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Brexit and the 'Great British Trade-Off' the future of the EU's and the UK's external treaty relations

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Chapter 12

Brexit and the ‘Great British Trade-Off’: The Future of the EU’s and the UK’s External Treaty Relations



J. Larik

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Abstract The United Kingdom has left the European Union. While both sides continue to shape their future relationship, Brexit also reveals a distinctly global dimension. The UK government is negotiating “continuity agreements” with countries around the world to replace agreements concluded by the EU, while also aiming to strike new agreements where the EU has failed to do so thus far. At the same time, the EU as a global treaty-maker is not standing still either. This setting provides a fertile ground for a comparative analysis of the performance of both the UK and EU as international treaty negotiators, especially in the area of trade. This chapter argues that such a comparison serves as an unprecedented opportunity for testing some of the core assumptions of both Eurosceptics and proponents of European integration. The assumptions can be grouped under two opposing narratives designated here as “Global Britain” and “Market Power Europe”, respectively. While the former suggests that the UK will be better off “unshackled” from the EU by becoming a more agile and effective international actor, the latter argues that the benefits of being able to rely on the collective economic power of the EU outweigh the costs of heterogeneity of interests and more burdensome decision-making. Comparing the ability of both the EU and UK to conclude trade agreements with partners around the world, and comparing the respective terms accorded to them, will enable researchers to provide insights into the costs and benefits of “non-Europe” on the international stage. However, in order to produce meaningful findings, numerical, normative, relative and cumulative methodological challenges will have to be overcome. Therefore,

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a new interdisciplinary approach is required that combines rigorous legal analysis with empirical-legal, qualitative, and economic methods to answer a fundamental question: was striking out on its own in the world “worth it” for the first country that left the EU?

Keywords Brexit · EU External Relations · International Agreements · International Trade · United Kingdom

12.1 Introduction: From *Verdrittstaatlichung* to Global Competition

On the night of 31 January 2020 to 1 February 2020, the world witnessed the first case of the *Verdrittstaatlichung* of a country,¹ i.e., the transformation of a European Union (EU) Member State into a “third country”. That night, Brexit “got done”, to use the campaign slogan of Boris Johnson and his Conservative Party.² It was accomplished in the sense that the United Kingdom (UK) ceased to be a Member State of the EU. As confirmed before by the *Wightman* judgment of the Court of Justice of the EU (CJEU), before this moment, the UK could have stopped the withdrawal process and remained a Member State with all the rights and obligations it already had.³ However, this did not happen and thus the UK’s very special status, replete with rebates, opt-outs, opt-ins,⁴ is now consigned to history. Henceforth, the UK is an outsider from the point of view of the EU.⁵

Nevertheless, the aftermath of Brexit continues. First, the UK and EU went through a “transition period” as envisaged by the Withdrawal Agreement to give form to their future relations.⁶ Moreover, Brexit also entails a rupture and need for a recalibration of the UK’s treaty relations with numerous countries around the world, due to the fact that many treaties concluded by the EU will no longer be applicable to it.⁷ As a consequence, the UK has been engaged in signing so-called “continuity agreements” in the area of trade to fill the gap.⁸ At the same time, the idea that the UK,

¹The author proudly claims authorship of this German compound neologism.

²See Perrigo B (2019) ‘Get Brexit Done.’ The 3 Words That Helped Boris Johnson Win Britain’s 2019 Election. <https://time.com/5749478/get-brexite-done-slogan-uk-election/>. Accessed 1 June 2020.

³Court of Justice, *Wightman and Others v Secretary of State for Exiting the European Union*, Judgment of the (full) Court, 10 December 2018, Case C-621/18, ECLI:EU:C:2018:999, para 74.

⁴See Keedus et al. 2018; Gowland 2016, pp. 219–30; and George 1998, pp. 39–41.

⁵See Chap. 11 and this chapter; see also Larik 2020a, pp. 9–12.

⁶Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, opened for signature 24 January 2020, OJ C 384I (entered into force 1 February 2020) (UK WA), articles 126 and 184.

⁷McClellan P (2017) After Brexit: The UK Will Need to Renegotiate at Least 759 Treaties, Financial Times. <https://www.ft.com/content/f1435a8e-372b-11e7-bce4-9023f8c0fd2e>. Accessed 01 June 2020.

⁸Larik 2020b.

under the “Global Britain” banner, will strike lucrative trade and other agreements around the world, unencumbered by the sluggish EU, was a prominent theme during the campaign to leave the EU, during which “Vote Leave initially focused on the economic and sovereignty arguments, not least the ability of a non-EU UK to negotiate its own trade deals”, before migration assumed a prominent role in the discourse as well.⁹ Also subsequently, this idea was reiterated by leading Brexiters. According to Prime Minister Johnson, Brexit is an opportunity “to recover [the UK’s] natural and historic role as an enterprising, outward-looking and truly global Britain.”¹⁰ The EU, on its part, is not standing still either as an international treaty-maker in the area of trade in view of an evolving international environment.¹¹

The need to deliver on “Global Britain” puts the British government—and those favouring leaving the EU more generally—under pressure. If the UK suffers instead of thrives post-Brexit, this may be seen as proof that the country would have been “better off” remaining in the EU. However, the EU—and those favouring regional integration more generally—are equally under pressure. The fundamental question they face is: What if the UK prospers after its departure from the EU? More specifically, what if “Global Britain” actually manages to outperform the EU in global trade negotiations? In that sense, Brexit has created the background conditions for a large-scale comparative experiment that could allow scholars to test some core assumptions of both proponents of European integration and Eurosceptics alike.

While it is still too early for any firm conclusions on this matter, the 10th anniversary of the Centre for the Law of EU External Relations (CLEER), which this volume commemorates, is an apt opportunity to look forward into the next ten years for the EU as a global actor. This chapter, therefore, expounds the grand competition onto which the EU and UK are now embarking, including its international legal dimension as well as its opposing underlying narratives and economic and political stakes. Moreover, it outlines an assessment framework and highlights some of the main methodological challenges that research in this area will face. These challenges, while considerable, can be tackled by combining rigorous legal research with empirical-legal, qualitative, and economic analysis.

12.2 The Great British Trade-Off: “Global Britain” Versus “Market Power Europe”

What is called here the “Great British Trade-Off” (not to be confused with the “Great British Bake Off”, a TV show where the stakes are considerably lower) is the idea that the UK will gain agility and flexibility outside of the EU in its international

⁹Oliver 2018, p. 67.

¹⁰Prime Minister’s Office 2019. The UK will also negotiate treaties in other areas. However, due to the prominence of trade deals in the political and public discourse as well as due to the transactional nature of most trade agreements, the present chapter will focus on this area.

¹¹Weiß 2020, p. 29; Larik 2020a, pp. 13–14.

treaty negotiations, in particular trade negotiations, while at the same time losing the ability to rely on the EU's combined economic weight, in particular its combined market power. In this sense, the concept harks back to the enquiry of economists Alberto Alesina and Enrico Spolaore on the "optimal size" of countries, which they frame as a trade-off between the benefits of combined capacities and the costs of heterogeneity.¹²

In a similar vein, Brexit can be understood here as a large-scale experiment for determining the "cost of non-Europe". This concept was popularized in the 1988 Cecchini Report.¹³ Back then, it was used in an introspective and prospective way. It sought to determine how much better the Member States would be off economically if they completed the Single Market.

With regard to Brexit, by contrast, the "cost of non-Europe" takes on a meaning that is both outward-looking and comparative. All "continuity" agreements which the UK will agree on with other countries can be compared to pre-existing agreements concluded by the EU. This, in turn, will lead to insights into the added value of being inside or outside the EU in global trade and other negotiations.

Whether Brexit will make the UK "better off" as an international treaty negotiator (see Sect. 12.4 *infra* on the methodological issues related to this) is a fundamental question for both the Brexiteers and proponents of European integration alike. In essence, it will serve to confirm or challenge their respective assumptions about leaving the EU—and the added value of regional integration more broadly. In the following paragraphs, these main assumptions, encapsulated in the two opposing narratives called "Global Britain" and "Market Power Europe", are presented.¹⁴

12.2.1 "Global Britain"

The vision of a "Global Britain" that would be freed from the constraints of EU membership and hence would be able to strike trade deals around the world was a prominent theme both during the campaign and afterwards. This narrative's premise is that by acceding to the EU, figuratively speaking, the UK "shackled [itself] to a corpse".¹⁵ This image captures well the key elements of this narrative, which posits that the UK would be better off outside the EU, which has been holding it back.

Adherents of "Global Britain" lament the EU's slow economic growth compared to the rest of the world. To quote Boris Johnson during the campaign to leave: "The

¹²Alesina and Spolaore 2005.

¹³Cecchini et al. 1988.

¹⁴The following two sub-sections draw on Larik 2020b.

¹⁵As quoted in Mason R (2012) Britain "shackled to corpse" of EU, says Douglas Carswell, The Telegraph, 22 October 2012. <https://www.telegraph.co.uk/news/politics/9636417/Britain-shackled-to-corpse-of-EU-says-Douglas-Carswell.html>. Accessed 1 June 2020.

only continent with weaker economic growth than Europe is Antarctica.”¹⁶ They criticise, moreover, the Union’s alleged sluggishness as a treaty negotiator, which failed to take British interests to heart. For instance, Conservative politician David Davis stated that “trade agreements negotiated by the EU take a very long time to conclude”, that British “interests are not well represented in trade negotiations” and, hence, “that these trade deals are not tailored to [the UK’s] requirements”.¹⁷ This was echoed by fellow Conservative party member Rishi Sunak, who stressed in the lead-up to the referendum that “the agility of independent, mid-sized nations has proven more effective at tapping into the global economy than the sluggish, horse trading between 28 different EU nations, each protecting their own special interests”.¹⁸

Hence, according to the proponents of Brexit, the UK would be better off once it left the EU. The country would prosper, including and especially in its relations with the wider world. On the day the revised Withdrawal Agreement was announced, this outlook was summarized in rather emphatic terms by senior Conservative Jacob Rees-Mogg:

We will be able to implement our own free trade deals. We will be able to set our own regulations. We will be in charge of our own laws. ... it will be a golden age for the United Kingdom when we are free of the heavy yoke of the European Union, which has bowed us down for generations and made us less competitive, less efficient and higher-cost.¹⁹

This idea is reinforced by arguments that the UK would be more agile in its trade negotiations, not having to wait for EU-internal compromises to be hammered out and no longer having to take into account interests from other Member States and their industries, which are not shared by the UK. Thus, the UK could tailor trade agreements better to its own preferences. In addition, it could avail itself of its “soft power” and historical ties, in particular the Commonwealth and the “special relationship” with the U.S. As the UK government noted in its Trade Policy White Paper of 2017,

The Commonwealth is home to a third of the world’s population, many of its fastest growing economies, and half of the globe’s top 20 emerging cities. This vast network of growing markets, with which the UK has long-established relationships, presents a significant opportunity for UK business and enhances the UK’s ability to promote free trade in a multilateral rules-based system.²⁰

In a certain sense, “Brexiters” could be understood as constructivists of sorts from the point of view of international relations theory due to their emphasis on identity

¹⁶Johnson (2016) The only continent with weaker economic growth than Europe is Antarctica, Telegraph. <https://www.telegraph.co.uk/news/2016/05/29/the-only-continent-with-weaker-economic-growth-than-europe-is-an/>. Accessed 1 June 2020.

¹⁷Davis 2016.

¹⁸Sunak R (2016) One Glance at the EU’s Dismal Trade Policy Simply Destroys the Economic Argument for Remain. <https://www.telegraph.co.uk/news/2016/06/01/one-glance-at-the-eus-dismal-trade-policy-simply-destroys-the-ec/>. Accessed 1 June 2020.

¹⁹UK House of Commons 2019.

²⁰UK Department for International Trade 2017.

and “the power of ideational variables”²¹ as opposed to material factors in the form of economic weight. This vision of “Global Britain”, which is as scathing about the EU as it is optimistic about the UK as an international actor, can be contrasted with that of the EU as collective global actor benefitting all of its members.

12.2.2 “Market Power Europe”

A diametrically opposing narrative is espoused by what can be called “Market Power Europe”.²² As explained by Chad Damro, “as a major economic power with a large single market, the EU is capable of externalizing various internal policies, in particular its regulatory standards”.²³ It can wield this power “specifically through the relative size of its market.”²⁴ Aggregate market power is seen as the key to success in negotiations with external partners.

The EU’s market power is particularly felt by smaller economies in the EU’s neighbourhood, which can be seen to make significant commitments in order to gain access to the internal market. The prime examples here are the countries of the European Economic Area (EEA), which follow important parts of EU standards and regulations, subject themselves to a supranational architecture (the EFTA Surveillance Authority and EFTA Court), and even contribute to the EU budget, without have a vote in EU decision-making processes.²⁵

Consequently, a country leaving the EU collective would entail being confronted with harsher conditions in trade negotiations because of a loss of relative market size and thus leverage. In 2017, the UK accounted for 15.2% of the EU’s total GDP.²⁶ This makes the UK still one of the world’s largest economies. However, the UK will have a smaller market to use for bargaining purposes compared to the U.S. and China, as well as the EU (of twenty-seven) and Japan. Its relative weight compared to other economies will also have decreased.

The principle rationale for collective action is the EU’s ability to obtain more concessions in trade negotiations, which is due to a favourable economic power differential with the external trading partner. In other words, relative economic size matters. The European Commission stressed the importance of combined strength through the internal market in its 2015 *Trade for All* strategy:

The EU is the world’s largest exporter and importer of goods and services taken together, the largest foreign direct investor and the most important destination for foreign direct investment (FDI). This scale makes the EU the largest trading partner of about 80 countries and the second most important partner for another 40. The EU should use this strength to

²¹ Andreatta 2011, p. 36.

²² Damro 2012.

²³ Ibid., p. 686.

²⁴ Ibid., p. 686.

²⁵ See Baur et al. 2018.

²⁶ Eurostat 2018.

benefit both its own citizens and those in other parts of the world, particularly those in the world’s poorest countries.²⁷

Thus, according to the “Market Power Europe” narrative, the UK should experience the downside of negotiating on its own. As Ramses Wessel puts it,

the UK will have to start from scratch, although it may in some cases aim at what could largely be a copy of the agreements that were concluded by the EU. This, of course, assumes that the other contracting parties would agree to such a solution. In fact, this should not be taken as a given. One thing is to negotiate a trade agreement with the biggest trade block in the world, quite another to negotiate it with a medium-size country on the fringes of Europe.²⁸

In his own emphatic style, the European Parliament’s Brexit coordinator Guy Verhofstadt warned that the Brexiteers will “drag their country down a path strewn with uprooted trade ties and substantial new barriers to commerce.”²⁹ Lambasting the idea of “Global Britain”, he noted how the EU had managed to wield its combined market power to its own advantage:

The real global trading power, of course, is the EU, which has recently concluded trade deals with Japan, South Korea and Canada. As an EU member state, the UK automatically benefits from the 40 trade agreements the bloc has in place with more than 70 countries.³⁰

In fact, as observed by Anu Bradford, businesses and governments outside the EU may adopt EU standards and regulations even in the absence of trade agreements imposing a legal duty to do so due to the “size and attractiveness of its market”.³¹ This is what she has termed the “Brussels Effect”, meaning “the EU’s unilateral ability to regulate the global marketplace.”³² For the EU, she argues, the ability to set global rules, including through trade agreements, serves also “to prove to its critics that it remains relevant as a global economic power.”³³

Proponents of the “Market Power Europe” narrative can thus be understood as positivists of sorts, in the meaning of the term in international relations theory, due to their emphasis on economic power,³⁴ which is then also the EU’s foremost foreign policy tool to pursue its interests and values.³⁵

Until Brexit, these narratives remained largely unproven assumptions, or in any event assumptions that are very difficult to verify due to the lack of a direct

²⁷European Commission 2015.

²⁸Wessel 2018, p. 116.

²⁹Verhofstadt G (2019) Boris Johnson’s Talk of ‘Global Britain’ is about to Look even more Ridiculous. <https://www.theguardian.com/commentisfree/2019/jun/27/boris-johnson-global-britain-eu-trade-deal>. Accessed 1 June 2020.

³⁰Ibid.

³¹Bradford 2020, p. 2.

³²Ibid.

³³Ibid., p. 24.

³⁴Stressing economic power over military power also causes some international relations scholars to classify such a perspective as “liberal”, Andreatta 2011, p. 27.

³⁵Larik 2011, pp. 23–30.

comparator. With the UK having left the EU and having embarked on a worldwide effort of negotiating its own international agreements under the banner of “Global Britain”, this will allow for a more direct comparison between the performance of the EU and the UK on the international stage. However, due to the transition period of the Withdrawal Agreement, the UK is slowly phased into its new position.

12.3 “The Great British Trade-Off” as an International Legal Issue

That Brexit is not only an intra-European affair but has wide-ranging consequences for international treaty relations has by now been well documented by a number of scholars.³⁶ This concerns, on the one hand, treaties that no longer apply to the UK. On the other, this is about the UK’s increased freedom from the constraints of EU law in negotiating and concluding new international agreements.

Regarding treaties that would no longer apply to the UK, the *Financial Times* reported in 2017 that this would be the case for approximately 750 international agreements concluded by the EU with 168 different third countries, once it is no longer a Member State.³⁷ As noted by the *BBC*, these include 40 trade agreements with more than 70 countries.³⁸

A legal debate ensued regarding the different categories of these agreements, of which three can be distinguished. First, there are agreements concluded by the EU alone (i.e., without the Member States) with one or several third parties. Since the UK was never a party to these in its own right, these are generally considered to no longer apply to the former Member State.³⁹ Second, there are “multilateral mixed agreements”, i.e. agreements that include as parties the EU, (some of) its Member States, and several third countries. Prominent examples for this type of setting are the main WTO Agreements and the UN Convention on the Law of the Sea. Here, the UK was already a party, and will remain one, with the main difference being that it is no longer constrained by EU law, in particular the need to respect the EU’s exclusive powers and the duty of sincere cooperation as laid down in Article 4(3) TEU.⁴⁰ Third, there are “bilateral mixed agreements”, i.e. treaties that have as parties the EU and its Member States on one side, and one third party on the other.

³⁶See Łazowski and Wessel 2016; Odermatt 2017; Wessel 2018; Silvereke 2018; Larik 2018; and Larik 2020b.

³⁷See <https://www.ft.com/content/f1435a8e-372b-11e7-bce4-9023f8c0fd2e>. Accessed 1 June 2020. For some critical remarks on how to count such international agreements, see Larik 2018, pp. 19–24.

³⁸Edington T (2020) Brexit: What Trade Deals has the UK done so far? <https://www.bbc.com/news/uk-47213842>. Accessed 1 June 2020.

³⁹Silvereke 2018, p. 339; and Odermatt 2017, p. 1056.

⁴⁰See Chamon and Govaere 2020. There may also be other issues to sort out. In the WTO context, for instance, tariff rate quotas needed to be split up between the UK and the EU.

“Bilateral mixed agreements” are arguably the trickiest category when it comes to determining the UK’s post-Brexit status. While the UK was a party to these agreement in its own right and was exercising some powers of its own in their conclusion and implementation, a number of scholars pointed out the bilateral setup of these agreements.⁴¹ In a nutshell, bilateral mixed agreements did not foresee the situation of an EU Member State becoming a third country. Their provisions on territorial application and institutional mechanisms, for instance, are written to apply to the EU and its Member States as a collective entity and the respective third country. They are not designed for accommodating an additional third country.⁴² The British government’s practice seems to confirm the view that these agreements would no longer apply to the UK, as the UK has signed continuity agreement with certain countries with which the EU has mixed bilateral agreements.⁴³

According to the Withdrawal Agreement between the EU and UK, the “Union will notify the other parties to these [external] agreements that during the transition period the United Kingdom is to be treated as a Member State for the purposes of these agreements.”⁴⁴ This means that the EU’s external agreements should continue to apply to the UK during the transition period, to the extent that the respective third countries go along with this request. At the same time, the Withdrawal Agreement allows the UK to “negotiate, sign and ratify international agreements entered into in its own capacity in the areas of exclusive competence of the Union, provided those agreements do not enter into force or apply during the transition period, unless so authorised by the Union.”⁴⁵ In doing so, the UK is to respect “the principle of sincere cooperation” according to which “the United Kingdom shall refrain, during the transition period, from any action or initiative which is likely to be prejudicial to the Union’s interests”.⁴⁶

These provisions in the Withdrawal Agreements apply to both continuity agreements that the UK may wish to negotiate as well as agreements that are not aimed at replacing treaties concluded by the EU. Through these provisions, the Withdrawal Agreement itself provides a legal framework for a gradual easing into the “Great

⁴¹Wessel 2018, p. 120; Odermatt 2017, pp. 1059–60; and Sacerdoti 2017, p. 82.

⁴²See, e.g., Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part, opened for signature 30 October 2016, OJ L 11/23 (entered into force (provisionally) 21 September 2017), article 1.3 on the geographical scope of application and article 26.1(1) on the composition of the Joint Committee.

⁴³See, e.g., Free trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, opened for signature 06 October 2010, OJ L127/6 (entered into force 13 December 2015); and Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Korea (with Exchange of Notes), opened for signature 22 August 2019 (CP 167). See further Larik 2020b, pp. 448–49.

⁴⁴UK WA, above n. 6, article 129(1), n. 1.

⁴⁵Ibid., article 129(4).

⁴⁶Ibid., article 129(3).

British Trade-Off”. While the UK remains largely bound by EU law during the transition period,⁴⁷ while having lost its without voting rights,⁴⁸ it can start negotiations with third countries, as long as its continuity and new agreements do not enter into force before the end of the transition.

12.4 An Assessment Framework and Its Methodological Challenges

By the time the UK had left the EU, it had already signed a number of continuity trade agreements with countries around the world.⁴⁹ However, the time for direct comparisons of the performance of the EU and UK viewed through the terms of international agreements with the rest of the world is not quite ripe yet due to the abovementioned transition as well as the fact that additional agreements are likely to take time be negotiated, especially if they will not be based on the template of a pre-existing agreement concluded by the EU. Nevertheless, it is already possible—and indeed timely—to theorize about an assessment framework for verifying the claims of both proponents of what has been termed here “Global Britain” and “Market Power Europe”.

To provide evidence-based answers to questioning these narratives, a framework is required for assessing the UK’s post-Brexit performance as opposed to the EU’s in international treaty negotiations. On the one hand, where the UK manages to extract more favourable terms from an external trade partner, that would have to be considered a success for “Global Britain”. Despite reduced market size, it managed to outperform the EU in such cases. This may vindicate the premises of “Global Britain”, such as greater flexibility or bringing its soft power to bear. The latter factor in particular would have certain theoretical implications as well since it may be seen as evidence that shared identities and ideas can outweigh sheer material, economic power in international relations.

In addition, it is argued here that even instances where the UK manages to extract the same terms as before, for instance by “incorporating” a pre-existing agreement concluded by the EU virtually in its entirety, should be considered a success. That is so because also here, despite its reduced market power, the UK managed to obtain the same result, demonstrating that there was no added value of being part of the EU, at least in this particular context.

On the other hand, where the UK fails to obtain the same or better terms than the EU managed to do, this can be considered a sign of the global costs of no longer being part of the bloc. This would vindicate the premises of “Market Power Europe” and could be seen as evidence of the added value of being part of the EU. On a more theoretical level, such a result may also be seen as evidence of material, economic

⁴⁷Ibid., article 127.

⁴⁸Ibid., article 7(1).

⁴⁹Larik 2020b, p. 452.

power prevailing over ideational factors—at any rate those touted by the proponents of “Global Britain”.

However, establishing and applying such an assessment framework, as any ambitious project, comes with a range of methodological challenges. These include the following four:

- Numerical, i.e., the ability to analyse considerable amounts of legal materials;
- Normative, i.e., a definition of “better” and “worse terms”;
- Relative; i.e., factoring in economic power differentials;
- Cumulative, i.e., offsetting the sum of “Global Britain” wins against Brexit losses.

Firstly, the numerical challenge lies in the fact that Brexit has caused a rupture of hundreds of treaty relations. Nevertheless, the analysis of larger numbers of international agreements is made possible through advances in empirical-legal studies, where larger samples of treaties have been compared.⁵⁰ A focus on trade agreement narrows down the number, with an estimated 40 trade agreements in need of replacement.⁵¹ Using this smaller sample and/or making use of empirical-legal tools, would make textual comparisons of individual treaties more feasible.

This is especially the case for continuity agreements, some of which follow the so-called “short-form” format. In those cases, the EU agreement is “incorporated into and made part of”⁵² the new agreement, while deviations are spelled out. Here, the negotiators do the comparative work for future researchers as differences with the agreement concluded by the EU are made explicit. Also for “long-form” agreements, where the entire content is copied and modified in certain regards, a simple side-by-side comparison can reveal the differences. As regards new agreements, these may be compared to similar agreements concluded by the EU with that same third country, to the extent that they exist. If there is none, such as a comprehensive trade agreement with the United States or China, for instance, conclusions will have to be drawn from the UK managing to do so.

Secondly, once textual differences are revealed, tackling the normative challenge means drawing conclusions from the comparisons of the terms of agreements concluded by the EU and UK with the same external partners. In essence, this means determining whose terms are “better” or “worse”. In some instances, this will be easy. For example, where the UK would receive less market access from a trading partner compared to the EU in the form of (higher) tariffs. Concerning tariff rate quotas, the assessment needs to take into account also the UK’s market size and previous export levels to the third country. The issue of non-tariff barriers such as regulatory restrictions will be more difficult to evaluate.

The normative analysis of comparing EU and UK trade agreements would therefore benefit from supplementing the comparison of the legal texts with qualitative

⁵⁰See, e.g., Alschner and Skougarevskiy 2016; and Verdier and Versteeg 2015.

⁵¹See <https://www.bbc.com/news/uk-47213842>. Accessed 1 June 2020.

⁵²See, e.g., Agreement Establishing an Association Between the United Kingdom of Great Britain and Northern Ireland and the Republic of Chile, opened for signature 30 January 2019, CP 35, article 3(1).

research methods. These would include taking into account sources from the different countries giving insights into these countries' respective interests in trade negotiations and how these were achieved, or where concessions were made, to the UK or EU. Semi-structured interviews with government, industry, and civil society representatives could be particularly useful to gain targeted data for evaluating the respective terms in the trade agreements accorded to the EU and UK.

Thirdly, such a comparative analysis of terms obtained in trade agreements will have to factor in relative economic power differentials. The UK represented about one sixth of the EU's gross domestic product (GDP) before its departure. On its own, it represents a much smaller market. At the same time, it still is the world's fifth largest economy in terms of nominal GDP according to the World Bank.⁵³ Therefore, it will doubtlessly continue to be a significant trading power and a larger market than most other countries. For a comparative analysis with the EU in trade negotiations, these different economic power differentials need to be taken into account.

For instance, for small economies, including least developed countries, the economic power differential will still be very favourable to the UK despite no longer being able to rely on the EU's combined market leverage. For example, Zambia's and El Salvador's GDP (in nominal terms) is less than 1% of both the UK's and the EU's.⁵⁴ By contrast, at the other end of the spectrum, the UK will be the smaller market compared to economic heavyweights such as Japan. According to the "Market Power Europe" narrative, it is here that the UK would experience particular difficulties in achieving terms comparable to the EU. Both additional economic analysis and country-specific qualitative research will be needed to take these relative economic power differentials and bilateral trading profiles fully into account.

Fourthly, once texts are compared and differences are explained, the results need to be contextualized with the future relationship between the EU and UK. At any rate, this will become relevant in case the analysis reveals the UK achieving more favourable terms than the EU in its trade agreements with global partners. On their own, these could be interpreted as validating the "Global Britain" narrative. However, one may object that any such wins would have to be offset against any losses in market access the UK would experience in its relationship with the EU post-transition. This would be the case according to economic forecasts, especially in scenarios where the EU and UK would only have a CETA-style trade agreement or fall back onto WTO rules.⁵⁵ As of 2020, the EU is still the UK's main trading partner, accounting for about half the latter's trade.⁵⁶ Therefore, the cumulative effect of better terms obtained by the UK compared to the EU would need to be brought in a relation to losses suffered in relation to trade with the EU.

⁵³World Bank (2020) GDP (current US\$)—All Countries and Economies. https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?most_recent_value_desc=true&year_high_desc=true. Accessed 1 June 2020.

⁵⁴Ibid.

⁵⁵See Ries et al. 2017, pp. 47–73.

⁵⁶<https://www.bbc.com/news/uk-47213842>. Accessed 1 June 2020.

Additional economic analysis would be required to meaningfully combine these different effects. Even where the UK manages to extract better terms from certain non-EU trading partners, the theory of “gravity” in international trade will need to be accounted for, i.e. that countries tend to trade more with larger and closer markets.⁵⁷ The EU fulfils both criteria and could show in this way that the UK will find it difficult to escape from its economic orbit. In any event, trade patterns may also take longer times to adjust. Hence, longitudinal analyses across many years would be necessary to keep checking how trade relations evolve.

In sum, a meaningful comparative analysis of the EU and UK’s post-Brexit—or rather post-transition—performance as international treaty negotiators in the area of trade has considerable potential in terms of providing evidence for verifying the opposing narrative of “Global Britain” and “Market Power Europe”. However, this evidence is not easily established. While rigorous legal analysis will remain essential, this needs to be supplemented with legal-empirical, qualitative and economic research methods.

12.5 Conclusion: Was Leaving “Worth It”?

This chapter has sought to highlight the international dimension of Brexit and its wider importance for the EU as an international (legal) actor. Beyond the intra-European dimension of fashioning a future relationship between the EU and UK, Brexit has a distinctly global dimension. And beyond the more immediate need for the UK to ensure “continuity” of a range of treaty relations with the rest of the world due to its departure from the EU, larger questions of the respective futures of both the EU and UK on the global stage are looming on the horizon.

While it is too early to draw any conclusions yet at a time when the transition period has just ended, now is an opportune moment to reflect on the aftermath of Brexit as an unprecedented opportunity to check some of the core assumptions of the main opposing narratives of the costs and benefits of European integration in an international context. These have been designated here, respectively, as “Global Britain” and “Market Power Europe”. Rather than blindly or implicitly subscribing to either narrative, it is incumbent upon scholars to be critical of either and to seek ways to test them on the basis of objectifiable evidence.

Such evidence, it has been argued here, is forthcoming in the form of scores of new international agreements the UK seeks to conclude with partners around the world, largely to replace existing EU agreements but also to forge new legal ties where the EU has not managed to do so yet. Making sense of this evidence requires an interdisciplinary research agenda in order to meet the numerical, normative, relative, and cumulative methodological challenges that such an endeavour poses.

Rigorous legal analyses will remain crucial to provide an accurate understanding of these new materials. Given their volume, legal-empirical methods will be useful to

⁵⁷Lowe 2018.

process them and to condense findings. Qualitative research methods will be essential for explaining differences in terms accorded to the UK and EU, respectively, in the analysed agreements. This will be particularly important for determining whose terms are more favourable. Last but certainly not least, economic analyses will be indispensable to balance relative economic power differentials and for offsetting any gains made by the UK with the rest of the world against loss of access to the EU's internal market.

None of this is easy, and none of this will be done quickly. However, further refining and applying this methodology seems a worthwhile endeavour, for the prize that beckons is considerable: The answer to the question “Was striking out on its own in the world worth it for the first country that left the EU?”

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