services (<https://www.ft.com/content/92c5663a-ff69-11e7-9650-9c0ad2d7c5b5>)”.

### UK Trade in Services With the EU

In 2016 the UK recorded growth of 17.8 per cent in the trade in services with the EU, according to the Office for National Statistics. The EU is either the largest or second-largest destination market (<https://www.ons.gov.uk/businessindustryandtrade/internationaltrade/bulletins/internationaltradeinservices/2016>) for every region in the UK. In the case of the North East and the West Midlands, half of the regions’ services exports (<http://blogs.sussex.ac.uk/uktpo/publications/which-manufacturing-sectors-are-most-vulnerable-to-brexite/>) go to the EU, according to Sussex University Trade Policy Observatory.

EU member states, excluding the UK, collectively purchase almost a third of global imported services, three times more than either the US or China. While the EU makes up 32 per cent of the global trade in services ([https://www.wto.org/english/res\\_e/statis\\_e/wts2017\\_e/WTO\\_Chapter\\_09\\_tables\\_e.pdf](https://www.wto.org/english/res_e/statis_e/wts2017_e/WTO_Chapter_09_tables_e.pdf)), the figure for the US is just under 11 per cent, and China represents 9.6 per cent of the global total, according to the WTO.

Ten of the top 20 service-importing countries in the world are EU member states. The EU has ratified or is in the process of striking deals with another four of the top 20 service-importing countries. These arrangements represent three-quarters of global commercial services imports ([https://www.wto.org/english/res\\_e/statis\\_e/wts2017\\_e/WTO\\_Chapter\\_09\\_tables\\_e.pdf](https://www.wto.org/english/res_e/statis_e/wts2017_e/WTO_Chapter_09_tables_e.pdf)).

### **Role of the EU Single Market in Services Trade**

According to research by the National Institute for Economic and Social Research (NIESR), the European Single Market “substantially and statistically significant increases in bilateral services trade flows (<http://journals.sagepub.com/doi/abs/10.1177/002795011623800113>)”.

The NIESR found that membership of less comprehensive free-trade agreements was “not associated with any significant increase in bilateral services trade (<https://www.niesr.ac.uk/publications/assessing-impact-trade-agreements-trade>)”. It concluded that if the UK leaves the single market, it could have the impact of reducing UK services exports to EU states by 60 per cent. This could reduce total UK services trade (<https://www.niesr.ac.uk/publications/assessing-impact-trade-agreements-trade>) by almost a quarter.

The Institute for Fiscal Studies (IFS) has highlighted that for services, “non-tariff barriers are especially important”. Nontariff barriers ([http://unctad.org/en/PublicationsLibrary/ditctab20121\\_en.pdf](http://unctad.org/en/PublicationsLibrary/ditctab20121_en.pdf)) include safety regulations, environmental standards and product quotas. The UN Conference on Trade and Development lists 16 different categories of nontariff barriers of trade ([http://unctad.org/en/PublicationsLibrary/ditctab20122\\_en.pdf](http://unctad.org/en/PublicationsLibrary/ditctab20122_en.pdf)). The IFS also found that membership of the single market reduces nontariff barriers (<https://www.ifs.org.uk/>

publications/8411) “in a way that no existing trade deal, customs union or free trade area does.”

The World Bank’s Services Trade Restrictiveness Index charts the ability to trade in five key service sectors between more than 100 countries. While trade between EU countries is “virtually open with minor restrictions”, it finds that major restrictions (<http://iresearch.worldbank.org/servicetrade/aboutData.htm>) apply in areas such as transport, financial, legal and accountancy services between EU and non-EU countries.

Key to the elimination of nontariff barriers is an effective enforcement process. In 2016, the European Commission pursued around 1,000 enforcement cases against EU states. In total, there have only been 500 WTO dispute settlements ([https://ec.europa.eu/info/publications/2016-commission-report-and-factsheets-monitoring-application-eu-law\\_en](https://ec.europa.eu/info/publications/2016-commission-report-and-factsheets-monitoring-application-eu-law_en)) since the Second World War.

According to a leaked Government report seen by Sky News, official projections of the costs of nontariff barriers (<https://news.sky.com/story/new-brexit-leak-reveals-steep-costs-for-uk-industries-11240583>) on key UK business sectors show that retail could face additional costs of up to 20 per cent, while carmakers could see their costs rise by up to 13 per cent.

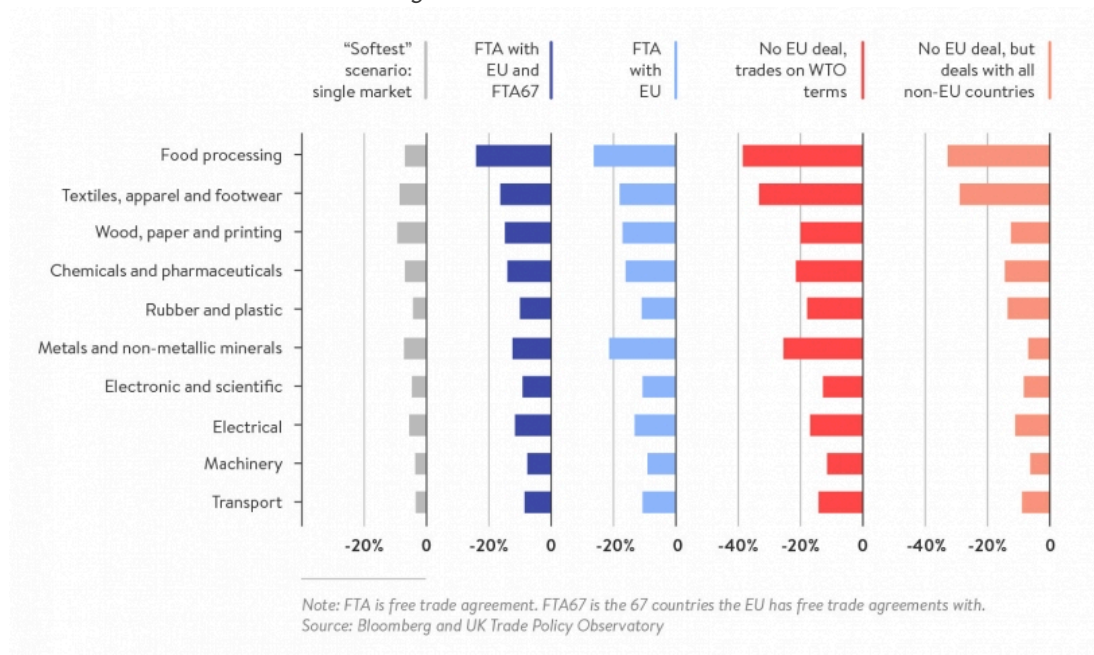
### **International Trade Deals Outside the EU**

In her Lancaster House Speech in January 2017, UK Prime Minister Theresa May declared that “a Global Britain must be free to strike trade agreements (<https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>) with countries from outside the European Union”.

It is principally for this reason that the UK Government has indicated it will not remain within the EU Customs Union. But leaked UK Government analysis has found that free-trade deals with non-EU countries (<https://www.thetimes.co.uk/edition/news/trade-deals-cannot-make-up-for-brexit-losses-says-leaked-report-j78lqwtgm>) will add less than 1 per cent to the long-term growth of the UK economy.

The Sussex University Trade Policy Observatory believes that in a “scenario in which the UK leaves the EU without a deal but signs FTAs with all other countries in the world . . . that even these universal FTAs (<http://blogs.sussex.ac.uk/uktpo/files/2018/02/Briefing-paper-16.pdf>) would not fully mitigate the loss of trade with the EU” (see figure 8).

Figure 8: The Possible Impact of Various Brexit Scenarios on the Value of Britain’s Manufacturing Ex



### Potential UK-US Free-Trade Deal

UK International Trade Secretary Dr Liam Fox has repeatedly promised that new trade deals outside the EU, with countries such as the US and China, will guarantee the UK’s future prosperity and that the process will be both “quick and smooth”.<sup>3</sup>

Undisclosed research for the “EU Exit Analysis—Cross Whitehall Briefing” undertaken by the Department for Exiting the European Union found that a US trade deal with the UK ([https://www.buzzfeed.com/albertonardelli/the-governments-own-brexite-analysis-says-the-uk-will-be?utm\\_term=.sebYq8vQO#.rmQv4KVmP](https://www.buzzfeed.com/albertonardelli/the-governments-own-brexite-analysis-says-the-uk-will-be?utm_term=.sebYq8vQO#.rmQv4KVmP)) would only add 0.2 per cent to UK long-term GDP. The public policy research group the

3 Dr Liam Fox: Peston on Sunday ITV.

Rand Corporation has also calculated that following Brexit, “the loss of growth cannot be made up by negotiating free trade agreements (<https://www.rand.org/randeurope/research/projects/brexit-economic-implications.html>) (FTAs) with other partners either, including the United States”.

US President Donald Trump has made clear he advocates an America First trade policy ([https://www.washingtonpost.com/news/post-politics/wp/2017/11/10/trump-says-u-s-wont-be-taken-advantage-of-anymore-and-hours-later-pacific-rim-nations-reach-deal-on-trade-without-u-s-buy-in/?utm\\_term=.3ad0d55400af](https://www.washingtonpost.com/news/post-politics/wp/2017/11/10/trump-says-u-s-wont-be-taken-advantage-of-anymore-and-hours-later-pacific-rim-nations-reach-deal-on-trade-without-u-s-buy-in/?utm_term=.3ad0d55400af)). In his words, “we are not going to let the United States be taken advantage of anymore”. He has already withdrawn from the Trans-Pacific Partnership trade agreement, criticised the North America Free Trade Agreement and the WTO, and vetoed the appointment of new judges to this international trade body.

According to US Commerce Secretary Wilbur Ross, a “trade war (<http://www.independent.co.uk/news/business/news/trump-trade-war-us-global-wilbur-ross-ramparts-troops-comments-latest-a8175446.html>) has been in place for quite a little while. The difference is the US troops are now coming to the ramparts”. Any agreement of a trade deal with the US is likely to require a lowering of UK standards, particularly in agriculture. Wilbur Ross has stated that the UK would need to abandon EU environmental standards (<https://www.theguardian.com/business/2017/nov/06/trump-ross-says-uk-us-trade-deal-eu-brexit-chlorinated-chicken>), particularly in agriculture, if it wanted a free-trade deal with the US.

Ted McKinney, the US undersecretary of agriculture, has also called on the UK to use the “reset button” rather than maintain EU rules on hormone-produced beef (<https://www.express.co.uk/news/world/900935/brexit-US-EU-trade-deal-ted-mckinney-department-of-agriculture-theresa-may>). The UK Environment Secretary Michael Gove has promised that the UK will not agree a trade deal with the US if it means lowering British animal-welfare standards (<https://www.politico.eu/article/michael-gove-no-us-trade-deal-if-it-means-lower-environmental-standards/>).

### **US-Australia Free-Trade Deal**

In 2005 the US signed a free-trade deal with Australia. Research by the Australian National University a decade later established that it diverted Australia's trade away from the lowest-cost sources and so offset any benefits. Both countries were worse off than they would have been without the agreement. By 2012 it had reduced or diverted \$54 billion of trade (<https://crawford.anu.edu.au/pdf/ajrc/wpapers/2015/201501.pdf>) with the rest of the world.

An inquiry by the Australian Senate ([http://www.aph.gov.au/binaries/senate/committee/fretrade\\_ctte/report/final/report.pdf](http://www.aph.gov.au/binaries/senate/committee/fretrade_ctte/report/final/report.pdf)) established that:

- there had been insufficient preparations for the negotiations;
- the Australian Parliament did not even consider the deal until after it had been officially signed;
- article 8.7 of the deal stated that the US must be allowed to participate in the development of standards and technical regulations.

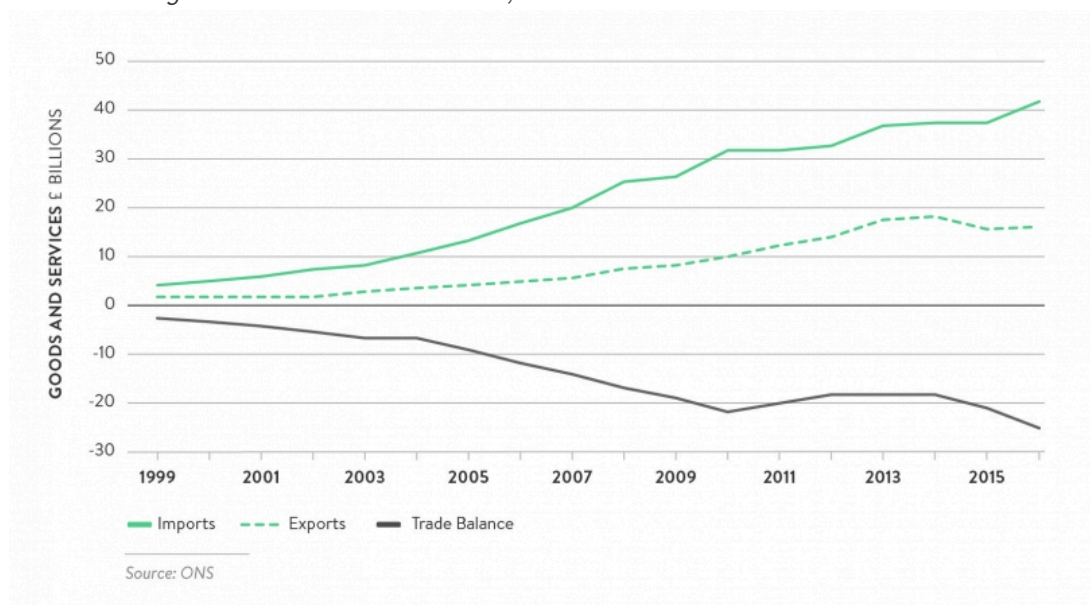
Australia's exports to the US over the five years to 2010 grew by only 2.5 per cent, compared with double-digit growth for exports to all the major Asian trading partners.

"A world in which bilateral trading agreements (<http://www.smh.com.au/federal-politics/political-opinion/mind-the-gap-benefits-from-free-trade-havent-quite-gone-the-distance-20100302-pg6p.html>) play a more central role favours the biggest countries, such as the US and China. Their power affords them superior bargaining leverage to win concessions favouring their domestic constituencies," according to Professor Rodney Tiffen of Sydney University.

### **UK-China Trade Relationship**

In 2016 the UK had a £25.4 billion trade deficit with China, (<http://researchbriefings.files.parliament.uk/documents/CBP-7379/CBP-7379.pdf>) the highest on record. China accounts for 3.1 per cent of UK exports and 7.2 per cent of imports (see figure 9).

Figure 9: UK Trade With China, Goods and Services



Billions of pounds

According to the British Chambers of Commerce, “growth in Chinese exports (<http://exportbritain.org.uk/market-snapshots/china.html>) is expected to be most rapid to other economies in Asia over the medium term”. “Even if UK exports to China grew in line with strong Chinese economic growth through to 2030, export levels (<https://www.ifs.org.uk/publications/8411>) are unlikely to reach anywhere near current levels with the EU or US,” according to the IFS.

Dr Liam Fox on a recent trip to Beijing conceded that a free-trade deal with the world’s second-largest economy, China, is “some time away” and that other market access measures (<https://news.sky.com/story/liam-fox-post-brexit-trade-deals-some-time-away-11231725>) might be more appropriate than a free-trade agreement. The UK trade envoy to China, Richard Burn, has also expressed “caution” over the prospect of a future trade deal (<https://www.bloomberg.com/news/videos/2018-02-08/burn-says-china-cautious-on-pre-brexit-trade-talks-with-u-k-video>) while highlighting the potential of financial services.

China currently imposes limits on the foreign ownership of financial services. There is a 25 per cent cap on the total foreign ownership stake in Chinese commercial banks and asset-

management companies. While there are plans to ease these restrictions over the next three years, China uses joint venture requirements (<https://www.ft.com/content/d4a85422-c5d5-11e7-b2bb-322b2cb39656>) in a broad range of industries to protect domestic business from competition.

Chinese nonfinancial investment fell by more than 40 per cent in the ten months to October 2017. Since January 2018, the Chinese Government has imposed capital controls (<https://www.ft.com/content/b69166fa-ee01-11e7-b220-857e26d1aca4>) and caps on overseas currency withdrawals of \$50,000 per person.

Donald Trump has accused China of “massive intellectual property theft (<http://money.cnn.com/2018/01/26/news/economy/trade-trump-davos/index.html>), industrial subsidies and pervasive state-led economic planning”. The US has launched investigations into alleged unfair Chinese trading practices including intellectual-property theft. Large tariffs have been imposed on Chinese solar-cell exports. An anti-dumping investigation (<https://www.ft.com/content/4e96e20c-e742-11e7-97e2-916d4fbac0da>) has been launched into the export of aluminium sheeting, the first probe of its kind in quarter of a century.

### **UK-India Trade Relationship**

According to the Office for National Statistics, the UK has been running a trade deficit with India (<https://www.ons.gov.uk/economy/nationalaccounts/balanceofpayments/datasets/9geographicalbreakdownofthecurrentaccountthepinkbook2016>) since 2005. In 2014, 1.7 per cent of UK exports went to India (<https://www.ft.com/content/5fef7796-1914-11e7-a53d-df09f373be87>). UK exports to India have been declining, according to the Federation of Indian Chambers of Commerce.

Research for the Commonwealth Library has highlighted that any free-trade deal between the UK and India is “likely to have a greater impact on India than the UK”. Tariffs on UK exports to India are 14.8 per cent on average and are particularly high for alcohol and automobiles ([http://www.keepeek.com/Digital-Asset-Management/oecd/commonwealth/trade/brexit-opportunities-for-india\\_ca804af9-en#.WoVka0x2uhc](http://www.keepeek.com/Digital-Asset-Management/oecd/commonwealth/trade/brexit-opportunities-for-india_ca804af9-en#.WoVka0x2uhc)).



Trade talks between the EU and India have been under way for almost a decade. According to the former UK Business Secretary Vince Cable, progress was halted by the desire of the then Home Secretary, Theresa May, to control immigration. Visa restrictions have led to more than a 50 per cent decline in Indian students in the UK (<https://www.theguardian.com/politics/2016/oct/17/theresa-may-obsessed-with-controlling-immigration-says-vince-cable>) since 2010.

### **The UK and the Commonwealth**

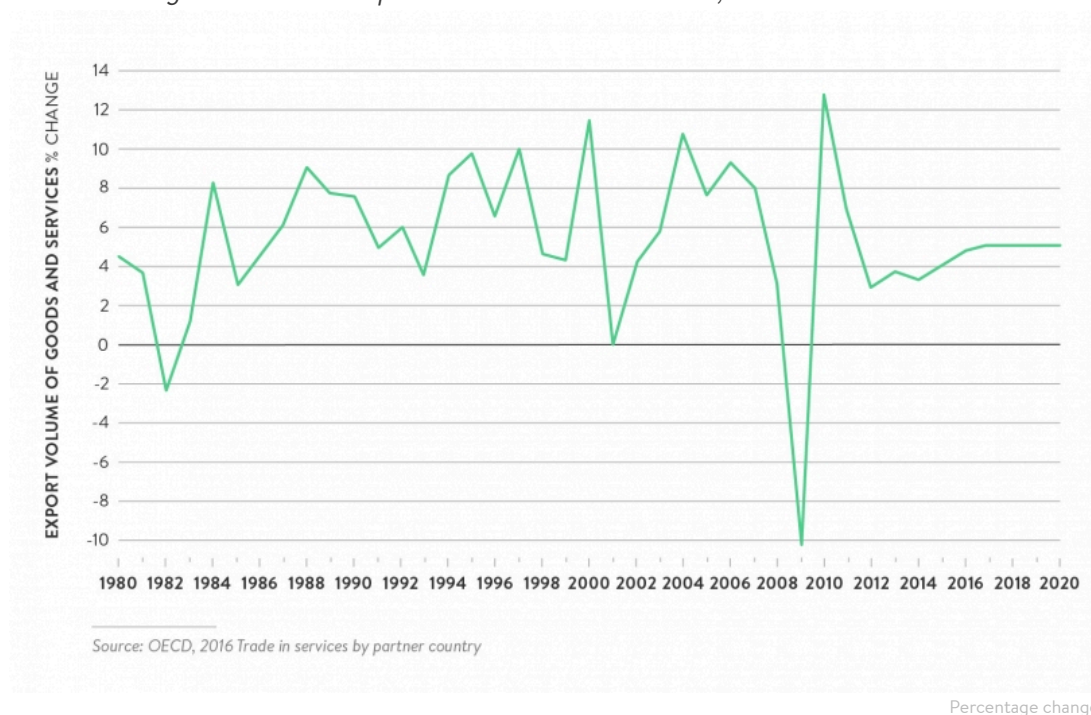
UK goods exports to the Commonwealth fell from £29.9 billion in 2013 to £25.1 billion in 2015. The UK exports more to Germany (<https://visual.ons.gov.uk/commonwealth-trade-in-focus-as-uk-prepares-for-brexite/>) than to the Commonwealth countries of Australia, Canada, India, Malaysia and New Zealand combined, according to the Office for National Statistics.

The EU already has preferential trading arrangements (<http://researchbriefings.files.parliament.uk/documents/RP13-42/RP13-42.pdf>) with 16 out of over 50 Commonwealth members and is in negotiations with more than another 25, according to research for the House of Commons Library.

### **The Changing Nature of Global Trade**

As the UK Department for International Trade admits in its white paper on future trade policy, global trade is at half its long-term growth rate: “Growth in global trade ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/654714/Preparing\\_for\\_our\\_future\\_UK\\_trade\\_policy\\_Report\\_Web\\_Accessible.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/654714/Preparing_for_our_future_UK_trade_policy_Report_Web_Accessible.pdf)) is unlikely to return to the high growth rates of the last 30-40 years.”

Figure 10: World Exports of Goods and Services, 1980–2020



Total international trade growth (<http://www.oecd.org/std/its/OECD-G20-trade-Q32017.pdf>) for the G20 advanced economies remains approximately 5 per cent below the level reached in 2014, according to the OECD.

#### *Distance and Trade: The Gravity Model*

The farther apart two trading partners are geographically, the less they trade on average. The gravity model of trade is one of the most widely used tools in international economics and underlines the importance of the EU to UK exports. The gravity model states that trade between two countries is greater if they have larger economies and less if they are more distant from one another.

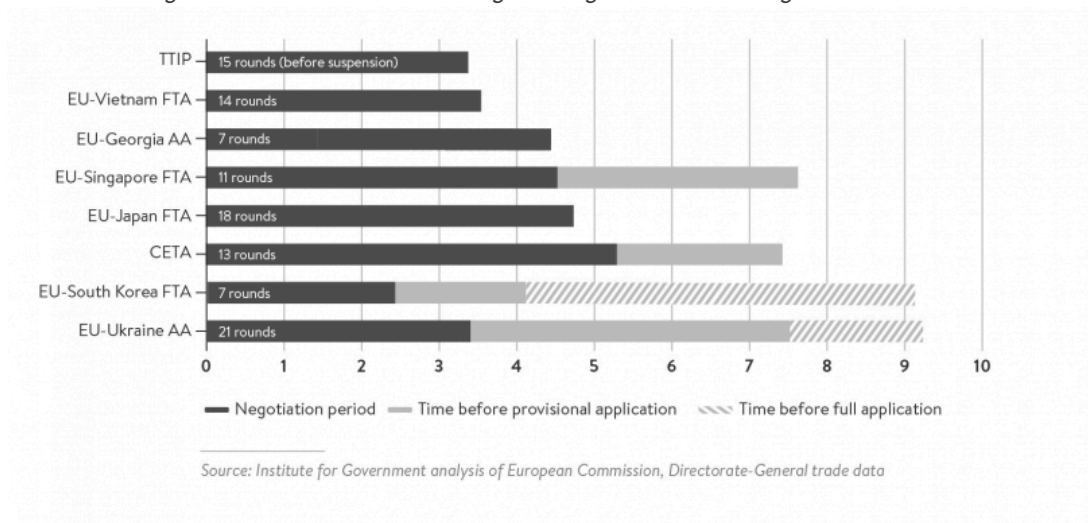
Academic research has identified a nearly inverse relationship between trade and distance. A 10 per cent increase in distance lowers bilateral trade (<https://www.gtap.agecon.purdue.edu/resources/download/3699.pdf>) by about 9 per cent and reduces services trade by 7 per cent. Italy and Japan buy the same amount of Britain's services (<http://www.cer.eu/insights/britains-services->

firms-cant-defy-gravity-alas) despite Japan’s economy being 2.5 times larger than Italy’s.

### Global Trade: Complexities and Delays

Trade negotiations are lengthy and complex (see figure 11). The EU-Canada deal runs to 1,600 pages and took seven years to negotiate. Australia took a decade to agree a free-trade agreement with China.

Figure 11: The Duration of Negotiating and Concluding Recent EU FTAs



Years

The UK Government has revealed that the EU has over 100 international agreements ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/680366/Technical\\_Note\\_-\\_International\\_Agreements\\_in\\_the\\_Implementation\\_Period\\_-\\_CLEAN.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/680366/Technical_Note_-_International_Agreements_in_the_Implementation_Period_-_CLEAN.pdf)) with non-EU countries, which the UK is set to lose after Brexit. The UK has asked the EU to be treated during the transition period “in the same way as EU member states for the purposes of these agreements”.

The UK Department for International Trade has admitted that the UK still has to replicate free-trade arrangements that the EU has with 65 other countries. Twelve per cent of all UK trade is with 65 non-EU states (<http://www.huffingtonpost.co.uk/entry/greg-hands->

[free-trade-brexiteers-uk\\_5a14344ce4b0aa32975dc89c](http://www.huffingtonpost.co.uk/entry/trade-eu-brexiteers-greg-hands-uk_5a14344ce4b0aa32975dc89c)) such as South Korea and Switzerland.

The UK Trade Minister Greg Hands has told MPs that ministers and officials could not cope if existing [EU trade deals](http://www.huffingtonpost.co.uk/entry/trade-eu-brexiteers-greg-hands-uk_5a68c708e4b002283008c675?utm_hp_ref=uk-homepage&ncid=newsletter-ukThe%20Waugh%20Zone%20250117) ([http://www.huffingtonpost.co.uk/entry/trade-eu-brexiteers-greg-hands-uk\\_5a68c708e4b002283008c675?utm\\_hp\\_ref=uk-homepage&ncid=newsletter-ukThe%20Waugh%20Zone%20250117](http://www.huffingtonpost.co.uk/entry/trade-eu-brexiteers-greg-hands-uk_5a68c708e4b002283008c675?utm_hp_ref=uk-homepage&ncid=newsletter-ukThe%20Waugh%20Zone%20250117)) with other countries had to be agreed by the expected Brexit departure date of March 2019. “If we were to enter into 40 plus live trade negotiations, and have to get them done within the space of 14 months, you’ve got to bear in mind what is actually possible.”

### **The Long-Term Economic Impact of Brexit on the UK**

Contrary to the claims of Brexiteers, there is a strong consensus over the impact of Brexit on the UK economy. In addition to [HM Treasury](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/662826/Forecomp_November_2017.pdf) ([www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/662826/Forecomp\\_November\\_2017.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/662826/Forecomp_November_2017.pdf)) and the [Bank of England](https://www.bankofengland.co.uk/-/media/boe/files/inflation-report/2016/may-2016.pdf?la=en&hash=24C2DA653E11ED506E25AA67FA54BFA2CBE16FC9) (<https://www.bankofengland.co.uk/-/media/boe/files/inflation-report/2016/may-2016.pdf?la=en&hash=24C2DA653E11ED506E25AA67FA54BFA2CBE16FC9>), numerous credible and independent institutions including the [International Monetary Fund](http://www.bbc.co.uk/news/business-42424700) (<http://www.bbc.co.uk/news/business-42424700>), the [OECD](http://www.oecd.org/eco/outlook/economic-forecast-summary-united-kingdom-oecd-economic-outlook.pdf) (<http://www.oecd.org/eco/outlook/economic-forecast-summary-united-kingdom-oecd-economic-outlook.pdf>), the [IFS](https://www.ifs.org.uk/uploads/publications/comms/r116.pdf) (<https://www.ifs.org.uk/uploads/publications/comms/r116.pdf>), the [National Institute for Economic and Social Research](https://www.niesr.ac.uk/media/niesr-press-release-gdp-growth-05-three-months-january-2018-13244) (<https://www.niesr.ac.uk/media/niesr-press-release-gdp-growth-05-three-months-january-2018-13244>), the [CBI](http://www.cbi.org.uk/businessvoice/latest/the-economic-outlook-for-2018/) (<http://www.cbi.org.uk/businessvoice/latest/the-economic-outlook-for-2018/>), and the [London School of Economics](http://cep.lse.ac.uk/pubs/download/brexit02.pdf) (<http://cep.lse.ac.uk/pubs/download/brexit02.pdf>) have all calculated that Brexit will permanently reduce the size of the British economy by depressing trade and investment. A host of investment banks including Goldman Sachs, Deutsche Bank and HSBC, and consultancies such as PWC and Oxford Economics, have come up with [similar numbers](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/662826/Forecomp_November_2017.pdf) ([www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/662826/Forecomp\\_November\\_2017.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/662826/Forecomp_November_2017.pdf)).

The only dissenting voice is a group called Economists for Free Trade (<https://www.economistsforfreetrade.com/News/cabinet-told-to-forget-flawed-official-forecasts-whitehalls-secret-new-model-shows-brex-it-will-boost-gdp-by-up-to-4-per-cent/>) (formerly known as Economists for Brexit), which relies on modelling work done by Professor Patrick Minford of Cardiff University.

Why does Professor Minford come to such different conclusions from everybody else? He assumes unilateral tariff-free trade, no nontariff barriers to trade and no transport or border costs. He also assumes that there will be no loss of trade from quitting the EU and that scrapping unnecessary EU regulation will save British businesses £120 billion (around 6 per cent of GDP) a year. Scrapping tariffs and regulation will reduce the prices of agricultural and manufacturing goods by 20 per cent, increase competition and force British producers to be more competitive or die. The combined effects of all this will be to boost GDP by up to 4 per cent.

Professor Minford assumes that the differences in goods prices between the EU and low-cost countries are all down to the EU's trade tariffs, and that distance, quality, safety and branding have no impact on the prices of traded goods. In short, he assumes that British consumers will buy any given product at the lowest price available globally, so will swap their German cars for Chinese ones. In reality, consumers do not buy from the cheapest supplier and trade is strongly affected by the distance between countries, their size, history and wealth.

He also claims that the growth in trade between EU countries has come at the expense of lower trade with other countries—that is, the EU has not created additional trade, just diverted it.

But there is overwhelming empirical evidence that Single Market rules have facilitated trade between EU members by removing nontariff barriers rather than diverting it from other countries. Crucially, he ignores the impact that the loss of passporting rights will have on the UK's exports of financial services. Professor Minford's assertion that the EU could not restrict British access to the Single Market for services, as this would be illegal under WTO rules, misses the point by ignoring nontariff barriers to trade. EU

member states will not allow British firms to provide services to their citizens without signing up to EU rules. The EU's drive to open up member states' financial sectors to competition—which benefited the UK disproportionately—would have been impossible without the EU setting common standards.

Professor Minford came up with his estimate of the regulatory cost of EU membership by attaching an arbitrary cost to EU regulation and then assumed that the UK would face none of these costs if it quit the EU. There are understandable reasons why the EU regulates: 28 conflicting regulations would act as barriers to trade, so the EU sets common minimum standards that enable mutual recognition—the animating principle of the Single Market—to work.

While Professor Minford is wrong to dismiss the impact of lost manufacturing capacity. He is right to argue that the benefits of trade are down to the utility derived from imported goods and services, and that we should not overemphasise exports for exports' sake, but we still need to export to pay for what we import.

## “TAKING BACK CONTROL”: LAW

In her Lancaster House speech (<https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>) of January 2017, Theresa May emphasised the importance of the UK taking control of its own laws: “Leaving the European Union will mean that our laws will be made in Westminster . . . and those laws will be interpreted by judges not in Luxembourg but in courts across this country.”

During the speech, May announced her intention to end the direct jurisdiction of the ECJ in the UK. This followed consistent commitments (<http://brexitcentral.com/take-back-control-courts-must-break-free-european-court-human-rights/>) by Vote Leave during the referendum campaign to take back control over the UK’s laws.

The prime minister has since accepted a role for the ECJ after the UK’s withdrawal date from the EU in March 2019. UK courts can refer cases that involve EU citizens’ rights ([https://ec.europa.eu/commission/sites/beta-political/files/joint\\_report.pdf](https://ec.europa.eu/commission/sites/beta-political/files/joint_report.pdf)) to the ECJ until 2027.

### The European Court of Justice

The European Court of Justice (ECJ), based in Luxembourg, is the highest court in the European Union in matters of interpretation of EU law.

The court has four main roles (<http://ukandeu.ac.uk/explainers/the-court-of-justice/>):

- to settle disputes between EU institutions;
- to allow member states to challenge EU legislation;
- to allow the European Commission to challenge member states to comply with EU law;
- to allow national courts to send questions to the ECJ about the interpretation of EU law.

The ECJ was established by the Treaty of Paris in 1951. It was not created to strike down national law like the US Supreme Court and

is designed to work in conjunction with national courts. At the request of national courts, it ensures the “uniform application ([https://curia.europa.eu/jcms/jcms/Jo2\\_6999/en/](https://curia.europa.eu/jcms/jcms/Jo2_6999/en/)) and interpretation of EU law”.

The ECJ has the power to fine governments that fail to carry out treaty obligations in common areas of policy such as applying agreed EU rules on the environment or opening markets.

The ECJ’s areas of jurisdiction have gradually expanded under the Treaties of Rome in 1957, Maastricht in 1992, Amsterdam in 1997, Nice in 2001 and Lisbon in 2007. In some policy areas where member states have unanimously agreed to develop policy at a European level in a treaty, further detailed legislation is required before the ECJ acquires jurisdiction. Such legislation is initiated by the European Commission, then voted on by the European Parliament and the EU Council of Ministers.

### **Remit of the ECJ**

EU law protects the rights of all EU citizens and businesses, regardless of their state of origin. Where collectively agreed by member states in a treaty, the role of EU law extends beyond pure trade-related issues. Where European law applies, any individual can go to a national court and challenge the legislation. For example, in the 1990s, the member states agreed to extend the role of EU law and of the court to apply to disability issues.

A series of landmark cases in the 1960s helped define its powers. Individuals, not just states, were given enforceable rights in the European courts following the Van Gend en Loos case in 1963. In the Costa case in 1964, the ECJ ruled that when national law is in conflict with EU law, the latter has primacy.

In the words of the House of Lords EU Select Committee (<https://publications.parliament.uk/pa/ld201011/ldselect/lddeucom/128/12805.htm>), “the ECJ does not actually decide the substance of the case. Having given its interpretation, the case returns to the national court for them to decide, based on the ECJ’s interpretation.”



It is not necessary for a national court to refer an interpretation of EU law to the ECJ, if the national court thinks the matter has already been clarified. This is what is referred to as the *Acte Clair* doctrine established by the legal precedent in the *Cilfit* case in 1982.

The ECJ is the ultimate arbiter of all legal interpretation related to the European Single Market. The [duties of the court \(http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62007CJ0219&qid=1519227148511&from=EN\)](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62007CJ0219&qid=1519227148511&from=EN) include interpreting the application of the principles of free movement in the EU treaties in new situations and determining whether any national restrictions imposed for public policy reasons are necessary, nondiscriminatory and proportionate responses to the problem identified. Insofar as the UK is bound by EU law, then the ECJ's interpretation of the law is binding on the UK.

As a general rule, the criminal-justice systems of England and Wales, Scotland, and Northern Ireland do not fall under the scope of EU law. The bulk of [domestic legislation \(http://ukandeu.ac.uk/fact-figures/does-eu-law-take-precedence-over-uk-law/\)](http://ukandeu.ac.uk/fact-figures/does-eu-law-take-precedence-over-uk-law/) in areas such as health and welfare does not naturally fall under the remit of the ECJ.

During the 1980s and 1990s, the *Factortame* case, which concerned UK fishing quotas, was a source of political controversy in the UK. The 1988 Merchant Shipping Act was designed to limit the practice involving Spanish fishing vessels of quota hopping. In order to qualify for the right to fish in UK waters, a fishing vessel had to be 75 per cent British owned.

The ECJ ruled the UK Government's actions incompatible with the need for equal and uniform application of European treaties, which prevents market access from being limited by nationality. In 1991, the UK Government conceded that the case did not raise any new [constitutional issues \(https://publications.parliament.uk/pa/ld199899/ldjudgmt/jd991028/factor-1.htm\)](https://publications.parliament.uk/pa/ld199899/ldjudgmt/jd991028/factor-1.htm). There are significant cases from which UK companies have also benefited where the court has held that EU law did not permit other member states to maintain [discriminatory barriers to trade \(http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61990CJ0271\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61990CJ0271).

In 1992 the Surinder Singh judgement defined “extended family members” under free-movement rules to enable non-EU nationals (<https://www.gov.uk/family-permit/surinder-singh>) who are partners of UK nationals living in another EU member state to become resident in Britain.

### **Sovereignty**

The legal representative body the Bar Council states, “While the UK has not given up sovereignty over the terms and application of its own laws within the United Kingdom, it has pooled sovereignty ([https://www.barcouncil.org.uk/media/624129/brexit\\_paper\\_25\\_-\\_internal\\_market\\_and\\_customs\\_union.pdf](https://www.barcouncil.org.uk/media/624129/brexit_paper_25_-_internal_market_and_customs_union.pdf)) . . . by agreeing to participate in the institutions and legal structures of the European Union.” It goes on to say there is nothing unique in this arrangement, which is comparable in nature with that required for membership of other international organisations such as the WTO.

Indeed, any “deep and special relationship ([www.barcouncil.org.uk/media/624129/brexit\\_paper\\_25\\_-\\_internal\\_market\\_and\\_customs\\_union.pdf](http://www.barcouncil.org.uk/media/624129/brexit_paper_25_-_internal_market_and_customs_union.pdf))” with the EU “will not be possible without accepting an extensive institutional pooling of sovereignty”, according to the Bar Council. The former ECJ judge Sir David Edward states that the ECJ “doesn’t have any other jurisdiction in the UK (<http://uk.businessinsider.com/former-ecj-judge-mays-pledge-to-end-ecj-rule-shows-how-ignorant-she-is-2017-8>) other than to answer questions put to it by UK courts”.

In 2002, in his High Court judgement on the so-called metric martyrs case, Lord Justice Laws observed that “there is nothing in the European Communities Act which allows the Court of Justice, or any other institutions of the EU, to touch or qualify the conditions of legislative supremacy (<https://publications.parliament.uk/pa/cm201011/cmselect/cmleueg/633/63304.htm>) in the United Kingdom”.

### **Criticism of the ECJ**

Ending the role of the ECJ in UK law is a primary motive for many Leave campaigners concerned about sovereignty. Conservative MP Jacob Rees-Mogg believes “it is perhaps the most important red

line in ensuring the leave vote is honoured”. More than 60 per cent of Tory MPs oppose ECJ jurisdiction (<http://ukandeu.ac.uk/survey-of-mps-reveals-theresa-may-and-jeremy-corbyn-face-significant-political-challenges-over-brexit/?platform=hootsuite>) in the UK after March 2019, according to a survey by The UK in a Changing Europe.

They believe the ECJ furthers the aims of European integration or “ever closer union” due to the doctrines of direct effect and supremacy established in the 1960s.

Research by the House of Commons Library found that only 0.2 per cent of ECJ opinions and judgements made a reference to the aim of “ever closer union”, out of 29,969 cases considered between 28 November 1954 and 13 November 2015. More than half of the total of 57 cases that did make a reference were concerned with access to official documents and the issue of transparency (<http://researchbriefings.files.parliament.uk/documents/CBP-7230/CBP-7230.pdf>).

According to the prominent barrister Marina Wheeler QC, the reach of the ECJ “undermines legal certainty, which in turn undermines good governance”. She has highlighted its potential to have a role in interpreting areas of freedom of expression and nondiscrimination (<https://ukhumanrightsblog.com/2016/02/09/cavalier-with-our-constitution-a-charter-too-far/z>) set out in the EU Charter of Fundamental Rights.

But in 2014, the UK Ministry of Justice clarified that the application of the Charter of Fundamental rights in the UK does not apply to all areas of UK law, does not create any new economic or social rights, and does not give the EU new competencies ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/335759/application-of-the-eu-charter-of-fundamental-rights-in-the-uk-a-state-of-confusion.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/335759/application-of-the-eu-charter-of-fundamental-rights-in-the-uk-a-state-of-confusion.pdf)).

Prominent Brexiteers, such as the former Tory Leader Iain Duncan Smith, believe that ending ECJ jurisdiction will enable a “root and branch review of EU regulations”. The Trades Union Congress (TUC) has calculated that there are 700,000 fewer UK employees working more than 48 hours a week following the introduction of the Working Time Directive

(<http://www.telegraph.co.uk/news/2017/03/27/need-have-root-branch-review-eu-regulations-2020-general-election/>) in the UK 20 years ago.

For the Brexit Secretary David Davis, the problem with the ECJ is that the EU cannot “pick the referee (<http://www.telegraph.co.uk/news/2017/07/16/david-davis-warns-brussels-cant-pick-referee-legal-disputes/>)” for legal disputes. “If Manchester United played Real Madrid, you would not let Real pick the referee.”

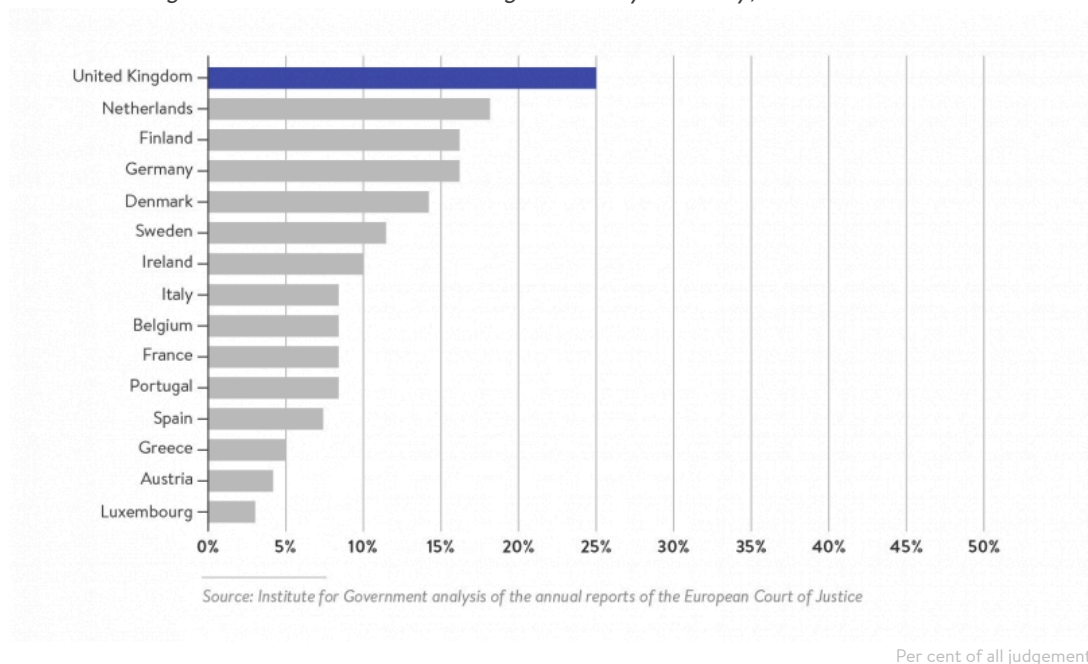
As the UK Government’s own Brexit negotiating position paper ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/639609/Enforcement\\_and\\_dispute\\_resolution.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/639609/Enforcement_and_dispute_resolution.pdf)) on dispute resolution declares, “when entering into international agreements, no state has submitted to the direct jurisdiction of a court in which it does not have representation”.

In the opinion of the former head of the UK Government Legal Services Sir Paul Jenkins, the UK will have to create a new court or dispute-resolution process (<https://www.theguardian.com/politics/2017/aug/19/brexit-european-court-of-justice-theresa-may-foolish-attack>) that is “the ECJ in all but name”.

### **The UK Government and the ECJ**

The UK has achieved the highest long-term rate of successful judgements out of 15 EU member states over the past decade, according to the Institute for Government (see figure 12). The UK has never been referred to the ECJ for a fine, let alone been ordered to pay one.

Figure 12: Favourable ECJ Judgements by Country, 2003–2016



The Institute for Government goes on to say that the UK resolves its cases early, ends up in court less often than most and wins more often than most other EU member states. The bulk of cases refer to the internal market, consumer health and the environment (<https://www.instituteforgovernment.org.uk/publications/whos-afraid-ecj-brexite>). Over the past five years there have been a total of nine actions brought before the ECJ where the UK was thought not to have fulfilled its obligations as a member state ([https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-03/ra\\_jur\\_2016\\_en\\_web.pdf](https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-03/ra_jur_2016_en_web.pdf)).

According to the European Commission, new complaints against the UK were at a five-year low in 2016. Cases involved nitrogen oxide levels ([http://eur-lex.europa.eu/resource.html?uri=cellar:389befd1-623d-11e7-9dbe-01aa75ed71a1.0001.02/DOC\\_2&format=PDF](http://eur-lex.europa.eu/resource.html?uri=cellar:389befd1-623d-11e7-9dbe-01aa75ed71a1.0001.02/DOC_2&format=PDF)) at the Aberthaw power station in Wales and legislation on tyre approvals. According to the House of Commons Library, between 2007 and 2017 the UK made a total of six legal challenges (<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-03-30/70148/>) to the ECJ.

Two recent landmark cases in which the ECJ has ruled in favour of the UK Government are:

- In March 2015 the UK won a successful challenge (<http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30dd986ad9b38a9641129277cb8d19b42c57.e34KaxiLc3qMb>) to an attempt by the European Central Bank to enforce a rule that would have required financial institutions clearing euro-denominated securities to be based in a eurozone state.
- In June 2016 the ECJ backed the UK Government's right (<https://www.ein.org.uk/news/european-court-justice-rules-uk-can-withhold-benefits-eu-migrants-without-right-reside>) to withhold basic benefits such as child benefit and tax credits from EU migrants if they were economically inactive, on the grounds of "protecting a member state's finances".

In November 2014 the ECJ judged against the UK (<http://curia.europa.eu/juris/documents.jsf?num=C-404/13>) after it sought to postpone compliance with an EU air quality directive to limit levels of the pollutant nitrogen oxide. In 2015 the ECJ ruled (<http://curia.europa.eu/juris/documents.jsf?num=C-202/13>) in the McCarthy case that the UK could not refuse the Colombian wife of a dual British and Irish citizen living in Spain entry to the UK without a visa.

In June 2016 the ECJ ruled that a Pakistani woman divorced from her husband after being the victim of domestic violence was able to remain resident in the UK ([https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-03/ra\\_jur\\_2016\\_en\\_web.pdf](https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-03/ra_jur_2016_en_web.pdf)) with her two children, who had been born there. In November 2017 the ECJ ruled (<https://www.thetimes.co.uk/article/eu-citizens-who-become-british-keep-family-immigration-rights-qmkmbzvst>) that the UK was wrong to refuse a dual Spanish and British citizen the right to have her Algerian husband live with her in the UK. In December 2017 an ECJ nonbinding opinion rejected as discriminatory the UK Government's decision to reject a transgender woman's claim for a state pension.

### **ECJ Judgements**

In 2013, the UK's then minister for Europe, David Lidington, highlighted to Parliament two other ECJ judgements (<https://hansard.parliament.uk/Commons/2013-06-11/debates/13061192000003/CourtOfJusticeOfTheEuropeanUnion>) of direct benefit to the UK:

- A successful case was brought in 2002 by the National Farmers Union after France refused to lift the beef ban on UK imports (<http://curia.europa.eu/juris/showPdf.jsf?docid=86471&doclang=EN>) following the BSE crisis.
- In 2010, the ECJ ruled in favour of incentive schemes to encourage doctors to prescribe generic medicines, saving the Department of Health £400 million.

Professor Kenneth Armstrong of the Centre for European Legal Studies at Cambridge University says it is “almost impossible to find specific let alone numerous examples of judgments with which Brexiteers disagree . . . to make leaving the EU (<https://brexittime.com/2017/03/30/the-taming-of-control-the-great-repeal-bill/>) the inevitable consequence”.

In December 2015, the ECJ found that the Scottish Parliament's minimum pricing rules for alcohol were likely to breach European free-trade rules (<https://curia.europa.eu/jcms/upload/docs/application/pdf/2015-12/cp150155en.pdf>) and that the UK national courts should apply a set of EU law criteria to determine the case. In November 2017 the UK Supreme Court ruled that the minimum alcohol legislation (<https://www.supremecourt.uk/cases/docs/uksc-2017-0025-judgment.pdf>) was lawful and not in breach of EU law.

In March 2017, the House of Commons Justice Committee argued that a continuing role for the ECJ (<https://publications.parliament.uk/pa/cm201617/cmselect/cmjust/750/750.pdf>) in civil justice cases such as child abduction was “a price worth paying to maintain the effective cross border tools of justice”.

### **ECJ Employment Cases**

From 2011 to 2016, the ECJ handed down 12 judgements on cases referred from the UK courts relating to EU citizens' rights.

The TUC has highlighted the “significant employment rights gains” from ECJ rulings:

- Workers with no fixed place of work such as care workers may count travel time under the Working Time Directive.
- Care workers in the London borough of Harrow have been freed from having to be on call for 76 hours a week and on site for 113 hours a week.
- ECJ case law has had an important impact on UK women's pay and pension rights.
- Rights from dismissal on grounds of pregnancy have been extended to fixed-term workers.
- Gender equality protection has been extended in respect of pay to include occupational pensions schemes
- Holiday pay includes commission and overtime payments.
- The ECJ ruled ([https://www.tuc.org.uk/sites/default/files/UK\\_employment\\_rights\\_and\\_the\\_EU.pdf](https://www.tuc.org.uk/sites/default/files/UK_employment_rights_and_the_EU.pdf)) in favour of a British salesman Conley King on a commission-only contract who had not received a paid holiday in 13 years.

### **EU Environmental Cases**

EU law has sought to set minimum standards to improve the quality of the environment and combat climate change in cooperation with member states. The ECJ has provided more than 700 judgements on environmental matters based on the principles of precaution, prevention and that the polluter pays.

The Royal Society for the Protection of Birds highlighted in a 2014 Government report the improvements in UK air quality following the introduction of the EU air quality directive ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/284500/environment-climate-change-documents-final-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284500/environment-climate-change-documents-final-report.pdf)).

Other environmental improvement measures have included the birds and habitats directives as well as the bathing water and urban



waste water treatment directives, which have led to cleaner UK beaches and less pollution, according to the UK Government.

In 34 ECJ cases brought against the UK on environmental matters, no fewer than 30 have resulted in a judgement wholly or partly against the UK government (<https://www.brexitenvironment.co.uk/2017/09/14/ecj-debate-environmental-governance/>), according to the legal expert Dr Viviane Gravey of Queen's University Belfast.

### **Regulatory Consequences of Leaving the ECJ**

The rejection of the ECJ by the UK appears to bring to an end regulatory cooperation across a wide number of different sectors, including medicine and aviation.

When she notified the European Council of the UK's intention to leave the EU, Theresa May also declared the UK's intention to leave the European Atomic Energy Community (Euratom), the EU's nuclear safety and research watchdog, because it is "uniquely legally joined (<https://www.gov.uk/government/publications/prime-ministers-letter-to-donald-tusk-triggering-article-50>)" to the EU. It manages the production of nuclear energy in the EU and provides oversight of facilities and materials. It is a separate legal entity from the EU but is subject to the ECJ.

As the House of Commons Business Select Committee observed, "we found no-one, in or out of Government, prepared to make a case for leaving Euratom". A third of the scientific staff at the UK Atomic Energy Authority are EU nationals. Switzerland has accepted the supervisory role of the ECJ (<https://publications.parliament.uk/pa/cm201719/cmselect/cmbeis/378/37803.htm>) to become an associate member of Euratom.

EU law has a major role to play in regulating the health sector. It ensures cross-border collaboration over the supply of medicines, the mutual recognition of qualifications, cross-border treatment and research, as well as cooperation on the prevention and control of communicable diseases (<http://researchbriefings.files.parliament.uk/documents/RP13-42/RP13-42.pdf>). The European Medicines Agency operates under EU law. According to the European Federation of Pharmaceutical

Industries and Associations, UK-based companies hold licences authorising 2,400 medicines across the EU. British regulatory bodies such as the British Safety Institute face losing their status to certify medical devices such as artificial hips and MRI scanners.

The European Aviation Safety Agency, which is regulated by the ECJ, sets and supervises common standards in safety, security and air-traffic management. The UK has the third-largest aviation network after the US and China and the second-largest aerospace manufacturing industry in the world.

Sky News has reported that the UK will accept the indirect jurisdiction of the ECJ and making budget payments (<https://news.sky.com/story/govt-to-stay-in-eu-air-safety-body-in-blurring-of-brexit-red-line-11151049>) to retain membership of this EU agency. Theresa May has signalled that she is prepared to make a special exemption for the role of the ECJ in overseeing cross-border policing measures such as the European Arrest Warrant that ensure the swift arrest and extradition (<https://www.ft.com/content/770e6d30-13cb-11e8-9376-4a6390addb4>) of terrorist and criminal suspects.

According to the Bar Council, 35 separate EU measures ([http://barcouncil.org.uk/media/508513/the\\_brexit\\_papers.pdf](http://barcouncil.org.uk/media/508513/the_brexit_papers.pdf)) are crucial to UK law enforcement to combat cross-border crime as well as the continued ability to work with agencies such as Europol and Eurojust.

## “TAKING BACK CONTROL”: IMMIGRATION

In her Lancaster House Speech of January 2017, Theresa May made controlling immigration to Britain from the rest of Europe another key objective for Brexit. While the prime minister recognised the positive benefits of immigration to the UK, she went on to say: “I know that you cannot control immigration (<https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>.) overall when there is free movement to Britain from Europe”.

A central pledge of the Leave campaign ([http://www.voteleavetakecontrol.org/why\\_vote\\_leave.html](http://www.voteleavetakecontrol.org/why_vote_leave.html)) was to “take back control of our borders”. Freedom of movement of people is one of the four key pillars of the European Single Market alongside free movement of goods, capital and services. Freedom of movement has enabled over 1 million British people to live and work wherever they want in the EU.

### EU Migration to the UK

More than eight out of ten EU nationals come to the UK with a definite job offer, to look for work or study, according to the Office for National Statistics.<sup>4</sup> In the period from October 2016 to September 2017, UK net migration was 244,000. EU net migration has fallen over the last year, as fewer EU citizens are coming to the UK and the number leaving the UK has increased. Many parts of the UK economy, such as the NHS, construction, agriculture and hospitality, depend on migrant workers (see table 13).

---

4 ONS Migration Statistics Quarterly Report, November 2017, table 3

Table 13: Reliance of Certain Industries on Migrant Labour, 2014–2016

INDUSTRY	Share of Total Employments (%)				
	EU14	EU8	EU2	RoW	ALL MIGRANTS
Manufacturing of food products	4.0%	24.1%	1.8%	11.2%	41.1%
Domestic personnel	5.7%	10.2%	6.3%	17.2%	39.3%
Undifferentiated goods	4.2%	13.4%	4.2%	13.8%	35.6%
Manufacture of wearing apparel	3.1%	6.7%	0.8%	21.0%	31.6%
Accommodation	4.5%	11.4%	3.1%	11.6%	30.5%
Food and beverage service activities	4.5%	5.4%	1.6%	18.5%	30.1%
Extraterritorial organisations	4.2%	0.1%	0.0%	25.3%	29.6%
Security and investigation activities	1.5%	2.9%	0.7%	22.1%	27.2%
Services to buildings and landscapes	3.4%	7.4%	2.8%	11.9%	25.5%
Computer programming and consultancy	5.1%	1.6%	0.6%	18.0%	25.4%
Warehousing and support for transport	2.0%	10.9%	1.7%	10.3%	25.0%
Scientific research and development	6.4%	1.8%	0.7%	15.8%	24.6%
Land transport inc via pipeline	1.3%	3.4%	1.0%	18.2%	23.9%
Residential care activities	1.9%	2.8%	1.3%	15.3%	21.2%
Manufacture of textiles	1.9%	7.6%	0.5%	10.9%	20.8%

Source: RF analysis of ONS, LFS

According to the Office for National Statistics, there are 18 sectors of UK industry (<https://www.theguardian.com/politics/2017/jul/29/eu-workers-fifth-labour-force-18-sectors-britain-economy>) in which a fifth of the labour force originates from the rest of the EU. Different UK regions rely more heavily on EU workers in specific industries. A fifth of manufacturing workers in Northern Ireland are EU nationals, as are nearly a fifth of the East of England’s agricultural workers.

But as the European policy think tank Bruegel (<http://bruegel.org/reader/people-on-the-move#executive-summary>) states, “neither the share of foreign-born, nor the share of foreign citizens, is high in the United Kingdom relative to other EU countries”.

Research undertaken for the Home Affairs Select Committee indicates that the UK public believes “different kinds of immigration (<https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/500/50005.htm>) should be treated differently” and that immigrants can both increase demand on public services and contribute to the financing and provisions of services.

Voter concern over immigration in 2015 reached levels last seen in the 1970s as public trust in the system was undermined. Since then, the public has become more positive about immigration (<https://medium.com/@robfordmancs/how-have-attitudes-to-immigration-changed-since-brexit-e37881f55530>) and its contribution to the British economy and way of life.

In July 2017 the Home Secretary Amber Rudd announced a major inquiry into EU migration. The independent Migration Advisory Committee has been asked to consider the regional distribution of migrants and the industry sectors where they work. It will not report until September 2018. Negotiations between the UK and the EU are scheduled for completion in October 2018.

As the Home Affairs Select Committee declares, “the Government does not know how limiting the rights of EU nationals to work (<https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/500/50005.htm>) in the UK may impact on the UK’s public services and businesses”.

### **The Economic Benefits of EU Migration to the UK**

A study by the London School of Economics has found that EU immigrants are more likely to be in work ([http://cep.lse.ac.uk/pubs/download/brexit08\\_book.pdf](http://cep.lse.ac.uk/pubs/download/brexit08_book.pdf)) than UK-born individuals and are less likely to be economically inactive. It observes that “immigrants have helped subsidise the NHS and other public services”. That is because EU migrants are more likely to be in work, are younger and are better educated than British nationals, so pay more in tax than they take out in welfare.

Research by the University College London has calculated that European migrants contributed more than £20 billion to the UK public finances between 2001 and 2011. It found that migration leads to more investment (<https://www.ucl.ac.uk/news/news-articles/1114/051114-economic-impact-EU-immigration/>) and the creation of new jobs as it expands demand for goods and services.

### **UK Labour Shortages**

The British Chambers of Commerce is warning that skills shortages (<https://wcnwchamber.org.uk/bcc-quarterly-economic-survey-skills-shortage-biggest-risk-business/>) in the UK are reaching

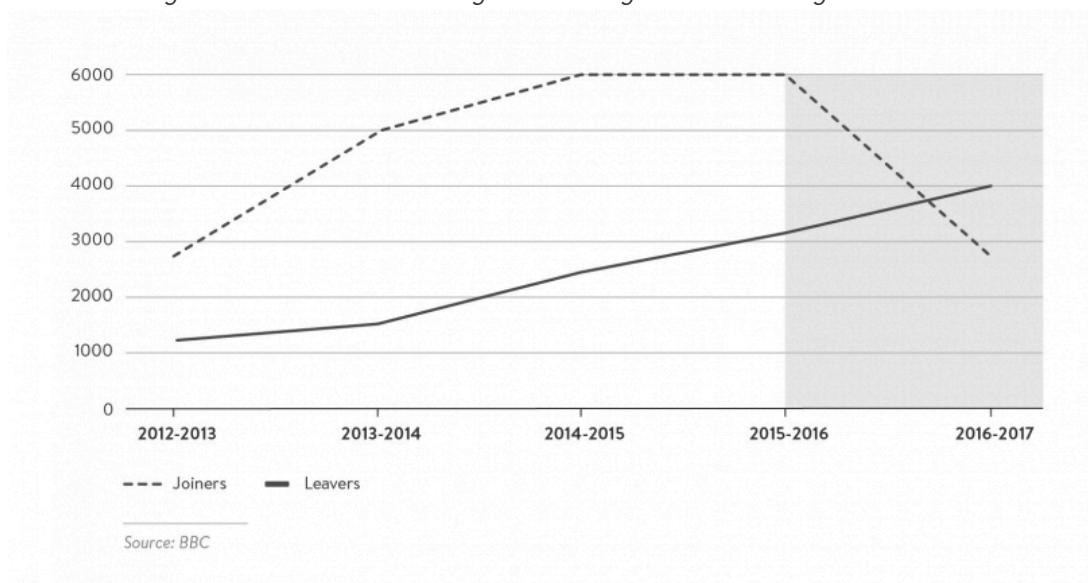
critical levels. Seventy-one per cent of services businesses reported greater recruitment difficulties, the highest figure since records began.

The UK jobless rate is currently 4.4 per cent, while the number of vacancies is at a record high. The increase in graduate entrants ([https://www.rec.uk.com/\\_data/assets/pdf\\_file/0005/376160/Buiding-the-Post-Brexit-Immigration-System-09.06.17.pdf](https://www.rec.uk.com/_data/assets/pdf_file/0005/376160/Buiding-the-Post-Brexit-Immigration-System-09.06.17.pdf)) to the UK workforce of 0.6 per cent in the year to the third quarter of 2017 was the lowest since records began in 2000.

#### *The National Health Service*

According to NHS Digital, the number of EU nurses leaving the NHS (<http://www.bbc.co.uk/news/health-42653542>) in England has trebled since 2012–2013 to nearly 4,000 last year (see figure 14). The number of EU nurses joining the NHS has halved since the referendum in 2016.

*Figure 14: EU Nurses Joining and Leaving the NHS in England*



According to the General Medical Council (GMC), in 2017 there was a 9 per cent drop in doctors coming to UK from the rest of the EU, while the number of EU doctors (<https://www.bloomberg.com/news/articles/2018-02-15/european-doctors-are-giving-up-on-the-u-k>) registering to work in the NHS fell by more than a quarter. In February 2018, NHS Improvement published new figures that show

there are now around 100,000 vacancies in the NHS (<https://www.thetimes.co.uk/edition/news/100-000-job-vacancies-as-nhs-pushed-to-limit-3q0v9p8gv>). The GMC is concerned the demand for general practitioners is outstripping supply, warning of a “crunch point (<https://www.gmc-uk.org/news/31153.asp>)” for the medical profession.

The British Medical Association believes nearly one in five NHS doctors from the European Economic Area (EEA) has made concrete plans to leave the UK. Their survey shows that as many as 5,400 EEA doctors (<https://www.bma.org.uk/collective-voice/influence/europe/brexit/eu-survey>) are considering moving abroad.

In 2016, more than 200,000 health and social care workers were EU nationals. The Nuffield Trust has estimated that social care, which includes care homes for the elderly, faces a shortfall of as many as 70,000 workers (<https://www.nuffieldtrust.org.uk/news-item/nhs-could-face-bill-of-over-half-a-billion-pounds-from-brexit>) by 2025–2026 if net migration from the EU is halted after Brexit.

### *Construction*

One in five people working on housebuilding sites across Britain comes from other EU countries. The Home Builders Federation says there are not enough UK-born workers ([http://www.hbf.co.uk/uploads/media/28075-Home\\_Builder\\_Report-Master-\\_V4\\_02.pdf](http://www.hbf.co.uk/uploads/media/28075-Home_Builder_Report-Master-_V4_02.pdf)) to meet demand. Brian Berry, the chief executive of the Federation of Master Builders, says that skills shortages are at a record high and two-thirds of small and medium-sized construction companies are struggling to hire bricklayers (<https://www.fmb.org.uk/about-the-fmb/newsroom/two-thirds-of-construction-bosses-can-t-find-a-bricky-or-chippy/>).

### *Hospitality, Transport and Agriculture*

The hospitality sector is responsible for a total of 3 million jobs in the UK. Only a quarter of those employed are UK nationals, according to the professional services group KPMG. The British Hospitality Association (BHA) says it will take ten years to plug the gaps left by EU nationals in the UK restaurant and catering sector. The BHA believes more than 60,000 new EU migrants a year are needed just to replace those who leave the

industry and to maintain current levels of service (<http://www.bha.org.uk/wordpress/wp-content/uploads/2017/05/BHA-EU-migration-final-report-170518-public-vSTC.pdf>).

The Freight Transport Association says 10 per cent of its entire workforce is made up of EU nationals. There is a shortage of 52,000 large goods vehicle drivers ([http://www.fta.co.uk/export/sites/fta/\\_galleries/downloads/campaigns/skills-shortage-report-1117.pdf](http://www.fta.co.uk/export/sites/fta/_galleries/downloads/campaigns/skills-shortage-report-1117.pdf)) in the UK, a rise of almost 50 per cent in the 12 months since the Brexit vote.

The National Farmers Union's seasonal labour survey found that over the course of 2017, 12.5 per cent of vacancies for seasonal fruit and vegetable workers went unfilled. It estimates that 99 per cent of seasonal labour ([www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/articles/labourintheagricultureindustry/2018-02-06](http://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/articles/labourintheagricultureindustry/2018-02-06)) is provided by EU workers.

### **The Changing Nature of EU Migration to the UK**

There is a growing divergence in the migration patterns for EU and non-EU citizens, according to the Office for National Statistics. EU net migration was less than half the figure for non-EU net migration over the past year. The number of EU citizens leaving the UK (<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/bulletins/migrationstatisticsquarterlyreport/february2018#fewer-eu-migrants-coming-to-the-uk-for-work>) is the highest recorded level since 2008.

The Centre of Economic Business Research believes a rapid reduction in net immigration to below 100,000 a year would reduce the potential size of the UK economy by between 1.5 per cent and 3 per cent by 2025. As a result UK public borrowing (<https://cebr.com/reports/cebr-special-report-economic-consequences-of-limiting-migration/>) would have to rise by £15.6 billion a year.

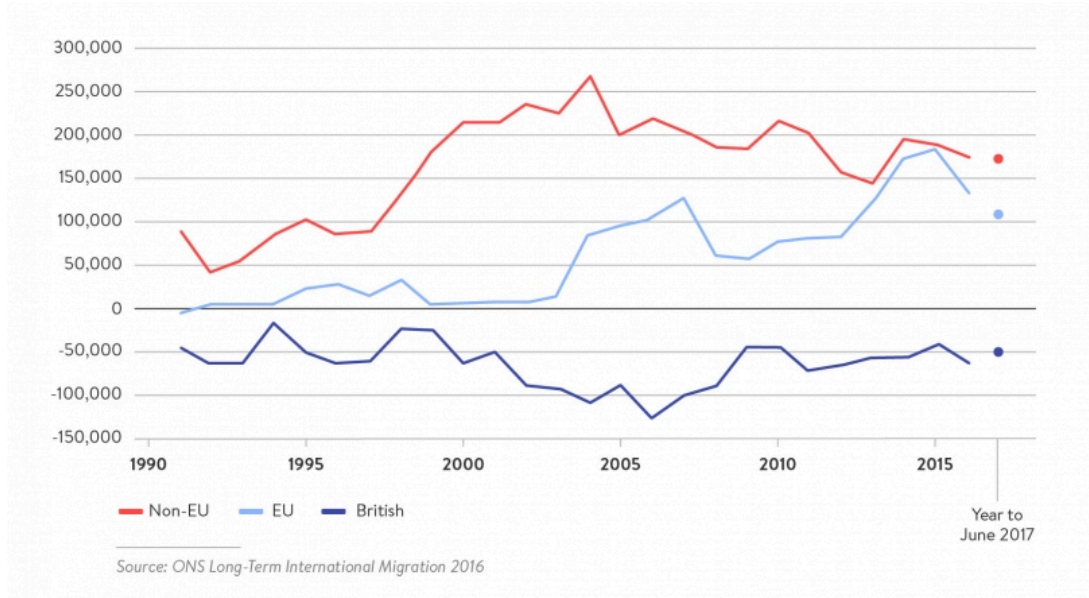
### **Non-EU Migration to the UK**

Non-EU migration to the UK has been higher than EU migration for decades (see figure 15). As the anti-immigrant campaigning



group Migration Watch UK states, “the largest source of net migration remains from countries outside the European Union, something over which the government has immediate control”.

Figure 15: Long-Term International Net Migration to the UK by Nationality



5

As the Home Affairs Select Committee

<https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/500/50005.htm> observes, “net migration of non-EU migrants alone, which the Government can control regardless of whether the UK is in the EU or not, has consistently exceeded 100,000 since 2010”.

### Freedom of Movement

Free movement is tied to the creation of the European Single Market. It gives EU citizens the right to enter and reside in other EU member states. It also includes a right to work on the same basis as nationals and the right to equal treatments and benefits.

It is not an unconditional right. Free movement does not mean countries cannot regulate or manage migration. Current free-movement rules state that after three months, EU migrants need to either be working, be actively seeking work, have a member of the

5 ONS Long-Term International Migration 2016, table 2.01a

family working or have sufficient funds. If not, they can be returned to their home country.

In the opinion of the Bar Council, UK control over immigration ([www.barcouncil.org.uk/media/624129/brexit\\_paper\\_25\\_-\\_internal\\_market\\_and\\_customs\\_union.pdf](http://www.barcouncil.org.uk/media/624129/brexit_paper_25_-_internal_market_and_customs_union.pdf)) could be achieved by imposing a “requirement to register within a short time of arrival in the UK, as is currently the case in Germany and Belgium”.

As the academic research body The UK in a Changing Europe (<http://ukandeu.ac.uk/wp-content/uploads/2017/11/Free-movement-after-Brexit-policy-options.pdf>) states, “it is practical and feasible to modify the operation of free movement of persons between the UK and the EEA in ways that would allow the UK to remain in the single market after Brexit, temporarily or permanently”.

The Migration Observatory at Oxford University has suggested that there could be “a numerical limit on the number of people who could work in the UK under free movement, either permanently or as an emergency brake during times of high migration flows”. This would be achieved by requiring residence permits or restricting National Insurance number allocations (<http://www.migrationobservatory.ox.ac.uk/resources/reports/labour-immigration-brexit-trade-offs-questions-policy-design/>).

In February 2016, then UK Prime Minister David Cameron reached an agreement with the EU that allowed any member state to limit access to in-work benefits ([http://europa.eu/rapid/press-release\\_WM-16-2090\\_en.htm](http://europa.eu/rapid/press-release_WM-16-2090_en.htm)) for new EU immigrants for up to four years.

The Home Affairs Select Committee (<http://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/news-parliament-2017/immigration-policy-consensus-report-published-17-19/>) has also recommended replacing the UK’s current net migration target with an evidence-based plan that provides targets and controls that meet the social and economic needs of the UK.

The EU has already announced a series of enforcement initiatives to control the movement of people:

- The EU is introducing electronic pre-authorisation passenger systems that would include visa-exempt travellers.
- The EU is in the process of introducing both fingerprint and photographic checks from 2020 on all travellers entering the Schengen Area.

### **UK Immigration Changes**

In 2015, about 3.3 million people (<https://www.theguardian.com/politics/2017/oct/17/britain-to-accept-eu-nationals-by-default-says-amber-rudd>) living in the UK (about 5 per cent of the UK population) were citizens of other EU countries. The Home Secretary Amber Rudd has stated that from the end of 2018, EU nationals who are already living in the UK will be required to register online under the new settled status scheme to acquire UK residency rights.

The UK already imposes some restrictions on benefits such as Jobseeker's Allowance to EU nationals.<sup>6</sup> In 2016–2017, the test was applied to about 15,000 claimants, and in about 90 per cent of cases benefit was denied or stopped.

In 2016, the Immigration Act (<http://www.legislation.gov.uk/ukpga/2014/22/contents/enacted/data.htm>) made it a criminal offence for landlords to rent properties to individuals who do not have a right to live in the UK. Landlords can face up to five years' imprisonment and/or a fine.<sup>7</sup>

UK banks are required to carry out status checks on all individuals applying for current accounts. If an individual is flagged as disqualified, the bank is expected to refuse to open an account for that person.<sup>8</sup>

### **How the Rest of the EU Manages Freedom of Movement**

Many EU states track people's movements. In Austria, new arrivals must register with the authorities within three days of

---

<sup>6</sup> DWP, 2017

<sup>7</sup> Parliament of the United Kingdom, Immigration Act 2014, s. 33C (as inserted by Immigration Act 2016, s. 39) 216

<sup>8</sup> Parliament of the United Kingdom, Immigration Act 2014, s. 40A (as inserted by Immigration Act 2016, s. 40A)

moving in. Failing to register is an offence. In Belgium, EU citizens must report their presence at the local town hall within ten days of their arrival. The same applies in Germany ([https://europa.eu/youreurope/citizens/residence/documents-formalities/registering-residence/index\\_en.htm](https://europa.eu/youreurope/citizens/residence/documents-formalities/registering-residence/index_en.htm)).

In Italy (<http://www.poliziadistato.it/articolo/10930>), EU nationals must register at the local municipality after three months with evidence of employment, proof they are a student or evidence they have sufficient funds. In Portugal ([http://www.sef.pt/portal/V10/EN/asp/apoiocliente/detalheApoio.aspx?fromIndex=0&id\\_Linha=4351](http://www.sef.pt/portal/V10/EN/asp/apoiocliente/detalheApoio.aspx?fromIndex=0&id_Linha=4351)), EU nationals are expected to declare on oath at the local town hall that they are employed or self-employed or that they have sufficient financial support. Spain also expects EU nationals to register after three months with proof of employment or evidence of maintenance.

All of this is done within the scope of existing rules on freedom of movement.



The further the UK diverges from EU single market and customs union, the greater the economic pain. The closer the trading relationship, the more the UK will have to abide by European regulation.

**FOLLOW US**

[facebook.com/instituteglobal](https://facebook.com/instituteglobal)

[twitter.com/instituteGC](https://twitter.com/instituteGC)

[instagram.com/institutegc](https://instagram.com/institutegc)

**GENERAL ENQUIRIES**

[info@institute.global](mailto:info@institute.global)

FIND OUT MORE  
**INSTITUTE.GLOBAL**

Copyright © February 2018 by the Tony Blair Institute for Global Change

All rights reserved. Citation, reproduction and or translation of this publication, in whole or in part, for educational or other non-commercial purposes is authorised provided the source is fully acknowledged. Tony Blair Institute, trading as Tony Blair Institute for Global Change, is a company limited by guarantee registered in England and Wales (registered company number: 10505963) whose registered office is 50 Broadway, London, SW1H 0BL.