

E.CA Economics

# Brexit and State aid control

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## Chillin' Competition Workshop

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# Outline

Brexit and state aid control: economic fundamentals

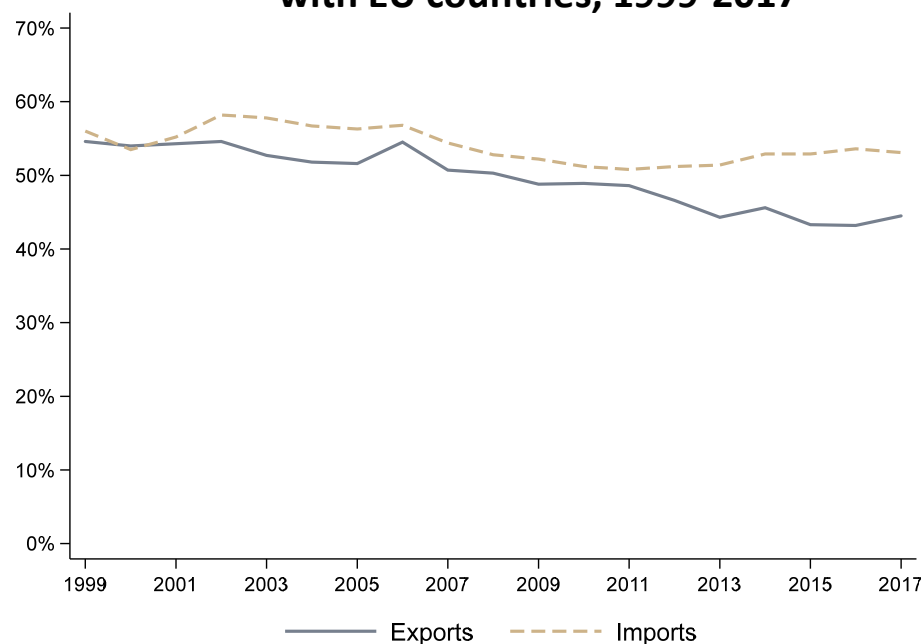
Models for the future relationship

Presentation based on Verouden and Ibáñez Colomo (2019): *Ensuring a Level Playing Field Post-Brexit: State Aid Control*

## Context: EU is UK's most important trading partner

- EU-UK trade represents approx. 44% of UK exports and 55% of UK imports
  - Share is higher if also e.g. EFTA is taken into account
- Share has been declining, but rather stable post-2013

**Figure: UK trade in goods and services with EU countries, 1999-2017**



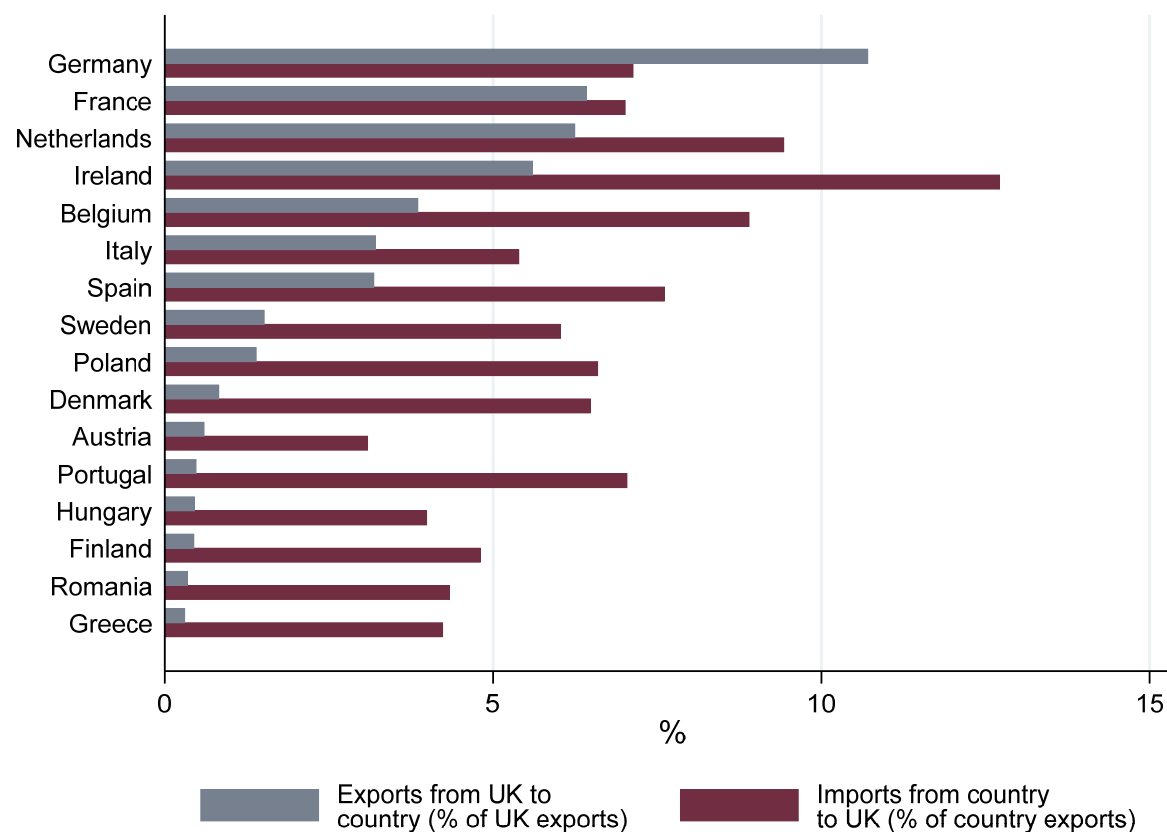
Source: E.CA Economics, ONS

## Zooming in: goods only

- Focusing on goods only, the UK-EU export share is higher: 49%
- For some individual regions, this share is distinctly higher
  - Wales: 60%
  - Northern Ireland: 56%
  - Scotland 49%
  - England 49% (North-East England: 59% vs. London: 42%)

# Differences across countries

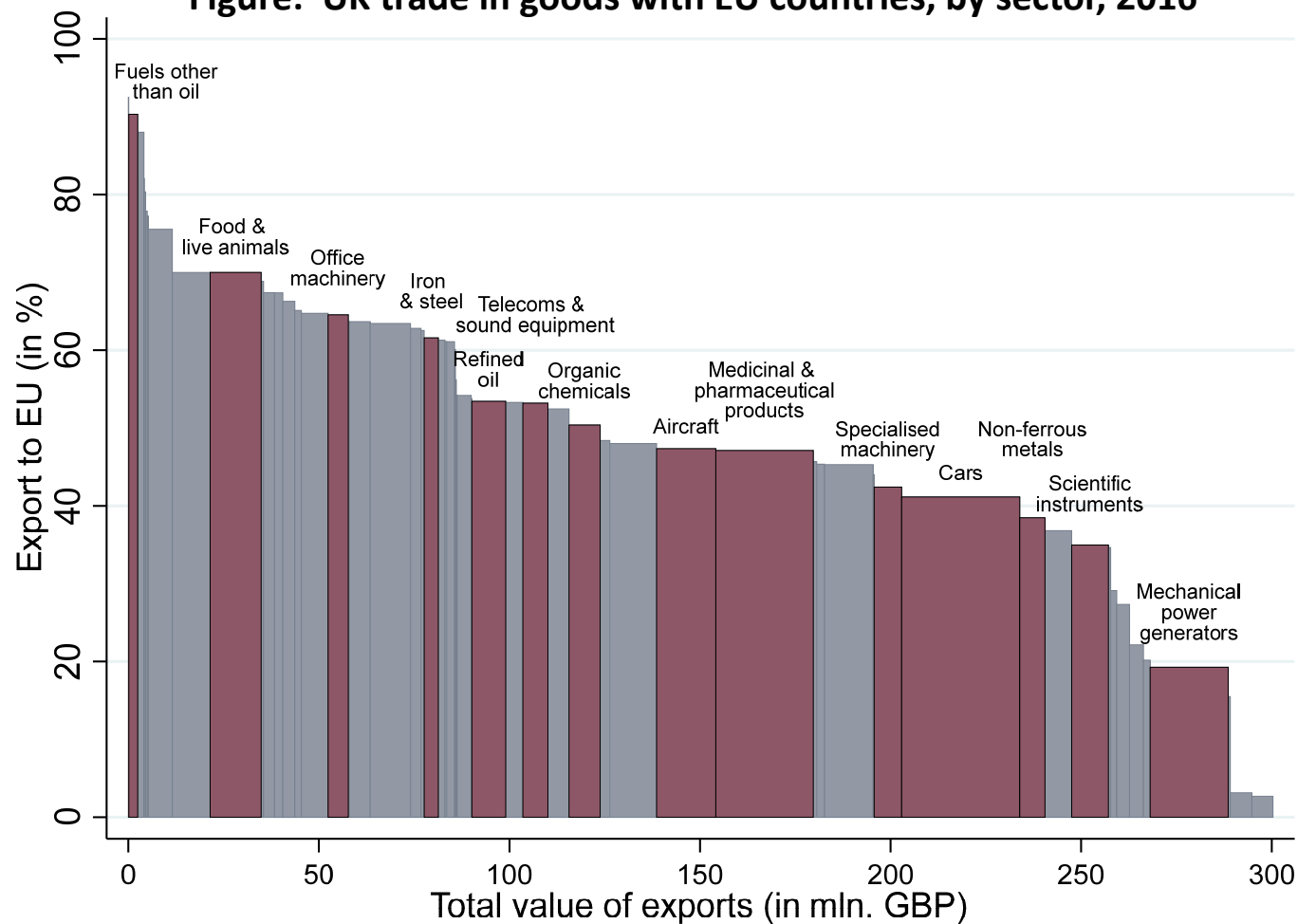
**Figure: Exports of goods between the UK and individual EU member states (2016)**



Source: E.CA Economics, ONS

# Sectoral differences

Figure: UK trade in goods with EU countries, by sector, 2016



EU-UK exports as a % of total UK exports. Source: E.CA Economics, ONS

# The case for a continued EU-UK state aid control “system”

- Basic premise: trade = good (for welfare creation)
    - Increased trade zone allows for more specialisation (comparative advantage), optimisation of logistics, scale economies, enhanced competition
  - A well integrated trade zone requires removing/addressing obstacles to trade:
    - Tariff barriers
    - Non-tariff barriers
    - Distortive subsidies/state aid
- Requires rules and institutions

## The case for a EU-UK state aid control system (2)

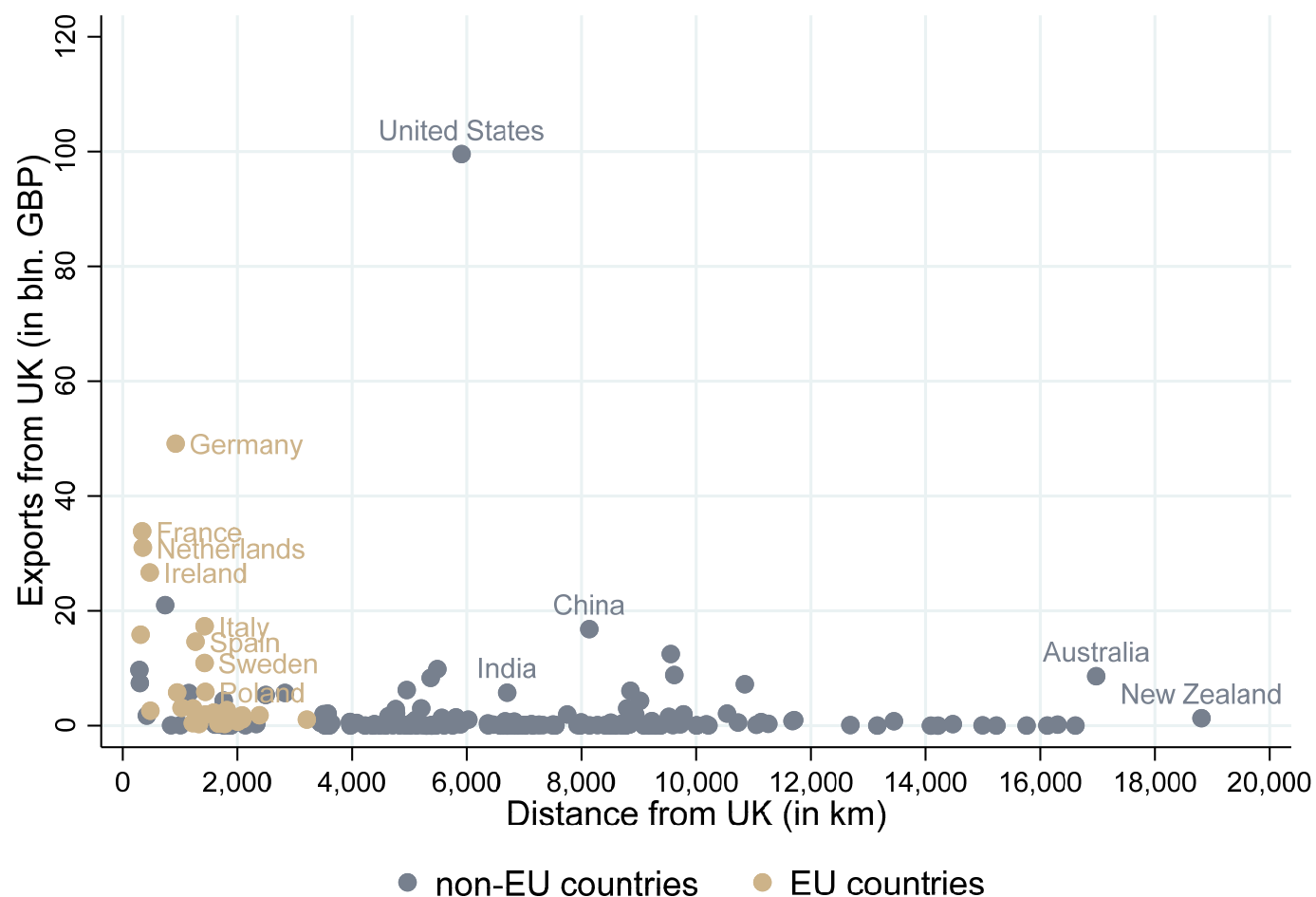
- Two main factors determine whether it makes sense to have a (comprehensive) system of state aid control between trading partners:
  1. The (potential) depth of the trade relationship
  2. The propensity of the trading partners to subsidize domestic economic activities

## Potential depth of the trade relationship

- Principle of “**economic gravitation**”: trade flows between two economies depend on their respective size/GDP and (inversely) on their distance from each other.
  - the benefits of a state aid control system increase with the extent to which trading partners are both **large and close**
- In addition, the “starting point” is one of quasi-complete integration (UK having been a EU member for **>45 years**)

# Economic gravitation (UK exports)

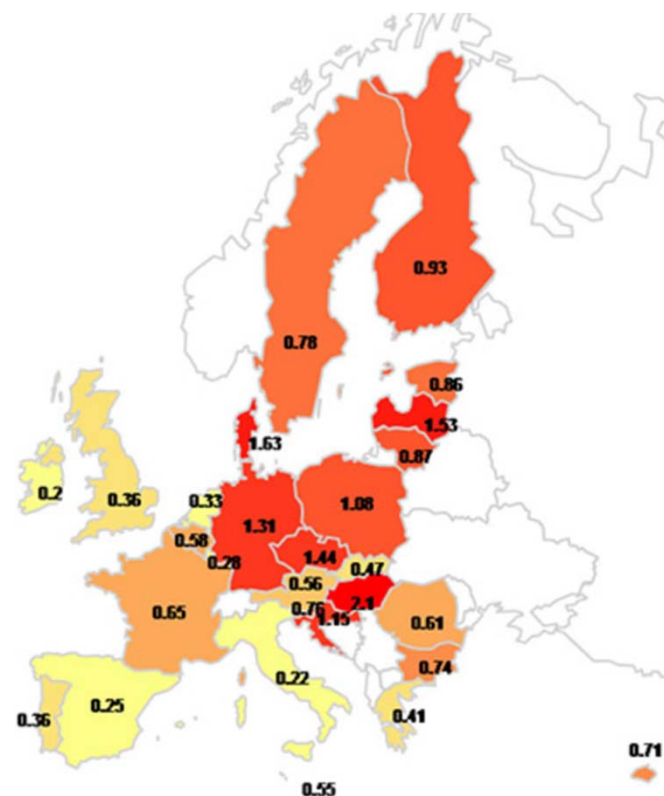
Figure: UK exports of goods and services, by distance (2016)



Source: E.CA Economics, ONS

# Propensity to subsidize

- Other factors than economic gravitation are also determinative, notably the **propensity** of the trading partners to subsidize
  - Ability to subsidize
  - Incentive to subsidize
- UK propensity to subsidize has traditionally been moderate
- But: will that remain that the case in the future?
  - Asymmetric impact of Brexit on UK regions
  - Targeted/selective interventions in certain sectors
  - Political imperative to “do something”



EU State aid scoreboard 2017 (data 2016)

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Models for the future relationship

## Requirements for the future relationship: EU view

- Council Guidelines 23 March 2018:

*“Given the **UK's geographic proximity and economic interdependence** with the EU27, the future relationship will only deliver in a mutually satisfactory way if it includes robust guarantees which ensure a **level playing field**. The aim should be to prevent unfair competitive advantage that the UK could enjoy through undercutting of levels of protection with respect to, inter alia, competition and state aid, tax, social, environment and regulatory measures and practices. This will require a combination of **substantive rules aligned** with EU and international standards, adequate **mechanisms** to ensure effective implementation domestically, enforcement and dispute settlement mechanisms in the agreement as well as Union autonomous **remedies**, that are all **commensurate** with the **depth and breadth** of the EU-UK economic connectedness.” (para 12)*

# Models of state aid enforcement: EEA

- EEA: parallel jurisdictions
  - Two pillars, both **supranational** (EU and EFTA)
    - Some “pre-eminence” for EU/EC/ECJ
  - Common rulebook
    - Dynamic alignment (but not automatic)
  - Dispute resolution (hardly ever used)
  - “Homogeneity” insured by cooperation mechanisms, role of ECJ, and both Commission and ESA being supranational bodies in character

# Models of state aid enforcement: UK White Paper

- UK White Paper (June 2018): similar as EEA structure, but critical difference: **domestic** UK enforcement (CMA)
- Raises questions about enforcement (notion of aid, compatibility) → common rulebook not enough
- Problematic from the EU-27 perspective, leads to asymmetric situation
  - EU-27: bound by strict SA rules
  - UK: (loosely?) bound by the CMA only

# Models of state aid enforcement: Withdrawal Agreement

- Withdrawal Agreement/Protocol on Ireland/Northern Ireland (Nov. 2018)
  - Also non-supranational in nature, but with extra safeguards (not foreseen in EEA model), enhancing the role of the EC
  - Common rulebook EU-UK, dynamic alignment
  - Enforcement mechanism: different in GB and NI
    - related to differences in degree of market access: customs union access (for GB) vs. quasi-internal market access (for NI)

# Withdrawal Agreement: competences

- Overview of competences:

	EU-27 measures	UK measures
Effect on NI/EU trade	EC <i>Protocol, Art. 12 + 14(4)</i>	EC <i>Protocol, Art. 12 + 14(4)</i>
Effect on GB/EU trade	EC <i>Annex 4, Art. 7(1); Protocol, Art. 14(4)</i>	CMA <i>Annex 4, Art. 7(1)</i>
Effect on intra-EU trade	EC <i>TFEU</i>	n.a.

parallel review of UK  
measures possible/  
likely

- Plus additional safeguards for EC w.r.t. enforcement by CMA of UK measures affecting EU/GB trade (*Cf. Annex 4, Art. 10 - 12*)

## The “common interest” criterion

- Existing EU approach: state aid in principle prohibited, but derogations when the aid can be deemed in the “common interest”:
  - aid pursues a sound public policy objective
  - distortions of competition and negative effects on trade are limited
- How will the EU and the UK interpret apply the respective common interest objectives? How to deal with “cross-Channel” negative effects? What about Irish cross-border effects?
- As a matter of law (WA, Annex 4, Art. 7(1)), the UK CMA will have to apply the criteria of Art. 107(3) TFEU, i.e. take into account negative effects on EU-27
- *Prima facie*, no explicit similar (reciprocal) provision for the Commission. But obligation can be inferred from Art. 7(1) WA (“*All references ...*”) → EC has to treat UK “as if” it is a Member State

## The future relationship

- Political Declaration: commitment to a Level Playing Field “**building** upon the arrangements provided for in the Withdrawal Agreement and **commensurate** with the overall economic relationship”
  - If the UK wants to have access at the level foreseen in the WA (or have more access), the WA is a **template**

# Further reading



## Ensuring a Level Playing Field Post-Brexit: State Aid Control

24 Pages • Posted: 27 Jan 2019 • Last revised: 4 Apr 2019

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E.CA Economics

Pablo Ibáñez Colomo

London School of Economics - Law Department

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3316146](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3316146)



### Publications

#### Ensuring a post-Brexit level playing field

20 May 2019

David Baldock (Senior Fellow, Institute for European Environmental Policy (IEEP)), Larissa Brunner (Policy Analyst), Pablo Ibáñez Colomo (Chair in Law, London School of Economics; Visiting Professor of Law, College of Europe, Bruges), Emily Lydgate (Senior Lecturer in Law, University of Sussex; Fellow of the UK Trade Policy Observatory), Marley Morris (Senior Research Fellow, Institute for Public Policy Research (IPPR)), Martin Nesbit (Senior Fellow and Head of Climate and Environmental Governance, Institute for European Environmental Policy (IEEP)), Jacques Pelkmans (Senior Fellow, Centre for European Policy Studies (CEPS)), Vincent Verouden (Director, E.CA Economics; Solvay Fellow, Vrije Universiteit Brussel (VUB)) and Fabian Zuleeg (Chief Executive and Chief Economist)

[https://www.epc.eu/pub\\_details.php?cat\\_id=1&pub\\_id=9223](https://www.epc.eu/pub_details.php?cat_id=1&pub_id=9223)

# Thank you!

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