

The Option of Association:

The United Kingdom Post-Brexit and the European Free Trade Association

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The UK government's plans for Brexit remain largely a work in progress. To date, few details on the proposed scope and intensity of future UK-EU relations have been provided. There is also little clarity on the UK's proposed trade and economic relations with non-EU countries. As an EU member, the UK participates in a range of free trade agreements with non-EU countries, both in Europe and in the rest of the world. In case of a «hard Brexit» and the UK leaving the EU's customs union, the UK would lose the preferential market access these agreements provide.

The UK could try to negotiate replacement agreements with each European and non-European country. However, this could prove a long and very difficult task, given the complexity of trade agreements today. One way to address this challenge would be for the UK to become a member of the European Free Trade Association (EFTA).

Joining EFTA – an intergovernmental organization that serves as a platform for free trade between its members – would allow some continuity to be maintained in UK trade relations. This is not only true for trade with Switzerland and Norway – two significant markets for the UK – but also for many ext-

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tra-European markets with which EFTA has concluded free trade agreements. EFTA membership, far less demanding legally, politically and financially than EU membership, has its attractions. However,

it also contains a commitment to establish the free movement of persons with the other EFTA countries. This could prove highly problematic for the UK government given domestic political debate regarding immigration.

How then could the UK proceed to develop constructive relations with EFTA and avail of some, at least, of the attractions of membership? One scenario, would be to seek an association with EFTA. This association could be similar to the arrangement concluded between Finland and EFTA from the 1960s to the 1980s. A «UKEFTA» association could secure the trade benefits of EFTA membership while not necessarily involving the same level of political commitment to which the existing members have signed up, especially in matters

related to immigration and accession to all trade agreements concluded by EFTA. A UKEFTA association could be a temporary or permanent flexible arrangement depending on the preferences of all the stakeholders. The combination of partial continuity and evident flexibility offered by association could be an asset for the UK as it navigates the many uncertainties of Brexit.

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Introduction

Almost a year after the «Brexit» referendum, the prospective withdrawal of the United Kingdom (UK) from the European Union (EU) continues to raise many as yet unanswered questions. The outcome of the Article 50 negotiations remains uncertain, especially considering the numerous issues that EU and UK negotiators will have to address in the time left of the two years provided to conclude the terms of withdrawal, establish the framework for future relations and agree transitional arrangements.¹

Most importantly, the form of the future UK-EU trade relationship remains unclear. There were a few «known knowns»

prior to the UK election in June 2017. According to the UK government, the UK would not be remaining a member of the EU's Single Market; it was also highly likely that the UK would leave

the EU's customs union. This could change. Assuming, however, the UK does not remain in either the Single Market or the customs union, there are essentially three likely scenarios for the UK-EU trade relationship.

- First, the UK could seek to retain partial membership of the Single Market, i.e. pursue sectoral integration along the lines that

Switzerland has managed to do through its multiple bilateral agreements.

- Second, the UK could follow the precedent of Turkey and establish itself as an associate of the EU and participate in its customs union.
- A third scenario would see the UK opting for a free trade agreement, possibly drawing on the example of the Comprehensive Economic and Trade Agreement (CETA) signed between the EU and Canada and/or the Deep and Comprehensive Free Trade Area (DCFTA) arrangement the EU has with Ukraine.

This third scenario fits best with the UK government's aim – set out in Prime Minister Theresa May's letter to European Council President Don-

ald Tusk triggering Article 50 TEU and the withdrawal process – of securing a «deep and special partnership» involving «a bold and ambitious Free Trade Agreement».² Whether such an aim can be se-

cured will depend heavily on the position taken by the EU in negotiations.

If things are unclear regarding the exact nature of the future UK-EU trade relationship, they are even more uncertain regarding future trade arrangements between the UK and non-EU partners. As an EU member state, the UK currently participates in 45 preferential trade agreements with countries and regional groupings all around the world; an-

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¹ Grant, C., *Mrs May Emerging Deal on Brexit, not Just Hard but also Difficult*, London, Centre for European Reform, February 2017. See: <http://bit.ly/2nKDbkQ>.

² May, T. *Prime Minister's Letter to Donald Tusk triggering Article 50*, 29 March 2017, p.4. See: <http://bit.ly/2ogoGps>.

other five agreements, including with Canada, are awaiting entry into force.³ In leaving the EU, it is very likely that the UK will lose its participation in these agreements. While replacement arrangements can be sought, the loss of favorable market access terms, at least in the interim, are likely to impact negatively on trade and be harmful to the UK economy. Close to 40% of UK exports to non-EU countries are governed by these preferential trade arrangements concluded by the EU,⁴ thus making it critical for the UK to secure replacement deals post-Brexit.

This paper explores one possible way in which the UK might go about securing such replacement deals.⁵ The UK could

seek to join or become an associate of another European regional trade organization: the Euro-

The UK could seek to join or become an associate of another European regional trade organization: the European Free Trade Association (EFTA).

pean Free Trade Association (EFTA). Indeed, by joining EFTA, the UK could solve, to a significant degree, the question of its lost EU trade arrangements with countries around the world. The paper considers the EFTA option in three sections. A first section presents a brief update on the UK's current post-Brexit trade strategy towards the EU and non-EU entities. A second section focuses on the option of joining EFTA, discussing both its desirability and feasibility from a UK perspective. A final section

considers the difficulties the UK would encounter in seeking EFTA membership and offers a potential compromise or intermediate solution: association with EFTA, or the «UKEFTA» option.

3 European Commission, «Trade Agreements», *DG Trade*, 31 March 2017. See: <http://bit.ly/1e98O11>.

4 Office of National Statistics (ONS), «UK Trade and beyond», *Statistical bulletin*, December 2016. See: <http://bit.ly/2mMz-MAm>.

5 In the view of the authors the UK's economic and political interests would be best served by remaining inside the EU. If outside the EU, those interests would be best served by remaining inside the customs union and the Single Market. The paper therefore is designed simply to present an option in case the UK outside the EU does not remain in the customs union and eschews the option of seeking continued membership of the Single Market.

1. The UK's post-(hard) Brexit Trade Relations

The form that Brexit will take and what type of trade arrangement the UK should seek for its future relationship with the EU have attracted much speculation and debate. In her Lancaster House speech on 17 January 2017, Theresa May, stated categorically that the UK would be leaving the EU. Moreover, it would be seeking its own bespoke trade arrangement with the EU:

[...] we seek a new and equal partnership - between an independent, self-governing, Global Britain and our

friends and allies in the EU.

Not partial membership of the European Union, associate membership of the European Union, or anything that leaves us half-in, half-out. We do not seek to adopt a model already enjoyed by other countries. We do not seek to hold on to bits of membership as we leave.

No, the United Kingdom is leaving the European Union.⁶

While emphatic in parts, the speech lacked specifics in terms of the actual trade arrangement the UK would be seeking. Most importantly, May confirmed that the UK did not want to retain membership of the Single Market; this would entail transgressing at least one key red line of the UK government, i.e.

opting out of free movement of persons. A second red line could also be transgressed in that membership of the Single Market could require, indirectly at least, accepting the jurisdiction of the European Court of Justice (ECJ). Instead the UK government would seek «the greatest possible access to [the Single Market] through a new, comprehensive, bold and ambitious free trade agreement». The access would be «on a fully reciprocal basis».⁷ May also made it clear that she did not want the UK to remain in EU arrangements such as the Common Commercial Policy (CCP) and the Common External Tariff (CET). She did, however, raise the possibility of becoming «an associate member of the Customs Union in some way, or remain[ing] a signatory to some elements of it».⁸ There was no detail on what this might entail.

Two weeks after May's speech, the UK government published its White

Paper on withdrawal from the EU. It confirmed the UK would be leaving the jurisdiction of the ECJ whatever the form of the future UK-EU relationship. This was arguably the White Paper's clearest message.⁹ On future relations, the White Paper elaborated some general guidelines. The UK Government's priority would be «ensuring free trade with the European markets» and achieving this through «a new strategic partnership with the EU, including a wide reaching, bold and ambitious free trade agreement». There would be no partial membership of the Single Market. Instead, «a mutual-

⁶ May, T., *The Government's Objectives for exiting the EU: PM Speech*, Lancaster House, London, 17 January 2017. See: <http://bit.ly/2oUMHF8>.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ UK Government, *The United Kingdom's Exit from and New Partnership with the European Union White Paper*, 2 February 2017. See: <http://bit.ly/2jZcln7>.

ly beneficial new customs agreement with the EU» would be sought. Its purpose would be to «help to support our aim of trade with the EU that is as frictionless as possible».¹⁰ There was no reference to the UK possibly pursuing «associate membership of the customs union» and no further details were provided on what a customs facilitation agreement would cover. As with so much of the White Paper, a document described by Steve Peers as one «largely devoid of content»,¹¹ the discussion of trade did little to clarify the UK government's position.

References to a free trade agreement and a new customs agreement meant that uncertainty persisted around whether, when combined, the two agreements left open the option of the UK remaining in the EU's customs union, even though the White Paper insisted that the UK «will not be bound by the EU's Common External Tariff or participate in the Common Commercial Policy». Some apparent clarity came when the Secretary of State for Exiting the EU, David Davis, confirmed in parliament that this meant that the UK would definitely be leaving the customs union.¹² The future «customs agreement» would only focus on customs arrangements to help secure the Government's goal of «securing the freest and most frictionless trade possible in goods and services between the UK and the EU» (emphasis added).

On trade with non-EU partners, neither May nor the White Paper had much to say, except that the UK – transformed outside the customs union into «Global Britain» – would be free to strike its own advantageous trade deals. In this respect, a number of future partners were highlighted, all extra-European: China, Brazil, the Gulf States, Australia, New Zealand, India and the United States. How this would be achieved was unclear. The fact that eight of the twenty fastest growing markets included countries that possess trade and economic agreements with the EU and so these agreements would be lost with Brexit was also ignored.

There was no clarity either on what the plans were regarding trade with more than 18 non-EU European states, other than a reference to «seeking to achieve continuity».¹³ No non-EU European states were named and there was no reference to EFTA.¹⁴ There was simply an ambiguous wish for «tariff-free trade with Europe and cross-border trade there to be as frictionless as possible» (emphasis added) and a reference to «new trade agreements not just with the European Union but with old friends and new allies from outside Europe too».¹⁵

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¹⁰ *Ibid.*

¹¹ Peers, S., «As Bad as it gets: the White Paper on Brexit», *EU law analysis blog*, 3 February 2017. See: <http://bit.ly/2neM6op>.

¹² Hansard (House of Commons), Vol. 620, col. 1222, 2 February 2017. See: <http://bit.ly/2mL2S3n>.

¹³ UK Government, *op.cit.*

¹⁴ In March 2017, the House of Commons issued a report which mentions EFTA. This report remained unspecific however. It simply recommended that the UK government to evaluate the implications of the UK re-joining the European Free Trade Association. See: House of Commons (International Trade Committee), «UK Trade Options beyond 2019», First Report of Session 2016-2017, HC817, 7 March 2017.

¹⁵ *Ibid.* Switzerland did appear, albeit without comment, in a chart as being the sixth most important export market for UK goods and services. A list of the top twenty fastest growing markets included seven non-EU European states, two of them being EFTA members. This did not attract comment. The only reference to EFTA as an organization was an appearance in a chart of «EU and related membership groupings».

The UK position on the future of its post-Brexit trade relations with non-EU European states currently amounts therefore to no more than a desire for some sort of continuity. That begs the question of how that might be achieved and sustained. The near certainty that the UK will no longer be part of EU's customs union means that it will have the opportunity to conclude its own trade arrangements with most non-EU European states. The exceptions will be Turkey, Andorra, Monaco and San Marino, all of which are now part of the EU's customs union and have to align with the CET and CCP.¹⁶ Thus, a major challenge for the UK would be managing the process of negotiating and concluding new trade arrangements with each of the other non-EU European countries. Undertaking such negotiations promptly could prove very difficult given the limited number of trained negotiators that the UK government has presently. Furthermore, negotiations could prove protracted given their complexity; agreements increasingly need to cover intellectual property and investment protection. Finally, as several recent cases have demonstrated, notably the EU's CETA saga, new generation trade agreements have become increasingly contested domestically. The UK government could face domestic opposition to some of its negotiations. One way to reduce these challenges would be for the UK to secure EFTA membership.

2. EFTA membership: a means towards maintaining free trade with non-EU partners?

In the UK debate on Europe, EFTA has often been described simplistically as a club of four eurosceptic European countries that enjoy a privileged free-trade relationship with the EU without being part of it. As one leading eurosceptic commentator has noted: «EFTA countries participate in the European market without subjecting themselves to the associated costs of membership (...) EFTA states have found a way to have their cake while guzzling away at it».¹⁷ Over time, such shallow analysis has reinforced simplifications and even myths about the nature of an organization that remains largely unknown to the vast majority of the UK public.

EFTA was established in 1960 by those west European states – including the UK – which either would not or could not commit to the deeper integration being pursued by the «Six» in the then European Communities (EC), the forerunner of today's EU. The original goals of EFTA were establishing free trade in industrial goods among its member states and pursuing liberalized trade with the Six. Both goals were achieved, but in the process the organization lost two members – Denmark and the UK – to the EC in 1973, with a third – Portugal – following in 1986. Later, the EC's renewed focus on achieving the free movement of goods, services, capital and people through the Single Market project led to an intensification of relations between the EFTA and

¹⁶ Turkey has a partial customs union agreement with the EU. Therefore, the above-mentioned alignment is not automatic. Under the provision of the EU-Turkey Customs Union Agreement Turkey is, however, obliged to conclude trade agreements «mirroring» the EU's trade agreements.

¹⁷ Hannan, D., *The Case for EFTA*, London, The Bruges Group, 2005. See: <http://bit.ly/2nxiqMt>.

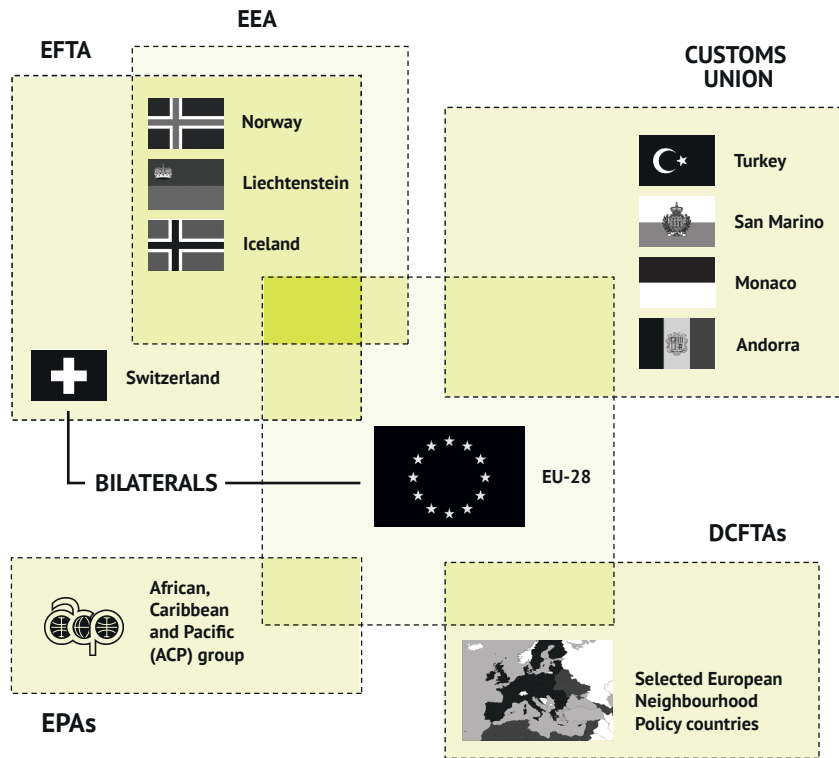


Figure 1: Different institutional arrangements of European trade governance

the EC – the EU from November 1993 – and eventually negotiations on a European Economic Area (EEA). This was

eventually established – without Switzerland – in 1994.¹⁸ One year later, three more EFTA states – Austria, Finland and Sweden – joined the EU. EFTA was left with four members: Iceland, Liechtenstein, Norway and Switzerland (the «EFTA-4»).

One common misconception in the UK debate is that with EFTA membership comes membership of the EEA and so the Single Market.¹⁹ It does not. In fact, EFTA as an organization has no formal relationship with the EU's Single Market, nor does it facilitate or regulate trade with the EU for its four member states. EFTA countries do have access to the Single Market, but this follows from their par-

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ticular relationships with the EU and is not a consequence per se of their EFTA membership. In the case of Norway, Iceland and Liechtenstein, they enjoy full access to the Single Market through their membership of the EEA where they form the so-called «EEA/EFTA pillar». This can cause confusion, as observers often mix EEA/EFTA and EFTA. In the case of Switzerland, access to the Single market is only partial and derives from sector-specific bilateral agreements it has with the EU.

In fact, EFTA is a classical international organization. Based on the 1959 Stockholm Convention, it mainly serves as a platform for free trade in most goods and services between its members.²⁰ The provisions of the Convention eliminate tariff barriers and ad-

¹⁸ Switzerland rejected EEA membership in a referendum in December 1992.

¹⁹ Wintour, P., «European Free Trade Area could be UK's best Brexit Option, says Judge», *The Guardian*, 1 December 2016. See: <http://bit.ly/2fVozob>.

²⁰ Trade in goods includes industrial goods and fish/marine products. For services, note that: «specific rules govern the supply and consumption of services by natural persons». Also, financial services are not covered. EFTA Secretariat, «Short overview of the EFTA Convention», April 2017. See: <http://bit.ly/2p3A6jV>.

dress some non-tariffs barriers (for instance mutual recognition of conformity assessments). They establish common rules on customs. The Convention also covers protection for intellectual property rights. Furthermore, since its 2001 revision, the Convention covers issues such as free movement of persons, including coordination between social security systems and mutual recognition of diplomas between its member states.²¹ Intra-EFTA free movement is similar to that in place within the EU and EEA.²²

EFTA, as an organization, possesses no supranational competences: there is neither a common commercial policy nor a customs union. EFTA's budget is small, especially in comparison with other trade organization: CHF 11.1 million (c £9 million) per year for all activities not related to the EEA.²³

Unlike the EU, there is no secondary EFTA law.

EFTA does, however, make it easier for its members to trade with countries around the world. Indeed, it forms a single negotiating group with which third states can conclude trade agreements. This decreases transaction costs – international trade negotiations are costly to manage – and gives

more political leverage to the EFTA-4.²⁴ EFTA currently has 27 free trade agreements covering 38 countries. That said, EFTA member states remain free to conclude separate trade agreements if they wish.

From an institutional point of view, EFTA has a light structure. There are only two small institutions: the Secretariat and the Council.²⁵ The former has two offices and employs 76 fixed-term staff.²⁶ An office in Geneva focuses on EFTA-only issues; a larger office is located in Brussels and is dedicated to EEA/EFTA matters.²⁷ The Geneva office manages day-to-day issues related to the implementation of the EFTA Convention and the facilitation of EFTA's negotiations with third countries.²⁸ Also, the Geneva Secretariat has no

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surveillance or executive competences other than the few technical tasks specified in the Convention.

In other words, it is only an administrative body that mostly serves the other main EFTA institution: the Council. The EFTA Council is an intergovernmental institution in the classical sense. As such, it includes ministerial representatives of the member state governments as well as several diplomats and

²¹ See Article 20-22 of the EFTA Convention (EFTA, *Convention Establishing the European Free Trade Association*, 21 June 2001. See : <http://bit.ly/2Mq67pS>). The 2001 revision followed the implementation of free movement of persons between the EU and both the EEA/EFTA countries (via the EEA) and Switzerland (via the 1999 agreement on free movement of persons). It would have been odd for Switzerland and the other three EFTA countries to apply free movement with EU countries but not between themselves.

²² Intra-EFTA free movement only applies to Switzerland on the one hand and EEA/EFTA countries on the other. Free movement between EEA/EFTA countries is governed by the EEA Agreement. Intra-EFTA free movement rules mirror those in the 1999 Swiss-EU Agreement on the Free Movement of Persons (AFMP). The AFMP regime is similar to the one in place within the EU and the EEA. However, the EFTA Convention does not set any supranational institution to manage Swiss-EEA/EFTA free movement.

²³ Stoker, G., «EFTA Budget», April 2017. See: <http://bit.ly/2ouJ86l>.

²⁴ Schwok, R., «Specificities of Switzerland's Relations with EFTA and the EEA» in K. Bryn and G. Einarsson (eds), *EFTA 1960 - 2010. Elements of 50 years of European History*, Reykjavik, University of Iceland Press.

²⁵ EFTA also has two advisory bodies: an EFTA Consultative Committee and an EFTA Parliamentary Committee.

²⁶ Omarsson, T., *56th Annual Report of the European Free Trade Association*, EFTA, April 2017, p. 49. See: <http://bit.ly/2oRbjzL>. Four staff are located in Luxembourg (related to the EEA/EFTA pillar).

²⁷ The EFTA Surveillance Authority and the EFTA Court should also be noted. These are not EFTA institutions *per se* but bodies established under the EEA Agreement. Only EEA/EFTA states participate in them; a country joining only EFTA would not be part of either body unless it joined the EEA.

²⁸ Omarsson, T., *op cit*.

experts. It decides on issues related to economic and trade relations between the EFTA states and manages issues related to agreements with non-EU countries. The Council deals also with administrative and financial matters, as well as enlargement. All decisions require unanimity. The Council meets twice a year at ministerial level. The summer session discusses EEA/EFTA matters and trade agreements with non-EU countries (without Switzerland when EEA/EFTA matters are addressed). The winter session – with ministers from all four member states – only covers agreements with non-EU countries.²⁹

EFTA general information

EFTA members: Iceland, Liechtenstein, Norway, Switzerland
 Established: 3 May 1960
 Seats: Geneva, Brussels
 Secretary General: Kristinn Árnasson (Iceland)
 Staff: 76
 Working language: English
 Total budget (2017): CHF 21.86 million (GBP 17.63 million)
 Population: 14 million

2.1. Joining EFTA – Arguments

In joining EFTA, the UK would achieve five aims, the first three of which are specifically stressed in the UK government's recent White Paper.

First, the UK would secure a free trade with the EFTA-4. This would allow the UK to safeguard a significant part of its current trading relationships

with EFTA states. As discussed, these relationships are currently regulated by the UK's participation in the EEA and the Swiss-EU bilateral agreements. Such participation is likely to lapse with Brexit and so potentially seriously disrupt the deep trading ties that the UK enjoys with the EFTA-4. These ties

The EFTA-4 are not only among the most advanced economies in Europe – their combined nominal GDP reaches more than US\$ 1 trillion or 40% of the UK's – they are currently the UK's third most important export market.

are not unimportant for the UK. The EFTA-4 are not only among the most advanced economies in Europe – their combined nominal GDP reaches

more than US\$ 1 trillion or 40% of the UK's³⁰ – they are currently the UK's third most important export market (see figure 2). UK-Swiss trade has risen significantly in value, growing 137.8% between 2009 and 2016. Norway, meanwhile, is the UK's ninth most important source of imports.³¹ In 2015, total UK-EFTA trade in goods and services amounted to £46 billion (more than UK-French trade for the same year - £44 billion).³² Out of this £46 billion, a significant amount comprised goods that are covered by the EFTA Convention (e.g.: pharmaceutical products, machinery, etc.).³³

The UK joining EFTA would also preserve trade in services, a high level of intellectual property protections and movement of capital between the UK and the EFTA-4. This is particularly important for the UK as EFTA countries are a major source of direct investment into the UK. Swiss direct investment into

³⁰ International Monetary Fund, «World Economic Outlook Database», 18 April 2017. See: <http://bit.ly/2pPI5os>.

³¹ UK Government, *op.cit.*

³² Michigan State University (GlobalEdge), «United-Kingdom: Trade Statistics» (based on February 2017 World Bank data), 7 May 2017. See: <http://bit.ly/2qgIUUo>. Original data are in 2015 USD.

³³ EFTA Secretariat, «Trade between EFTA and the UK», 4 April 2017. See: <http://bit.ly/2pwxazV>.

²⁹ Gronningsaeter, T., *This is EFTA*, Brussels, Gramme SA, March 2015, p. 7.

Top Trade Partners	Exports (in % of total trade)	Imports (in % of total trade)
United States	15.13	9.35 (3rd)
Germany	10.17	15.19 (1st)
EFTA	8.53	4.76 (7th)
China	6.02	10.14 (2nd)

Figure 2: UK external trade in goods and services (2015), Michigan State University (GlobalEdge), *op.cit.*

the UK amounted to more than £40 billion in 2014.³⁴ Thus, in joining EFTA, the UK would not have to conclude new agreements to replicate with the EFTA-4 the trade status-quo prevailing through the EEA and Swiss-EU bilateral agreements. Moreover, EFTA

Convention provisions on the free movement of persons would allow existing rights to be maintained to the benefit of UK citizens living in the

EFTA-4. Currently, around 42,000 UK citizens are registered in Switzerland with many of them benefiting from free movement of persons.³⁵ Meanwhile, approximately 33,000

Swiss citizens are living in the UK.³⁶ Regarding Norway, the picture is similar. Recent figures indicate that there are almost

as many Norwegians living in the UK (c 15,000)³⁷ as there are UK citizens (c 18,000) living in Norway.³⁸

Currently, around 42,000 UK citizens are registered in Switzerland with many of them benefiting from free movement of persons. Meanwhile, approximately 33,000 Swiss citizens are living in the UK.

As such these agreements and the access they provide to c900 million consumers could limit the anticipated loss of preferential access to those 50+ markets covered by the EU trade agreements that Brexit will bring.

Second, joining EFTA and therefore the free trade agreements it has with 38 countries (see Figure 3 and section 2.1) would allow the UK to maintain its trade with important partners. As such these agreements and the access they provide to c900

million consumers could limit the anticipated loss of preferential access to those 50+ markets covered by the EU trade agreements that

Brexit will bring.³⁹ Joining the EFTA agreements would also reduce the number of bilateral negotiations the UK would need to enter into in order to

secure the preferential access to third markets that it seeks outside the EU. Furthermore, it would limit the extent to which the UK post-Brexit

would need to rely on relatively unambitious World Trade Organization (WTO) rules for its global trade. EFTA has fewer free trade agreements than the EU, and some of the agreements are in some respects less comprehensive than the ones the EU has concluded.⁴⁰ That said, differences in terms of substance

³⁴ Swiss Federal Department of Foreign Affairs, *op.cit.*

³⁵ Swiss Federal Statistic Office, «La population de la Suisse», Neuchâtel, 2016. See: <http://bit.ly/2mEXVwC>.

³⁶ Swiss Federal Department of Foreign Affairs, «Bilateral Relations Switzerland-The United Kingdom», April 2017. See: <http://bit.ly/2nNfNHr>.

³⁷ Office of National Statistics (ONS), «Population by Country of Birth and Nationality underlying Datasheets», 25 August, 2016. See: <http://bit.ly/2p9EpKy>.

³⁸ Statistics Norway, «Immigrants and Norwegians born to Foreign Parents», 2016. See: <http://bit.ly/2ovQ4Qw>.

³⁹ European Commission, *op.cit.*

⁴⁰ This is the case in matters related to investment protection. However, EFTA supports the updating of its free trade agreements when the EU manages to conclude more comprehensive agreements with the same partner (see figure 3).

Free Trade Agreements (in force or pending)	Free Trade Agreements (in negotiations)	Joint Declaration of Cooperation*
<ul style="list-style-type: none"> - Albania - Bosnia and Herzegovina - Canada - Central American States (except Honduras) - Chile - Colombia - Egypt - Georgia - Gulf Cooperation Council - Hong-Kong - Israel - Jordan - Republic of Korea - Lebanon - Macedonia (FYROM) - Mexico - Montenegro - Morocco - Palestinian Authority - Peru - Philippines - Serbia - Singapore - Southern African Customs Union - Tunisia - Turkey - Ukraine 	<ul style="list-style-type: none"> - Algeria (on hold) - Ecuador - Honduras (on hold) - India - Indonesia - Malaysia - Eurasian Customs Union (on hold) <ul style="list-style-type: none"> - Armenia - Belarus - Kazakhstan - Kirghizstan - Russian Federation - Thailand (on hold) - Vietnam - Canada (upgrade negotiation) - Chile (upgrade negotiation) - Mexico (upgrade negotiation) - Turkey (upgrade negotiation) 	<ul style="list-style-type: none"> - Eastern African Community <ul style="list-style-type: none"> - Burundi - Kenya - Rwanda - Tanzania - Uganda - Mercosur <ul style="list-style-type: none"> - Argentina - Bolivia - Brazil - Paraguay - Uruguay - Venezuela - Mauritius - Mongolia - Myanmar - Pakistan - United States of America (dialogue on free trade) <p>*Joint Declarations of cooperation establish committees enhancing bilateral economic relations. They usually precede free-trade negotiations.</p>

Figure 3: list of EFTA trade agreements with non-EU countries (as of April 2017), Omarsson, T., *op.cit.*, pp. 7-13.

between the EU and EFTA agreements are not, on average, very significant. EFTA has also concluded free trade agreements with important trade partners with which the EU has no agreement. The most notable are the agreements with the Gulf Cooperation Council and Hong Kong. An agreement with Singapore is also pending, and negotiations are well advanced with India and Indonesia. Also, EFTA tends to be able to conclude trade negotiations quicker than the EU.⁴¹

Third, joining EFTA would not involve submitting to the jurisdiction of a supranational court or a supranational surveillance system. EFTA does not

possess supranational dimensions either in its institutional design or in its competences. Moreover, no member state can have decisions imposed on it since all Council decisions are based on unanimity. EFTA membership would not therefore entail a formal pooling or loss of sovereignty. This fits well with the UK government's insistence in its White Paper that the UK will no longer be subject to the jurisdiction of the supranational ECJ.⁴²

Fourth, after Brexit, EFTA membership could facilitate the long-term development of the UK's relations with the EU.⁴³ If the UK in the future were minded to seek full participation in the Single Mar-

⁴¹ «L-EFTA behind: The EFTA Countries show how Hard Brexit will be for Britain», *The Economist*, 12 April 2017. See: <http://econ.st/2oHYir4>.

⁴² UK Government, *op cit.*

⁴³ Note that on some technical issues (e.g. standardisation, customs, trade facilitation), EFTA also serves as a platform for broader cooperation with the EU.

ket, EFTA membership would provide a necessary prerequisite for joining the EEA: currently EEA membership requires membership of either the EU or EFTA.⁴⁴

Fifth, joining EFTA would send a positive message to UK's international partners that Brexit does not mean that the country is retreating from the international order. As one observer has noted: «Rejoining EFTA would be a practical step in a new strategy for UK trade and a symbolic move signaling Britain still embraces international partnership».⁴⁵

Five aims the UK would achieve through EFTA membership

- 1) Maintain free trade with the EFTA member states. *The volume of UK-EFTA trade is comparable to UK-French trade*
- 2) Join 28 free trade agreements with 37 third countries. *Several of these third countries (Singapore, South Korea etc.) are important trade partners for the UK*
- 3) Avoid the jurisdiction of a supranational court. *EFTA does not possess supranational dimensions*
- 4) Open up options for the longer-term development of UK's relations with the EU. *EFTA membership could be a stepping-stone towards membership of the European Economic Area*
- 5) Demonstrate to international partners its commitment to free trade and multilateralism. *Brexit does not mean the UK is retreating from the international order*

Joining EFTA – legal procedure

In order to join EFTA, the UK would have to wait for Brexit to be formally concluded. Legally, the UK cannot conclude any trade agreements until it has left the EU. As far as the process for joining EFTA is concerned, the requirements are set out in Article 56(1) of the EFTA Convention:

«Any State may accede to this Convention, provided the Council decides to approve its accession, on such terms and conditions as may be set out in that decision. (...) Any State acceding to this Convention shall apply to become a party to the free trade agreements between the Member States on the one hand and third states, unions of states or international organizations on the other».⁴⁶

The provisions of Article 56(1) are far from expansive. There is no clarity on whether any precise criteria for accession need to be met. As Georges Baur notes «There is no procedure. Hence, accession to EFTA depends widely on negotiations».⁴⁷ Essentially, the EFTA Council has full discretionary powers to decide whether an applicant can or cannot join.

In practical terms, the UK would have to submit an application to the EFTA Council which would then consider the application before deciding on the opening of accession negotiations. These negotiations would focus on the terms and conditions of accession, and would cover the assumption of the rights and obligations contained in and flowing from the EFTA Convention. These focus on the lib-

44 Baur, G., «Who can join the European Economic Area», in Gstöhl, S. (ed.), *The European Neighbourhood Policy in a Comparative Perspective. Models, Challenges and Lessons*, London, Routledge, 2016, pp. 60-61.

45 Byrne, L. «Save Britain from the worst of Brexit by joining EFTA», *Financial Times*, 7 March 2017. See : <http://on.ft.com/2oCwouM>.

46 EFTA, *op.cit.*, art. 56(1).

47 Baur, G., *op.cit.*, pp. 61-62.

eralization of intra-EFTA trade, so include provisions on the abolition of tariffs/quotas, on rules of origin and various customs matters. The UK would also have to join all the agreements that EFTA has concluded with third countries. Legally speaking, an extension of the EFTA free trade agreements to the UK would require the agreement of all signatories. Thus, the UK would have to formally negotiate with 38 countries. No major difficulties are to be expected with countries that already have free trade with the UK through an agreement with the

Beyond trade, the UK would have to commit to the free movement of persons with the EFTA-4.

third country's perspective; and there may be objections. Beyond trade, the UK would have to commit to the free movement of persons with the EFTA-4. Agreement would also have to be reached on the UK's contribution to the budget. The conclusion of negotiations would require unanimous agreement between the EFTA-4 and the UK. The agreed terms and conditions would then be included in the instrument of accession which would have to be approved by each signatory state. Precedent indicates that this would involve national parliamentary approval.

Joining EFTA - Process

- 1) The UK submits a membership application to the EFTA Council
- 2) The EFTA Council decides on the opening of accession negotiations
- 3) The UK negotiates accession with the EFTA member states; negotiations would cover, trade liberalization, free movement of people, contribution to budget.
- 4) The agreed terms and conditions would then be included in an instrument of accession which would have to be ratified by the UK and each EFTA member state; this would normally involve national parliamentary approval
- 5) The UK would have to seek agreement to become party to the free trade agreements that EFTA has concluded

2.2. Joining EFTA – politically feasible?

It is important to note here that, unlike the EU, EFTA does not pursue an active enlargement policy. Indeed, the last country to join EFTA was Liechtenstein in 1991.⁴⁹ Instead, it is reactive and only considers applications as and when they are submitted. Whether an enlargement is feasible or desirable is therefore assessed on a case-by-case basis.⁵⁰ There is no guarantee that EFTA member states would welcome any new member. In the case of the UK, a number of voices from EFTA member states have welcomed the possibility of a UK application. Some of them consider that UK accession could strengthen EFTA, most notably during its difficult ongoing free trade negotiations with large third countries.⁵¹ However, not all have unconditionally welcomed the possibility of the UK actually joining EFTA. In the months following the UK referendum in June

EU.⁴⁸ Where that is not the case, negotiations may not be straightforward. Adding the UK to any EFTA trade agreement could alter its nature from the

⁴⁹ Liechtenstein was in fact «part of» EFTA from 1960 but without its own seat. The EFTA Convention was applied to Liechtenstein via the Customs Union Treaty with Switzerland.

⁵⁰ Schwok, R. and Najy, C., «UK returning to EFTA: Divorce at 40 and going back to Mom and Dad», *House of Commons, Foreign Affairs Committee*, Written Evidence, 6 June 2012, line 78, <http://bit.ly/2mUTKKn>.

⁵¹ Najy, C. *Interview with a Swiss Diplomat*, Geneva, 6 April 2016.

⁴⁸ Najy, C., *Interview with an EFTA Official*, Brussels, 8 May 2017.

2016, Norwegian officials were markedly cautious about the prospect, stressing that EFTA member states would only «consider» a potential UK application. There was no guarantee of acceptance.⁵² The Norwegian government's caution reflected fears that a UK accession could disturb the settled organization of EFTA.⁵³ Until now, EFTA member states have had broadly homogeneous trade preferences and the organization has therefore worked well. Whether this would survive a UK accession is open to question. As one Swiss official has commented:

«(...) nobody knows what is going to happen after such a large country join us. The UK might impose its free-trade agenda or change the whole dynamic of the organization, turning EFTA into a rival of the EU, which we do not want».⁵⁴

In addition to the cautious stance being voiced in some EFTA quarters it is not clear whether EFTA membership would necessarily appeal to the UK government. The requirement that states joining EFTA have to sign up to the trade agreements with third countries would limit the UK's ability to conclude its own trade agreements and so may not be sellable politically in a context of the «take back control» narrative that so influences the current UK government. Hard-line Brexiteers may also baulk at the prospect of signing up to the liberalization of the movement

of persons. Free movement of persons with EFTA countries is not causing the problems that many Brexiteers complain about (e.g. social dumping). However, could the UK agree to maintain free movement of persons with EFTA countries, while it limits EU immigration. Less contentious would be the provisions on liberalization of investment, trade in services, technical regulations, intellectual property rights, air/land transport and public procurement.

Seeking to join EFTA has its attractions for the UK. Yet, joining EFTA, at least initially, might not prove to be a politically viable option for a UK government if some forms of cooperation beyond trade liberalization prove problematic for ardent Brexiteers. In practice, actually securing membership might also

Hard-line Brexiteers may also baulk at the prospect of signing up to the liberalization of the movement of persons.

encounter resistance from the current EFTA member states. How then could the UK and

EFTA proceed to develop relations? One option, following the historical example of Finland's relationship with EFTA, would be «association».

⁵² Dagenborg, J., «Norway softens Stance on Britain joining EFTA», *Reuters*, 18 August 2016. See: <http://ret.rs/2Nd23oV>. Forster, C. and Gemperli, S. «Efta-Treffen in Bern: Offene Türen für die Briten in der Efta», *Neue Zürcher Zeitung*, 27 June 2016. See: <http://bit.ly/2pBfbBX>.

⁵³ «Norway won't commit to UK joining EFTA», *The Local*, 28 June 2016. See: <http://bit.ly/2oBtgPH>.

⁵⁴ Najy, C. *Interview with a Swiss Diplomat*, Geneva, 9 March 2016.

3. Association with EFTA «UKEFTA»: an interim, possibly optimal solu- tion?

Throughout its history, EFTA has established a range of relationships with non-member states that are largely unknown to most scholars.⁵⁵ The most developed and original was the FINEFTA association, the arrangement governing relations between Finland and EFTA from 1961 until Finland formally joined EFTA in 1986.⁵⁶ The FINEFTA association was based on provisions currently contained in Article 56(2)⁵⁷ of the EFTA Convention:

«The Council may negotiate an agreement between the Member States and any other States, union of States or international organization, creating an association embodying such reciprocal rights and obligations, common actions and special procedures as may be appropriate. Such an agreement shall be submitted to the Member States for acceptance and shall enter into force provided that it is accepted by all Member States».⁵⁸

This particular association allowed for a very close

involvement of Finland in all EFTA activities at a time when the Nordic country was neither willing nor able, for reasons associated with its special economic and political relations with the then Soviet Union, to become a full member.

In legal terms, FINEFTA was in fact a free trade agreement between EFTA's member states individually and Finland. It was not possible politically for Finland, given its particular neutrality and relations with the Soviet Union, to conclude a more ambitious or wide-ranging agreement. In practice, however, all the provisions of the EFTA Convention concerning trade and economic activity were applied to commercial relations between Finland and the EFTA countries.⁵⁹ FINEFTA relations were initially managed through a dedicated «Joint Council». Its decisions were taken by consensus between the EFTA member states, on the one hand, and Finland, on the other. Formally, therefore, Finnish representatives did not participate in EFTA's decision making process and were in effect in a position of being «rule-takers». However, a close working relationship was established between Finnish officials and their counterparts from EFTA and its member states. Moreover, the EFTA member states displayed a strong political desire not to sideline Finland. As a result, the institutional separation of EFTA and FINEFTA matters changed in 1964 when the FINEFTA Joint Council was merged with the EFTA Council.

Thus, although not representing a formal EFTA member state until 1986, Finnish diplomats had a seat on the EFTA Council from 1964 to 1986. They

⁵⁵ Academic literature on EFTA is indeed limited. The most active periods of interest were in the 1960-70s.

⁵⁶ On the FINEFTA association, see «Association Agreement with Finland: Outline and Explanation», *EFTA Bulletin*, Vol. 2, No. 4, 1961, pp. 4-5; Sorsa, K. «Finnland zwischen EWG und RWG», *Europa-Archiv*, Vol 29, No. 14, 1974, pp. 461-72.

⁵⁷ The provisions were originally contained in Article 41(2) of the EFTA Convention but were moved to Article 56(2) with the revision of the Convention that entered into force in 2002.

⁵⁸ EFTA, *op. cit.*, art. 56(2).

⁵⁹ Weder, G. and Vahl, M. «50 Years of EFTA – a Brief History», in Bryn K. and Einarsson, G. (eds), *EFTA 1960-2010, Elements OF 50 Years of European History*, Reykjavik, University of Iceland Press, 2010, p.17.

therefore participated in all the deliberations of the Council, and although formally they did not have a vote, in practice all decisions were taken by consensus of those participating in meetings, so including the Finnish representatives. Without exception, all important EFTA issues were discussed with Finland and all official communiqués were jointly written. Moreover, Finnish experts fully participated in the work of the EFTA Secretariat. Historical sources show that at no point was Finland politically marginalized by the «associate» status it enjoyed prior to actually joining EFTA in 1986.⁶⁰

The FINEFTA association constitutes a very specific case in the post-1945 history of European economic integration and provides a very interesting example of how the UK-EFTA relations could be organized, assuming that EFTA membership were neither pursued nor offered, particularly in the short- to medium-term. Set alongside the inherent flexibility that association with an international organization normally entails,⁶¹ the FINEFTA association provides a precedent for a close and constructive UK-EFTA relationship short of membership.

For the UK, depending on the terms agreed, a «UKEFTA» association could, if negotiated, represent a convenient solution to its looming global trade issues. For instance, a UKEFTA association

could be limited to or extended well beyond free trade in industrial goods, so potentially to include participation in other forms of EFTA cooperation. The UK could sign up for free movement of persons but could also seek special accommodation (e.g.

The UK could sign up for free movement of persons but could also seek special accommodation (e.g. special safeguard clauses to limit immigration in certain circumstances) through its associate status.

special safeguard clauses to limit immigration in certain circumstances) through its associate status. Importantly, it could also join some or

all of the free trade arrangements EFTA has with third countries. This would all be a matter for negotiation.⁶² The association could also be dynamic in that additional rights and obligations could be later extended depending on the interests of both the UK and the EFTA member states. A strictly utilitarian and non-political approach to the relationship with EFTA could thus be pursued by the UK through a UKEFTA association. Following the FINEFTA example, and in sharp contrast to existing association arrangements the EU has with its neighbors, the UK could secure genuine participation, albeit without formal voting rights, in the work of the EFTA Council and EFTA Secretariat.⁶³ However, following once again the FINEFTA precedent, these shortcomings could be solved through political cooperation and socialization within the EFTA institutions leading to acceptable institutional solutions for both the EFTA-4 and the UK. Thus, UKEFTA would not necessarily constitute a «second-class» membership for the UK.

⁶⁰ Kinnas, J., *The Politics of Association in Europe*, Frankfurt, Campus Verlag, 1979, p. 53. See also Tuomioja, E., *Finnish integration policy from the Cold War to the Present*, Speech given at University of Turku, 15 September 2014. See: <http://bit.ly/2nnr-2lx>.

⁶¹ See Kinnas, J., *op cit.*; also Phinnemore, D. *Association: Stepping-Stone or Alternative to EU Membership*, London, Continuum, 1999.

⁶² As discussed, the UK's accession to EFTA's free trade agreements would have to be negotiated one by one with 38 third states. However, as an associate, the UK could conceivably opt out of the obligation to join certain (or even all) of the free trade agreements. This could prove convenient in case the UK did prefer to achieve an ambitious bilateral free trade agreement with a particular third state (e.g. Hong-Kong) rather than joining an existing agreement.

⁶³ In practice, however, FINEFTA arrangements provided Finland with a genuine say in the whole EFTA decision-making.

For EFTA states a UKEFTA association would allow for the establishment of free trade in industrial goods (and fish/marine products) with an important and close trade partner. It could also allow for the UK's participation in the free trade agreements that EFTA has established with non-member states and its involvement in the ongoing negotiations. Here the political weight of the UK might have positive effects.

A UKEFTA association would not admit the UK formally into the EFTA institutions. In practice, however, the UK could have the same rights and obligations as the other EFTA members. The UK could participate in deliberations but have neither a veto over decisions nor an obligation necessarily to take on decisions of the EFTA Council except where obliged to do so under the terms of the association. In this last case, all decisions could be taken though unanimity. At a later stage, and following the FINEFTA example, association could initiate a familiarization process that could allow for gradual deeper involvement of UK diplomats in EFTA institutions. An understanding could be reached that the EFTA-4 would agree not to block the UK's gradually increased participation in exchange for a UK government commitment not to disrupt the smooth functioning of the organization. This could facilitate eventual UK membership of EFTA were that to be pursued and offered. The experience of Finland suggests that accession following association could be formalized relatively swiftly.

As such, a UKEFTA association could provide a firm guarantee to the EFTA-4 that the current political

and decision-making equilibrium would not be disrupted, especially if the UK were tempted to use EFTA to impose its own political agenda. Thus, a UKEFTA association would allay the apprehensions that many Swiss and Norwegian diplomats currently display when asked about a potential UK EFTA membership.

A UKEFTA association could therefore provide a flexible arrangement that would involve clear benefits for the UK, notably in terms of free trade with the EFTA-4 and the opportunity to become part of other preferential trade arrangements with emerging economies. Importantly, in the context of the UK government's red lines for Brexit, it would involve neither the jurisdiction of a supranational court nor necessarily free movement of persons. Meanwhile, a UKEFTA association could also prove to be a convenient solution for the EFTA-4. This assumes, however, that there would be a willingness on their part to accommodate UK preferences and to show good will. The FINEFTA association was very much a product of its time and its rather generous terms were secured because the EFTA member states were generally sensitive to Finland's particular political situation. In the current context, it is unclear if the same level of generosity would be

A UKEFTA association would not admit the UK formally into the EFTA institutions. In practice, however, the UK could have the same rights and obligations as the other EFTA members.

shown towards the UK. The option of association nevertheless exists both legally and politically. And within association

there is scope for flexibility. For all these reasons, the UKEFTA option should be explored by all stakeholders.

UKEFTA as opposed to EFTA Membership

- 1) It could allow the UK to opt out of free movement of people or free movement with an attached safeguard clause could be agreed
- 2) The UK would have room to join some or all of EFTA's free trade agreements with third states
- 3) A UKEFTA association could be flexible and dynamic (further rights and obligations could be later extended)
- 4) The UK could secure participation in EFTA institutions, albeit without formal voting rights
- 5) A UKEFTA association could initiate a familiarization process that could allow for gradually deeper involvement of the UK within EFTA institutions
- 6) A UKEFTA association would alleviate fears among some existing members that a UK accession to EFTA could unsettle the organization

Conclusion

The UK government's plans for Brexit remain a work in progress. A number of red lines have been drawn for negotiations with the EU and a commitment has been made to pursue new trade deals with other countries once the UK is outside the EU's customs union. Little detail has been provided on how the UK government will deliver on this commitment. It has also said very little on how it intends to deliver continuity for those existing preferential trade arrangements the UK enjoys with numerous countries in the world through its EU membership.

Securing membership of EFTA would allow some continuity to be maintained not only with the significant Swiss and Norwegian markets but also, importantly, those many (economically promising) extra-European markets with which EFTA has secured free trade agreements. EFTA membership, significantly less demanding legally, politically and financially than EU membership, has its attractions, although a commitment to promote the free movement of persons – even if the EFTA-4 are economically-advanced small European countries – does pose formal challenges due to domestic UK political constraints regarding immigration. It is also unclear whether the UK would necessarily be welcomed into EFTA by the existing members. Until now, Switzerland and Norway seem to be cautious about the possibility of the UK joining EFTA. As recent sources point out, these two countries fear that the UK would disrupt the whole organization in which they assume political leadership. Moreover, they fear a «politicization» of EFTA in the context of the current tensions between the UK and the EU over the Brexit process.

Faced with these particular concerns, one option for the UK – and EFTA – is therefore association. Drawing on the little known precedent of FINEFTA – the arrangement that preceded Finland’s eventual membership of EFTA in 1986 – a UKEFTA association could secure the trade benefits of EFTA membership without necessarily involving the same level of UK political commitment to cooperation that the existing members have signed up to, especially in matters related to immi-

gration and accession to all free trade agreements concluded by EFTA. A UKEFTA association could come with a small loss of formal sovereignty – less so if an exact

FINEFTA-type institutional arrangement were to be adopted. However, this drawback would be offset by an elegant and relatively swift solution to some of the challenges facing the UK in securing post-Brexit trade agreements with

non-EU partners. Also, a UKEFTA association would meet the interests of those existing EFTA members – particularly Switzerland and Norway

– which so far have not always been particularly welcoming of the prospect of the UK joining «their» organization.

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A UKEFTA association would meet the interests of those existing EFTA members – particularly Switzerland and Norway – which so far have not always been particularly welcoming of the prospect of the UK joining «their» organization.

Finally, a UKEFTA association could be a temporary or permanent flexible arrangement, depending on the preferences of all the parties. The combination of continuity and flexibility it would provide could prove very valuable as the UK navigates the numerous uncertainties of Brexit.

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