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**AFTERMATH OF BREXIT AND IT'S AFFECT ON MULTILATERAL
OR BILATERAL TRADE**- Madhvee Singh¹**ABSTRACT:**

Free trade creates a remarkable dynamic for material prosperity and innovation. It encourages the trade of goods and services by making it cheaper and simpler. In this post-Brexit world, few hurried and insignificant trade agreements are unlikely to provide a boost to the economy of the United Kingdom. The UK has applied to join many multilateral trade agreements, such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) in the absence of the protection and negotiation that might be rendered by the European Union. The UK in order to facilitate its trading prospects, has entered into a withdrawal agreement, namely Trade and Cooperation Agreement (TCA) with the EU. An offshoot of the TCA is the trading arrangement that allows the UK to leave the EU's single market and customs union without controls being re-imposed on the border between the Republic of Ireland and Northern Ireland. A series of violations of the Northern Ireland Protocol by the UK has led to legal actions initiated by the EU before the European Court of Justice. The resulting border checks could potentially cause serious repercussions to the peace agreement of 1998 as well.

In this paper, the author deals with the purpose/ cause behind the Br-exit and its effect on trade with UK and EU. The author further deals with the issues in negotiating trade deals with the UK's multilateral and bilateral trade partners. This paper further probes the resulting problems and difficulties faced by the European Union and Ireland after violations by the UK of the terms and conditions of TCA, international trade laws, and Northern Ireland Protocol which is vital to the 1998 Good Friday peace deal that ended three decades of violence in Ireland and Northern Ireland.

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INTRODUCTION:

Brexit refers to the initiation of exit of the United Kingdom from the European Union, against 16.1 million who voted in favor of remaining; a vote of 17.1 million in favor of leaving the European Union resulted in triggering the exit clause by the UK. The vote to leave determined its exit and set the ground for negotiation for a soft or hard Brexit. Being political initiative policymakers were right to be concerned about the withdrawal of the European Union as a trade block as it has significant economic, political, and cultural repercussions. In all possible circumstances, Brexit has made the UK poorer in comparison to its European neighbors due to the higher trade cost now bearing down on Britain with an ever-increasing welfare budget coupled with the high cost of trade and higher cost of living has become an ever-present problem in the UK.

CAUSE AND IMMEDIATE EFFECTS OF BREXIT:

As a sick man of Europe, in 1973 Britain entered a community that was then known as European Economic Community. The three founding members closest to the UK in terms of size i.e. France, West Germany, and Italy, produced more per person than the UK did by the late 1960s and the difference widened yearly. The GDP per head in these three nations increased by 95% between 1958 when the EEC was established, and Britain's accession in 1973, compared to only 50% in Britain. For the first time since 1965, Britain outperformed the average of the three major European nations².

The decision to vote on exit from the EU was primarily taken when the Conservative Party led by David Cameron promised the electorate to vote on exit if he returned to power. The Eurosceptics voted to leave the EU based on the following reasons-

NATIONALISM- "The principle that the decisions concerning the UK should be taken in the UK". The voters were swayed by the rise in nationalism, jingoism, and growing distrust of multinational trade, financial organizations across the world, and the unreal and unjust promises by leaders of the leave campaign, such as retaining nationalism as a cultural right.

IMMIGRATION- Although the Brexit movement did not initiate the post-racial xenophobia in the UK, it did provide it with a state-approved arena where it was given more latitude. In the run-up to the Brexit vote, the immigrants suffered cultural violence in the form of

²Chris Giles, What has the EU done for the UK? <https://www.ft.com/content/202a60c0-cfd8-11e5-831d-09f7778e7377>

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nationalist, defensive anti-immigration statements. The refugee crisis, which begins after the Arab Spring of 2011, also fuelled the fear in the electorate that the immigration crisis was looming over the United Kingdom as it was creating chaos in Europe. The “leave” voters saw the refugee crisis as a threat to their cultural life and voted against it³.

ECONOMY-The proponents of the leave faction argued that a vote for Brexit would boost the economic opportunities for Britain and that it would free Britain to make free trade agreements with big economies to its own benefit. Exit from the EU would also mean freedom from stringent European Union regulations. The promised economic benefits included an increase in the export potential of the UK and a boost to the UK economy.

The increased welfare budget, austerity, and burgeoning pressure on National Health Services also put fear in the mind of voters. Britain’s yearly contribution toward the European Union budget hovered around 14 billion pounds, roughly €55 million a day, the figure was also propagated to argue that this amount would be put to better use in case of exit from the EU, but simultaneously the grants/aid of roughly 7 billion Euro provided by the EU to the UK were not put forth before the public to make an informed choice in voting for/against Brexit. The leaders for the Leave campaign amplified their message to the public better than the Remain campaign and their ‘economic black hole’ message⁴.

Overall, the ‘membership price’, which includes the expenditure of Common Agricultural Policy (CAP) and poorly designed EU regulations, has probably not exceeded 1.4% of GDP on average. A cost-benefit study of EU membership reveals that it was highly advantageous, as evidenced by the positive annual effect on GDP of 8.6 or 10.6% it clearly implied by a cost-benefit analysis that membership to the European Union was highly beneficial to the UK⁵.

TRADE RELATIONS BETWEEN THE UNITED KINGDOM, NORTHERN IRELAND AND EUROPEAN UNION:

PRE-BREXIT:

³ George Friedman, Three reasons Brits voted for Brexit
<https://www.forbes.com/sites/johnmauldin/2016/07/05/3-reasons-brits-voted-for-brexit/?sh=c2cebf01f9d6>

⁴ Evans, Menon, Geoffrey, Anand (2017). Brexit and British Politics. Cambridge: Polity. p. 48. *ISBN 978-1-5095-2386-3*.

⁵ <https://www.smf.co.uk/wp-content/uploads/2016/04/SMF-CAGE-The-Growth-Effects-of-EU-Membership-for-the-UK-a-Review-of-the-Evidence-.pdf>

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The UK is comprised of England, Scotland, Northern Ireland, and Wales, Northern Ireland shares a land border with Ireland, which gained independence in 1922 after the Government of Ireland Act was passed on May 3rd, 1921, vide which island of Ireland was divided into Northern Ireland which practiced home rule and remained a part of UK, whereas the southern part gained Independence as a new country 'Ireland'. Even after gaining independence from the UK, Irish nationalist continued to call for reunification where loyalists in Northern Ireland wanted to remain part of the UK. Combined with the demand of loyalists/nationalists and the perceived religious discrimination, started the thirty-year conflict, which took more than 3500 lives and lasted from 1969 to 1998. In accordance with the Good Friday Agreement of 1998, the Government of Ireland, Britain, and other political parties agreed not to change Northern Ireland's administration without its citizens' approval. The Good Friday agreement reaffirmed that the border between Ireland and Northern Ireland should be open and without inspections or controls. The tension between Irish Republicans and British- unionist-monarchist has greatly improved as a result of the open border policy. If the border infrastructures are put at the border between Ireland and Northern Ireland as a result of Brexit, the control on movement of goods and people, and inspection of goods, livestock and plants would seem inevitable⁶. Prior to Brexit, a common regulatory framework governed the trade between UK and Ireland. The UK would need to be allowed to deviate from the regulatory frameworks regulated by the EU to have more freedom to seek trade agreements with the rest of the globe. Multiple sets of regulations might increase costs for businesses and discourage cross-jurisdictional competition between UK and EU member states.

Prior to the vote of Brexit, the United Kingdom had been a member of the European Union for more than 5 decades, having fared better than the similarly placed member countries. Britain reaped the benefit of membership to a single market, such as the elimination of tariff and trade barriers as well as the free movement of goods, services, capital, and people. Ireland joined the European Union as a member state in 1973 at the same time as Britain, but unlike Great Britain, Ireland, was amongst the first to adopt Euro as currency on January 1, 1999. As both Great Britain and Ireland were member states before the Brexit vote the movement of goods and people was unhindered.

The hard Brexit border would have entailed the inspection of goods- deliveries to be checked for contraband, to check the origin and compliance with the import nation's requirements due

⁶https://books.google.co.in/books?id=n-eoDwAAQBAJ&dq=%22open+border%22+%22Good+Friday+Agreement%22&pg=PA142&redir_esc=y#v=onepage&q=%22open%20border%22%20%22Good%20Friday%20Agreement%22&f=false

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to the regulatory divergence across the Irish land borders. This inspection would increase trade obstacles, whether it was done close to the border or farther away. Transactional cost would also increase or more documentation is needed to comply with “rules of origin” laws for cross-border shipping of goods.

TRADE AND CO-OPERATION TREATY-

After negotiations that lasted more than 10 months, the Trade and Cooperation Treaty (TCA), which outlined new trading rules, was reached by the UK and the EU in December 2020, putting an end to the UK’s nearly 50 years of membership in the European Union’s single market. The TCA has provisionally come into effect on 1st January 2021. The provision of TCA envisages that the trade in goods will occur with no tariffs or quotas, albeit commerce will now be constrained by non-tariff barriers such as the “Rule of Origin”. The TCA also permits short-term residency without a visa, making it easier to migrate temporarily for business. The TCA also envisaged a few level playing field provisions which require the parties to maintain social, labor, and environmental standards that are at least as high as they were on January 1, 2021; the provisions also establish a rebalancing mechanism whenever there are material impacts on trade or investment from significant divergences in these areas. Additionally, Northern Ireland is recognized as a component of the UK’s custom area under the Ireland/ Northern Ireland protocol and its goods continue to enjoy tariff-free access to the European Union. The TCA is divided into seven parts, two of which deal with “horizontal” issues (the institutional framework and dispute-settlement), and the remaining deal with disciplines. The titles of parts cover more specialized topics like commerce, transportation, fishing, law enforcement, and judicial cooperation in criminal cases⁷.

The UK and EU are each other’s top trading partners. The EU is by far UK’s greatest trading partner for goods, while the UK is the third after the United States of America and China, with total EU-UK trade in goods accounting for 48% of the UK’s total trade and 13% of EU total trade. Furthermore, the value chains involved are very integrated, roughly 11% of UK intermediate goods are utilised in the UK’s manufacturing of exported goods. Trade in the absence of a Free Trade Agreement would be conducted in accordance with WTO rules,

⁷[https://www.europarl.europa.eu/RegData/etudes/IDAN/2021/679071/EPRS_IDA\(2021\)679071_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2021/679071/EPRS_IDA(2021)679071_EN.pdf)

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where imports are subject to tariffs and quotas set by the importing nation. Therefore, a Free Trade Agreement without tariffs would be a way to maintain the status quo⁸.

In the banking and financial services industry, the benefit of a European Union passport is very well established. The passport grants institutions formed in the EU the authority to offer financial services in the fields of banking and other financial services, throughout the EU, with the license given and under the direction of the home member state. The financial services sectors in the UK and EU have been working under no-deal scenario since January 1, 2021, where most financial services are dependent upon the unilateral equivalence provided to the specific activities and categories of financial services.

The TCA lays down a framework for close energy cooperation between the EU and the UK while also ensuring a high level of access for both parties even after the UK leaves the EU's single market and customs unions. The TCA has provisions to prevent market abuse and ensure that electricity and natural gas prices accurately reflect supply through openness.

The TCA permits bilateral operations to transport goods by road, including transit rights under each other's territories. This includes the right of EU operations to cross Great Britain carrying goods between Ireland and the rest of the EU, known as land bridge, and for the UK operators to transit through EU territories between points in the UK. These provisions also outline the conditions that road transport operators must meet to be issued the operating licenses that will enable them to conduct the transportation activities authorized by the agreement. It retains the provisions earlier applied to the transport operations such as professional qualification of the drivers and regulations regarding rest and driving hours.

One of the cornerstones of the single market is the free movement of people, which gives EU individuals the freedom to travel freely between member states as well as live, work and study in any other member state. Movement rights granted to the members enabled the EU citizens to apply for permanent residence after their stay in the other member country surpasses 5-year duration. In the withdrawal agreement signed between UK and EU, UK agreed that EU citizens, who have taken permanent residency before December 2020, shall not face any action under new legislation.

The UK-Ireland common travel area permits Irish and British people to travel, work and live in any of the territories regardless of their citizenship. Therefore, nothing changes for travel

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between the UK and Ireland. The withdrawal agreement attests to the continuity of the common travel area. Despite the information in change becoming less fluid, the TCA still manages to maintain strong ties in this area. A surrender mechanism that replaces EAW(European arrest warrant) data exchange and collaboration with Europol and EuroJust are a few of the substantial provisions on law enforcement and judicial co-operations in criminal cases found in part III of the TCA. However, UK's access to EU databases is restricted going forward.

NORTHERN IRELAND PROTOCOL:

The Northern Ireland Protocol became effective on January 1, 2021, setting out Northern Ireland's relationship with the EU and Great Britain following Brexit. The protocol ensures that there are no inspections of goods moving between Ireland and Northern Ireland (and the rest of the EU). It includes Northern Ireland in the EU single goods market and customs regulations. This implies that items entering Northern Ireland from the UK must be examined and/ or have documentation proving they adhere to EU regulations⁹.

The protocol is a part of the withdrawal agreement mutually agreed between UK and EU, this protocol is separate from the TCA which is a set of rules governing trade and related co-operation between UK and EU¹⁰. As the details of the protocol became public in December 2020 and the protocol come into effect on 31 January 2021, businesses in Northern Ireland and Great Britain had little time to prepare. Therefore, the EU and UK decided to temporarily postpone the full application of EU laws to Northern Ireland, which requires checks and other controls and to ease save procedures for a limited time. They were dubbed "grace period". Even the grace periods, businesses are worried that the challenges with shipping goods between Great Britain and Northern Ireland would worsen once the grace periods expire.

The UK sought the EU for flexibility and exemptions of portions of the protocol in various areas, such as steel quotas, and transferring cattle and pharmaceuticals, in response to the challenges faced by businesses and individuals after the protocol came into effect. In response, the EU suggested cutting back on checks and paperwork and altering EU drug legislation to address difficulties. The UK government, completely unprepared, again requested more significant amendments, including removing the jurisdiction of protocols from the Court of Justice of the European Union (CJEU) and placing limitations on state aid.

⁹[https://one.oecd.org/document/ECO/WKP\(2021\)49/en/pdf](https://one.oecd.org/document/ECO/WKP(2021)49/en/pdf)

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The EU out rightly rejected the removal of the jurisdiction of CJEU from the matters/ disputes emanating from the protocol's violation.

The UK was allowed to continue participating in some EU programs, such as Horizon Europe (Research) and Copernicus (related to the space program), under the terms of the UK-EU Trade and Co-operation Treaty (TCA). Even though TCA began functioning on January 1st, 2021, the UK'S participation in these programs has not appeared due to the relation by the EU to the same delay on the part of the UK in implementing provisions of TCA¹¹.

The protocols emergency provision, article 16, allows the UK or EU to enact transient safeguards to insulate their economy and society. However, it is to be implemented in conditions caused by the implementation of the protocol "severe, economic, social, environmental issues that are liable to persist", or to "diversion of trade". To effectively resolve the issues, the implementation of Article 16 should be focused upon. Though not specifically outlined Article 16 can be used to suspend the provisions of the protocol¹².

As per the dispute resolution mechanism of the withdrawal agreement, substantial disagreements between the parties may be referred to an arbitration panel if they cannot be solved through joint committee negotiations. Any queries regarding the application of principles or clauses of EU law must be directed to the CJEU, and the panel must abide by the CJEU's decision; either party may request the arbitration panel to decide whether safeguards or counterbalancing measures satisfy the Article 16 requirements.

- EU Regulations pertaining to the customs union and the single market for goods are applicable to Northern Island for instance, all products entering or leaving Northern Island are subject to the customs regulations of the European Union.
- At the points of entry, products coming from the rest of the United Kingdom or any third country must go through the necessary check and control. This also means that the UK acting on behalf of Northern Island, must make sure necessary sanitary and phytosanitary controls are carried out, among other things. As per Article 12 of the protocol the implementation and application of the protocol, the UK authorities are accountable for implementation. Article 12(2) requires for a 'union presence' throughout

¹¹<https://commonslibrary.parliament.uk/research-briefings/cbp-9548/>

¹²<https://commonslibrary.parliament.uk/research-briefings/cbp-9330/>

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all the implementation mechanism that takes place by the UK authorities for monitoring purposes¹³.

The protocol on Ireland and Northern Island establishes a new 'consent' process that gives the Northern Island assembly final say over how long relevant EU laws would be applied to Northern Island under the protocol. The assembly may by a single majority vote approve the continued application of EU laws up to 4 years after the date of enforcement of the protocol or vote to stop it doing so. The assembly may then decide to keep applying pertinent Union law every year four years¹⁴.

LEGAL ACTIONS INITIATED BY EUROPEAN UNION-

The European Commission considering the infringement by the UK, decided to invoke the infringement process under the withdrawal agreement. The EC first chose to launch infringement proceedings against the UK on March 15th, 2021, for improper implementation of the protocol, particularly with regard to the certification requirements for the transfer of agricultural foods, led to the invitation of the infringement process. It was later put on hold to encourage to faster constructive collaboration is free up time to create constructive solutions. The UK'S refusal to participate in substantive discussions since February 2022, as well as many unilateral decisions, directly contradicts this spirit¹⁵. The Court of justice has all the powers entrusted by the treaties, including the ability to impose a lump sum or penalty payment, according to Article 12(4) of the protocol.

Additionally, the commission has chosen to initiate two additional infringement procedures against UK for-

1. Failing to carry out the sanitary and Phytosanitary (SPS) regulations set forth by the EU, the UK's neglect to implement the required checks and failure to provide sufficient infrastructure and human resources at a border check post in Northern Island effectively invalidates the European laws.
2. Not meeting the protocol's requirement to furnish the EU with specific trade statistics data on Northern Island.

¹³https://commission.europa.eu/strategy-and-policy/relations-non-eu-countries/relations-united-kingdom/eu-uk-withdrawal-agreement/protocol-ireland-and-northern-ireland_en

¹⁴https://commission.europa.eu/law/law-making-process/applying-eu-law/infringement-procedure_en

¹⁵https://ec.europa.eu/commission/presscorner/detail/en/ip_22_3676

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The above-mentioned infringement proceedings were in response to the unilateral actions taken on June 15, 2022, as the UK government introduced the Northern Ireland Protocol bill, which would empower the UK cabinet to dis-apply any provision of the Northern Protocol and disempower the Court of Justice of the European Union (CJEU) in deciding the matters relating to EU laws. Subsequently, the EU, on July 22nd. 2022 instituted four new cases against the UK allegedly for failing to enforce EU customs and VAT as well as excise rules; all these are heading to judgment by the European Court of Justice.

CONCLUSION:

After seven years after the vote on Brexit, Britain's/UK's future prospects are not looking brighter than they were before Brexit. The dynamic progress required in negotiating new trade deals with the help of clear policy and political willpower is certainly lacking at present. The promise of moving the UK toward a "High-Wage, High-Skill, High-Productivity economy" in which "everyone can take pride in their work and the quality of their work" has certainly not materialized, as the businesses have to be cost-effective in view of increased competition, higher and recently imposed tariffs, higher wages. Increased bureaucracy due to the loss of approach to the EU single market has dented the bottom line of businesses/economic sectors. Brexit and the subsequent TCA resulted in increased bureaucracy, EU regulations for businesses which led to closure of the many small enterprises failing to keep doing business with their European counterparts. Many businesses have incorporated subsidiaries and entities on the European mainland to shield them from increased regulation in doing business with the EU and high wages in the UK¹⁶.

The Gross Domestic Product of Northern Ireland increased by 1.5 percent in the quarter of July to September 2021, according to the Office of National Statistics, outpacing the economies of England, Scotland, and Wales¹⁷, coupled with record-breaking trade between the Republic of Ireland and Northern Ireland. Northern Ireland is in a unique position as a member of both the EU single market and the UK single market and has benefitted greatly. This has brought increased inward investment in Northern Ireland, which shall be protected in light of troubled history and for peace brought by the Good Friday Agreement.

¹⁶<https://www.durham.ac.uk/business/impact/world-economy/moving-to-a-high-wage-high-skill-economy-in-a-post-brexit-uk/#:~:text=This%20vision%20looks%20to%20replace,the%20quality%20of%20their%20work%22>

¹⁷<https://www.ons.gov.uk/economy/grossdomesticproductgdp/bulletins/gdpukregionsandcountries/julytoseptember2021>

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Even after the signing of the TCA and Protocol on Northern Ireland, there are limits on what can actually be accomplished, it should not be shocking that the TCA only has modest goals for removing economic obstacles between the EU and the UK. It is a direct result of the UK's and EU's political choices, these hurdles would not go away unless priorities shift.¹⁸



¹⁸<https://theconversation.com/brexit-trade-problems-whats-gone-wrong-and-can-it-be-fixed-153270>

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