

# The influence of Brexit on UK trade & development policy towards developing countries. The perspective of international trade law

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## I. Introduction

HAMLET:

*Why, then 'tis none to you; for there is nothing either good or bad, but thinking makes it so. To me it is a prison.*  
[emphasis added]

W. Shakespeare, *Hamlet*, Act II, Scene 2, lines 257–258.

It seems more than appropriate to introduce a paper devoted to the consequences of Brexit with a quote from possibly the greatest playwright of all time, William Shakespeare, English both by birth and at heart. In this short excerpt, Hamlet tries to explain to his false friends, Rosencrantz and Guildenstern, how it can be that Denmark and the world are simultaneously a metaphorical prison for him but not for them. If we were to return now to the prose of life, Brexit is similarly neither good nor bad in itself, but a great amount of thinking can make it as either. It is an event of great political and legal saliency, possibly charting the United Kingdom’s (“UK”) direction for decades to come. While politicians engage in a tremendously heated discussion about the matter, scholars try to map all the burning issues and

anticipate possible courses of action, and when possible, to promote the best solutions. The scope of the debate is as broad as the European Union's ("EU") influence on the UK has been so far: grand.

Future generations will judge whether the decision to withdraw was wise – for academics, the most pressing challenge is to credibly assess the withdrawal process, depict its consequences, and to propose possible solutions to the numerous legal and political issues arising out of it. This paper is an attempt to do so regarding the influence which Brexit may have on the sustainability of British trade & development policy towards developing countries. By "sustainability" I understand compliance with the rules of sustainable development set out in Agenda 2030 – the resolution of the United Nations General Assembly.<sup>1</sup> Sustainable development may be defined as an attempt to meet the justified needs of both present and future generations and as such it requires common, globalised action and long-term planning.<sup>2</sup> In detail, this principle may be seen as a bid to reconcile economic growth with non-economic values to prevent resource depletion and also to improve living conditions in the future. The concept has significantly broadened in scope in recent years and currently also refers to such values as the equality within societies and between states.

One way of implementing sustainable development in international trade is to support developing and the least developed states through measures which grant them preferential access to developed countries' markets. As depicted later in this paper, the EU has created an impressively comprehensive system aimed at supporting developing countries in trade, although this system is not free of grave flaws. The UK is set to take responsibility for creating its own scheme upon leaving the EU and undoubtedly this is in itself a great challenge.

The future of trade relations between the UK, EU, and third parties in the post-Brexit era has been widely discussed.<sup>3</sup> However, there is not that much said about

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<sup>1</sup> UN General Assembly Resolution 70/1, *Transforming our world: the 2030 Agenda for Sustainable Development*, A/RES/70/1 (21st October 2015). The Agenda itself, as most resolutions of the UN General Assembly, is not binding. Nevertheless, this document creates a framework for countries' efforts to implement sustainable development. For a detailed discussion about the binding effect of General Assembly resolutions see: M.D. Öberg, *The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ*, "European Journal of International Law" 2006, vol. 16 no. 5, pp. 883–884.

<sup>2</sup> The most frequently cited definition that "*sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs*" may be found in the Report of the World Commission on Environment and Development: *Our Common Future*, Ch. 2, pt 1.

<sup>3</sup> See e.g.: P. Holmes et al, *Negotiating the UK's Post-Brexit Trade Arrangements*, "National Institute Economic Review" 2016, vol. 238 no. 1; F. De Ville, G. Siles-Brügge, *The Impact of*

the consequences of this “divorce” for developing countries. Brexit may be either good or detrimental for those countries, in that case mostly depending on whether the UK shoulders its responsibilities as part of overseas development and trade policy or decides to reduce its involvement. This decision will be reflected in the continuation or rejection of legal measures applied so far by the EU.

The article opens with Section II, concisely depicting the relevant aspects of the withdrawal process, then Section III serves the purpose of describing current measures used by the EU in its trade policy towards developing countries. As the discussion is framed around the issues of trade relations with developing countries, the focus of the paper is on unilateral measures and development aid, not on the sustainable development clauses characteristic of new generation Free Trade Agreements concluded with developed countries. Then, Section IV analyses the dependency of some developing countries on access to the UK market. The two following sections explore the possible future legal setting in the UK for unilateral trade measures, i.e. what will be the shape of the British successors of European EBA, GSP, and GSP+ schemes. Sections VIII and IX depict current trends regarding trade agreements concluded so far by the UK with developing countries, with the focus on the so-called “Commonwealth effect” which describes an economically discernible preference of the members of the Commonwealth of Nations to trade with one another instead of external states. That leads to conclusions regarding the future of UK trade & development policy and its possibly growing politicisation.

## II. Key political and legal aspects of Brexit

On 23<sup>rd</sup> June 2016, British subjects were asked one of the most important questions in the recent history of the United Kingdom: “*Should the United Kingdom remain a member of the European Union or leave the European Union?*”<sup>4</sup> The Brexit referendum, which took place on that day, was organised as an answer to anti-EU sentiments rising within the UK. Adjusting its agenda to the pressure from the voters, the Conservative Party placed the notion of organising the referendum in its manifesto for the 2015 general election.<sup>5</sup>

David Cameron, at that time Prime Minister of Her Majesty’s Government, proposed that the UK should renegotiate its position within the European system

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*Brexit on EU Trade Policy*, “Politics and Governance” 2019, vol. 7 no. 3; S. Trommer, *Post-Brexit Trade Policy Autonomy as Pyrrhic Victory: Being a Middle Power in a Contested Trade Regime*, “Globalizations” 2017, vol. 14 no. 6.

<sup>4</sup> See: *European Union Referendum Act 2015*, c. 36.

<sup>5</sup> *The Conservative Party Manifesto 2015*, p. 30, retrieved 10th October 2020 from <http://ucrel.lancs.ac.uk/wmatrix/ukmanifestos2015/localpdf/Conservatives.pdf>.

and then provide the British with the opportunity to cast their vote on the matter of further membership.<sup>6</sup> Mr Cameron, a “remainer” himself, fulfilled the electoral vow and ordered a referendum upon finalising talks with Brussels, most probably convinced that British people would decide to stay in the EU, even if by a narrow margin.<sup>7</sup> The results, however, were contrary to those predictions. With the high turnout of 72.2%, 16,141,241 Brits voted “Remain”, 17,410,742 “Leave”.<sup>8</sup> Therefore, the “Leave” option won by the narrow margin of 3.6 percentage points, sparking a long-lasting and utterly complicated process of the withdrawal of the United Kingdom from the European Union. Eventually, the UK left the European Union on 31<sup>st</sup> January 2020, 23:00.

Brexit presented a great constitutional challenge for the UK and, eventually, the courts had to rule whether the referendum was binding, what was the scope of executive powers, and what was the relation of the withdrawal to devolution (i.e. the administrative decentralisation of the state apart from central England, namely into following regions: Scotland, Northern Ireland and Wales).<sup>9</sup> Eventually, the UK Supreme Court had to face those divisive issues in the watershed Miller case.<sup>10</sup>

The Justices had to resolve a conflict between the doctrine of the parliamentary sovereignty on one side, and prerogative executive powers on the other. Traditionally, the UK Government exercises the Crown’s prerogative at the international level, and that power includes the possibility of entering into and terminating treaties.<sup>11</sup> However, every prerogative power, even a very-well established one, may be

<sup>6</sup> BBC News, *David Cameron promises in/out referendum on EU*, retrieved 10th October 2020 from <https://www.bbc.com/news/uk-politics-21148282>.

<sup>7</sup> *House of Commons Daily Hansard*, 22 Feb 2016, Columns 21–25.

<sup>8</sup> The Electoral Commission, *Results and turnout at the EU referendum*, retrieved 5th November 2020 from <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/elections-and-referendums/past-elections-and-referendums/eu-referendum/results-and-turnout-eu-referendum>.

<sup>9</sup> See: C. Liske, *Brexit, Devolution and Scottish Independence. Political and Legal Impact of the Sewel Convention in the UK*, “Przegląd Prawa Konstytucyjnego” [Constitutional Law Review] 2019, vol. 6; L.N. Kiss, *Unilateral Withdrawal of a Member State? Some Thoughts on the Legal Dimensions of Brexit*, “Pécs Journal of International and European Law” 2018, vol. I; UK High Court, *Miller & Anor, R (On the Application Of) v The Secretary of State for Exiting the European Union (Rev 1)* [2016] EWHC 2768; UK Supreme Court, *R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant)* [2017] UKSC 5; UK Supreme Court, *R (on the application of Miller) (Appellant) v The Prime Minister (Respondent) Cherry and others (Respondents) v Advocate General for Scotland (Appellant) (Scotland)* [2019] UKSC 41.

<sup>10</sup> *R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant)* [2017] UKSC 5.

<sup>11</sup> *Ibidem*, paras 47, 54.

diminished by the Parliament acting through its supreme sovereignty. As A.V. Dicey, in his time a leading authority on the UK constitution, stated: the Parliament can “*make or unmake any law whatever*”.<sup>12</sup> The prerogative power of conducting British foreign affairs is similarly subject to any restrictions imposed by the primary legislation and cannot, without parliamentary consent, change domestic laws.<sup>13</sup> As the Supreme Court confirmed: “*ministers require the authority of primary legislation before they can take that course*” (of issuing the withdrawal notice).<sup>14</sup> Anyone hoping that this empowerment of the Parliament would have changed the course of action had to face a bitter disappointment. The Parliament ruled by the conservative majority responded by adopting the *European Union (Notification of Withdrawal) Act 2017* that opened a way for a formal notification of the withdrawal.<sup>15</sup>

Another important legal issue faced by the Supreme Court related to the problem of devolution in regard to the withdrawal process. Devolved territories – Scotland, Northern Ireland, and Wales – have the power to determine a variety of policies on their own, through their own legislative and executive bodies.<sup>16</sup> However, the source of devolution always lies in Westminster that can “*make or unmake any law whatever*”.<sup>17</sup> During the withdrawal process, the UK central Government and Parliament ignored the dissent of devolved territories, most notably Scotland.<sup>18</sup> They could do so since the Sewel Convention, which sets limits to Westminster’s power in regard to devolution, is – like all constitutional conventions – an unenforceable rule of political conduct.<sup>19</sup> The Supreme Court confirmed this fact in the *Miller case* which in turn led to the conclusion that the UK Government could proceed with Brexit despite lacking the consent of devolved administrations for the enacted legislation.<sup>20</sup> However, although not legally enforceable, the Sewel Convention retains its political influence within the UK. It is a widely known fact that the majority of Scots voted against Brexit.<sup>21</sup> What is more, the Scottish National Party

<sup>12</sup> A.V. Dicey, *Introduction to the Study of the Law of the Constitution*, ed. R.E. Michener, Indianapolis 1982, p. 20.

<sup>13</sup> *R (on the application of Miller and another)*..., para 56.

<sup>14</sup> *Ibidem*, para 101.

<sup>15</sup> *European Union (Notification of Withdrawal) Act 2017*, c. 9.

<sup>16</sup> M. Keating, *The Government of Scotland. Public Policy Making after Devolution*, 2nd edition, Edinburgh 2010, pp. 34–35.

<sup>17</sup> A.V. Dicey, *Introduction to the Study...*, p. 20.

<sup>18</sup> C. Liske, *Brexit, Devolution and Scottish Independence. Political and Legal Impact of the Sewel Convention in the UK*, “Przegląd Prawa Konstytucyjnego” [Constitutional Law Review] 2019, vol. 6, p. 262.

<sup>19</sup> *Ibidem*, pp. 255–256.

<sup>20</sup> *R (on the application of Miller and another)*..., paras 148 and 149.

<sup>21</sup> The Electoral Commission website, *Results and turnout at the EU referendum*, retrieved 14<sup>th</sup> December 2020 from <https://www.electoralcommission.org.uk/who-we-are-and-what>

gained significantly in the latest general election and the support for Scottish independence has been gradually rising.<sup>22</sup> Further political tensions are likely to arise, even threatening the unity of the UK.

Although the UK is formally no longer part of the EU, not everything changed drastically during the single night of 31<sup>st</sup> January 2020. The main novelty includes an overall change to British political influence within European institutions – the UK lost its membership of those bodies and British Members of the European Parliament lost their seats.<sup>23</sup> British ministers do not attend EU summits and are not part of the decision-making process.<sup>24</sup> The rest of regulations, including those on the free movement of people and customs, were still in force until the end of the transition & implementation period, i.e., 31<sup>st</sup> December 2020.<sup>25</sup> During that time, most EU laws were still binding on the UK and the European Court of Justice retained its jurisdiction – a few minor exceptions were enlisted in art. 127 of the Withdrawal Agreement.<sup>26</sup> The Withdrawal Agreement provided for the possibility to extend the transition period for 1–2 years, but the UK Government did not decide to use this option – a decision which should not be particularly baffling, taking into consideration the steady pro–Brexit course of the current Prime Minister.<sup>27</sup>

During the transition period, the UK and EU had to negotiate their future relations, most importantly including a future trade agreement. In the beginning, Ms Ursula Von der Leyen, President of the European Commission, expressed scepticism regarding the feasibility of reaching an understanding before the end of 2020.<sup>28</sup> It contrasted starkly with the optimism of Mr Boris Johnson, who was seemingly convinced that a comprehensive Free Trade Agreement with the EU could be concluded this year.<sup>29</sup> The UK Prime Minister reassured in his statement in February 2020 that *“there is complete certainty that at the end of 2020 the process of transition to that relationship will be complete and that the UK will have*

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we-do/elections-and-referendums/past-elections-and-referendums/eu-referendum/results-and-turnout-eu-referendum.

<sup>22</sup> C. Liske, *Brexit, Devolution and Scottish Independence...*, p. 263.

<sup>23</sup> *Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community*, Treaty Series No. 3 [2020], CP 219 Volume 1, art. 128.

<sup>24</sup> *Ibidem*.

<sup>25</sup> *Ibidem*, art. 126–127.

<sup>26</sup> *Ibidem*.

<sup>27</sup> See the announcement of Michael Gove, Minister for the Cabinet Office: Politico, *UK formally rejects Brexit transition period extension*, retrieved 11th November 2020 from <https://www.politico.eu/article/uk-formally-rejects-brexit-transition-period-extension/>.

<sup>28</sup> BBC News, *Brexit: Full UK-EU trade deal ‘impossible’ by deadline – von der Leyen*, retrieved 19<sup>th</sup> December 2020 from <https://www.bbc.com/news/uk-politics-51028614>.

<sup>29</sup> *Ibidem*.

recovered in full its economic and political independence”.<sup>30</sup> Eventually, both parties reached an agreement at the very end of the transition period – the statement was issued on 24<sup>th</sup> December 2020.<sup>31</sup>

The newly concluded Trade and Cooperation Agreement between the UK and EU contains three separate parts: free trade agreement, partnership on security, and horizontal agreement on governance.<sup>32</sup> The agreement was ratified by the UK Parliament on 30<sup>th</sup> December 2020 and now it is undergoing the scrutiny of the European Parliament and the Council of the European Union.<sup>33</sup> Awaiting its ratification, the agreement has been applied provisionally.<sup>34</sup> It provides for zero tariffs and quotas for all goods.<sup>35</sup> However, such goods have to comply with strict rules of origin.<sup>36</sup> The agreement also contains rules on a level-playing field, access to UK fisheries, and the UK’s participation in several EU programmes.<sup>37</sup> Many issues have not yet been resolved, and await further negotiations, such as regulations on services, mutual recognition of qualifications, transfer and protection of personal data.<sup>38</sup> Recent troubles of exporters and lack of many goods on shelves in Northern Ireland prove that despite the abolition of tariffs, many less obvious trade barriers will be in place.<sup>39</sup>

No longer part of the EU, the UK could start coining its own trade policy towards the rest of the world. However, any new agreements and unilateral measures could not be implemented during the transition period due to the yet upheld

<sup>30</sup> The UK Government website, *Written statement to Parliament: The Future Relationship between the UK and the EU*, retrieved 19th December 2020 from <https://www.gov.uk/government/speeches/the-future-relationship-between-the-uk-and-the-eu>.

<sup>31</sup> European Commission – Press release, *EU-UK Trade and Cooperation Agreement: protecting European interests, ensuring fair competition, and continued cooperation in areas of mutual interest*, Brussels, 24 December 2020.

<sup>32</sup> *Ibidem*.

<sup>33</sup> House of Lords Library, *In focus – UK-EU Trade and Cooperation Agreement*, published 5th January 2021, Jim Brunson, *EU to seek more time to ratify trade deal with UK*, “Financial Times”.

<sup>34</sup> *Ibidem*.

<sup>35</sup> See: *Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part*, Article GOODS.5: Prohibition of customs duties.

<sup>36</sup> *Ibidem*, Part two: trade, transport, fisheries and other arrangements, Title I: Trade in goods, Chapter 2: Rules of origin.

<sup>37</sup> European Commission – Press release, *EU-UK Trade and Cooperation Agreement: protecting European interests...*, Brussels, 24 December 2020.

<sup>38</sup> *Ibidem*.

<sup>39</sup> See: B.M. Araujo, *Brexit trade problems: what’s gone wrong and can it be fixed?*, “The Conversation”, retrieved 31<sup>st</sup> January 2021 from <https://theconversation.com/brexit-trade-problems-whats-gone-wrong-and-can-it-be-fixed-153270>.

customs union with the EU.<sup>40</sup> Since the UK finally left the customs union with the EU at the beginning of 2021, it is now solely responsible for its trade policy. Part of this policy will be devoted to relations with developing countries.

### III. The current EU framework for international trade

Before we can assess the upcoming challenges, it would be important to depict current EU trade policy which governed UK trade until the end of 2020. According to art. 3 of the Treaty on the Functioning of the European Union, the EU has exclusive competence in the area of common commercial policy.<sup>41</sup> Effectively, even though the EU member states are also individually WTO members, the EU exercises trade policy on their behalf and represents them in the WTO, concludes trade agreements, and also sets the customs strategy.

The EU's tariff structure has not changed significantly during recent years, with the average MFN tariff set at the level of 6.3%.<sup>42</sup> The most protected industries are agriculture, fish products and clothing with tariff rates between 11.6% and 14.2%.<sup>43</sup> However, the EU is very active in the field of negotiating and concluding trade agreements and creating unilateral preferential schemes. Although the core framework developed under the WTO has been stagnant, the bilateral and regional agreements are dynamically changing the shape of EU trade relations. It clearly fits within the wider tendency to create particular, closed regimes in place of the generally binding WTO rules, especially that the Doha Round remains in deadlock.<sup>44</sup>

When it comes to bilateral relations, the EU's main instrument is "deep and comprehensive" Free Trade Agreements ("FTAs"). As of 30<sup>th</sup> September 2019, the EU had 41 FTAs in force with 72 countries, including Canada, Japan, and

<sup>40</sup> The UK Government website, *Written statement to Parliament: The Future Relationship between the UK and the EU*, retrieved 14<sup>th</sup> December 2020 from <https://www.gov.uk/government/speeches/the-future-relationship-between-the-uk-and-the-eu>.

<sup>41</sup> *Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union* [2012], OJ C 326/01.

<sup>42</sup> Trade Policy Review Body, *Trade policy review report by the Secretariat: European Union*, WT/TPR/S/395 (10th December 2019), p. 10.

<sup>43</sup> *Ibidem*.

<sup>44</sup> See: A. Martin, B. Mercurio, *Doha dead and buried in Nairobi: lessons for the WTO*, "Journal of International Trade Law and Policy" 2017, vol. 16 no. 1; D. Drache, Marc. D. Froese, *Deadlock in the Doha Round: The Long Decline of Trade Multilateralism* (May 2017), retrieved 13<sup>th</sup> December 2020 from SSRN: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1024030](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1024030).



South Korea.<sup>45</sup> Those agreements serve as *lex specialis* – a more detailed, binding regime in place of general WTO rules subject to art. XXIV of the GATT.<sup>46</sup>

The EU also creates free trade areas on preferential terms with groups of developing states – those are called Economic Partnership Agreements (“EPA”) with the most known example of the broad Cotonou Agreement with the African, Caribbean and Pacific Group of States (“ACP countries”).<sup>47</sup> EPAs provide for reciprocal liberalisation of trade barriers in accordance with the WTO rules but expand also on development aid provided to developing countries by the EU. Nevertheless, developing and the least developed countries which are not ready for opening their markets may still benefit from unilateral, non-reciprocal instruments created by the EU, such as General Schemes of Preferences.

Generalised Systems of Preferences (“GSPs”) – or “Schemes” in the European terminology – are created under the WTO regime and are one of the exceptions to the non-discrimination rule under the enabling clause introduced in 1979.<sup>48</sup> Namely, they provide for the possibility to establish unilateral tariff cuts for developing and the least developed nations. The EU operates three such schemes: standard GSP, GSP+ and Everything But Arms (“EBA”).<sup>49</sup> Standard GSP removes fully or partially duties on 2/3 types of goods, GSP+ additionally offers 0% tariffs in exchange for efforts to implement sustainable development and good governance, and EBA eliminates all tariffs apart from duties on arms and armaments unconditionally if a beneficiary country is among the least developed countries.<sup>50</sup> Therefore, if a country is a developing country but not among the least developed countries, it can benefit from standard GSP or apply for GSP+ if it meets the requirements.

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<sup>45</sup> Trade Policy Review Body, *Trade policy review...*, WT/TPR/S/395 (10th December 2019), p. 10.

<sup>46</sup> *General Agreement on Tariffs and Trade* (30th October 1947), UNTS vol. 55, no. 814.

<sup>47</sup> See: *Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part signed in Cotonou on 23 June 2000* [2000], OJ L 317/03. The pact was due to expire in February 2020 but has been prolonged until December 2020 since negotiations on a revised version are still pending.

<sup>48</sup> GATT Contracting Parties, *Decision of 28 November 1979 on differential and more favourable treatment reciprocity and fuller participation of developing countries* (L/4903).

<sup>49</sup> As stipulated by the *Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008* [2012], OJ L 303/01.

<sup>50</sup> Lists of benefiting countries, tariff rates and general information are available on the official website of the European Commission: retrieved 7th November 2020 from <https://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/>. Apart from arms and armaments, the EU also restricts access to its market for sensitive products such as sugar.

This three-fold system makes European GSP one of more comprehensive and progressive in the world. It is not, however, flawless. It may surprise some that on the list of GSP+ beneficiaries is the Philippines, a country which is widely criticised for confirmed extra-judicial killings as part of its “war on drugs”.<sup>51</sup> The EU, however, did not decide to remove the benefits granted to it under GSP+.<sup>52</sup> On the other hand, the EU partially withdrew EBA benefits from Cambodia over human rights violations regarding freedom of association and expression.<sup>53</sup> Phil Hogan, at that time EU Commissioner for Trade, said: “[...] *the respect for human rights is non-negotiable for us*”.<sup>54</sup> However, it seems that sometimes it is negotiable and sometimes it is not, depending on the circumstances and the importance of economic relation with particular countries.

Notwithstanding the possible criticism, EU trade policy may be called ambitious and comprehensive. It may create a significant economic boost for developing countries through granting unilateral access to the EU market.<sup>55</sup> Secondly, it involves aspects directed towards sustainable development, for example, the GSP+ scheme. The assessment of particular measures taken by the EU may vary, but one thing can be said quite confidently: the system created by the Union is complex. Brexit means that the UK will cease to be part of this well-developed setting. This can be both an opportunity and a threat to the sustainability of British trade policy.

#### IV. The importance of the British market for developing countries

From the perspective of the UK, trade relationships with developing countries might not be so economically salient, as the main focus is on facilitating trade with the EU and developed countries such as the USA, Australia, New Zealand, and

<sup>51</sup> See: EC joint staff working document, *The EU Special Incentive Arrangement for Sustainable Development and Good Governance (‘GSP+’) assessment of the Philippines covering the period 2018 – 2019*, SWD(2020) 24 final (10th February 2020).

<sup>52</sup> The Philippine Star, *Philippines in good position to enjoy GSP+ with EU*, retrieved 5th November 2020 from <https://www.philstar.com/business/2018/01/22/1779996/philippines-good-position-enjoy-gsp-eu>.

<sup>53</sup> The official communication is available on the EC website: *Commission decides to partially withdraw Cambodia’s preferential access to the EU market*, retrieved 11th November 2020 from <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2113>.

<sup>54</sup> *Ibidem*.

<sup>55</sup> See: F. Aiello, F. Demaria, *Do trade preferential agreements enhance the exports of developing countries? Evidence from the EU GSP*, Università Della Calabria, Working Paper n. 02 – 2010; M. Cipollina, L. Salvatici, *EU and developing countries: an analysis of preferential margins on agricultural trade flows*, University of Molise 2007; X. Cirera et al., *The impact of preferences on developing countries’ exports to the European Union: bilateral gravity modelling at the product level*, “Empirical Economics” 2016, vol. 50(1).

Japan.<sup>56</sup> That is not to say that developing countries are not important in the context of British foreign policy and its “soft power”, especially when it comes to ties with those states which were in the past part of the British Empire. Nevertheless, the outcome of trade negotiations is certainly not so important for the UK as it is for those countries, as the volume of trade exchange is much lower than in case of trade with developed countries. For example, while the EU stands for around 53% of UK exports and 62% of UK imports of goods, the whole of Africa represents around 3% of UK exports and even less – 2% – of its imports of goods.<sup>57</sup> On the other hand, a few examples backed by economic data should clearly depict the dependency of developing countries to accessing the British market.

According to a brief produced by the Overseas Development Institute (“ODI”), 5% of the least developed countries’ (“LDCs”) total export goes to the UK.<sup>58</sup> The level of the interconnection is significantly varied, however. For particular nations, the UK represents a crucial part of their export. Those are countries like Belize (30% of its total export), Mauritius and Fiji (20%), Bangladesh and Kenya (10%).<sup>59</sup> For such nations, any disruptive changes in terms of trade may be highly damaging. It is especially the case with Belize, since exports to the UK used to stand for around 75% of its total exports to the EU.<sup>60</sup> For other, less dependent countries, the changes may be easier to accommodate, but Brexit will bring negative consequences nevertheless, both short- and long-term.

The level of the possible direct influence of Brexit on developing economies depends on many factors. Firstly, one should consider the total value of exports from those countries. Secondly, there is the type of goods exported, namely: if they are price sensitive. Some industries, such as textiles, gourmet food and flowers, are more price sensitive.<sup>61</sup> Thirdly, it depends on the ability of those countries to change the destination country, that also being subject to the existing demand for particular goods on the international markets (trade diversion effects).<sup>62</sup>

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<sup>56</sup> See policy papers at the UK Government website: retrieved 19<sup>th</sup> December 2020 from <https://www.gov.uk/government/collections/the-uks-trade-agreements#trade-negotiations-the-uk-is-prioritising>.

<sup>57</sup> M. Ward, *Geographical pattern of UK trade*, “House of Commons Library” 2020, briefing paper no. 7593, p. 7.

<sup>58</sup> M. Mendez-Parra et al., *Brexit and development: how will developing countries be affected?*, “ODI Briefings”, July 2016, p. 5.

<sup>59</sup> *Ibidem*.

<sup>60</sup> *Ibidem*.

<sup>61</sup> *Ibidem*, p. 6.

<sup>62</sup> As the example see the analysis of the impact of Brexit on developing countries in Asia: A. Jacob et al, *Implications of Brexit to the Asia-Pacific region: with a focus on least developed countries*, “United Nations ESCAP Trade Insight” 2017, iss. 20, pp. 5–6.

Indirect effects are more difficult to assess. They stem from, among others, drop in the value of the pound and euro, decrease of income and consumer confidence in the UK, disruptions in supply chains involving the EU, the UK, and developing countries.<sup>63</sup> Short-term negative effects are inevitable, but long-term effects will depend mostly on future trade arrangements between the UK and the EU, and between the UK and developing countries. These may either mitigate or worsen the consequences of Brexit, depending on the circumstances. If the UK decides to actively fill the gap left after the withdrawal, it may even introduce more effective and ambitious trade and development policy, although building such a system independently from the EU will inevitably take time.

## V. The “Everything but Arms” scheme and its future in the post-Brexit UK

As presented above, General Systems (or schemes) of Preferences are created under the WTO rules and enable “positive discrimination” of developing countries, including LDCs, by well-developed countries. That is done by unilateral opening markets by lifting or lowering tariffs. In that way, economically less fortunate nations gain access to developed markets almost without preconditions and free of a requirement to reciprocate the liberalisation. The EU runs a couple of such schemes – they were briefly depicted in Section III.

The most ambitious of them is the “Everything but Arms” (EBA) scheme which grants LDCs duty-free and quota-free access to the EU for almost all goods excluding arms and armaments. The access is granted automatically through delegated regulation and does not depend on political decisions.<sup>64</sup> The list of beneficiary countries is based on the list produced by the United Nations Committee for Development Policy.<sup>65</sup> Currently, there are 47 such states.

Criteria for identifying LDCs are objectified and currently are Gross National Income per capita of \$1,025 or below, Human Assets Index (“HAI”) of 60 or below, Economic Vulnerability Index (“EVI”) of 36 or above and population below 75 million inhabitants.<sup>66</sup> The Committee for Development Policy reviews its

<sup>63</sup> M. Mendez-Parra et al., *Brexit and development...*, “ODI Briefings”, July 2016, pp. 5–7.

<sup>64</sup> *Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 [2012]*, OJ L 303/01.

<sup>65</sup> See: UN website, *LDCs’ complete dataset 2000–2018*, retrieved 9th November 2020 from <https://www.un.org/development/desa/dpad/least-developed-country-category/lcd-data-retrieval.html>.

<sup>66</sup> UN Committee for Development Policy, *Handbook on the Least Developed Country Category: Inclusion, Graduation and Special Support Measures*, retrieved 12<sup>th</sup> November

recommendations about the inclusion and graduation of LDCs every three years.<sup>67</sup> The vast majority of LDCs are located in Africa with the addition of island and East-Asia states. 36 of them are currently members of the WTO and another 8 are negotiating their accession.<sup>68</sup>

There are possible disadvantages of preference schemes such as EBA, mainly that they may give incentives for LDCs to specialise in branches that will not let them become truly competitive. Overall, however, the effects of EBA are positive. According to the study conducted by L. Cernat and others, there are “*moderate, but useful, welfare and trade gains from the EBA initiative, with the largest gains being recorded for sub-Saharan Africa*”.<sup>69</sup> The main advantage of European EBA is that it does not impose complicated regulations, giving tariff-free access for almost all types of goods. LDCs are eligible for the benefits independently of other programmes and agreements – they can choose to stay under EBA even if they concluded a separate agreement with the EU, depending on which one is more beneficial at the moment.

For now, the UK Government announced that it will replicate the EBA scheme.<sup>70</sup> After the transition period, starting from 1 January 2021, the UK will introduce its own general system of preferences. EBA will be replaced by the Least Developed Countries Framework (“LDCF”) directed to the same countries. A legal basis for that can be found in the *Taxation (Cross-border Trade) Act 2018*, Part 1, sec. 10 “*Preferential rates given unilaterally*”.<sup>71</sup> Pursuant to this section, the power to establish trade preference schemes will be vested in The Secretary of State and will be issued by administrative regulation. However, the *Taxation Act* does not provide for certainty – the Secretary only *may* establish such preferences. If the Government decides to do so, the general scope of LDCF will be dictated by the Taxation Act mentioned above. Pursuant to sec. 10(3), regulation will have to provide “*(a)[...] for a nil rate of import duty to be applicable to all goods originating from a least developed country, except arms and ammunition*”.<sup>72</sup> LDCF may also contain “[...] provision

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2020 from <https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/2018CDPhandbook.pdf>, pp. 55–57, 65.

<sup>67</sup> *Ibidem*, p. 5.

<sup>68</sup> WTO website, *Least-developed countries*, retrieved 12th November 2020 from [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org7\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/org7_e.htm).

<sup>69</sup> L. Cernat et al., *The EU’s Everything But Arms Initiative and the Least-developed Countries*, “WIDER discussion papers” 2003, no. 47.

<sup>70</sup> UK Government Website, *Trading with developing nations*, retrieved 14th November 2020 from <https://www.gov.uk/guidance/trading-with-developing-nations-from-1-january-2021>.

<sup>71</sup> *Taxation (Cross-border Trade) Act 2018*, c. 22.

<sup>72</sup> *Ibidem*.

*about the suspension and withdrawal of the application of the nil rate*”.<sup>73</sup> If properly applied, LDCF will be broadly identical to the EBA scheme, both when it comes to the scope of beneficiary countries and the level of tariff relief. Some differences may occur with regard to the exclusions. For example, the EU not only excludes the import of duty-free armaments but also heavily regulates the import of sugar under EBA. Similar exclusions may be applied by the UK, though their scope is not certain. Although the current framework for LDCF does not completely mitigate uncertainty, we may reasonably expect that the UK will indeed introduce a scheme similar to EBA starting from 2021. It is good news especially for Bangladesh, which among LDCs is a country especially heavily dependent on duty-free export to the UK.

## VI. “Standard GSP” and “GSP+” preference schemes in the post-Brexit UK

The next tier of European schemes of preferences is Standard GSP. This GSP reduces tariffs for approximately 2/3 of product tariff lines. The target of this programme are developing countries which are not the least developed ones – therefore, the level of benefits is significantly reduced in comparison with the EBA scheme, albeit still economically important. There are 15 countries eligible for Standard GSP scheme, as presented in Figure 1 below.<sup>74</sup> Vietnam has recently concluded an FTA with the EU, so it will no longer use GSP.<sup>75</sup>

GSP+, on the other hand, was created for the countries that are not least developed – so they cannot use EBA – but are willing to make an additional effort to maximise their benefits. GSP+ grants total, not partial, reductions on the same tariff lines as in Standard GSP in exchange for actions taken by those countries to ensure sustainable governance.<sup>76</sup> Countries being subject to the programme have to unreservedly ratify 27 international conventions on human and labour rights, environmental protection, and good governance.<sup>77</sup> The EU monitors progress on the implementation of good standards and presents “scorecards” of issues needing

<sup>73</sup> *Ibidem*.

<sup>74</sup> As of 1st January 2019. The list published by the EC: List of GSP beneficiary countries, retrieved 16th October 2020 from [https://trade.ec.europa.eu/doclib/docs/2019/may/tradoc\\_157889.pdf](https://trade.ec.europa.eu/doclib/docs/2019/may/tradoc_157889.pdf).

<sup>75</sup> European Commission Website, *Commission welcomes European Parliament’s approval of EU-Vietnam trade and investment agreements*, retrieved 16th October 2020 from <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2114>.

<sup>76</sup> *Annex IX* to the EU’s GSP regulation provides for the list of products included in the GSP+. *Regulation (EU) No 978/2012...* [2012], OJ L 303/01.

<sup>77</sup> *Ibidem*, art. 9(1b). The list of those conventions is available in *Annex VIII*.

further attention. Granting the status of a GSP+ beneficiary is subject to an examination of the request made by a country – it is not automatic. GSP+ may be considered the most politically involved project among all European schemes of preferences. Currently, 8 countries are benefiting from GSP+ as presented in Figure 2 below.<sup>78</sup>

No	Country
1	Congo
2	Cook Islands
3	India
4	Indonesia
5	Kenya
6	Micronesia
7	Nauru
8	Nigeria
9	Niue
10	Samoa
11	Syria
12	Tajikistan
13	Tonga
14	Uzbekistan
15	Vietnam

Figure 1. Countries eligible for the EU Standard GSP scheme

Source of data: [https://trade.ec.europa.eu/doclib/docs/2019/may/tradoc\\_157889.pdf](https://trade.ec.europa.eu/doclib/docs/2019/may/tradoc_157889.pdf)

No	Country
1	Armenia
2	Bolivia
3	Cape Verde
4	Kyrgyzstan
5	Mongolia
6	Pakistan
7	Philippines
8	Sri Lanka

Figure 2. Countries benefiting from the EU GSP+ scheme

Source of data: [https://trade.ec.europa.eu/doclib/docs/2019/may/tradoc\\_157889.pdf](https://trade.ec.europa.eu/doclib/docs/2019/may/tradoc_157889.pdf)

The UK Government declared upholding European unilateral trade preferences, but contrary to LDCF, there are no indicators present in the statute.<sup>79</sup> Nevertheless, Minister for Trade Policy, George Hollingbery, confirmed that not only EBA but also GSP and GSP+ will be continued.<sup>80</sup> According to the communique issued by the UK Department for International Trade, GSP will be substituted with

<sup>78</sup> As of 1st January 2019. The list published by the EC: List of GSP beneficiary countries, retrieved 2nd November 2020 from [https://trade.ec.europa.eu/doclib/docs/2019/may/tradoc\\_157889.pdf](https://trade.ec.europa.eu/doclib/docs/2019/may/tradoc_157889.pdf).

<sup>79</sup> UK Parliament, *Trade and the Commonwealth: developing countries*, sec. 2 “Current unilateral arrangements”, pt 13, retrieved 2nd November 2020 from <https://publications.parliament.uk/pa/cm201719/cmselect/cmintrade/667/66705.htm>.

<sup>80</sup> *Ibidem*, pt 14.

a “general framework” and GSP+ with an “enhanced framework”.<sup>81</sup> It is not sure whether their scope will be fully upheld. Contrary to EBA and its British LDCF successor, GSP and GSP+ require more careful regulation regarding the list of allowed goods, the level of tariff benefits and the exact scope of eligible countries. Moreover, GSP+ is reliant on political decisions and involves a great deal of cooperation with beneficiary countries. That means that the framework for those two programmes may be subject to significant changes in the long-term.

## VII. Aid for Trade

Aid for Trade (“AfT”) is a typical instrument of international trade which aims to provide developing countries with an infrastructure needed to effectively conduct trade. It may be seen as an attempt to not only improve market accessibility – which seems not to be enough – but also trade capacity of mentioned countries and by doing so it may serve both donors and beneficiaries.<sup>82</sup> AfT can aim to improve physical facilities such as ports or roads but also non-material resources by training trade officials or sharing know-how, for example. Apart from Economic Partnership Agreements and General Schemes of Preferences, the EU has also been providing more direct assistance to developing countries through its Aid for Trade Strategy since 2007.

According to the “EU Aid for Trade Progress Report 2019”, the current main objectives are to ensure a focus on the least developed countries, to increase the contribution to sustainable development goals with a focus on women’s participation in business, and finally to better adjust the aid to real opportunities and constraints present on the markets.<sup>83</sup> As indicated previously, AfT initiatives are broad in scope and may be summarised as material help targeting infrastructural shortages and non-material aid in developing efficient legislative, good practices, and transfer of knowledge. It is quite controversial whether this “aid” is truly to help developing countries or to strengthen the influence of developed countries.<sup>84</sup> Although globally AfT has

<sup>81</sup> UK Government Website, *Trading with developing nations*, retrieved 16th October 2020 from <https://www.gov.uk/guidance/trading-with-developing-nations-during-and-after-the-transition-period>.

<sup>82</sup> See: *Aid for Trade: Making it Effective* [in:] *Development Co-operation Report 2006: Efforts and Policies of the Members of the Development Assistance Committee*, Paris 2007, retrieved 8th November 2019 from <https://www.oecd-ilibrary.org/docserver/dcr-2006-3-en.pdf?expires=1571824795&id=id&accname=guest&checksum=E9F46D97CDE5FA753D4B03EA68B6272A>.

<sup>83</sup> European Commission, *EU Aid for Trade progress report 2019*, p. 6.

<sup>84</sup> See: M. Langan, J. Scott, *The Aid for Trade Charade*, “Cooperation and Conflict” 2014, vol. 49, no. 2.



the objective of helping those less fortunate countries to mark their presence on the global market, it would be naive to consider it charity. In that regard, much depends on the exact shape of the instruments used under particular AfT policies.

The EU's AfT system is quite complex. Currently, the EU and its member states stand for 31% of global AfT and are therefore the most generous donor.<sup>85</sup> Most of that help is directed to Africa.<sup>86</sup> Part of the benefits are established under Economic Partnership Agreements, part through different institutions such as the Emergency Trust Fund, the European Development Fund, and the European Investment Bank. They conduct a broad variety of regional projects, often targeting specific industries in beneficiary countries. The report cited above outlines numerous examples of such undertakings in different parts of the world.

According to the data presented in the EU AfT Report, in 2017 the UK spent €1,008 million on trade-related aid.<sup>87</sup> In comparison, Poland spent only €14 million.<sup>88</sup> The UK's involvement stands for approximately 7% of the total budget among member states and the EU together, and for little above 9% among member states only.<sup>89</sup> Only Germany and France offer higher value of AfT among EU donors. Therefore, Brexit heralds significant changes to the structure of the aid provided by the EU. It also poses a great challenge for the UK itself. The European structure provides a great supply base for all initiatives within AfT, both financially and organisationally. The UK will lose access to those projects. Its financial contribution may be smaller and therefore less influential. On the other hand, this is a chance for the UK to independently rebrand its development policy.

Although that approach is often criticised, we may expect that to some extent UK development policy will turn more into "trade" than "development". The UK may exercise its powers as a global AfT donor primarily in the realisation of its own economic interests. As PM Boris Johnson suggested, aid should "*do more to serve the political and commercial interests*" of the UK.<sup>90</sup> Of course, it is not the first time when countries act selfishly in their own interest. Nevertheless, the primary goal of AfT as an instrument of international trade is to help developing countries access global markets and therefore to stimulate commercial exchange. It is not designed to be simply a tool of extending developed countries' influence over developing ones.

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<sup>85</sup> European Commission, *EU Aid for Trade...*, p. 6.

<sup>86</sup> *Ibidem*.

<sup>87</sup> *Ibidem*, p. 75.

<sup>88</sup> *Ibidem*.

<sup>89</sup> The percentage is calculated on the basis of the data provided in the tables, *ibidem*.

<sup>90</sup> The Guardian, *Trade and foreign aid: will Boris Johnson bring an end to DfID?*, retrieved 14<sup>th</sup> November 2020 from <https://www.theguardian.com/global-development/2019/jul/24/trade-foreign-aid-boris-johnson-dfid>.

The upcoming “politicisation” of British AfT could have been suggested by plans to merge the Department of International Development with the Department for International Trade and the Foreign Office.<sup>91</sup> Taking into consideration how great the influence of the UK is in global development policy, this means a threat for developing nations – some may be cut from the source of financing, some may be subject to political pressure. Quite possibly, the members of the Commonwealth of Nations will be in a much better position – this tendency may be suggested by trade agreements concluded so far by the UK, as it will be explained in the following Section. Taking into consideration all the current challenges, the topic may be overlooked by the UK government as it deals with other pressing needs.

### VIII. Trade agreements concluded by the UK with developing countries

While the exact shape of unilateral trade preferences remains uncertain, the UK has already concluded several Free Trade Agreements and Economic Partnership Agreements with developing countries. Usually, the rule is that a developing country can be eligible both for a scheme of preferences and bilateral agreement (if signed), depending on which one is more beneficial for that country. Therefore, such a country can decide to export its goods under one of the unilateral schemes instead of negotiating and signing an agreement. Nevertheless, the agreements concluded between the UK and the chosen developing countries provide for some level of certainty for those countries and let them develop more comprehensive cooperation with Great Britain.

Not counting the recent agreement with the EU, the UK has concluded trade agreements covering only around 8% of its total trade.<sup>92</sup> When it comes to developing countries, the UK has entered into agreements with The Caribbean Forum (“CARIFORUM”) group of states, Eastern and Southern Africa (“ESA”) trade bloc and Southern Africa Customs Union and Mozambique (“SACUM”).<sup>93</sup> Some agreements were made with particular countries – the full list is provided in Figure 3 below. There is ongoing engagement with countries such as Algeria, Cameroon, Egypt, Ghana (a full list in Figure 4).<sup>94</sup>

<sup>91</sup> *Ibidem*. Eventually, the Department of International Development was replaced by the Foreign, Commonwealth & Development Office.

<sup>92</sup> BBC News, *Brexit: What trade deals has the UK done so far?*, retrieved 23rd October 2020 from <https://www.bbc.com/news/uk-47213842>.

<sup>93</sup> UK Government, *UK trade agreements with non-EU countries in a no-deal Brexit*, retrieved 23<sup>rd</sup> October 2020 from <https://www.gov.uk/guidance/uk-trade-agreements-with-non-eu-countries-in-a-no-deal-brexit#trade-agreements-that-have-been-signed>.

<sup>94</sup> *Ibidem*.

The EU directed most of its aid for trade to the African, Caribbean and Pacific Group of States (“ACP countries”), mainly through the Economic Partnership Agreements linked with the Cotonou Agreement. The efforts made by the UK to prolong this kind of agreement do not cover this whole group of states. Interestingly, the West African group seems to be partially left behind. It seems that the UK replicated existing agreements mostly with countries which were part of the British Empire in the past. One reason for that could be that it is simply easier to facilitate negotiations with those countries taking into consideration all the ties between them. This phenomenon in the context of the UK is sometimes called the “Commonwealth effect” – Section IX aims to depict this in more detail.

Furthermore, those shifts can suggest growing “politicisation” of UK trade policy towards developing countries. It indicates that the UK government will seek to realise the political and economic interests of Britain first. Consequently, we may expect a trade policy which is narrower and more politically dependent than EU trade policy towards developing and the least developed countries.

No	Country	No	Country
1	Antigua and Barbuda	20	Kenya
2	Bahamas	21	Kosovo
3	Barbados	22	Lebanon
4	Belize	23	Madagascar
5	Chile	24	Mauritius
6	Colombia	25	Morocco
7	Costa Rica	26	Nicaragua
8	Dominica	27	Panama
9	Ecuador	28	Papua New Guinea
10	EL Salvador	29	Peru
11	Faroe Islands	30	Saint Christopher & Nevis
12	Fiji	31	Saint Lucia
13	Georgia	32	Saint Vincent & Grenadines
14	Grenada	33	Seychelles
15	Guatemala	34	Suriname
16	Guyana	35	Trinidad and Tobago
17	Honduras	36	Tunisia
18	Jamaica	37	Ukraine
19	Jordan	38	Zimbabwe

Figure 3. Developing countries with which the UK has concluded trade agreements. Source of data: <https://www.gov.uk/guidance/uk-trade-agreements-with-non-eu-countries-in-a-no-deal-brexithtrade-agreements-that-have-been-signed> (as of 23<sup>rd</sup> October 2020).

No	Country
1	Albania
2	Algeria
3	Bosnia & Herzegovina
4	Cameroon
5	Egypt
6	Ghana
7	Mexico
8	Moldova
9	Montenegro
10	North Macedonia
11	Serbia

Figure 4: Developing countries with which the UK negotiates trade agreements. Source of data: <https://www.gov.uk/guidance/uk-trade-agreements-with-non-eu-countries-in-a-no-deal-brexithtrade-agreements-that-have-been-signed> (as of 23<sup>rd</sup> October 2020).

## IX. The “Commonwealth effect”

The Commonwealth of Nations is a voluntary political association of 54 states, among which almost all were part of the British Empire in the past.<sup>95</sup> However, not all former colonies and possessions of the British crown are part of the organisation: e.g. the USA, quite understandably, does not participate. The Head of the Commonwealth is the British monarch – currently Queen Elizabeth II. According to Sir Sirdith Ramphal, “*the most celebrated links within the Commonwealth of Nations were centred on language, learning and law*”.<sup>96</sup> Many of the associations operating within the framework of the Commonwealth are of the international and non-governmental character, therefore being an interesting example of a bottom-up civic movement.<sup>97</sup> There are also governmental meetings where heads of states and ministers participate. Member states share a common history, traditions, language, and often also legal paradigms in the form of common law, which facilitates cooperation on both a formal and informal level.

The “Commonwealth effect” is defined as a tendency of member nations to trade and invest with one another.<sup>98</sup> The theory is that this flow of trade and capital is higher between them than with comparable non-member states. The first comprehensive analysis of data on trade and investment within the Commonwealth was presented by Sarianna M. Lundan and Geoffrey Jones in 2001 in the paper entitled “*The ‘Commonwealth Effect’ and the Process of Internationalisation*”. The authors regard the Commonwealth as a *de facto* trading block even in the absence of formal arrangements.<sup>99</sup> According to the research, the effect exists both in trade and investment, but especially in direct investment. The share of intra-Commonwealth exchange amounted to 58% in total investments, 38% in imports and 34% in exports.<sup>100</sup> Generally speaking, a level of exchange is higher between two Commonwealth states than between a Commonwealth state and a non-member – the trend that was steady over the analysed period. Smaller and less wealthy nations, mostly developing ones, are especially inclined to depend on trade with other

<sup>95</sup> With the exception of Mozambique and Rwanda. See: M. Kirby, *The Commonwealth Of Nations Today: Historical Anachronism Or Focus For Universal Values?*, “Commonwealth Law Bulletin” 2010, no. 2463, p. 4.

<sup>96</sup> Quoted after M. Kirby, *The Commonwealth Of Nations...*, “Commonwealth Law Bulletin” 2010, no. 2463, p. 9.

<sup>97</sup> *Ibidem*.

<sup>98</sup> S.M. Lundan, G. Jones, *The ‘Commonwealth Effect’ and the Process of Internationalisation*, “The World Economy” 2001, vol. 24, no. 1, p. 102.

<sup>99</sup> *Ibidem*, p. 103.

<sup>100</sup> *Ibidem*, p. 104.

Commonwealth states.<sup>101</sup> Furthermore, the UK has traditionally been the largest and often the only significant investor in the African countries which had ties with or were part of the former British empire. According to the authors, “*there appears to be a contrast to the experience of countries in the Francophone world, where the present share of French investment is in many cases negligible*”.<sup>102</sup>

By and large, there are a few factors that may contribute to the “Commonwealth effect”. Politics certainly plays a role – the UK has been traditionally interested in developing its influence in former colonies. Furthermore, the Commonwealth reduces knowledge acquisition costs and organisational distance between members, therefore being a good platform for those undertakings which intend to launch international operations for the first time.<sup>103</sup>

It is difficult to clearly assess whether the effect is mostly due to the tradition and historical ties or present profitability, but it certainly plays a significant role in deciding the trade policy of Commonwealth nations. This has consequences for the future of developing countries. We may expect that after Brexit there will be a shift in aid and benefits provided by the UK mostly to those developing countries which are currently part of the Commonwealth. It corresponds with the list of countries with which the UK has already concluded trade agreements – as I indicated previously, among developing ones these are in many cases the members of the Commonwealth. Some countries, e.g. part of the West African States, may suffer from this tendency. Furthermore, the aid and cooperation offered by the UK may from now on depend more on political reasoning since Britain will no longer be “checked” by other EU member states. Although not perfect, the European development policy has been rather universal due to the diversity of countries’ interests within the EU. The UK, on the other hand, may now more freely capitalise on its historical ties with countries that are part of the Commonwealth.

## X. Conclusions

The analysis shows that Brexit may lead to significant shifts in British trade & development policy. That can be of benefit of some countries, namely those associated in the Commonwealth or somehow politically close to the UK due to the “Commonwealth” effect. Many other developing nations face the threat of receiving significantly lower aid or losing access to the British market. That may be not only

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<sup>101</sup> *Ibidem*, p. 106.

<sup>102</sup> *Ibidem*.

<sup>103</sup> *Ibidem*, p. 116.

due to expected changes to UK trade policy, but also because of the economic instability caused by Brexit.

The future of many legal solutions implemented so far by the EU in the enforcement of its sustainability policy towards developing countries, is uncertain in the post-Brexit UK. Some efforts have been made, e.g. when it comes to upholding a British version of the Everything But Arms scheme. However, GSP and GSP+ schemes may undergo significant changes involving their scope, procedure, and level of benefits.

Brexit is often described as a threat but it could prove to be beneficial in terms of sustainability. That would, however, require much effort from the UK to modernise the system inherited from the EU and secure all its commitments. EU trade & development policy, as indicated in the article, suffers from certain shortcomings such as an inconsistency in withdrawing preferences for human rights violations. Moreover, the economic benefits of that policy, although assessed as at least moderately positive, do not exclude the possibility of negative influence such as giving incentives for keeping a less diverse structure of exports. The UK could create a less politically involved, more consistent system of trade preferences through a regulation objectively entrenched in statutes. Some authors suggest that the British version of the GSP could become more wide-ranging and less complicated, with a focus on all low- and middle-income countries, without creating many independent layers of aid.<sup>104</sup> Furthermore, the UK could develop a new institutional setting (a constitutional body) that would be more independent of the Government in assessing whether a developing country deserves to be stripped of its trade preferences due to human rights infringements. That does not seem to be a priority for the British Government under the current circumstances. We may expect more politicisation and a “UK first” approach in trade leading to a worsening of developing countries’ economic situation.

## Summary

Brexit is an event of a great political and legal saliency, possibly charting the United Kingdom’s direction for decades to come. Although the broad topic of the consequences of Brexit has been widely explored in academia, there is not much that has been said about its possible influence on developing countries trading so far with the UK by the use of legal measures implemented by the EU as part of common trade policy. The future of many such solutions, developed so far by the EU in the enforcement of its sustainability policy towards

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<sup>104</sup> K.A. Elliott, *A Post-Brexit Trade Policy for Development and a More Integrated Africa*, “Centre for Global Development”, January 2020, p. 5.

developing countries, is uncertain in post-Brexit UK. That can be a difficult challenge for those developing countries that are in particular economically dependent on access to the British market.

Firstly, the paper briefly depicts the key political and legal aspects of the withdrawal process. Afterwards, current EU trade policy towards developing countries is presented, with the focus on unilateral measures that grant preferences to such countries (General Systems of Preferences under World Trade Organisation rules), as well as on bilateral solutions (Economic Partnership Agreements). Then, the paper analyses measures that might be taken by the UK upon the end of the transition period of the withdrawal from the EU, including Aid for Trade directed to developing countries. The shape of such measures is evaluated critically to underline possible threats and opportunities from the perspective of international trade and sustainable development. Finally, the paper highlights the possibility of a politically motivated shift in British trade policy towards developing countries. Such a shift might be caused by the “UK first” approach, as well as by so-called “Commonwealth effect”.

**Key words:** European Union, United Kingdom, Brexit, international trade law, developing countries, sustainable development, the Commonwealth effect, Generalised System of Preferences

## **Wpływ brexitu na politykę handlową i rozwojową Zjednoczonego Królestwa wobec krajów rozwijających się. Perspektywa prawa międzynarodowego gospodarczego Streszczenie**

Brexit jest wydarzeniem o wielkim znaczeniu politycznym i prawnym, kształtującym w dużej mierze drogę, którą będzie podążać Zjednoczone Królestwo przez najbliższe dekady. Temat konsekwencji brexitu jest szeroko poruszany w piśmiennictwie, brakuje jednak analiz jego potencjalnego wpływu na kraje rozwijające się, które handlowały dotychczas z Wielką Brytanią przy użyciu środków prawnych implementowanych przez Unię Europejską w ramach prowadzonej przez nią wspólnej polityki handlowej. Przyszłość wielu takich rozwiązań, rozwijanych dotychczas przez UE w ramach realizacji polityki zrównoważonego rozwoju wobec krajów rozwijających się, pozostaje niepewna w Wielkiej Brytanii. Jest to znaczne wyzwanie dla tych spośród krajów rozwijających się, które są ekonomicznie znacząco zależne od dostępu do brytyjskiego rynku.

W pierwszej kolejności artykuł zwięźle opisuje kluczowe polityczne i prawne aspekty wystąpienia Zjednoczonego Królestwa z UE. Następnie przedstawiona jest obecna polityka handlowa UE wobec krajów rozwijających się z uwzględnieniem instrumentów unilateralnych, które nadają tym krajom preferencje handlowe (ogólny system preferencji), jak również rozwiązań bilateralnych (umowy o partnerstwie gospodarczym). W dalszej kolejności analizie zostały poddane rozwiązania, które mogą zostać implementowane

przez Wielką Brytanię po zakończeniu okresu przejściowego wystąpienia z UE, w tym również w zakresie pomocy na rzecz wymiany handlowej (*Aid for Trade*). Kształt takich możliwych rozwiązań jest poddany krytycznej ocenie, której celem jest wskazanie możliwych szans i zagrożeń z perspektywy handlu międzynarodowego i zrównoważonego rozwoju. W zakończeniu wskazane zostało, że brytyjska polityka handlowa wobec krajów rozwijających się może przejść transformację motywowaną politycznie. Taką zmianę może spowodować zarówno promowanie przez Wielką Brytanię w pierwszej kolejności swoich interesów handlowych (*UK first*), jak i wystąpienie tak zwanego „efektu Wspólnoty Narodów” (*the Commonwealth effect*).

**Słowa kluczowe:** Unia Europejska, Zjednoczone Królestwo, brexit, prawo międzynarodowe gospodarcze, kraje rozwijające się, zrównoważony rozwój, efekt Wspólnoty Narodów, ogólny system preferencji