

A retreat from globalisation? The potential risks and rewards for the legal sector

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About this Report

In light of Brexit and the election of Donald Trump as US President, this report explores the complex but vital issue of world trade. Are we entering a new era of protectionism - or is it still “business as usual”? Are the rules which underpin world trade now under genuine pressure from economic nationalism – or has nothing really changed?

By exploring world trade on a country, industry sector, and institution-specific basis, this report aims to help law firms and their clients to distinguish between hyperbole and reality. In essence, the report asks: “what is normal?” and “what is abnormal?” and “where do the most significant risks and rewards regarding the future of cross-border commerce genuinely lie?”

Contents

	<i>Page</i>
Introduction	4
Chapter one: Setting the scene: The global trade in goods and services	5
Chapter two: Trends in world trade: where are we now and where are we going?	22
Chapter three: Global structures that promote global free trade: are we going backwards or forwards?	39
Chapter four: UK cross-border trade in an era of Brexit: Danger ahead?	55
Chapter five: US trade under Trump: key risks and possible opportunities	68
Chapter six: Final thoughts	81

About Jomati

Jomati Consultant LLP was awarded the Queen's Award for enterprise: International Trade 2012. The award recognises Jomati's success in growing its international revenues year on year and for advising an increasing number of clients globally.

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Introduction

In the past few decades, the world economy has become more tightly integrated, as globalisation has gathered pace. In relation to physical goods, supply chains now routinely cross borders, aided by an international regime of common standards, mutual recognition and low tariffs. Meanwhile, the burgeoning digital economy has created new opportunities for the cross-border trade in services, building on the sector's traditional core of travel and transport.

In terms of regulation, there has been a proliferation of bodies that aim to ease the flow of cross-border trade in goods and services. From the World Trade Organization (WTO) to ICANN, from the European Union (EU) to the North American Free Trade Agreement (NAFTA), a variety of supranational entities now actively seek to overcome national differences in industry standards, and provide mechanisms for resolving disputes affecting cross-border trade.

However, having survived the 2008 financial crisis, the global trend towards cross-border commerce now appears uncertain. In June 2016, the United Kingdom electorate – against the advice of their own government – voted in a referendum to leave the EU, a decision that promises to profoundly alter the country's economic relationship with some of its largest trading partners. Then, just a few months later, US voters elected Donald Trump – widely regarded as an economic nationalist – as their new president. On the campaign trail, Donald Trump was clear in his policy position of seeking to renegotiate NAFTA, which he described as the “worst trade deal in the history of the country”. And, under President Trump, the planned Trans-Pacific Partnership (TPP) free trade agreement has been declared “dead in the water.”

In recent decades, the legal sector has benefited greatly from the globalisation of the world economy. Not only have law firms directly benefited from the liberalisation of the right to operate in many new jurisdictions, countless lawyers have made a respectable living aiding their transnational corporate clients to expand into new markets, and restructure their operations in a manner that makes full use of the opportunities offered by free trade. This Jomati report therefore aims to help law firm leaders and practitioners make sense of what appears to be a change in global sentiment towards cross-border commerce.

In chapter one, we explore which goods and services are currently the most highly traded across borders. The aim of this chapter is to help law firms evaluate which of their clients and geographical bases are most at risk from any retreat from global free trade. Chapter two explores recent trends in global trade, and discusses whether these trends are likely to continue. Chapter three explores whether the mechanisms that promote cross-border commerce – such as regional trade agreements (RTAs) – are now under pressure, or even beginning to retreat.

In light of the country's recent rejection of its EU membership, chapter four provides a case history on the UK's shifting position in the global marketplace. In terms of cross-border commerce, what are key economic challenges posed by Brexit – and what are the main opportunities? Finally, chapter five focuses on the US. This chapter attempts to make sense of the potential risks – and rewards – relating to cross-border trade that have arisen in light of the Trump presidency.

Chapter one

Setting the scene:
The global trade in goods and services

Chapter introduction

This chapter identifies those states, and those industries, which are most highly dependant on global trade, in relation to both goods and services. The aim of this section is to highlight those states and industries which are, potentially, at the greatest risk from any return to protectionism.

The big picture – the countries that are the most, and least, dependant on global trade

In recent decades, imports and exports have become an increasingly significant part of the world economy. Between 1990 and 2015 – the last year for which global data is available – the percent of world GDP accounted for by the export of goods and services rose from 19.48 per cent to 29.37 per cent, with equivalent figures for imports rising from 19.59 per cent to 28.68 per cent¹.

The growing importance of cross-border trade is also evident at a country-specific level – although these figures vary sharply between states. Take the two countries which currently dominate world trade, China and the US. Between 1990 and 2015, US trade as a percent of GDP rose from 19.76 per cent to 28 per cent². For China, its equivalent totals rose from 24.68 per cent to 40.46 per cent during the same period – with a short-term spike to 65.62 per cent³ in 2006, a few years after the country joined the WTO in 2001. Overall, therefore, both of these countries have become noticeably more dependent on cross-border trade for their economic well-being in recent decades.

For many of the world's smaller countries and territories, their reliance on cross-border trade for their overall economic wealth is even greater than the US or China. Indeed, as table one below shows, for some small trading countries and territories, the amount of goods and services passing through their border now exceeds their domestic GDP by a considerable margin. Whether or not this heavy dependency on global trade is likely to become problematic, should the world begin to move towards a more protectionist cross-border trading regime, will almost certainly be jurisdiction-specific. For example, in 2016, Hong Kong's key trading partner was mainland China⁴ – a state unlikely to impose import or export limitations on what is, effectively, part of the same trading entity. By contrast, two of Ireland's key trading partners are the UK and US⁵. This is arguably an unfortunate situation to be in, in light of recent world developments. The UK shares a land border with the Republic of Ireland but, once the UK leaves the EU, the two countries may no longer be part of the same tariff-free trading area and internal EU market. Meanwhile, Ireland's future trading relationship with the US is now partly dependent on the country not being perceived by Donald Trump as hindering his "America first" global trading policy.

1 World Bank. *World development indicators database. Export and imports of goods and services (% of GDP)*.

2 World Bank. *World development indicators database. Trade (% of GDP)*.

3 Ibid.

4 Hong Kong Trade and Industry Department. *Trade Statistics, 2016*.

5 Irish Central Statistics Office. *Statistical yearbook of Ireland 2016*, tables 15.3 and 15.4.

Table one: the 10 most dependent locations on cross border trade, plus the EU, China and US

Global rank	Country / territory	Trade as a % of GDP, 2016*
1	Luxembourg	419.47
2	Hong Kong	372.62
3	Singapore	318.42
4	Malta	270.93
5	Ireland	216.67
6	United Arab Emirates	205.26
7	Vietnam	184.69
8	Slovak Republic	183.90
9	Maldives	182.80
10	Hungary	174.70
73	European Union	82.68
177	China	37.06
203*	United States	28.00*

Source: The World Bank⁶

The top 10 global change states shown in table one above are currently the most dependent on cross-border trade relative to their GDP. The EU, China and the United States are also included by way of comparison (for the US only, 2015 data is shown). However, the nature of these states' dependency on cross-border trade varies sharply. Some states, such as Hong Kong and Singapore, are key trading posts – importing and re-exporting vast amounts of goods through some of the world's largest container ports⁷. Perhaps not surprisingly, a significant percentage of these states' workforces are employed in the import / export⁸, transportation and storage industries⁹. Other states' high trade to GDP ratios can be explained by their heavy focus on cross-border services¹⁰ – Luxembourg's strength in financial services, for example, or Ireland's role as a low-tax base for corporate headquarters and intellectual property holdings¹¹. The differing nature of these states' reliance on cross-border trade illustrates that the risks posed by any sustained move towards “deglobalisation” is likely to be jurisdiction specific. Singapore and Hong Kong would, in all likelihood, be at particular risk from a reduction in the amount of physical trade passing through their borders. By contrast, states that are highly dependent on the services sector would be more at risk from any attempt by the world's regulators to crack down on the cross-border movement of capital – for example, under the auspices of attempting to force multinational companies to pay more tax locally¹². The European Commission has been particularly active on this issue in recent months, asserting that Luxembourg's tax treatment of Amazon, and Ireland's tax treatment of Apple, amounts to illegal state aid¹³.

6 The World Bank. *World development indicators database. Trade (% of GDP)*. * US data and ranking relates to 2015, the last year for which data is available.

7 World Shipping Council. *Top 50 world container ports*.

8 Hong Kong Census and Statistics Department. *Hong Kong digest of statistics 2016 edition*, px (introduction).

9 Department of Statistics Singapore. *Singapore in figures 2017*, p7.

10 IMF. *IMF country report no 17/114 – Luxembourg*, May 2017, p3 – 4.

11 The Irish Times. *Ireland's GDP figures: why 26% economic growth is a problem*, 15 July 2016.

12 For example, the OECD/ G20 Base Erosion and Profit Shifting (BEPS) Package.

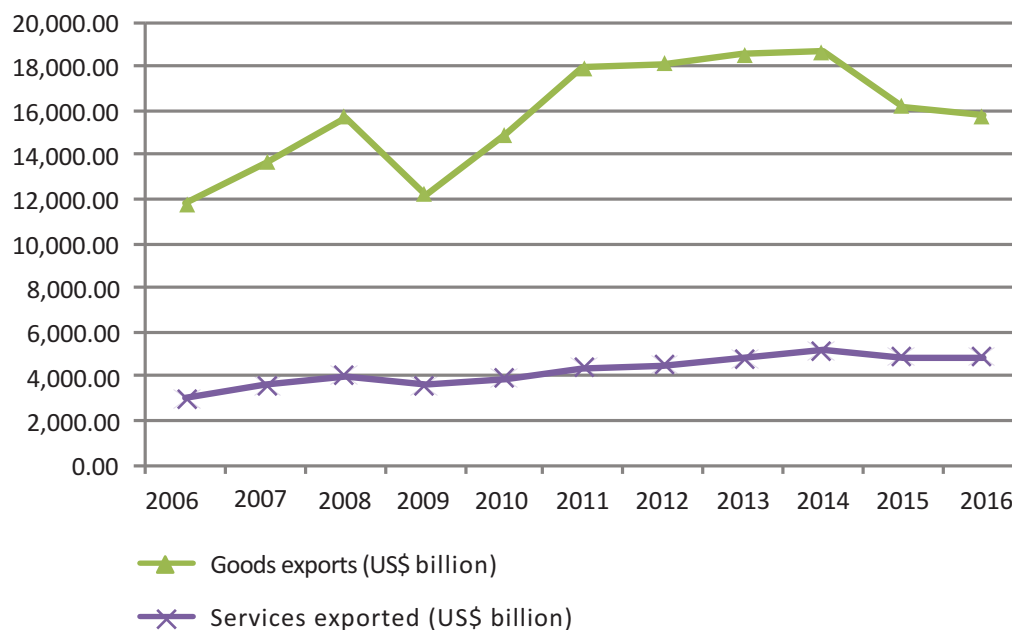
13 FT. *Amazon and Apple hit by EU tax crackdown*, 4 October 2017.

The big picture – global trade in goods versus services

In recent years, the rise of asset-light mega multinationals – such as Google and Facebook – may have given the impression that the world economy is now proportionately less dependent on the trade of physical goods, compared with services, than before. And, as figure one below shows, it is true that services exports have increased markedly in the past decade, rising from US\$ 2,994.78 billion in 2006 to US\$ 4,879.30 billion in 2016. However, despite this increase, the value of goods exported on a cross-border basis was approximately three times larger than services that year – US\$ 15,762.92 billion. A similar discrepancy also exists in relation to goods and services imports. In 2016, the global value of services imported was US\$ 4,797.44 billion, compared with US\$ 15,393.22 billion for goods¹⁴.

To a large extent, the discrepancy in the value between the cross-border trade in goods and services can be explained by the fact that balance of trade data regarding cross-border services does not typically include services delivered by a service organisation's foreign trade affiliates. It has been estimated that, in 2015, service firms' foreign affiliates generated US\$ 7,900 billion of value-add, worth around 11 per cent of world GDP¹⁵. The inclusion of affiliate income within the world trading system would bring the value of trade in services much nearer the value of trade in goods.

Figure one: value of goods and services exports compared, 2006 – 2016



Source: UNCTADstat Data Center¹⁶

14 UNCTADstat Data Center. *Goods and services (BPM6): Exports and imports of goods and services, annual, 2005-2016*. Please note: all UNCTADstat Data Center values are at current US\$ prices, so may fluctuate over time. Additionally, individual values do not always agree with group summaries, or with data stored in other tables. All UNCTADstat figures should therefore be treated as an approximate guide to cross-border trade values.

15 World Bank. *Global economic prospects: weak investment in uncertain times*, January 2017, Chapter 1, p44.

16 UNCTADstat Data Center. *Goods and services (BPM6): Exports and imports of goods and services, annual, 2005-2016*.

The states that are the most dependent on cross-border trade

Table two below shows the 10 largest exporters of physical goods in 2016, while table three shows its imports equivalent. What both of these tables make clear is that no single state – not even the US or China – overwhelmingly dominates either of these segments of world trade. Nevertheless, both tables also demonstrate how, on a US\$ value basis, a small number of states are responsible for a majority of cross-border commerce. Indeed, in 2016 – and in relation to both imports and exports – a mere 10 states accounted for more than half of all world trade in physical goods, in terms of US\$ values.

Table two: 10 largest exporters of physical goods in 2016

Rank	Country	Value US\$ billion	% of world trade by value
1	China	2,098.16	13.15
2	United States	1,454.61	9.12
3	Germany	1,339.65	8.40
4	Japan	644.93	4.04
5	Netherlands	569.71	3.57
6	Hong Kong	516.73	3.24
7	France	501.26	3.14
8	South Korea	495.43	3.10
9	Italy	461.52	2.89
10	United Kingdom	409.40	2.57
Totals		8,491.40	53.22

Source: UNCTADstat Data Center¹⁷

The relative importance of a small number of states to the cross-border trade in goods is further reinforced by the fact that nine states consistently appear across both tables – relating to both exports and imports – shown above and below. Indeed, even when some states fail to make the top 10 in both tables, they often sit just outside the leader board. For example, Canada, a top nine importer globally, is also a top 12 exporter. Again, this reinforces a point made earlier: at least in terms of global dollar value, overall patterns of cross-border trade are significantly influenced by the behaviours of a small number of states. It is in relation to these states, therefore, that we should be particularly wary of any retreat into overt protectionism.

17 UNCTADstat Data Center. *Merchandise: Total trade and share, annual, 1948-2016*.

Table three: 10 largest importers of physical goods in 2016

Rank	Country	Value - US\$BN	% of world trade by value
1	United States	2,251.35	13.95
2	China	1,587.43	9.83
3	Germany	1,054.89	6.54
4	United Kingdom	635.76	3.94
5	Japan	606.93	3.76
6	France	573.02	3.55
7	Hong Kong	547.34	3.39
8	Netherlands	503.41	3.12
9	Canada	416.60	2.58
10	South Korea	406.19	2.52
Totals		8,582.92	53.18

Source: UNCTADstat Data Center¹⁸

Note: Figures rounded

Tables four and five below show the equivalent ranking tables for services imports and exports in 2016. Notably, several of the same core countries shown above – China, Germany, France, Japan, the Netherlands, the US and UK – are also top 10 world leaders. This core group of world trading nations are also joined by three other services-focused countries: India, Singapore and Ireland. Each of these three countries are among the world's 10 largest exporters of services internationally, and also some of the world's 10 largest services importers¹⁹

Table four: 10 largest exporters of services in 2016

Rank	Country	Value - US\$BN	% of world trade by value
1	United States	752.41	15.42
2	United Kingdom	327.18	6.71
3	Germany	272.74	5.59
4	France	236.76	4.85
5	China	208.49	4.27
6	Netherlands	179.78	3.68
7	Japan	173.82	3.56
8	India	161.84	3.32
9	Singapore	149.64	3.07
10	Ireland	146.68	3.01
	Top ten totals	2,609.34	53.48

Source: UNCTADstat Data Center²⁰

Note: Figures rounded

18 Ibid.

19 UNCTADstat Data Center. *Services (BPM6): Exports and imports of total services, value, shares, and growth, annual, 2005-2016*.

20 Ibid.

Table five: 10 largest importers of services in 2016

Rank	Country	Value - US\$BN	% of world trade by value
1	United States	503.05	10.49
2	China	453.01	9.44
3	Germany	312.07	6.51
4	France	235.68	4.91
5	United Kingdom	198.65	4.14
6	Ireland	191.94	4.00
7	Japan	184.71	3.85
8	Netherlands	169.46	3.53
9	Singapore	155.58	3.24
10	India	133.71	2.79
	Top ten totals	2,537.86	52.90

Source: UNCTADstat Data Center²¹

Note: Figures rounded

Yet, despite countries such as the US, UK, the Netherlands and France being some of the most significant participants in the global economy, these same countries are all notable for exhibiting groundswells of anti-globalisation sentiment among their electorates. In some cases, noticeably in relation to the UK and US, this anti-globalisation sentiment actually upset established political orders, as witnessed by Brexit and the election of Donald Trump as US President. By contrast, in two recent European elections, neither the Dutch nationalist, Geert Wilders²², nor the French nationalist, Marine Le Pen²³, ultimately took power. However, the fact that both of these individuals enjoy a considerable support base²⁴ among their respective national electorates is significant. It appears that pure economic self-interest cannot be regarded as an inhibiting factor for many voters who wish to express their frustrations with globalisation.

Indeed, it is perhaps ironic that one of the world's most powerful advocates of cross-border trade is now China's President Xi Jinping²⁵ – a country leader unencumbered by the need to reflect voters' opinions through the ballot box. China's commitment to globalisation was recently reinforced by its "Belt and Road Initiative". This wide-ranging initiative includes the development of a new rail-based cargo route between China and Europe, additional funding for foreign investment, and plans for China to sign business and trade cooperation agreements with more than 30 countries²⁶.

The world's most traded goods

World trade in goods is often classified into three broad categories: fuels, primary commodities – which includes food stuffs, textiles, metals and precious stones – and, finally, manufactured goods. Of these three broad categories, manufactured goods are the largest single market segment, accounting for more than 70 per cent of all exports. With cross-border exports of manufactured goods valued at US\$ 11,329.24 billion in 2016, this broad category were worth more than four times the value of primary commodity exports (US\$ 2,640.97 billion), and more than seven times the value of fuel exports (US\$ 1,511.56 billion)²⁷.

21 Ibid.

22 The Telegraph. *Dutch election result: Mark Rutte sees off Geert Wilders challenge as Netherlands rejects far-Right*, 16 March 2017.

23 Financial Times. *French election results: Macron's victory in charts*, 9 May 2017.

24 Politico.eu. *Marine Le Pen's plan to make France great again*, 4 February 2017.

25 Financial Times. *Xi Jinping delivers robust defence of globalisation at Davos*, 17 January 2017.

26 China Daily. *7 ways China will promote the Belt and Road Initiative*, 15 May 2017.

27 UNCTADstat Data Center. *Merchandise trade matrix – product groups, exports in thousands of dollars, annual, 1995-2016*.

The relatively low value of the cross-border trade in primary commodities and fuels compared with manufacturing can be partly explained by the fact that many nations are substantially self-sufficient for both of these latter types of naturally-occurring resources. For example, it has been estimated that just 66 countries are physically incapable of being agriculturally self-sufficient due to either water or land constraints²⁸, and are therefore heavily reliant on cross-border trade to feed their populations. Similarly, in relation to energy, around 79 per cent of the OECD's needs are now met from domestic production rather than imports²⁹.

Of course, the ability to be self-sufficient as a result of access to "in-country" resources is not the only reason why certain sectors have embraced cross-border trade more than others. As chapter three will explain further, other considerations, including tariff levels, also play a part in either encouraging – or discouraging – the movement of goods across national boundaries. While the average tariff for manufactured goods is typically less than 10 per cent, tariffs on agricultural goods are often close to double that figure³⁰ – a significant cost inhibitor for any would-be importer.

Table six, below, provides a more detailed breakdown of imports and exports of physical goods among the G7 countries in 2016, plus China, by broad product type. Although the percentages vary from country to country, table six clearly shows how manufactured goods are the most extensively traded of all goods traded internationally across all countries listed, and also across both imports and exports. In the event that the world's politicians do move towards a protectionist stance, it is in relation to manufacturing for import and export that Western countries are particularly exposed.

Table six: the importance of manufacturing to global trade among the G7 nations, and also China

Country	Exports by type as a % (2016)				Imports by type as a % (2016)			
	Primary	Fuels	Manufacturing	Other	Primary	Fuels	Manufacturing	Other
Canada	22.59	16.01	52.45	8.95	12.15	6.27	77.80	3.78
France	15.31	2.31	79.57	2.81	13.12	8.40	78.06	0.42
Germany	8.52	1.63	83.78	6.07	12.90	7.12	72.65	7.33
Italy	11.63	2.59	83.09	2.69	17.48	10.17	69.73	2.62
Japan	3.94	1.45	87.28	7.33	17.99	18.27	61.70	2.04
UK	10.74	6.24	75.74	7.28	12.79	6.22	69.72	11.27
USA	13.78	6.51	65.66	14.05	8.99	7.26	77.96	5.79
China	4.49	0.92	94.44	0.15	22.80	11.03	64.87	1.30

Source: UNCTADstat Data Center³¹

Note: Figures rounded

Table seven provides a more detailed breakdown of some of the world's most extensively exported industry sectors in 2016. Collectively, these sectors were worth US\$ 8,624.38 billion in 2016 – equivalent to 55.95 per cent of all exports globally that year. Notably, and notwithstanding the high level of self-sufficiency enjoyed by many countries, fuels were one of the most extensively exported goods, when evaluated on a US\$ basis. And, reflecting the dominance of manufacturing across the entire world trading system, the most valuable export sectors included chemical products, electrical machinery, road vehicles, plus telecoms and sound recording apparatus.

28 Fader, Gerten et al. *Spatial decoupling of agricultural production and consumption: quantifying dependences of countries on food imports due to domestic land and water constraints*. (2013) *Environmental Research Letters* 8 (2013), p3 – 4.

29 International Energy Agency. *World Energy Balances (2016 edition)*, p8.

30 UNCTAD. *Key statistics and trends in trade policy 2016*, p7.

31 UNCTADstat Data Center. *Merchandise trade matrix – product groups, exports in thousands of dollars, annual, 1995-2016*; UNCTAD Data Center. *Merchandise trade matrix – product groups, imports in thousands of dollars, annual, 1995-2016*.

Table seven: selection of the world's most exported goods sectors, 2016

Standard international trade classification	Value (US\$ billion)	%
Chemical products	1,812.17	11.77
Fuels	1,549.02	10.06
Electrical machinery, apparatus and appliances	1,464.49	9.51
All food items	1,362.29	8.85
Road vehicles	1,336.99	8.69
Telecoms and sound recording apparatus	744.62	4.84
Iron and steel	354.80	2.23
Total – selected items	8,624.38	55.95
Total – all goods	15,932.39	100.00

Source: UNCTADstat Data Center³²

What is perhaps most striking about these rankings is the differing degrees to which the industry sectors shown above are politicised from a cross-border trade perspective. For example, politicians frequently intervene in the road vehicles sector, either seeking to encourage new investment or to discourage the closure of existing plants. There is a clear rationality for this action, given the importance of the road vehicles trade to many countries' balance of payments. Yet, despite the global value of the chemical products sector consistently exceeding that of its road vehicles equivalent, this other highly globalised sector has been hit by far fewer protectionist measures in recent years. Similarly, while iron and steel – and, in particular, the steel sector – has recently become the focal point of new state-sponsored restrictions on free trade, the telecoms sector has proven to be far less politically contentious³³ – despite having a higher value to cross-border trade.

Some industry sectors may not play a significant role in world trade in terms of their financial value – but can nevertheless be of great political importance. For example, CETA, the recently-signed Canadian-EU free trade agreement, was almost derailed over concerns about exports of Canadian pork and beef to the EU³⁴. To put these concerns into their monetary context, in 2016, the total value of Canadian goods exported to the EU was US\$ 30.03 billion – of which, manufactured goods comprised almost 40 per cent of this total, worth US\$ 11.78 billion. By contrast, the value of all meat and meat preparation products exported from Canada to the EU was just US\$ 0.03 billion – around 0.10 per cent of Canada's total EU export value that year³⁵. The ability of these types of producers, representing relatively small industry sectors, to hold trade talks to ransom can render the outcome of trade negotiations highly unpredictable.

In order to help the reader better understand which countries, and which sectors, are at greatest financial risk from any retreat into protectionism, tables eight and nine show which countries are most crucial to the five industry sectors whose export value exceeded US\$ 1,000 billion globally in 2016, shown previously on table seven. In table eight, each country listed is a "top five" exporter in at least one of the sectors identified. For example, Russia is included in table eight because, in 2016, it was the world's largest exporter of fuel, worth US\$ 151.46 billion.

To allow for direct import / export comparisons, table nine offers equivalent rankings in relation to the top five importing states for the same five sectors. Belgium is therefore included in this table because, in 2016, it was the world's fourth largest importer of chemical products. To offer a broader overview of these countries' trading mix, all countries' global rankings and traded values of the industries listed are also shown.

32 UNCTADstat Data Center. *Merchandise trade matrix – product groups, exports in thousands of dollars, annual, 1995-2016*

33 CEPR. *Global trade plateaus. The 19th global trade alert*, 2016, p27.

34 BBC News. *Belgian province may sink EU-Canada trade deal*, 11 October 2016.

35 UNCTADstat Data Center. *Merchandise trade matrix – product groups, exports in thousands of dollars, annual, 1995-2016*.

Across both tables, a number of trading characteristics are noteworthy. Perhaps surprisingly, several Western nations – including Belgium, Germany, the Netherlands and the US – continue to be among the world’s largest exporters of manufactured goods, suggesting that they have not been eclipsed by other nations. That said, the presence of countries such as Japan, South Korea and – especially China – graphically illustrates the increasing importance of Asia to the world’s cross-border trade in manufactured goods in recent years.

Table eight: countries’ relative rankings and values for leading export sectors, 2016

Country products	Chemical		Fuels machinery etc.		Electrical		Food items		Road vehicles	
	Rank US\$bn	Value	Rank US\$bn	Value	Rank US\$bn	Value	Rank US\$bn	Value	Rank US\$bn	Value
Belgium	3	117.25	18	27.62	24	9.53	10	40.25	10	44.90
Brazil	30	10.99	31	11.58	44	2.07	4	68.00	23	0.71
Canada	17	34.22	5	62.26	28	7.43	8	46.14	6	63.44
China	4	111.95	25	19.31	1	267.00	5	61.23	5	66.14
Germany	1	200.60	24	21.86	5	102.78	3	73.81	1	238.67
Hong Kong	24	15.12	91	0.52	2	159.66	32	10.52	44	1.27
Japan	10	64.32	36	9.37	8	80.88	44	5.75	2	140.36
Mexico	28	13.56	27	18.04	10	41.80	15	28.55	4	87.81
Netherlands	5	96.34	6	57.35	12	24.58	2	86.51	16	23.22
Russia	21	19.87	1	151.46	40	2.84	23	16.81	33	3.27
Saudi Arabia	16	36.28	2	122.34	60	0.56	64	2.81	53	0.54
Singapore	13	48.26	13	33.52	4	105.13	30	11.63	32	4.18
South Korea	11	59.45	19	27.49	5	96.08	41	6.95	7	62.18
UAE	27	14.27	3	94.80	34	4.94	26	13.59	25	9.85
United States	2	197.37	4	94.61	3	113.43	1	135.58	3	120.30

Source: UNCTADstat Data Center³⁶

Tables eight above and table nine below also illustrate how certain countries, notably the US and China, are leading importers and exporters of goods across a broad range of industry sectors. On the one hand, this broad dependency means these countries are highly exposed, in the event that the cross-border trade in physical goods slows across a multitude of different sectors. On the other hand, the broad base of these country’s cross-border trading behaviours means they are not overwhelmingly dependant on a handful of key industries. This stands in stark contrast to countries such as Saudi Arabia and Russia, who are both major exporters of fuels but whose global income from other sectors is small by comparison with many other industrialised countries. These highly sector-dependent countries are therefore particularly exposed to fluctuations in global demand in relation to their key export industries.

36 Ibid.

Table nine: countries' relative rankings and values for leading import sectors, 2016

Country	Chemical products		Fuels		Electrical machinery etc.		Food items		Road vehicles	
	Rank US\$bn	Value	Rank US\$bn	Value	Rank US\$bn	Value	Rank US\$bn	Value	Rank US\$bn	Value
Canada	12	43.46	15	25.27	16	22.63	11	33.98	5	66.14
China	21	75.2	1	175.37	1	310.6	2	109.14	3	82.15
Belgium	4	95.06	13	37.89	25	10.89	9	36.01	7	46.56
France	5	76.57	9	47.07	11	32.93	7	55.01	6	57.92
Germany	3	139.89	6	75.49	4	83.42	3	83.97	2	104.81
Hong Kong	27	19.27	29	9.7	2	177.27	12	27.19	52	3.99
India	13	43.15	4	89.34	19	16.1	16	21.18	45	4.84
Japan	7	64.9	3	110.88	7	54.29	4	62.8	13	20.73
Netherlands	9	63.55	7	67.33	14	24.82	5	58.68	12	25.07
Singapore	22	21.44	8	50.87	5	70.96	25	13.39	40	5.35
South Korea	14	42.65	5	81.76	6	54.65	13	26.07	21	15.05
United Kingdom	6	71.59	12	39.55	12	29.85	6	58.54	4	74.01
United States	1	221.16	2	163.35	3	172.32	1	137.86	1	281.36

Source: UNCTADstat Data Center³⁷

Between these two extremes is Germany, who is a top five exporter and importer in several, but not all, sectors identified above. Arguably one of this country's greatest risks from any slowdown in world trade is the country's high dependence on imported fuel, valued at US\$ 75.49 billion in 2016. Germany also has a significant trade imbalance in specific sectors, particularly in relation to its road vehicles sector. In 2016, this country was the world's largest exporter of road vehicles, worth US\$ 238.67 billion. Imports were less than half that figure, valued at US\$ 104.81 billion.³⁸

Whether a country's key export sectors are at risk from a retreat from cross-border trade is likely to be highly jurisdiction specific. Take Belgium's chemical industry, for example. In 2016, just under half of Belgium's US\$ 117.25 billion exports for this particular industry went to a handful of fellow EU states, including Germany (US\$ 23.34 billion), France (US\$ 13.07 billion)³⁹, the Netherlands (US\$ 8.03 billion) and Spain (US\$ 3.50 billion). The EU, is of course, not only a tariff free single market, but also a market that operates a common regulatory framework for its chemicals industry. It would therefore be exceptionally difficult for any other EU member state to raise trade barriers against Belgium, with the intention of limiting access to their chemicals markets.

By contrast, several of Japan's key export markets for road vehicles – notably the US⁴⁰ – are not reinforced by robust regional trade agreements (RTAs)⁴¹. Indeed, it has been a notable feature of the early period of the newly-elected administration that US President Trump has not only pulled out of the proposed TTP RTA – which would have encompassed both the US and Japan – but also repeatedly railed against the mismatch between Japanese auto exports to the US compared with US auto exports to Japan⁴². In a highly targeted intervention, President Trump publicly demanded that Toyota should build a new plant in the US rather than Mexico, or face a "big border tax"⁴³.

37 Ibid.

38 Ibid.

39 Ibid.

40 Ibid.

41 For more information, see the WTO's *Regional Trade Agreements Database*.

42 Japan Times. *How Japanese automakers' Trump crisis could develop*, 27 March 2017.

43 The Telegraph. *Japan rallies around Toyota after Donald Trump's criticism of Mexico car plant*. 6 January 2017.

Arguably, it is this latter type of protectionist proposal that poses the greatest threat to world trade. Even in isolation, one major trading nation advocating a policy of protectionism against another significant participant in world trade would be problematic: the fact the protectionist proposal in question relates to one of the world's most globalised industry sectors, and involves two of the world's most significant trading nations, is doubly troubling. Such a dispute would clearly not be a "little local difficulty". In all likelihood, it would have economic implications far beyond the two states involved and the industry sector at the heart of the dispute.

The world's most traded services

As previously stated, the global trade in services is officially regarded as being considerably smaller than its equivalent global trade in goods – with the important caveat that countries' balance of trade figures do not typically include services delivered by service organisations' foreign affiliates.

Of those services that are routinely traded on a cross-border basis, a handful of sectors dominate. Key sectors include travel, other business services (which include research and development and both professional and management services), transport, telecommunications, computers and information services, and financial services. Table 10, shown below, ranks the value of services exports for 2016 by US\$ value, as reported by the UNCTADstat Data Center.

In terms of overall importance to cross-border trade, the clear stand-out sector is travel, which single-handedly accounted for more than one quarter of all services exports that year. The third most important services export sector, transport, is not entirely interlinked with its travel equivalent – various freight and postal sectors comprise around two thirds of world transport exports, for example⁴⁴. Nevertheless, it is also notable that around one fifth of the entire transport sector is represented by the air passenger market⁴⁵, which is closely associated with the travel sector. Any change in cross border activity affecting the air passenger segment of the transport market is therefore likely to affect the travel sector, at least to some degree.

Table 10: global services exports in 2016, ranked by US\$ values

Industry sector	Value (US\$ billion)	%
Travel	1,205.48	24.75
Other business services	1,093.27	22.44
Transport	852.55	17.50
Telecommunications, computer, and information services	493.05	10.12
Financial services	420.27	8.63
Charges for the use of intellectual property	314.06	6.45
Goods-related services	166.01	3.41
Insurance and pension services	121.59	2.50
Construction	87.73	1.80
Government goods and services	71.61	1.47
Personal, cultural, and recreational services	45.34	0.93
Totals	4,870.96	100.00

Source: UNCTADstat Data Center⁴⁶

44 WTO. *World Trade Statistical Review 2016*, p35.

45 Ibid.

46 UNCTADstat Data Center. *Services (BPM6). Exports and imports by services-category, shares and growth, annual, 2005 – 2016*.

In 2016, the world's developed economies were responsible for 68.38 per cent of services exports globally. By way of comparison, the world's developing economies – which include states such as China, India, Mexico and South Africa – were responsible for 29.42 per cent of services exports that year. Transition economies were responsible for a mere 2.20 per cent of services exports in 2016. States falling into this category include Albania, Georgia, Russia and Ukraine.

With this overall picture, sector-specific variances are also evident. Some sectors, notably travel and transport fell roughly within the “developed world two-thirds / developing world one third” split outlined above, with the world's transition economies making a minimal contribution to the total. But, in the case of financial services and usage of IP rights, these exports sectors were exceptionally concentrated among the world's developed nations: 84.29 per cent and 93.60 per cent respectively. Conversely, the developing economies punched considerably above their weight in relation to the – albeit relatively small – construction sector. These nations were responsible for 44.40 per cent of that particular form of services exports in 2016 – just behind the developed economies, which were responsible for 48.92 per cent. The balance was made up by transitional economies.

UNCTAD does not currently publish aggregated, sector-specific, data regarding services imports. However, based on individual country submissions disclosed to date, table 11 below shows the approximate values and percentage of each industry sector for 2016. Both in terms of US\$ values and percentages, they are broadly similar to table 10, which relates to services exports.

Table 11: global services imports in 2016, ranked by US\$ values

Industry sector	Value (US\$ billion)	%
Travel	1,165.41	25.58
Other business services	1,063.11	23.33
Transport	969.36	21.27
Charges for the use of intellectual property	359.28	7.88
Telecommunications, computer, and information services	294.34	6.46
Insurance and pension services	201.10	4.41
Financial services	196.36	4.31
Goods-related services	108.25	2.38
Government goods and services	82.52	1.81
Construction	71.20	1.56
Personal, cultural, and recreational services	45.89	1.01
Totals	4,556.82	100.00

Source: UNCTADstat Data Center⁴⁷

Turning to a more granular analysis of cross-border trade in services, tables 12 and 13 below provide an overview of those countries that were responsible for the greatest values of cross-border services imports and exports in 2016, in the five top sectors shown in table 10. As with tables eight and nine shown previously, countries are included in each table if they are a “top five” trader in at least one of each sector analysed. For example, Spain is included in table 12 because it was a top two exporter of travel services in 2016, even though it was only a top 15 exporter of transport services. Both tables therefore indicate which countries are market leaders in niche areas of cross-border services, and which have a broader strength and depth. The former group are arguably more exposed to any sector-specific slowdowns in world trade, while the latter may be less exposed.

47 Ibid.

Table 12: top countries for services exports across five key export sectors, 2016

Country	Travel services		Other business		Transport		Telecommunications, computer, and information services		Financial services	
	Rank	Value US\$bn	Rank	Value US\$bn	Rank	Value US\$bn	Rank	Value US\$bn	Rank	Value US\$bn
China	4	44.45	5	57.96	7	33.86	6	25.42	18	3.18
France	5	42.57	3	79.27	4	40.82	8	16.90	10	11.64
Germany	8	37.42	4	77.75	2	51.36	5	32.72	4	23.40
India	13	22.43	6	53.2	17	15.19	2	55.32	14	5.08
Ireland	46	5.20	11	28.41	29	6.80	1	71.23	8	12.52
Luxembourg	50	4.29	19	16.84	40	4.23	22	3.98	3	55.23
Netherlands	27	12.42	7	47.73	6	34.45	3	37.56	13	5.23
Singapore	18	18.39	10	37.13	3	48.35	17	6.46	6	18.87
Spain	2	60.44	13	23.62	15	16.40	12	11.70	17	3.46
Switzerland	22	14.95	15	19.97	23	11.55	10	13.20	5	19.92
Thailand	3	49.93	26	8.62	33	5.68	56	0.55	32	0.68
United Kingdom	7	39.67	2	108.04	5	35.20	7	23.72	2	71.07
United States	1	206.83	1	136.05	1	84.63	4	37.26	1	96.75

Source: UNCTADstat Data Center⁴⁸

Both tables 12 above and table 13 below reinforce – again – the particular importance of travel and transport to the global market for cross-border services. Across both tables, several countries were responsible for imports and exports worth tens of billions of US dollars in 2016.

The identification of China as the leading travel services importer of 2016 is perhaps one of the most surprising statistics revealed in table 13. In fact, the high value of China's travel imports reflects the increasing affluence and global mobility of the Chinese population. Possibly counterintuitively, a country's spending on foreign tourism is counted as an import for the purposes of cross-border trade, whereas spending by foreign tourists within a country is classed as an export⁴⁹. And, according to China's National Bureau of Statistics, around half of all Chinese travel imports are accounted for by tourism alone⁵⁰. In 2016, a total of 135 million outbound trips were made from China, an increase of six per cent on the previous year⁵¹.

48 Ibid.

49 Andrej Raspor et al. *Tourism invisible part of exports: the analysis of Slovenia and Montenegro on the Chinese outbound tourism*. In *International trade – on the brink of change*, p96 – 97.

50 National Bureau of Statistics of China. *China Statistical Yearbook 2016 - Table 11- 12*.

51 UNWTO. *Chinese tourists spend 12% more in travelling abroad in 2016*, 18 April 2017.

Table 13: top countries for services imports across five key export sectors, 2016

Country	Travel services		Other business		Transport		Telecommunications, computer, and information services		Financial services	
	Rank	Value US\$bn	Rank	Value US\$bn	Rank	Value US\$bn	Rank	Value US\$bn	Rank	Value US\$bn
China	1	261.47	9	80.67	2	80.67	8	12.77	19	2.03
France	5	40.43	3	83.91	6	45.91	4	17.32	9	6.25
Germany	3	81.25	4	81.97	3	65.80	3	29.32	4	12.33
India	20	16.37	12	32.75	5	47.95	16	4.77	12	5.02
Ireland	36	6.12	2	88.37	56	2.52	31	2.07	5	7.76
Luxembourg	47	3.35	20	13.42	51	2.92	19	3.30	1	39.72
Japan	16	18.56	5	62.39	7	37.98	6	14.07	10	6.20
Netherlands	17	17.62	7	46.48	13	21.54	2	31.96	8	6.82
Singapore	12	22.10	8	44.86	4	48.67	11	8.38	14	4.53
Switzerland	21	16.10	11	34.14	28	9.87	5	14.55	15	3.78
United Kingdom	4	63.68	6	54.98	8	30.91	7	12.87	3	13.93
United States	2	121.53	1	96.08	1	97.18	1	37.53	2	25.23

Source: UNCTADstat Data Center⁵²

More generally, the importance of cross-border tourism to global trade also illustrates a wider point, which will be discussed in more detail in chapter three of this report: not all changes to the world's cross-border trading patterns can be accounted for by changes to internationally-agreed rules governing free trade and tariffs. Additionally, factors such as the disposable income of a country's population, their ability to travel overseas, and the convenience with which they can visit foreign locations can also play a significant part in the dynamics of world trade – as can other globally significant events, such as international health scares⁵³ or the threat of terrorism⁵⁴.

Moving beyond travel and transport, Luxembourg's high rankings in financial services – for both exports and imports – can be largely explained by its particular focus on this sector, including banking, insurance, corporate finance and, in particular, investment funds⁵⁵. Similarly, Ireland's position as the world's largest exporters of telecoms, computing and information services can largely be explained by the sector's exceptionally export-driven focus⁵⁶. For example, it has been estimated that around 97 per cent of the software produced in Ireland is sold in international markets⁵⁷. Notably, Ireland also plays host to numerous well-known technology companies, including Microsoft, Google, Dell, Oracle and Apple. According to a 2016 study by the Irish Exporters Association and Investec, all of these above-mentioned technology companies – and several more besides – were directly responsible for € multi-billion exports from Ireland in 2015⁵⁸.

52 UNCTADstat Data Center. *Services (BPM6). Exports and imports by services-category, shares and growth, annual, 2005 – 2016*.

53 IATA. *Economic briefing, Avian Flu*, May 2006.

54 UN World Tourism Organisation. *UNWTO tourism highlights, 2016 edition*, p7 and p12.

55 For more information, see the Luxembourg for Finance website.

56 Ireland Central Statistics Office. *CSO Statistical release, international trade in services 2015, November 2016, Table 2a, 24*.

57 Export.gov. *Ireland – computer software*, 13 January 2017.

58 Irish Exporters Association / Investec. *Top 250 exporters 2015. An analysis of the leading exporters by turnover on the island of Ireland*, p13.

It is perhaps not surprising that countries such as the US and UK are among the largest importers and exporters of “other business services”⁵⁹, which includes sectors such as advertising⁶⁰, accounting⁶¹ and law⁶². As lawyers will be well aware, the US and UK host the global headquarters of most of the world’s largest professional services firms, which also serve many other parts of the world via their networks of branch offices and affiliates. That said, it should be appreciated that the entire professional and consultancy services sector comprised a mere third of the US\$ 1,093.27 billion “other business services” (OBS) global export market in 2016, worth US\$ 357.97 billion. By contrast, other market sub-sectors – such as research and development, engineering, waste treatment providers and lease operators – made up the majority of “other business services” exports that year, with an aggregated value of US\$ 713.75 billion⁶³. If law firm managing partners ever wonder why market access for legal services does not feature highly in world trade negotiations, it is worth noting that the entire professional services sector only comprises a small percentage of the market for cross-border trade in services – which is, in itself, only a small percentage of world trade.

Sector-specific trade flashpoints

Because services-based sectors are “asset light” compared with their physical trade equivalents, one might be forgiven for thinking that it was more difficult for states to impose new rules which hindered the ability of service entities to function on a cross-border basis. However, the example of the Irish technology sector in recent months categorically demonstrates that is not the case. Legally, Apple’s state aid dispute with the European Commission over its Irish tax bill⁶⁴ and also the long-running dispute about data transfers between the EU and US⁶⁵ have nothing in common – and nor are they classically “protectionist” in their nature. However, both disputes represent attempts by regulators to curb the freedom of multinational technology companies to structure their global operations as they see fit, and move towards a more state-based operational regime. The issue of cross-border trade-hindering “trade restrictive measures” – not all of which are tariff-based – will be discussed further in chapter three of this report.

World trade – potential risks for the legal sector

The issue of cross-border trade is a vast and complex topic. For that reason, law firms may simply regard the issue as being “too hard” to evaluate, in terms of the possible risks to their business, should any slowdown in globalisation occur. However, as this chapter has shown, it is perhaps best not to think of cross-border trade as a broad topic. Rather, it can be seen as a series of discrete themes. This approach renders it possible to evaluate the risk associated with any retreat from cross-border trade on a fairly granular basis.

59 US Bureau of Economic Analysis. *US international services. Trade in services in 2015 and services supplied through affiliates in 2014*, December 2016, p14.

60 Advertising Age. *The agency report 2017*, 1 May 2017.

61 International Accounting Bulletin. *World survey: what an uncertain world*.

62 Legal Week. *The Global 100: the world's top-ranked law firms by revenue, lawyers and partner profits*, 26 September 2016.

63 UNCTADstat Data Center. *Services (BPM6). Exports and imports by services-category, shares and growth, annual, 2005 – 2016*.

64 The Irish Times. *Ireland ‘taking too long’ to collect Apple tax and may face court*, 19 May 2017.

65 Irish Independent. *Data Commissioner must halt transfers to the US, court told*, 17 February 2017.

Risk that law firms may wish to consider include:

- Does your firm operate in states that are particularly dependant on cross-border trade – in relation to goods or services, or both? If so, are there any signs that the state's key trading partners are retreating into protectionism?
- Is your firm particularly dependent on industries that are routinely traded across borders? If so, does your firm specialise in representing industries that are politically contentious?
- Would any protectionist measures currently being proposed in another state adversely affect your clients' key export markets?
- Where protectionist measures are being proposed, are there any legal mechanisms in place that might hinder the states' ability to enact the protectionist measure – for example, a regional trade agreement? If such an agreement is in place, is it likely that the state will adhere to any such limitations? Might that state seek to terminate such an agreement?
- Does your firm have a significant client base in sectors that are highly globalised, but also at risk from a sharp fall in cross-border activity for reasons that are not related to protectionism? These trade-inhibiting events might include an exposure to a fall in commodity prices in relation in the goods sector, or health scares or terrorism in relation to the services sector.

Chapter two
Trends in world trade:
where are we now and where are we going?

Introduction

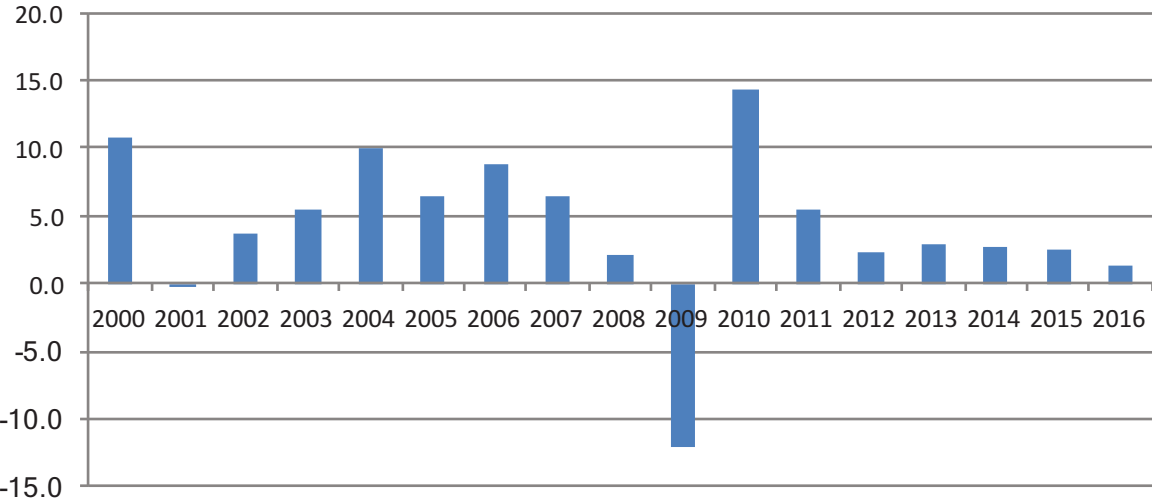
This chapter briefly explores the overall direction of world trade, both generally and also in relation to various forms of foreign direct investment (FDI). The aim of this chapter is to allow the reader to understand whether current and predicted world trade behaviours are normal by recent standards. This, in turn, may help firms to evaluate their future capacity needs relating to cross-border work.

World trade in numbers – recent activity

World trade can be measured in a variety of ways, including by volume and value. Measured by either metrics, and with the notable exception of the immediate aftermath of the global financial crisis, the level of cross-border trade has tended to increase in recent years.

However, as figure two below illustrates, the annual volume growth in one key segment of world trade – merchandise trade exports – has generally been lower in the 2010s than during the equivalent period a decade earlier. In early - mid 2000s, it was not unusual for world trade merchandise exports to grow by more than five per cent per year. By contrast, in the early-mid 2010s, an annual growth rate of more than five per cent was the exception rather than the norm⁶⁶.

Figure two: world trade merchandise export volumes – annual percentage change



Source: WTO⁶⁷

The only year in which the volume of world merchandise trade exports fell significantly during this century was in 2009, shortly after the global economic crash. By contrast, the last year in which world trade values fell was far more recent – in 2015. That year’s fall – the equivalent of 10 per cent of total world trade – was one of the steepest year-on-year declines in world trade values for more than 30 years⁶⁸.

66 WTO. *World trade statistical review 2017*, table A55, p145.
 67 Ibid.
 68 UNCTAD. *Key indicators and trends in international trade 2016. A bad year for world trade?*, p6.

More than 40 per cent of the fall in world trade values between 2014 and 2015 was caused by a sharp drop in the value of energy-related products, which fell by 37 per cent during this time⁶⁹. Perhaps not surprising, therefore, the value of bilateral trade between various energy producing and energy consuming states also fell considerably during this period. For example, the value of fuel exports from the UAE to Japan fell by 46.71 per cent between 2014 and 2015, dropping from US\$ 50.89 billion to US\$ 27.12 billion⁷⁰. However, the fall in cross-border trade values during this time cannot entirely be accounted for by the energy sector: similar falls also took place in relation to various other goods sectors, and also in relation to services. The year 2015 was therefore noticeable for experiencing a broad-based, rather than sector-specific, fall in the value of world trade⁷¹.

Both in terms of imports and exports, around half of the decline in world trade values between 2014 and 2015 occurred between developed countries⁷². By way of illustration, the value of intra-EU trade in agriculture fell by 14 per cent during this time; the value of intra-EU trade in natural resources fell by 35 per cent, and the value of intra-EU manufacturing fell by 12 per cent⁷³. Of course, given that the EU28 states includes several of the world's most significant trading nations, it is perhaps not surprising that any broad drop in the value of cross-border trade would also be strongly reflected in the EU's intra-member trade statistics. However, the fall in intra-EU trade between 2014 and 2015 also highlights another issue, which will be discussed more extensively in subsequent chapters: the mere existence of a free trade bloc – such as the EU – does not guarantee that the value of goods and services traded across national borders will invariably increase.

Recently-published data relating to 2016 continues to show a mixed picture regarding the health of world trade, when measured on a US\$ value basis. Positively, services sector exports grew – a little – that year, rising by around 0.4 per cent compared with 2015⁷⁴. Less positively, the value of merchandise trade exports fell for the second year in a row in 2016, dropping by 3.24 per cent⁷⁵.

Figure three: annual per cent change in world trade export US\$ values, 2006 – 2016



Source: UNCTADstat Data Center⁷⁶

69 Ibid.

70 UNCTADstat Data Center. Merchandise trade matrix – product groups, exports in thousands of dollars, annual, 1995-2016.

71 UNCTAD. *Key indicators and trends in international trade 2016. A bad year for world trade?*, p6.

72 Ibid, p7.

73 Ibid, p15.

74 UNCTADstat Data Center. Services (BPM6). *Exports and imports of total services, value, shares and growth annual, 2005 - 2016. Flow – exports.*

75 UNCTADstat Data Center. *Merchandise: Total trade growth rates, annual, 1981 – 2016.*

76 UNCTADstat Data Center. See notes 74 and 75 above.

Moving beyond these top-level trends, sharp variances occurred at a more granular level. On the one hand, the global value of travel exports – one of the largest of the service sectors – rose by 1.8 per cent in 2016, when compared with 2015. On the other hand, the value of transport exports fell by 4.3 per cent during the same period. And, in relation to physical goods, the price of oil once again played an important part in the decline in the value of goods exports during 2016⁷⁷ – the average cost of this highly-traded commodity fell by 15.6 per cent over the course of the year⁷⁸.

Variances in trade patterns were also evident on a geographical basis, in relation to both goods and services exported. For example, while the value of Germany's services exports rose by 3.1 per cent in 2016 compared with 2015, equivalent figures for the UK recorded a 5.0 per cent fall⁷⁹. Similarly, while the value of Germany's merchandise trade exports rose by 1.07 per cent in 2016, the value of UK merchandise trade exports fell by 7.36 per cent⁸⁰. Yet again, these variances reinforce the notion that trends in cross-border trading behaviours are best evaluated on a highly granular basis.

World trade projections for the near future

Following a generally anaemic period of world trade during 2015 – 2016, several leading authorities are now predicting a modest upturn for the years 2017 and 2018. For example, a recent International Monetary Fund (IMF) analysis predicts that total world trade volumes, across both goods and services, will increase by 4.2 per cent in 2017 compared with 2016, and by a further 4.0 per cent in 2018. Within this headline growth projection, the IMF also predicts that growth of at least 3.6 per year will occur in relation to both imports and exports globally, and also among both advanced and emerging markets / developing economies⁸¹.

The World Bank's forecasts largely concur with the IMF's estimates, and projects that world trade volumes will increase by 4.0 per cent over the course of 2017, by 3.8 per cent in 2018 and by 3.8 per cent (again) in 2019⁸². More granular World Bank projections, shown in relation to a selection of world regions, are summarised in table 14 below. In each of the world regions shown, and in relation to both imports and exports, the World Bank is predicting annual growth of at least 2.3 per cent between 2017 and 2019. If both the IMF and World Bank's projections prove to be correct, world trade levels are likely to return to the modest levels of growth that were fairly typical of the post-2008 crash era, rather than the more exuberant period of world trade expansion of the early / mid-2000s.

77 WTO. *Trade recovery expected in 2017 and 2018, amid policy uncertainty*, 12 April 2017.

78 IMF. *World economic outlook – growing momentum?* April 2017, p212.

79 UNCTADstat Data Center. *Services (BPM6). Exports and imports by services-category, shares and growth, annual, 2005 – 2016 / percentage change (year-on-year). Flow – exports*.

80 Ibid.

81 International Monetary Fund. *World Economic Outlook, October 2017: Short-Term Recovery, Long-Term Challenges*, October 2017, p14.

82 World Bank. *Global economic prospects: a fragile recovery*, January 2017, p4. Washington, DC: World Bank. Washington, DC: World Bank. doi: 10.1596/978-1-4648-1024-4. License: Creative Commons Attribution CC BY 3.0 IGO.

Table 14: World Bank projections indicating future world trade growth – all figures in percentages

World region	2017 %		2018 %		2019 %	
	Exports	Imports	Exports	Imports	Exports	Imports
East Asia and Pacific	3.3	4.9	3.6	5.0	4.1	5.2
Europe and Central Asia	3.7	5.4	3.9	5.9	3.8	6.0
Latin America / Caribbean	4.2	2.9	3.2	2.6	3.2	3.4
Middle East / North Africa	2.3	3.0	3.7	3.0	3.9	3.4
South Asia	6.0	4.4	6.3	5.9	6.2	6.3
Sub-Saharan Africa	2.7	2.9	3.0	3.5	3.3	3.7

Source: World Bank⁸³

Separate WTO projections, which focus only on merchandise trade volumes, predict that this particular segment of world trade will grow by 2.4 per cent in 2017 – with the proviso that this figure could be as low as 1.8 per cent or as high as 3.6 per cent. For 2018, the WTO is projecting an increase in volume of merchandise trade of between 2.1 and 4.0 per cent. Even by recent standards, these are not spectacular growth projections – historical WTO data suggests annual growth between 2013 and 2015 typically ranged from 2.4 to 2.7 per cent. Perhaps the best that can be said about the WTO's near-term projections for 2017 and 2018 is that they are higher than the growth levels reached in 2016, when the volume of world merchandise trade rose by just 1.3 per cent⁸⁴.

Does it matter if world trade fails to rise – or even falls?

Recently, the growth of cross-border trade in goods and services has been anaemic, at best. Nevertheless, the GDPs of many countries have continued to increase – and this trend is predicted to continue in the next few years⁸⁵. Arguably, therefore, it is legitimate to ask: does it actually matter to the world's inhabitants if world trade increases over time? In some economic sectors, notably tourism, the act of crossing a national boundary is often a key objective in its own right: the desire by tourists to seek out new cultural experiences, which are not available in their home market. However, in other sectors, cross-border trade is arguably no more than a means to an end – perhaps an end that requires access to supplies that are not available in an organisation's home state, or as a tool for reducing the cost of producing goods or services. If economic or technological advances render specific drivers of cross-border trade redundant, then perhaps it should not be regarded as problematic if world trade falls?

Arguably, the recent experience of the US petroleum sector is an example of this dynamic in action. Historically, petroleum-related products have been one of the country's largest sources of imports⁸⁶. However, as figure four below illustrates, domestic petroleum production has enjoyed a strong renaissance in recent years. This, in turn, has enabled the country's net reliance on imports to fall to a 20 year-low⁸⁷. This falling net reliance on imports is not due to protectionist restrictions imposed on the petroleum sector by the US government. Rather, the change has been bought about by the increased usage of fracking, which has allowed US oil production to almost double since the year 2000. In that year, fracking-based extraction was responsible for around two per cent of US oil production, yielding around 102,000 barrels per day. By 2015, this technology was responsible for 51 per cent of US oil production, yielding around

83 Ibid, p77, 83, 89, 96, 102, 109.

84 WTO. *Trade recovery expected in 2017 and 2018, amid policy uncertainty*, 12 April 2017.

85 World Bank. *Global economic prospects: weak investment in uncertain times*, January 2017, p247.

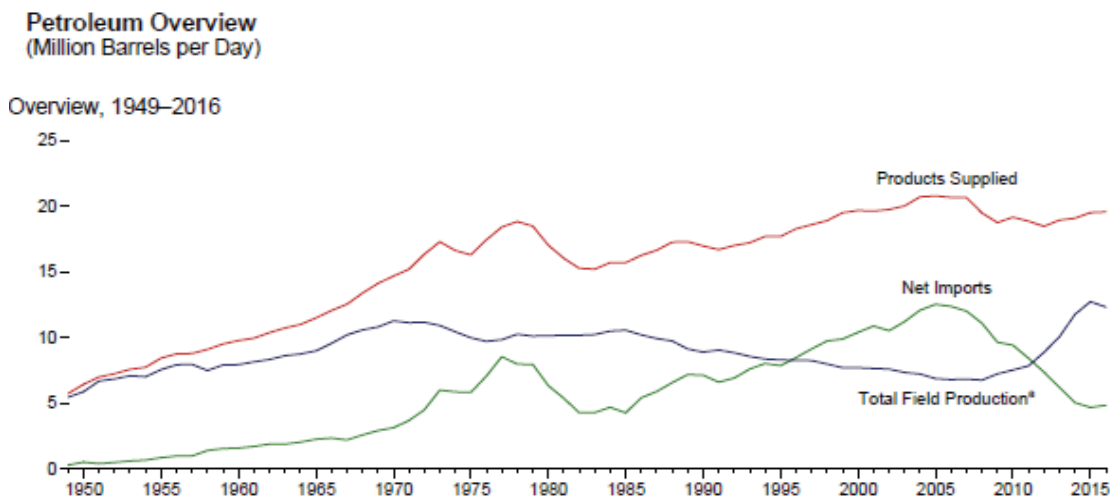
86 US International Trade Commission. *The year in trade 2015: operation of the Trade Agreement Programme, 67th report*, July 2016, publication number 4627, p239.

87 US Energy Information Administration. *Monthly energy review, January 2017*, p48-49.

4.3 million barrels per day⁸⁸. Notably, US consumers have not suffered as a result of the partial “deglobalisation” of their domestic petroleum market. Rather, they have directly benefited from the global collapse in oil prices which the rise of US fracking has helped bring about. In recent years, the average price paid by US consumers for gasoline and diesel fell from an average of US\$ 3.58 per gallon in 2011 to just US\$2.25 per gallon in 2016⁸⁹.

The example of the US petroleum industry arguably illustrates a wider point, which has previously been made in relation to the services sector: not all “mega trends” driving cross-border commerce can be explained by reference to trends in world trade regulation – market forces can also play an important role in this dynamic. What is more, in some circumstances, market forces may prompt cross-border trade to fall, not increase – and this development is not always a bad thing for the sector’s end users.

Figure four: the recent resurgence of domestic US petroleum production at the expense of imports



Source: US Energy Information Administration⁹⁰

Foreign direct investment – where are we heading?

Data that tracks the changing values and volumes of world trade can help us understand day-to-day flows of trade between nations. By contrast, foreign direct investment (FDI) data can help us understand which states and world regions are deemed by the world’s business community to be most worthy of new investment – and which are not. Of these two methods for evaluating world trade trends, FDI is noticeably more volatile year-on-year. This is because levels of FDI can be significantly influenced by individual investment decisions of exceptionally high value.

Nevertheless, in recent years, this volatility in FDI investment has tended to occur within what might be described as a “band of normality”. As figure five below shows, since 2010, this band of normality for global FDI investment has ranged between a low of just over US\$ 1,300 billion and a high of just under US\$ 1,800 billion⁹¹. In this context, the modest fall in global FDI in 2016 compared with 2015 is not particularly unusual. Taking a more long-term view of FDI inflows, it is also arguable that annual FDI has largely trodden water in value terms in recent years, rather than heading in a clear upwards or downwards direction.

88 US EIA. *Hydraulic fracturing accounts for about half of current US crude oil production*, 15 March 2016.

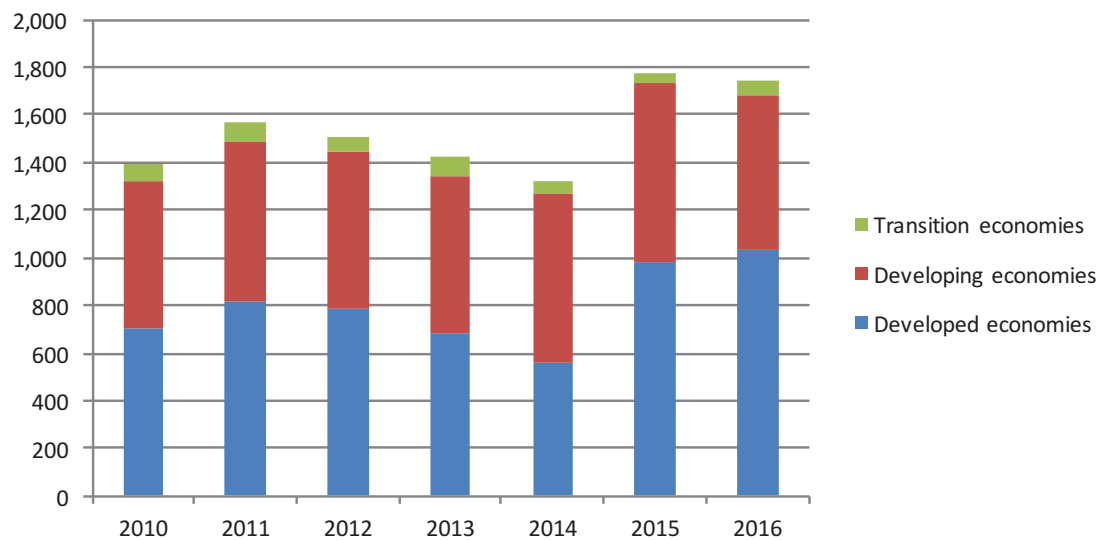
89 For more information, see www.eia.gov/dnav/pet/PET_PRI_GND_A_EPM0_PTE_DPGAL_A.htm

90 US EIA. *Monthly energy review, January 2017*, p48.

91 UNCTAD. *World Investment Report 2017: investment and the digital economy, Appendix table 01. FDI inflows, by region and economy, 1990 – 2016*, 7 June 2017.

Similarly, while the US\$ value of FDI has fluctuated significantly in recent years, the overall distribution of FDI between the broad economic grouping – shown below in figure five – has also remained broadly consistent. With the exception of 2014, a year notable for the sudden collapse of FDI into the US – since reversed – the world’s developed economies have repeatedly attracted moderately more FDI than developing economies, and significantly more FDI than the world’s transition economies. For example, FDI inflow into the developed economies during 2016 were valued at US\$ 1,032.37 billion, compared with US\$ 646.03 billion flowing into the developing economies. Transition economies, which includes the likes of Russia, Serbia and Ukraine, attracted just US\$ 68.02 billion of inward investment that year. On the basis of recent investment behaviours, it would appear that we are not yet witnessing a clear and unambiguous long-term shift in the focus of FDI away from the developed economies and towards other economic groupings.

Figure five: World FDI inflows, 2010 – 2016. All values in US\$ billions



Source: UNCTAD⁹²

FDI investment hotspots

Table 15 below shows the 10 states that received the greatest levels of inward FDI in 2016⁹³, together with their previous annual FDI investment totals since 2010. Also shown is the percentage of world FDI accounted for by these 10 states alone. A number of points can be made about this table, both in relation to individual states and also in relation to this 10-state group collectively.

Firstly, table 15 illustrates how the US\$ value of FDI received by individual states often fluctuates substantially, year-on-year. For example, FDI into the UK rose by a colossal 669 per cent between 2015 and 2016, growing from £33.00 billion to £253.83 billion⁹⁴. In reality, a significant percentage of the UK’s spike in FDI during 2016 can be accounted for by just three mega acquisitions of British companies by foreign investors that year: AB Inbev’s US\$ 101.50 billion acquisition of brewer SABMiller, Royal Dutch Shell’s US\$ 69.40 billion acquisition the BG Group and the US\$ 31.90 billion purchase of ARM Holdings by the SoftBank Group⁹⁵. These significant annual fluctuations suggest we should be wary of attributing too much meaning to one year’s FDI US\$ values in relation to any given state. Rather than indicating that a state is becoming a focal point for FDI investment, one year’s FDI data more typically reflects the fact that a handful of large companies operating in that jurisdiction have become takeover targets.

92 Ibid.

93 Ibid.

94 UNCTAD. *World Investment Report 2017: investment and the digital economy, Appendix table 01. FDI inflows, by region and economy, 1990 – 2016*, 7 June 2017.

95 UNCTAD. *World Investment Report 2017: investment and the digital economy*, p224.

Table 15: leading FDI recipient states in 2016 in US\$ billions, plus historical data and both sample group and global percentages. States listed alphabetically.

Country	2010 %	2011 %	2012 %	2013 %	2014 %	2015 %	2016 %
Australia	36.44	58.91	59.55	56.30	40.33	19.48	48.19
Brazil	83.75	96.15	76.10	53.06	73.09	64.27	58.68
British Virgin Islands	50.49	57.42	75.24	110.02	38.41	28.85	59.10
Cayman Islands	9.36	16.11	7.94	51.45	20.00	63.45	44.97
China	114.73	123.99	121.08	123.91	128.50	135.61	133.70
Hong Kong	70.54	96.58	70.18	74.29	113.04	174.35	108.13
Netherlands	-7.18	24.16	25.01	51.11	53.31	68.75	91.96
Singapore	55.08	49.16	56.24	64.68	73.99	70.58	61.60
United Kingdom	58.20	42.20	55.45	51.68	44.82	33.00	253.83
United States	198.05	229.86	199.03	201.39	171.60	348.40	391.10
Total value - sample	669.45	794.53	745.81	837.90	757.08	1,006.75	1,251.24
Total value - world	1,383.78	1,591.15	1,592.60	1,443.23	1,323.86	1,774.00	1,746.42
% of world value by sample	48.38	49.93	46.83	58.06	57.19	56.75	71.65

Source: UNCTAD⁹⁶

Note: Figures rounded

Secondly, it is also clear that FDI recipient data, as collated by UNCTAD, strongly reflects where large companies have their administrative headquarters – possibly for tax reasons – rather than the location where FDI may ultimately manifest itself. This is evidenced by the large number of offshore or low tax states identified in the table 15 above. These states include both the British Virgin Islands and the Cayman Islands, and also states such as the Netherlands.

Thirdly, and notwithstanding these two considerations, it nevertheless appears that a small group of states have consistently been among the largest recipients of FDI over the past few years. For example, the US, Hong Kong and China have each attracted FDI worth more than US\$ 70 billion each year since 2010. And, taken as a group, it is also noticeable that the 10 states listed above have consistently accounted for at least 46.83 per cent of global FDI throughout the 2010s to date. Indeed, thanks to the spike in FDI investment into the UK, this group's share of global FDI reached 71.65 per cent in 2016. Once again, these statistics reinforce the notion that a relatively small group of states are the recipients of a substantial portion of cross-border FDI. It is in relation to these states that any slowdown in FDI would be particularly impactful on the world FDI market as a whole.

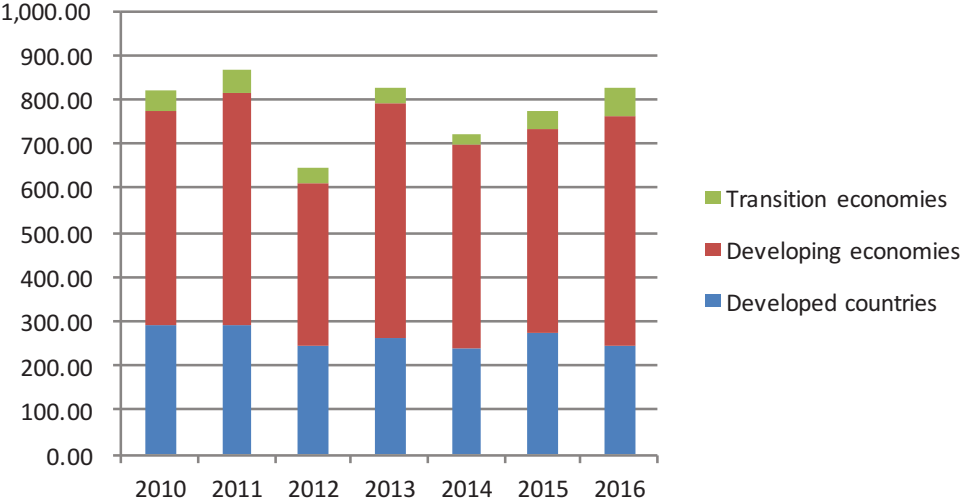
Trends in cross-border greenfield FDI

The annual US\$ value of greenfield FDI has fluctuated substantially in recent years. For example, global greenfield FDI reached a seven-year low of US\$ 645 billion in 2012, only to bounce back to a seven-year high of US\$ 826.62 billion just one year later. Positively, in 2016, global greenfield FDI continued its modest three-year upward trend, reaching US\$ 827.67 billion. However, to put this figure in its historical context, the value of greenfield FDI investment in 2016 was only fractionally higher than in 2013, when FDI was US \$826.62 billion – and noticeably less than in 2011, when the figure was US \$867.19 billion. Collectively, this data suggests that global greenfield FDI has not experienced a clear direction of travel since the start of the current decade⁹⁷.

96 UNCTAD. *World Investment Report 2017: investment and the digital economy, Appendix table 01. FDI inflows, by region and economy, 1990 – 2016*, 7 June 2017.

97 UNCTAD. *World Investment Report 2017: investment and the digital economy, Appendix table 19. Value of announced greenfield FDI projects, by destination, 2003 – 2016*, 7 July 2017.

Figure six: destination of FDI greenfield projects – all values in US\$ billions



Source: UNCTAD⁹⁸

At a more granular level, it is the developing – rather than the developed – world that has consistently attracted the largest segment of global greenfield FDI in recent years. Since the start of 2010, developing countries have typically received around two thirds of global greenfield FDI, compared with around one third going to developed nations. During this time the highest percentage of annual greenfield FDI that has gone to the transition economies – which notably includes Russia – was around eight per cent, in 2016⁹⁹.

In 2016, it is clear that a small number of states attracted the lion’s share of investment within each broad economic grouping. Table 16 below therefore illustrates the “top 10” states for greenfield FDI that year, clustered within these broad economic groupings. Although table 16 only shows the top ranked states for 2016, several of the states listed within each grouping have consistently been among the most significant recipients of inwards greenfield FDI in recent years¹⁰⁰. For example, the US has also topped the greenfield FDI league table every year this decade, while China and India have constantly appeared in the top three rankings each year during the same period.

98 Ibid.
 99 Ibid.
 100 Ibid.

Table 16: how a small number of states dominated greenfield FDI investment in 2016

Economic groupings. All values is US\$ billions						
Rank	Developed	Value	Developing	Value	Transition	Value
1	United States	58.16	India	62.84	Kazakhstan	40.27
2	United Kingdom	37.58	China	62.50	Russia	14.78
3	Australia	21.14	Egypt	40.91	Serbia	2.19
4	France	15.78	Vietnam	36.93	Uzbekistan	1.61
5	Germany	11.66	Mexico	27.05	Ukraine	1.49
6	Spain	10.99	Indonesia	22.26	Bosnia and Herzegovina	0.92
7	Poland	10.88	Malaysia	19.89	Belarus	0.64
8	Canada	10.73	Brazil	12.82	Montenegro	0.61
9	Japan	8.46	Singapore	12.35	Azerbaijan	0.56
10	Italy	6.52	Iran	12.22	Georgia	0.39
Totals	Total value - sample	191.82	Total value - sample	309.76	Total value - sample	63.46
	Total value - grouping	247.08	Total value - grouping	515.74	Total value - grouping	63.46
	% of grouping accounted for by top 10 sample	77.63	% of grouping accounted for by top 10 sample	60.06	% of grouping accounted for by top 10 sample	97.97

Source: UNCTAD¹⁰¹

Note: Figures rounded

Reflecting the preponderance for greenfield FDI investments to flow mainly into the world's developing nations, it is noticeable that several states within this grouping – shown above – enjoyed a significantly higher US\$ value in 2016 than their developed state equivalents. More broadly, as table 16 makes clear, the top 10 states listed in this table consistently attracted a large majority of that group's greenfield FDI in 2016 – and close to 100 per cent of investment in the case of the transition economies. Thus, in the event that global greenfield FDI does fall in the future, it is these states' investment figures that will probably be at the forefront of any drop.

Among the transition economies, Russia's position as a number two location for greenfield FDI in 2016 is unusual: it normally tops this table by a considerable margin. While the value of greenfield FDI into Russia in 2016 was broadly comparable with recent years, investment into Kazakhstan rose by US\$ 34 billion compared with 2015, pushing it into first place. The 2016 spike in Kazakhstan greenfield FDI can be overwhelmingly explained by Chevron's decision to invest US\$ 36.8 billion developing the country's Tengiz oilfield¹⁰².

Cross-border M&A investments trends remain positive – but the pace of growth has slowed

According to UNCTAD, the value of cross-border M&A sales continued their recent recovery in 2016, reaching a net value of US\$ 868.65 billion that year. Nevertheless, as figure seven below shows, the 2016 increase was also notable for being one of the smaller in recent times. And, while the 2016 M&A sales figures were the highest in value terms since the start of this decade, they were nevertheless lower than just before the global economic crash of 2007. In that year, cross-border M&A was valued at US\$ 1,032.69 billion¹⁰³.

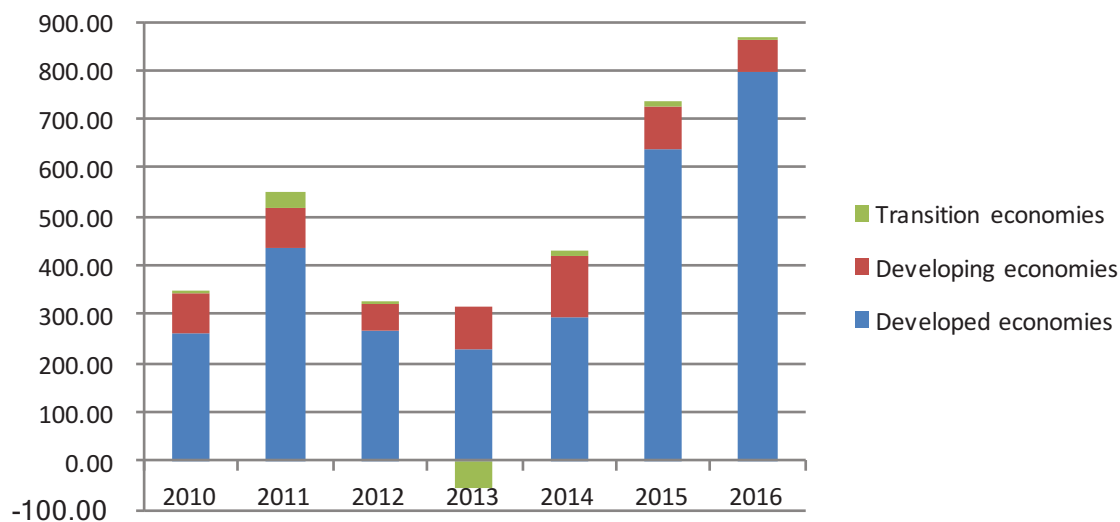
101 Ibid.

102 Financial Times. *Chevron approves \$37bn Kazakhstan oilfield expansion*, 5 July 2016.

103 UNCTAD. *World Investment Report 2017: investment and the digital economy, Appendix table 09. Value of cross-border M&As by region / economy of seller, 1990 – 2016*, 7 July 2017.

Viewed at a more granular level, both figure seven and table 17 below starkly illustrate the extent to which global M&A inwards investment continues to focus on the developed economies. Since the start of the decade, the states which comprise this economic grouping have consistently been the recipients of between 68.45 - 91.44 per cent of net global M&A Sales by value per year. By contrast, the developing economies have never exceeded 33.23 per cent. However, even this figure is far higher than the transition economies, which have consistently failed to attract more than six per cent of the world's M&A inward investment since 2010 – a more typical figure over the past seven years is around one per cent. Therefore, if cross-border M&A is to continue on its recent upward trajectory, it is the ongoing openness of the developed economies that will be crucial for enabling significant growth to occur. Even if cross-border M&A activity within the developing and transition economies grows by a considerable percentage in value terms, these economies' collective contribution to any change in global cross-border M&A activity levels are likely to be marginal.

Figure seven: global cross-border M&A sales values, 2010 – 2016



Source: UNCTAD¹⁰⁴

Table 17: percentages of global cross-border M&A sale values by broad economic grouping, 2010 – 2016

Economic grouping	2010 %	2011 %	2012 %	2013 %	2014 %	2015 %	2016 %
Developed economies	74.89	78.95	81.28	87.66	68.45	87.16	91.44
Developing economies	23.93	15.10	16.64	33.23	30.21	11.48	7.98
Transition economies	1.18	5.96	2.08	-20.89	1.33	1.36	0.58

Source: UNCTAD¹⁰⁵

Note: Figures rounded

104 Ibid.

105 Ibid.

Table 18 below shows the 10 states that attracted the greatest values of M&A inward investment during 2016, for each of the world's three main economic groupings. As this table makes clear, these states received the vast majority of their economic grouping's M&A inward investment that year. Again, table 18 further illustrates how a relatively small group of states are far more important to cross-border M&A activity than much of the rest of the world.

Reinforcing this point, several states listed below have consistently been among the largest recipients of M&A-led inwards investment since 2010. Among the developed economies highlighted in table 18 below, consistently-attractive countries include the US, UK and France; among the developing countries, favoured nations include Hong Kong and India; and finally, among the transition economies, Russia is the stand-out favoured nation. Often, such countries play host to a small number of completed mega deals, which may substantially boost their relative M&A rankings in a particular year. But, crucially, such countries also tend to be the focal point of such mega deals, not just in one year, but annually. In 2016, for example, the largest single cross-border M&A deal globally involved the UK-based SABMiller as the US\$ 101.5 billion target. In 2015, the world's sixth largest cross-border M&A deal globally, also involved a UK-based target – GlaxoSmithKline. This US\$ 16 billion deal saw GlaxoSmithKline's¹⁰⁶ oncology business sold to Switzerland's Novartis.

Table 18: the world's top recipients of M&A investment in 2016, ranked by broad economic grouping

Rank	Economic groupings. All values is US\$ billions					
	Developed	Value	Developing	Value	Transition	Value
1	United States	360.80	Brazil	9.46	Russia	4.71
2	United Kingdom	250.80	South Africa	8.68	Serbia	0.13
3	France	24.20	India	7.84	Georgia	0.09
4	Japan	20.09	Hong Kong	7.57	Bosnia and Herzegovina	0.06
5	Spain	14.52	Taiwan	7.49	Ukraine	0.01
6	Belgium	13.23	China	5.89	Moldova	0.01
7	Australia	12.68	Mexico	5.26	Belarus	0.00
8	The Netherlands	11.84	Singapore	4.45	Kazakhstan	0.00
9	Canada	11.65	Malaysia	3.91	Azerbaijan	0.00
10	Ireland	10.78	Kuwait	2.78	Albania	0.00
Totals	Total value - sample	730.58	Total value - sample	63.32	Total value - sample	5.01
	Total value - grouping	794.32	Total value - grouping	69.32	Total value - grouping	5.01
	Sample total %	91.98	Sample total %	91.35	Sample total %	100

Source: UNCTAD¹⁰⁷

Note: Figures rounded

106 UNCTAD. *World Investment Report 2016. Investor nationality: policy challenges*, p208.

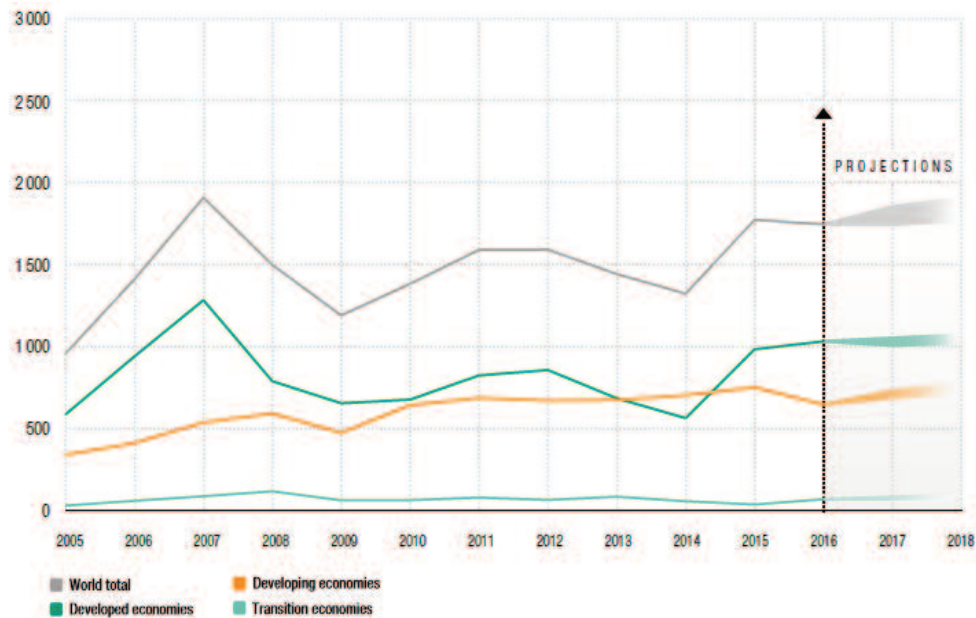
107 UNCTAD. *World Investment Report 2017: investment and the digital economy, Appendix table 09. Value of cross-border M&As by region / economy of seller, 1990 – 2016*, 7 July 2017.

FDI projections

As previously mentioned, FDI into individual countries can vary hugely year-on-year, largely driven by large-scale one-off transactions. Nevertheless, despite the inherently unpredictable nature of FDI, organisations such as UNCTAD do attempt to predict FDI activity levels several months in advance. These predictions are partly based on preliminary 2017 data regarding cross-border M&A activity and announced greenfield projects, and partly based on the surveyed opinions of investment promotion agencies and executives from the world's largest multinational enterprises (MNEs). UNCTAD's latest survey was undertaken in early 2017.

Broadly in line with projections discussed elsewhere in this report, UNCTAD's projections for 2017 – issued in July this year – are mainly positive. Globally, UNCTAD predicts that FDI will rise by around five per cent during 2017, with further growth predicted to occur in 2018. However, as UNCTAD also notes, the projected total of US\$ 1,855 billion global FDI for 2018 will still be below that achieved as far back as 2007¹⁰⁸, just before the global economic crash. Interestingly, and in line with recent investment behaviour indicated in figure five, figure eight below suggests it is the developed economies that will receive the largest single slice of FDI investment during 2017 and 2018.

Figure eight: projected FDI flows, by groups of economies (US\$ billions)



Source: UNCTAD¹⁰⁹

On a more granular basis, the MNE executives surveyed by UNCTAD indicated a cautious optimism regarding the overall direction of FDI activity in the period up to 2019. Globally, considerably more executives at top MNEs believed that FDI would increase (55 per cent) rather than decrease (21 per cent) during this time, with the remainder either expecting no change (three per cent) or expressing no view (21 per cent). MNE executives based in the developed economies were fractionally more positive that FDI would increase, compared with their counterparts based in the developing and transition economies. In total, 59 per cent of developed country-based MNE executives predicted that global FDI would grow between 2017 - 2019, compared with the 56 per cent who agreed with this statement among their developing / transition economies counterparts¹¹⁰.

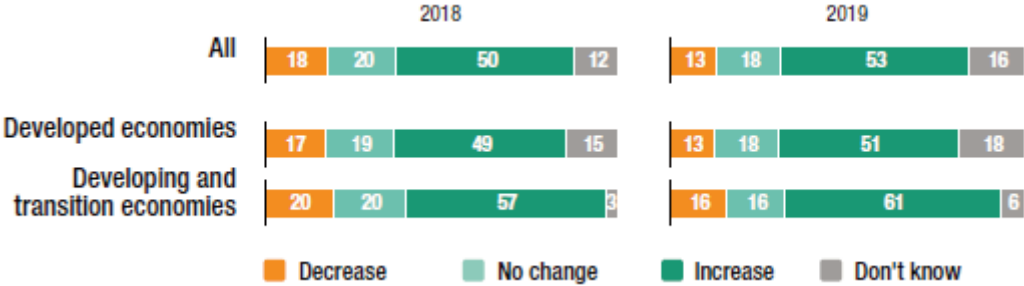
108 Ibid, p2.

109 Ibid, p2.

110 Ibid, p6.

These sentiments also broadly carried over into MNE executives’ own FDI spending intentions up to the year 2019. Globally, 50 per cent of surveyed executives intended to increase their organisation’s global FDI in 2018 compared with 2016 levels, while 53 per cent said they would do so in 2019. However, as figure nine below shows, when these survey results are broken down by the location of the MNE executives, it becomes clear that executives based in the developing and transition economies are somewhat more bullish about their company’s spending plans for 2018 and 2019 than their developed economy counterparts. In both 2018 and 2019, a clear majority of surveyed executives based in developing and transition economies said they planned to increase their organisation’s global FDI spend, when compared with the 2016 benchmark. By way of comparison, among MNE executives based in the developed economies, the percentage who planned to increase their organisation’s FDI spending was at least eight percentage points lower. And, in 2018, fractionally less than half of executives based in the developed economies said they would increase their organisation’s FDI¹¹¹.

Figure nine: Executives’ global FDI spending intentions, 2018 – 2019, compared with 2016 levels

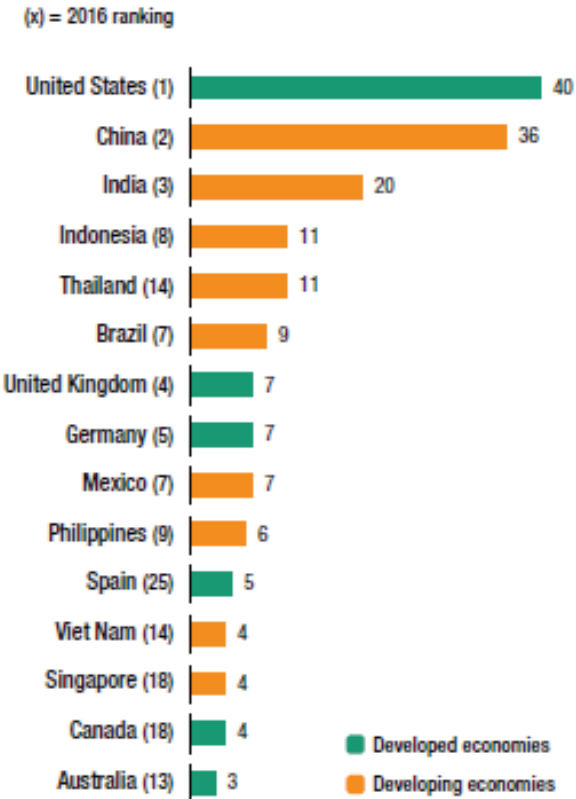


Source: UNCTAD¹¹²

In terms of top destinations for future FDI investment, figure 10 below shows how several of the world’s most noticeable target locations – China, India, and the US – remain the favoured host economies among MNE executives, according to latest UNCTAD survey¹¹³. This reinforced the notion – discussed previously – that a core group of states continue to be favoured FDI hotspots. That said, the UK’s fall in the latest rankings – from fourth to seventh place – is also noteworthy. UNCTAD speculates that this fall may, possibly, be due to uncertainties arising out of Brexit¹¹⁴

111 Ibid, p7.
 112 Ibid, p7.
 113 Ibid, p9.
 114 Ibid, p8.

Figure 10: leading prospects for FDI investment among top MNE executives, 2017 - 2019



Source: UNCTAD¹¹⁵

115 Ibid, p9.

Conclusions: where is world trade heading?

On balance, it appears that we can now be cautiously optimistic about the future direction of cross-border trade – at least in comparison with recent years.

In the recent past, world trade volumes have only ever turned negative after a significant global economic shock – and, even then, only for a single year. Unless a global shock of comparable severity occurs in the near future, it therefore seems likely that world trade volumes will continue to grow during the next few years. Indeed, if the IMF and World Bank's short-term projections prove to be accurate, the world will soon be enjoying the highest level of annual world trade volume growth since 2011. The pace of this growth may be lower than the period immediately before and, indeed, shortly after the economic crash. Nevertheless, growth is likely to be fractionally higher than that experienced in the recent past.

On a value basis, a significant factor in the future direction of cross-border trade will be world oil prices. Here, there are clear signs that the price of this vital world trade commodity is now stabilising. As a result, the price of oil is unlikely to act as a significant drag on world trade values into the near future. That said, it should also be understood that individual states and industry sectors may experience patterns of cross-border trade that are at sharp variance with global norms.

In terms of FDI, there is also reason to be cautiously optimistic. On balance, MNE executives surveyed by organisations such as UNCTAD now tend to believe that FDI will grow in the near future – or at least, not fall. More tangibly, many MNE executives at the world's leading companies are now actively planning to invest in the next few years.

Also in relation to overall FDI, it is likely that the developed economies will attract the highest level of investment, followed closely by the developing nations. By contrast, the transition economies will continue to trail far behind. At a more granular level, both past trends and projections for the near future suggest that it will be a handful of developing countries that are most likely to attract the highest levels of FDI investment. But, in relation to cross-border M&A, it is likely to be the developed states that will continue to dominate this form of inward investment in the next few years.

Across both world economic groupings, and notwithstanding sharp year-on-year variances in investment values, it also appears likely that a relatively small group of states will continue to attract a significant percentage of future FDI. Notwithstanding Brexit and US President Trump, these key investment hotspots are likely to include the US and UK, together with the likes of Brazil, China and India. Assuming these states continue to trade extensively with the rest of the world and remain open to substantial FDI, the overall health of cross-border trade appears largely assured.

Trends in world trade – lessons for law firms

- Monitoring top level trends in cross-border trade can help firms understand this important segment of the world economy. However, it is arguably more illuminating to evaluate trade trends between the key states in which you operate, and in relation to individual industry sectors your firm specialises in. Global mega-trends do not always reflect what is happening “on the ground” in your main operating jurisdictions and in relation to your key client sectors.
- Various leading organisations are now predicting a modest return to growth in cross-border trade over the next few years. However, law firms who specialise in advising clients on cross-border trade should be wary of basing future resourcing decisions on short-term fluctuations in activity. The level of cross-border trade and inward investment can vary hugely year on-year, and the value of cross-border trade can also be strongly influenced by issues such as fluctuating oil prices. It is arguably more useful to establish a “band of normality” that your firm should expect to encounter in a typical year, and only take corrective measures if activity consistently falls outside those parameters.
- The recent example of the US petroleum sector illustrates how opportunities for new instructions do not invariably arise from the continuous rise of cross-border trade. In some incidences, new work can alternatively be obtained from organisations that are helping to reduce the cross-border flow of goods and services.
- In relation to FDI, research shows that a small number of states consistently attract a substantial percentage of global annual investment. Firms who specialise in cross-border activity may wish to consider whether their geographical reach adequately services these key FDI markets – bearing in mind that specific states tend to attract specific forms of FDI, be that M&A-led or greenfield investment-led. Firms may also wish to examine, depending on their own practice mix and priorities, whether offices in countries that are not major markets or recipients of FDI are necessary or relevant in strategic terms.

Chapter three

Global structures that promote global free trade:
are we going backwards or forwards?

Introduction

There are many mechanisms for promoting cross-border trade, and also many ways in which this type of trade can be hindered. This chapter provides a flavour of some of the most notable mechanisms that seek to deliver – or inhibit – cross-border commerce, and explores whether those mechanisms are currently advancing or retreating.

Global free trade trends: WTO membership

Since its formation on 1 January 1995, the World Trade Organization (WTO) has become the world's principal oversight body for ensuring cross-border free trade. In the years since its establishment, WTO membership has continued to expand. At launch, the WTO comprised 128 members, who were collectively responsible for around 80 per cent of the world economy¹¹⁶. Today, the organisation has 164 members, responsible for 98 per cent of global economic output¹¹⁷. Countries that have recently become WTO members include Kazakhstan, which joined on 30 November 2015, Liberia (14 July 2016) and Afghanistan (29 July 2016)¹¹⁸.

Article 15 of the WTO's founding "Marrakesh Agreement" permits any signatory state to leave the organisation after giving six months' notice. However, no existing WTO member has – to date – taken this step. This includes the US, notwithstanding the pre-election threat by Donald Trump that he might consider pulling his country out of the WTO if elected US President¹¹⁹.

Regional trade agreements – where are we going?

The WTO provides a broad framework for regulating cross-border trade. This includes the setting of internationally agreed "bound" tariffs and an equal "most favoured nation" (MFN) trading status for all members. Nevertheless, within the WTO framework, regional trade agreements (RTAs) are also permitted. RTAs allow for preferential, reciprocal, trade deals between participating states, which go beyond agreed WTO MFN norms¹²⁰.

Anecdotally, the past few months have not been kind to the RTA-based system. The EU, the world's single largest RTA¹²¹, is due to lose one of its largest members – the UK – by 29 March 2019¹²², following the decision of the UK electorate to leave the Union in a June 2016 referendum¹²³.

Then, just a few months after the UK voted to depart the EU, the "CETA" RTA between the EU and Canada almost came unstuck, following the refusal of a regional Belgian parliament to ratify the deal¹²⁴. Weeks later, US President Donald Trump officially withdrew his country's participation in the planned Trans-Pacific Partnership (TPP)¹²⁵ – potentially rendering this RTA "dead in the water"¹²⁶. More recently still, President Trump came very close to terminating NAFTA¹²⁷, having previously lambasted it as the "worst trade deal" the US had ever signed¹²⁸.

116 WTO. *An empirical assessment of the economic effects of WTO accession and its commitments*. 6 February 2017, p3.

117 WTO. *Annual Report 2017*, p27.

118 WTO. *Members and observers*.

119 Financial Times. *Donald Trump threatens to pull US out of WTO*, 24 July 2016.

120 See WTO website. *Trade Topics, Regional trade agreements*.

121 WTO. *World Trade Statistical Review 2016*, p46.

122 Council of the European Union. *European Council (Art 50) guidelines for Brexit negotiations*. 29 April 2017.

123 UK Electoral Commission. *EU referendum results*.

124 The Guardian. *EU-Canada free trade deal at risk after Belgian regional parliament vote*. 14 October 2016.

125 The White House. *Presidential memorandum regarding withdrawal of the United States from the Trans-Pacific Partnership negotiations and agreement*, 23 January 2017.

126 ABC News. *Donald Trump signs executive order withdrawing US from Trans-Pacific Partnership*, 23 January 2017.

127 Washington Post. *"I was all set to terminate": Inside Trump's sudden shift of NAFTA*, 27 April 2017.

128 Bloomberg. *Trump: NAFTA is the worst trade deal ever signed*. 27 September 2016.

As table 19 below shows, a common feature of these various RTA-related upheavals is that all involve groups of states that are responsible for a significant percentage of world's cross-border trade. In the case of RTAs that already exist, there is therefore a real risk that new barriers to trade will be erected during any RTA renegotiation / termination proceedings. Equally, in relation to those draft RTAs currently being negotiated, there is the danger that trade liberalisation will not occur, in the event that the RTA is ultimately not bought into force by its participating states.

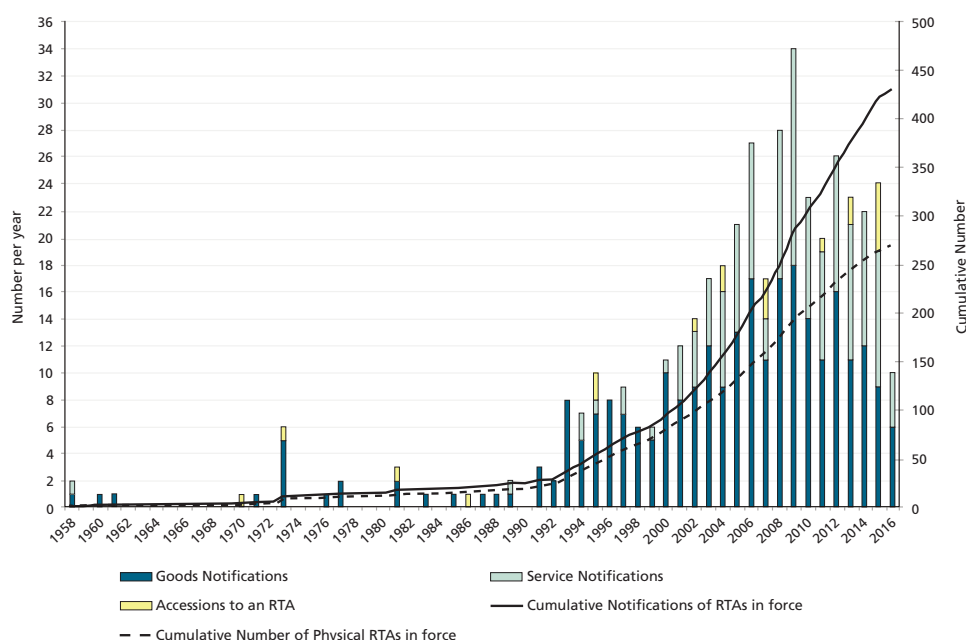
Table 19: current and potential disruptions within the RTA system

RTA name	Number of participant states	Key risk	Percentage of total world trade - 2016	
			Exports	Imports
CETA	29	Non-implementation	37.29	35.41
EU	28	UK departure	34.99	32.88
TPP	12	Non-implementation	25.22	27.90
NAFTA	3	US departure	14.29	18.06

World trade percentages source: UNCTADstat Data Center¹²⁹

At first sight, these developments suggest that global enthusiasm for RTAs has stalled – perhaps even gone into reverse. However, evidence collected by the WTO suggests that – on the contrary – the number of RTAs in force around the world continues to grow. As figure 11 below shows, there are now several hundred RTAs in existence¹³⁰. Certainly, figure 11 shows that the rate at which new RTAs are entered into has slowed – from more than 20 per year in the late 2000s to less than 10 in 2016¹³¹. Nevertheless, the overall number remains on an upwards curve. This ongoing willingness of many countries around the world to enter into new RTAs suggests that we should not take an unduly Western-nation focused perspective of global RTA trends.

Figure 11: cumulative number of RTAs in existence, 1958 – 2016



Source: WTO¹³²

129 UNCTADstat Data Centre. *Goods and services (BPM6): Exports and imports of goods and services, annual, 2005 – 2016*, 2016 percentage data only.

130 WTO. *Recent developments in regional trade agreements, July – December 2016*, p2.

131 IMF. *Economic outlook: subdued demand, symptoms and remedies*, October 2016, p79 - 80.

132 WTO. *Recent developments in regional trade agreements, July – December 2016*, p2. Figure ©copyright WTO, and reproduced with express permission.

That said, it should also be appreciated that, while the number of RTAs continue to increase, very few of these agreements are remotely comparable with the likes of the EU, CETA, NAFTA or TPP in terms of their overall significance to world trade. For example, of the nine RTAs that came into force during 2016¹³³, one involved two states – Turkey and Moldova – that were, respectively, responsible for just 0.91 and 0.01 per cent of¹³⁴ world trade exports. Even if this RTA is stunningly successful in boosting trade between its two members, its impact on total world trade will be minimal. Similarly, the EU's 2016 RTA with Ghana may well boost the latter country's trade with the EU, one of Ghana's leading import and export markets¹³⁵. However, given that Ghana was responsible for a mere 0.08 per cent of world trade exports in 2016¹³⁶ – and that the country's trade with the EU is worth just €5.5 billion¹³⁷ – it is hard to imagine how the advent of this RTA will have a significant impact on extra-EU cross-border trade, let alone world trade in general.

Both of the above-mentioned examples illustrate that it is not the number of RTAs in existence that is most important to the overall future direction of world trade. Rather, what matters is the identity of those states that are choosing to enter into new agreements.

Developing this point, it is worth noting that various states / regional groupings around the world have been unsuccessful in securing preferential RTAs with their key trading partners. Instead, it often appears that agreements have been reached with states where a deal is politically possible, rather than economically useful. For example, according to the WTO RTA database, the EU is currently party to 41 RTAs. Superficially, this sounds impressive. However, several of the EU's RTAs are with jurisdictions with which the EU states collectively do virtually no business, involve exceptionally small economies – or both. By way of example, the EU has a trading partnership with 15 Caribbean "CARIFORUM" countries, which the WTO categorises as an RTA. Unfortunately, several of these CARIFORUM countries each account for less than 0.1 per cent of the EU's foreign trade, worth less than €100 million in 2016. Other RTAs to which the EU is a party include with the Faroe Islands (the EU's 99th largest trading partner, worth €1.34 billion in 2016), the micro state of San Marino (146th, €319 million), and Fiji (164th, €125 million)¹³⁸. Just as importantly, as table 20 below illustrates, the EU currently has no RTAs in place with many of its largest trading partners, including the US and China.

133 See WTO database. *Regional Trade Agreements Information System (RTA-IS)*.

134 UNCTADstat Data Center. *Goods and services (BPM6): Exports and imports of goods and services, annual, 2005 – 2016, 2016 percentage data only*.

135 WTO. *Trade profile: Ghana*.

136 UNCTADstat Data Center. *Goods and services (BPM6): Exports and imports of goods and services, annual, 2005 – 2016, 2016 percentage data only*.

137 European Commission. *Interim economic partnership agreement between Ghana and the European Union – factsheet*.

138 European Commission, DG Trade. *Client and supplier countries of the EU28 in merchandise trade (value %) (2016, excluding intra-EU trade)*.

Table 20: the tenuous relationship between EU trade and EU RTAs

Rank	Country	% of total EU cross-border trade accounted for, goods only – imports and exports (2016)	RTA currently in place?
1	US	17.6	No – WTO terms only
2	China	14.9	No – WTO terms only
3	Switzerland	7.6	Yes, RTA in place since 1973
4	Russia	5.5	No – WTO terms only
5	Turkey	4.2	Yes, RTA in place since 1996
6	Japan	3.6	No – WTO terms only
7	Norway	3.2	Yes, RTA in place since 1973
8	South Korea	2.5	Yes, RTA in place since 2011
9	India	2.2	No – WTO terms only
10	Canada	1.9	Not yet fully in force – individual EU state ratifications pending ¹³⁹
11	Brazil	1.7	No – WTO terms only
12	UAE	1.6	No – WTO terms only
13	Mexico	1.6	Yes, RTA in place since 2000
14	Hong Kong	1.5	No – WTO terms only
15	Saudi Arabia	1.5	No – WTO terms only

Source: European Commission, DG Trade¹⁴⁰/ ©WTO RTA database

The future direction of RTAs – time to be cautiously optimistic?

In recent times, many of the RTAs that have come into force have been of limited global significance, often involving states that account for a very small percentage of world trade. However, there are now signs that the current preponderance for “micro RTAs” may change in the next few months and years – in part, prompted by the unlikely champion of “mega RTAs”, US President Donald Trump.

As table 21 below shows, the current US position in relation to RTAs largely echoes that of the EU. That is, many of its most important trading relationships are undertaken on a WTO-only basis.

139 European Commission, DG Trade. *EU-Canada trade agreement enters into force*, 20 September 2017.

140 Ibid. *WTO RTA database data* © copyright WTO and used with express permission.

Table 21: US RTA arrangements with key trading partners – current state of play

Rank	Country	% of US cross-border trade accounted for, goods only (2016)	RTA in place?
1	China	15.9	No – WTO terms only
2	Canada	15.0	Yes, NAFTA, from 1 March 1995
3	Mexico	14.4	Yes, NAFTA, from 1 March 1995
4	Japan	5.4	No – WTO terms only
5	Germany	4.5	No – WTO terms only
6	South Korea	3.1	Yes – from 15 March 2012
7	United Kingdom	3.0	No – WTO terms only
8	France	2.1	No – WTO terms only
9	India	1.9	No – WTO terms only
10	Taiwan	1.8	No – WTO terms only
11	Italy	1.7	No – WTO terms only
12	Switzerland	1.7	No – WTO terms only
13	Netherlands	1.6	No – WTO terms only
14	Brazil	1.5	No – WTO terms only
15	Ireland	1.5	No – WTO terms only

Source: US Census Bureau¹⁴¹ / WTO RTA database¹⁴²

Since taking office, President Trump's trade policy has been firmly based on bilateralism rather than multilateralism – which explains why he approved US withdrawal from the TPP, and also intends to renegotiate NAFTA¹⁴³. A second key strand of President Trump's trade policy is that it should be based on trade reciprocity and the creation of US jobs¹⁴⁴. Notably, neither of these policies suggest President Trump is against RTAs in principle, especially where US interests might be advanced. Quite the reverse, in fact.

Indeed, it is worth stating that President Trump and his team are now actively seeking trade deals with several of the key trading partners of the US, identified in table 21 above. For example, the Trump administration has recently sought to restart its Transatlantic Trade and Investment Partnership (TTIP) negotiations with the EU¹⁴⁵ – an RTA that could potentially encompass 30 per cent of all world trade¹⁴⁶. Separately, negotiations are now underway to secure a rapid – if limited – trade liberalisation agreement with China¹⁴⁷. In the long term, the US administration has also indicated a willingness to agree a post-Brexit RTA with the UK¹⁴⁸, and to secure a “broad framework for bilateral economic cooperation”¹⁴⁹ with Japan. Even if just one of these initiatives comes to fruition, any deal would increase the percentage of US cross-border trade that is conducted on terms that are more liberal than WTO MFN rules alone.

141 US Census Bureau. *Foreign trade - top trading partners - December 2016*. Year to date (goods only).

142 Ibid. Also WTO RTA database, US entry. WTO RTA Database date © copyright WTO and used with express permission.

143 The White House. *Trade deals that work for all Americans*.

144 Office of the United States Trade Representative. *2017 trade policy agenda and 2016 annual report of the President of the United States on the trade agreements program*, p1 – 7.

145 Financial Times. *US reopens door to reviving EU trade talks*, 23 April 2017.

146 EU Commissioner for Trade, Cecilia Malmström. *What's a good TTIP for the mechanical engineering sector?*, 25 April 2016.

147 US Department of Commerce. *Initial results of the 100-day action plan of the US – China comprehensive economic dialogue*, 11 May 2017.

148 BBC News. *Trump: UK-US trade deal could be “big and exciting”*, 25 July 2017.

149 Reuters. *Japan to discuss broad eco framework with US, not bilateral FTA*, 17 April 2017.

Improved trade terms between the US and other key world economies would, of course, also help partner states trade more freely with the US. However, President Trump's insistence on bilateral trade relations also appears to have acted as a spur for a variety of economic groupings to push ahead with their own ambitious RTAs. For example, the EU and Japan have recently reached an "agreement in principle" in relation to a possible trade deal between the two economic heavyweights¹⁵⁰, after more than four years of negotiations. Explaining the renewed push to conclude the deal, Japanese prime minister Shinzo Abe explicitly stated it would "show the world the flag of free trade as a model"¹⁵¹. This assertion has been widely interpreted as a subtle rebuttal of US President Trump's perceived protectionist tendencies¹⁵².

Also following US withdrawal from the TPP, various TPP participants have recently debated the possibility of entering into a slimmed down agreement involving a smaller number of states¹⁵³. Additionally, some TPP signatory countries are pushing ahead with the Regional Comprehensive Economic Partnership Agreement (RCEP) and / or the Free Trade Area of the Asia-Pacific (FTAAP) – two mega RTAs which both include China but exclude the US. Collectively, the 16-member RCEP would encompass 24 per cent of global GDP¹⁵⁴, while the 21-member FTAAP would cover countries responsible for nearly half of world trade¹⁵⁵. If enacted, both RTAs would dwarf NAFTA in terms of its world trade coverage, while the FTAAP would even eclipse the planned EU/Canada CETA agreement. It is perhaps ironic that this newfound enthusiasm for mega RTAs is, in part, a direct response to the trade policies pursued by Donald Trump since he was elected US President.

International investment agreements – totals rise, but the increase slows

An RTA is a high profile legal mechanism that countries can sign up to, which clearly signals their commitment to embracing cross-border trade. However, RTAs are not the only legal mechanism available to achieve this objective. Another option open to countries is to enter into an international investment agreement (IIA). An IIA can take several forms, including a bilateral investment treaty (BIT), a treaty with investment provisions (TIP) and an investment-related instrument (IRI).

Of the three types of IIA available to countries, BITs are by far the most common. A BIT will typically aim to offer assurances to the international business community that the signatory state will protect their foreign investments. TIPs can come in various forms, including an FTA which includes an investment chapter. The more open-ended IRIs can encompass issues such as mutual conventions on disputes settlements.

150 European Commission. *EU and Japan reach agreement in principle on Economic Partnership Agreement*, 6 July 2017.

151 Bloomberg. *EU, Japan forge ahead in trade talks as Trump give impetus*, 21 March 2017.

152 The Independent. *Angela Merkel and Japan's Shinzo Abe make subtle digs at Donald Trump at German tech event*, 20 March 2017.

153 Japan Times. *Japan, Vietnam leaders vow unity in bid to bring TPP into force*, 7 June 2017.

154 CNN. *TPP v RCEP? Trade deals explained*, 26 January 2017.

155 China Daily. *FTAAP to serve as role model for globalization*, 16 January 2017.

As table 22 below shows, it is not uncommon for countries to have dozens of BITs in place. Indeed, some states are party to considerably more BITs than they are RTAs. However, as table 22 also illustrates, it has now been several years since a majority of G7 countries formally entered into a new BIT. For some countries, such as Germany, this is arguably because there are virtually no new partner states to do deals with, which are not already covered by other types of IIA / RTA. For other countries, such as the US, there is clearly scope for new agreements to be reached – if not the political will do so¹⁵⁶.

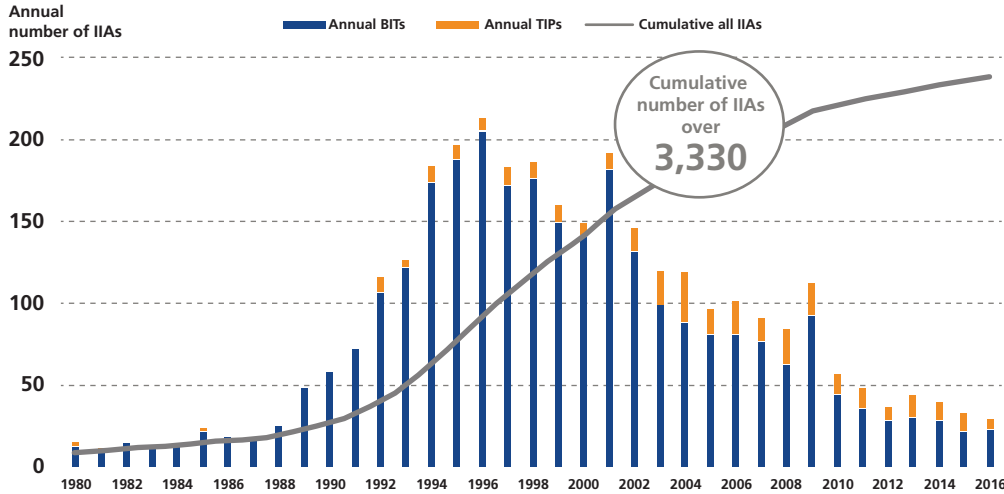
Table 22: prevalence of BITs among G7 countries, plus China, in 2016

Country	BITS	
	Number in force	Last BIT to enter force
Canada	35	Mongolia, 24 February 2017
France	96	Seychelles, 28 December 2014
Germany	131	Madagascar, 17 October 2015
Italy	73	Zambia, 2 December 2014
Japan	23	Saudi Arabia, 7 April 2017
UK	95	Columbia, 10 October 2014
USA	40	Rwanda, 1 January 2012
China	110	Congo, 1 July 2015

Source: UNCTAD¹⁵⁷

The slowdown in the adoption of new IIAs – including BITs – by the world’s leading economies is also replicated on a global scale. As figure 12 below shows, the number of new IIAs signed each year has decreased considerably in the past two decades – from a high of more than 200 in 1996 to just 30 in 2016. However, this does not mean the overall number of IIAs is falling: by the end of 2016¹⁵⁸, there were more than 3,300 in place.

Figure 12: trends in IIAs signed, 1980 – 2016



Source: UNCTAD / IIA Navigator¹⁵⁹

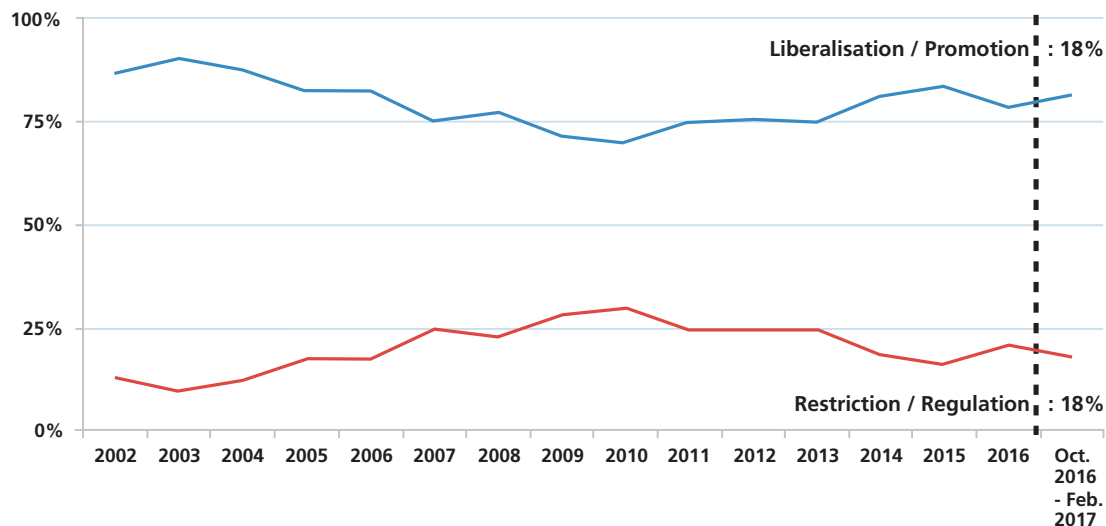
156 See UNCTAD’s investment policy hub.
 157 Ibid / International investment agreements navigator.
 158 UNCTAD. *Investment Policy Monitor*, March 2017, p6.
 159 Ibid, p6.

Conversely, it is also notable that many existing BITs are now scheduled for termination. One key driver of this BIT reduction programme is the European Commission, which recently made a formal request to EU member states to discontinue their intra-EU BITs, on the basis that such agreements are no longer needed¹⁶⁰. Similarly, a desire to rationalise investment protections – which are also covered by other agreements – may partially explain the recent decision by Indonesia to terminate¹⁶¹ up to 60 BITs¹⁶², including those with some of the country's most important trading partners¹⁶³. That said, as an Indonesian minister made clear at the time, his government's desire for "certainty" also played a part in this decision¹⁶⁴. The key takeaway from these two contrasting examples is that a state's withdrawal from a BIT is not, invariably, problematic for investor protection – so long as the withdrawal takes place for benevolent reasons, and so long as the legal protections continue to exist via other enforceable mechanisms.

National investment policies – recent global trends

Continuing with the cross-border investment theme, national investment policies (NIPs) also allow states to signal to the wider world that they wish to attract new foreign direct investment (FDI). And, for many years, the number of pro-liberalisation NIPs introduced by states around the world have significantly outnumbered those NIPs that seek to restrict or regulate FDI – even after the 2008 financial crash. In a typical year, pro-trade NIPs outnumber anti-trade NIPs by a ratio of four to one.

Figure 13: changes in national investment policies, 2002 – February 2017



Source: UNCTAD¹⁶⁵

In terms of recent activity, UNCTAD research has found that 49 NIP measures were taken by 33 countries between October 2016 and February 2017, the most recent reporting period available. Of these measures, UNCTAD classified 82 per cent as being liberalising, promoting and facilitative – broadly in line with the average of recent years. The largest number of new NIPs related to "entry and establishment" (21), followed by "the promotion and facilitation of investment" (14), "the treatment of established investors" (13) and "the general business climate" (9).

160 European Commission. *September infringements' package: key decisions*, 29 September 2016.

161 Bilaterals.org. *Indonesia ramps up termination of BITs – and kills survival clause in one such treaty – but faces new \$600 mil. claim from Indian mining investor*, 7 December 2015.

162 Financial Times. *Indonesia to terminate more than 60 bilateral investment treaties*, 26 March 2016.

163 World Bank. *World integrated trade solution, trade summary for Indonesia*.

164 The Jakarta Post. *Govt revises investment treaties*, 12 May 2015.

165 UNCTAD. *Investment policy monitor*. Issue 17, March 2017, p2.

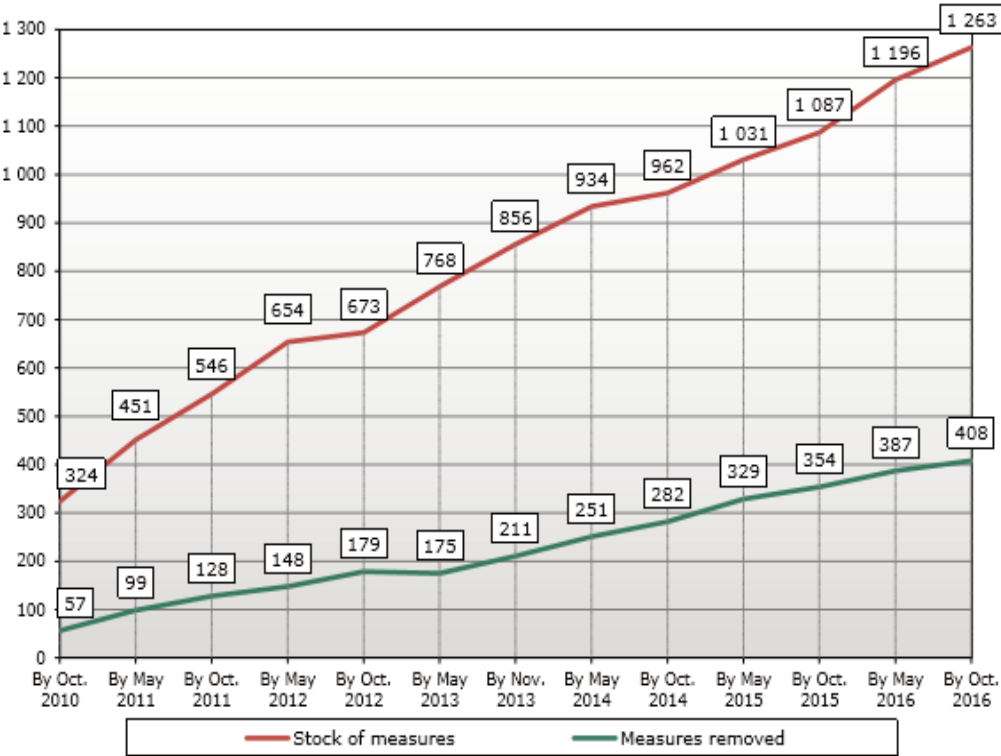
By way of illustration, one notable reform in relation to entry / establishment involved measures taken by India to further liberalise its regime for foreign venture capital investors. In relation to the treatment of established investors, an example included Iceland’s relaxation of capital controls on households and businesses. For promotion / facilitation of investment, one example involved Israel launching an innovation visa scheme for foreign entrepreneurs. Finally, in relation to general business climate, Hungary provided an illustrative example of how FDI could be encouraged: the country reduced its corporation tax rate to nine per cent.¹⁶⁶

Trade restrictive measures – where are we heading?

There are many types of trade restrictive measures (TRMs) that states can adopt. These include the imposition of new or higher new tariffs on imports, protective state aid regimes, import and export restrictions, localisation requirements, public procurement biases, subsidies and export promotions.

In recent years, research suggests that the G20 nations – which account for more than 80 per cent of world GDP¹⁶⁷ – have removed hundreds of TRMs¹⁶⁸. Unfortunately, this research also shows that the same G20 nations have continued to add new TRMs at an even higher rate. For example, in the four-year period between the start of 2010 and the end of 2014, for every trade facilitating measures (TFM) collectively introduced by G20 members in a typical month, one or two more new TRMs were also added. The upshot of this long-term mismatch between TFMs and TRMs is that the “stock” of TRMs among G20 nations has continued to increase in recent years¹⁶⁹.

Figure 14: How the “stock” of TRMs has increased among G20 nations, 2010 – 2016



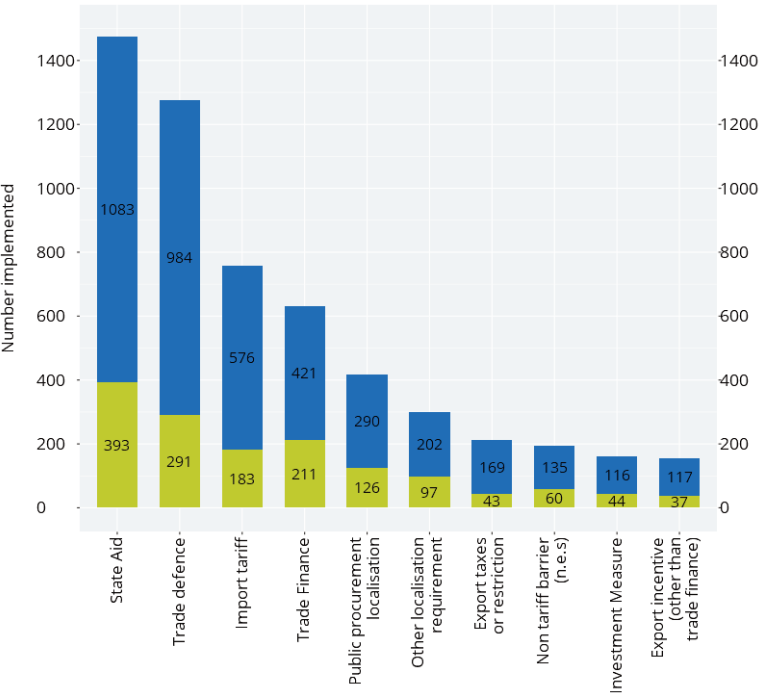
Source: OECD / WTO / UNCTAD¹⁷⁰

166 Ibid, p3 – 5.
 167 G20.org. *World population and gross world product 2015*.
 168 OECD / WTO / UNCTAD. *Reports on G20 trade and investment measures (mid-May to Mid-October 2016)*, 10 November 2016, p2.
 169 Ibid, p3 – 4.
 170 Ibid, p26. Figure 14 © copyright WTO and used with express permission.

More positively, recently-released data suggests this mismatch between TFMs and TRMs has eased – even reversed – in recent months. Full year data for 2016 now suggests that G20 members collectively introduced an average of five trade-hindering TRMs per month that year, compared with six trade-enabling TFMs. And, in the reporting period between mid-October 2016 and mid-May 2017, G20 members collectively introduced the same number of TFMs – six – per month as TRMs. By a very small margin it is now possible to claim that G20 states are no longer making cross-border trade more difficult, at least in relation to the overall number of new TRMs they are introducing¹⁷¹.

In terms of the nature of the TRMs being introduced, the Centre for Economic Policy Research (CEPR) has identified the most common groups of measures that have been introduced by G20 states since 2008. As figure 15 below shows, the “big three” measures identified by the CEPR are state aid, trade defence measures – that is, anti-dumping, anti-subsidy measures – and import tariffs. Since 2015, trade finance – essentially export subsidies – have also been used by G20 states with increasing frequency¹⁷².

Figure 15: the 10 most used TRMs introduced by G20 states since 2008



Source: CEPR¹⁷³

On a sectoral basis, CEPR research also notes that, since the global financial crisis began in 2008, a relatively small number of industries have been hit disproportionately hard, in terms of new protectionist measures being introduced by G20 nations. Of these, the stand-out sector is the basic metals sector: CEPR research suggests this industry has been subjected to 971 protectionist measures by G20 states since November that year. By way of contrast, CEPR research suggests the agricultural products sector has been hit by far fewer protectionist measures – 424 – during the same period. This lower figure is despite the agricultural products sector also being identified by the CEPR research as being one of the “top 10” industries affected by G20 protectionism in recent years¹⁷⁴. We should not, therefore, assume – simply because one industry sector is being hit hard by numerous TRMs – that this TRM activity is indicative of what is happening across the wider economy: trade protectionism tends to be highly sector-specific.

171 OCED/ WTO, UNCTAD. *Report on G20 Trade and investment measures (mid-October 2016 to mid-May 2017)*, p3.
 172 Centre for Economic Policy Research (CEPR). *Will awe Tump rules? The 21st global trade alert report*, p40.
 173 Ibid.
 174 Ibid, p42.

It should also be appreciated that, just because an industry sector is experiencing high TRM activity, this does not necessarily mean that all cross-border trade in that sector ceases. For example, despite the plethora of TRMs globally affecting the steel sector in 2015¹⁷⁵, the value of steel exported by the world's 10 leading producers only fell by between 12 and 27 per cent, when compared with 2014 – a large drop, but not one that was truly catastrophic. Moreover, the country that saw the largest single fall in the value of its steel exports in 2015 – Russia – has since witnessed a significant bounce-back during 2016, taking exports almost back to 2014 levels¹⁷⁶. Nor can the recent fall in the value of the cross-border steel trade be wholly explained by TRMs. Rather, recently introduced TRMs were typically enacted by governments in response to a global fall in steel demand¹⁷⁷. This fall in demand was, in turn, resulting in steel being dumped on the world market at below cost prices¹⁷⁸.

Table 23: annual changes to the value of steel exports among top 10 producers, 2014 - 2016

2015 rank	Country	US\$ billion values		
		2014	2015	2016
1	China	72.26	63.87	54.36
2	Japan	37.38	30.31	26.18
3	Germany	32.06	26.51	24.36
4	South Korea	29.01	23.32	21.30
5	Italy	21.32	16.67	16.46
6	United States	19.99	16.06	13.55
7	Russia	20.91	15.17	20.58
8	Belgium	16.36	13.80	13.48
9	France	16.34	13.45	11.70
10	Netherlands	13.84	11.70	10.93

Source: UNCTADstat Data Center¹⁷⁹

In reality, the relationship between TRMs and world trade is multifaceted. For some industries – such as steel – the underlying economic drivers of cross-border trade within a sector can prompt new TRMs to be introduced. In other situations, the imposition of new TRMs can, itself, prompt a fall in cross-border trade. For example, this latter outcome may occur if US President Trump carries out his longstanding threat to impose new tariffs on foreign car imports¹⁸⁰. This would have the effect of encouraging US domestic car production, while also discouraging the importation of automobiles into the country.

Technical barriers to trade – a necessary protection or a disguised hindrance to globalisation?

Not all limitations on cross-border trade, adopted by countries, claim to be introduced for overtly protectionist reasons. For example, according to data compiled by the WTO, by far the most common reason offered by member states for introducing a new “technical barriers to trade” (TBT) is the “protection of human health or safety”. This reason alone accounted for virtually half of all TBTs notified to the WTO between 1995 and 2016. As figure 16 below shows, in the years between 1995 and 2016, the three other most stated reasons for introducing a new TBT were the prevention of deceptive practices, protection of the environment and quality requirements¹⁸¹.

175 CEPR. Global trade plateaus. *The 19th global trade alert report*, p17 – 20.

176 UNCTADstat Data Center. *Merchandise trade matrix – product groups, exports in thousands of dollars, annual, 1995 – 2016*. 2014 – 2016 export data only, ranked by 2015 values. All values converted into US\$ billions.

177 CNBC. *Steel demand ‘evaporating at unprecedented speed’*, 28 October 2015.

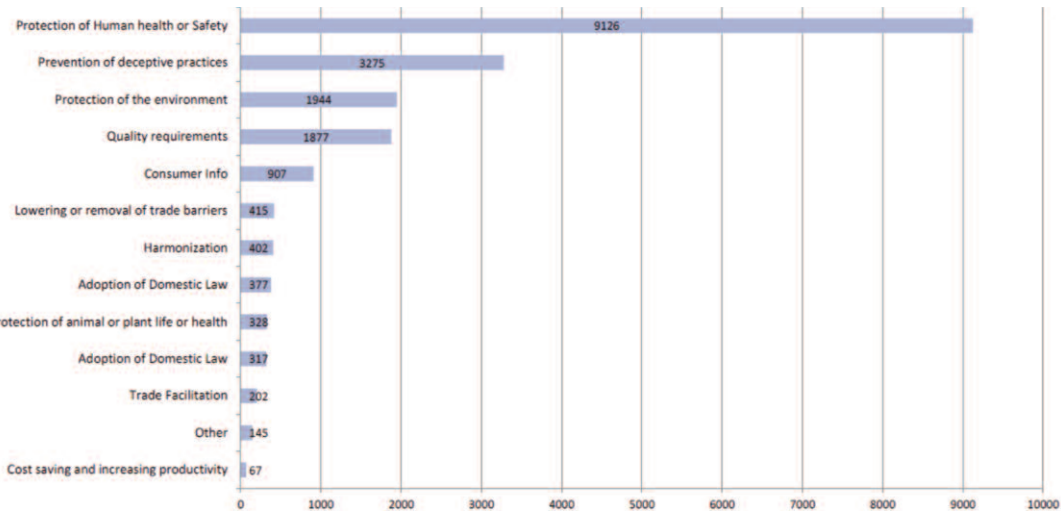
178 Financial Times. *EU pushes China to back steel sector*, 4 February 2016.

179 UNCTADstat Data Center. *Merchandise trade matrix – product groups, exports in thousands of dollars, annual, 1995 – 2016*. 2014 – 2016 export data only, ranked by 2015 values. All values in US\$ billions.

180 Reuters. *Trump threatens German carmakers with 35 per cent US import tariff*, 17 January 2017.

181 WTO. *Twenty-second annual review of the implementation and operation of the TBT agreement*, 15 March 2017, p11.

Figure 16: TBT notification by objective among WTO members, 1995 – 2016



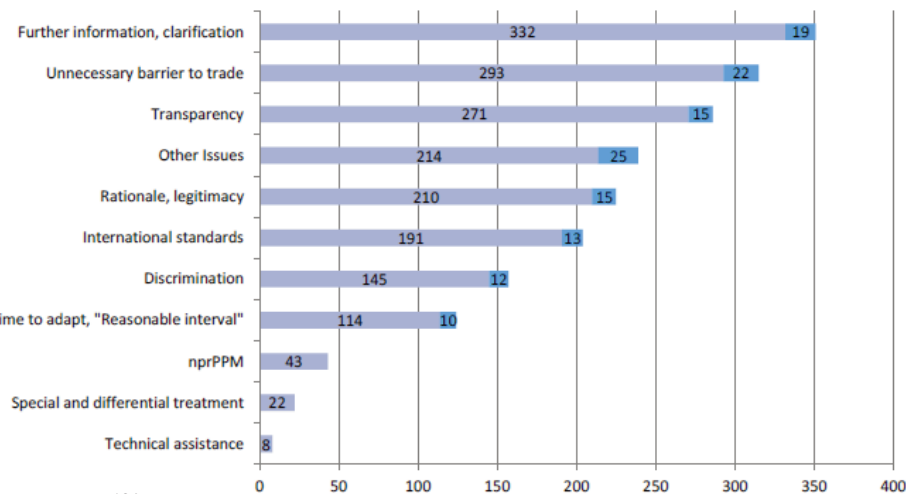
Source: WTO¹⁸²

In recent years, WTO research suggests a strong upsurge in annual TBT notifications. While the number of new TBTs never surpassed 800 per year in the decade between 1995 and 2005, the norm over the past five years has been around 1,500. Indeed, 2016 was a record year, with 1,653 new TBT notifications¹⁸³.

When a new technical barrier to trade (TBT) is proposed, the WTO’s TBT Agreement enables other member states to raise “specific trade concerns” (STC) about the planned measure. As figure 18 on p52 shows, the number of new STCs has increased in recent years, albeit with significant year-on-year fluctuations.

Since 1995, the most commonly raised types of STC is to request “further information or clarification” – suggesting states are keen to learn more about the TBT being proposed by a fellow WTO member, before coming to a definitive opinion about whether the planned rule will unduly harm cross-border commerce. However, a very common reaction to a proposed TBT is that the measure is not needed – for example, because it imposes an unnecessary barrier to trade, lacks rationale or legitimacy, breaches international standards or is discriminatory.

Figure 17: types of STC concerns raised by WTO members, 1995 – 2015 and 2016



Source: WTO¹⁸⁴

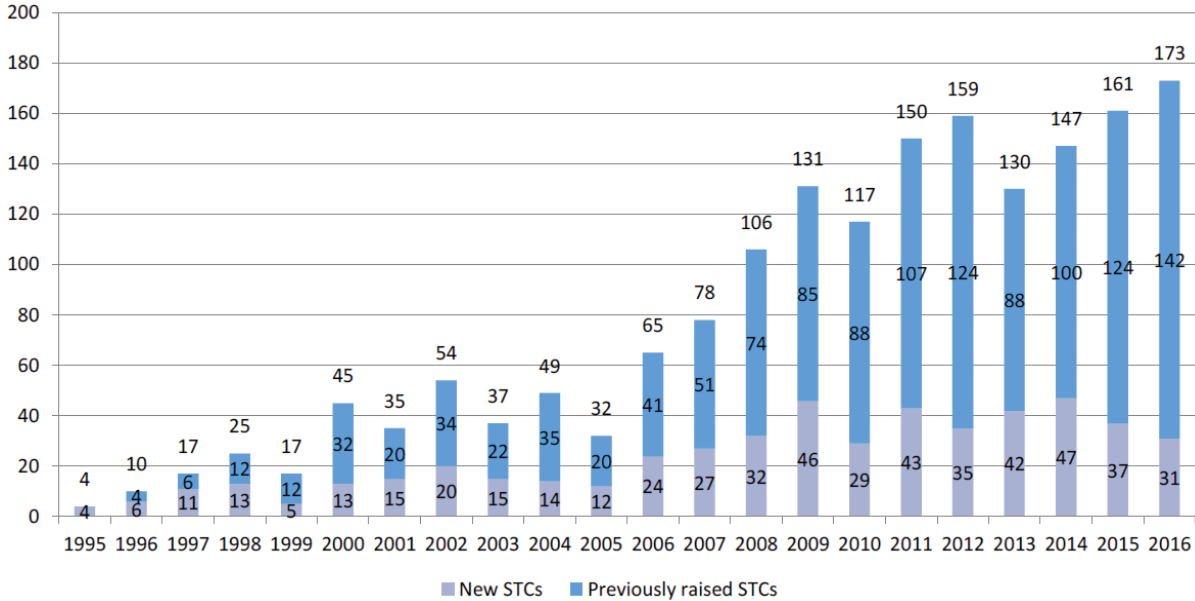
182 Ibid, p11. Figure 16 © copyright WTO and used with express permission.

183 Ibid, p5.

184 Ibid, p18. Figure 17 © copyright WTO and used with express permission.

In 2016, the TBT most frequently discussed by the WTO’s TBT committee was the EU’s “REACH” regulation, which deals with the regulation, evaluation and authorisation of chemicals. In total, this issue was raised by 34 members a total of 37 times¹⁸⁵. The fact that REACH came into force in 2006 illustrates how TBTs do not need to be new in order to be the subject of fresh complaints regarding its perceived adverse impact on cross-border trade. Indeed, as figure 18 below shows, in any one year, most STCs that are discussed by the WTO’s TBT committee have been debated by the committee previously.

Figure 18: trends in new and previously-raised STCs, 1995 - 2016



Source: WTO¹⁸⁶

In terms of entirely new STCs, the two TBTs that were of most concern to WTO members in 2016 were new Egyptian rules governing the importation of a diverse range of products and foodstuffs, and proposed new Indian rules governing safety standards of alcoholic beverages. Both of these STCs attracted concerns from 12 WTO member states, including Australia, Canada, China, Chile, the EU, South Africa and US¹⁸⁷.

What is perhaps most noticeable about all of the STCs discussed previously is that they focus on issues that are very different to those commonly complained about by politicians, or discussed in the mainstream media. Politicians and journalists often exert a great deal of energy debating the desirability – or otherwise – of tariffs on automotive parts or steel imports. By contrast, trade negotiators often spend their time attempting to resolve more mundane points of friction within the world trading system, such as chemicals regulation or the safety of alcoholic drinks.

185 Ibid, p30.

186 Ibid, p13. Figure 18 © WTO and used with express permission.

187 Ibid, p33 – 37.

Conclusions: free trade infrastructure – where is it heading?

Currently, the long term existence of NAFTA remains in doubt, while the nature of the post-Brexit UK-EU trading relationship is also uncertain – especially in light of the ambiguous outcome of the recent UK general election. If negotiations regarding the future of these mega RTAs fail, the world trading system potentially faces substantial upheaval. The best that can be said about this situation is that the WTO most favoured nation arrangements provide a useful “backstop” of trading terms, under which the states in dispute can continue to trade.

More positively, the possibility of a slimmed down TPP, together with CETA, RCEP and FTAAP – plus whatever new RTAs that US President Donald Trump can secure – suggest that the era of the mega RTA is not yet over. Nevertheless, it is important to stress that none of these planned RTAs have, so far, come into effect. All of these planned RTAs offer the prospect of a more liberal cross-border trading regime – but there is no guarantee that such an outcome will occur.

In contrast with the uncertain future of many large scale RTAs, other elements of the global infrastructure that seeks to promote cross-border trade appears to be in reasonable health. Notwithstanding some specific incidences of rationalisation, the total stock of IIAs continues to increase. Similarly, the number of pro-FDI national investment policies continues to outnumber their equivalent restrictive measures by a ratio of around four to one. At present, there is no clear indication of a global trend towards weakening of these types of FDI protections.

The number of trade restrictive measures (TRMs) being introduced by G20 states continues to grow as fast as they are being removed, with state aid, trade defence and import tariffs often being the protectionist weapons of choice. If there is one silver lining in this potential cloud over the world economy it is that, in recent years, TRMs have tended to be introduced in economic sectors that comprise a fairly small component of cross-border trade. Indeed, in sectors such as the steel industry, the TRMs being introduced are often a response to, rather than the cause of, underlying changes to world demand. That said, there are reasons to be concerned about future TRMs that overtly seek to alter world trading patterns via protectionist measures – such as US plans to impose high tariffs on car imports.

At first sight, the increase in the number of technical barriers to trade (TBT) being introduced each year appears to suggest that a growing number of protectionist measures are now being introduced by WTO members. That said, given that most TBTs claim to be introduced for benevolent reasons, and that the most common responses to a planned TBT is for other states to request more information about the measure, we should be wary of assuming that TBTs are invariably intended to be protectionist.

World trade regulation: lessons for law firms

- The threatened dissolution of NATFA, together with the possibility of an acrimonious divorce between the UK and EU, poses a significant – and, as yet – unquantifiable risk to the cross-border clients of law firms operating in those markets. While the WTO's MFN regime provides an important "backstop" of free trade rules, any replacement trading regime is unlikely to be as benign as that which currently exists. Law firms present in either world region should therefore consider monitoring the status of such negotiations closely.
- That said, what ultimately matters most to clients are the ratified terms of an RTA, rather than the – often inflammatory – rhetoric that typically precedes such agreements. Law firms therefore need to be able to distinguish between this negotiating rhetoric and the likely realities when advising clients during the negotiating process.
- Countries around the world are continuing to enter into new RTAs at the rate of roughly 10 per year: indeed, some of the RTAs now under discussion have the potential to encompass a greater percentage of world trade than both the EU or NAFTA. Advising on planned RTAs, and their implications for clients, may therefore offer a niche source of instructions for law firms. Notably, many of the most significant RTAs now under discussion relate to the Asia Pacific region. Global law firms should therefore not take an unduly Western centric approach in identifying new possibilities of advising on RTA-related matters.
- Nevertheless, law firms should appreciate that simply having an RTA in place will not automatically result in the RTA's signatory states becoming close trading partners. Law firms should not, therefore, necessarily expect a bonanza of cross-border work in the event that countries enter into a new RTA. The experience of both the EU and US tells us that RTAs are often signed because they are politically possible, rather than because they lead to significant increases in cross-border trade between nations.
- Advising on the adoption, and enactment, of international investment agreements (IIAs) may also provide law firms a niche source of work – as may advising on the repudiation of IIAs now deemed to be redundant.
- Many more states around the world continue to adopt national investment policies (NIPs) that aim to boost FDI rather than restrict it. Law firms should consider keeping abreast of pro-FDI NIPs being introduced, with a view to helping their clients to take advantage of these investor-friendly regulatory reforms.
- In recent years, the world's major economies have continued to introduce more TRMs than they have removed – and have been particularly enthusiastic about using state aid, trade defence measures and import tariffs to discourage what they regard as unwelcome cross-border trading behaviours. However, law firms should appreciate that TRMs tend to be sector-specific, and only have a modest impact on world trade. A highly specific approach to identifying likely trade risks is therefore probably the most useful approach for law firms to adopt, when marketing their expertise in this area.

Chapter four

UK cross-border trade in an era of Brexit: Danger ahead?

Introduction

In June 2016, the UK public defied the wishes of the country's national government¹⁸⁸, and narrowly voted in favour of Brexit¹⁸⁹. With the UK's departure from the EU now formally triggered, the two sides now have less than two years¹⁹⁰ to negotiate the UK's EU exit terms and agree their future trading relationship¹⁹¹. This chapter briefly outlines some of the risks to the UK's cross-border commerce posed by Brexit, and also some of the opportunities it offers.

The chapter assumes that the UK's departure from the EU is highly unlikely to be reversed – notwithstanding the ongoing uncertainties about the exact form that Brexit may take. These uncertainties have got more, not less, pronounced since the Brexit vote occurred, largely due to the ambiguous outcome of the country's recent general election¹⁹².

Setting the scene: the UK's evolving dependency on cross-border trade

In common with many other countries, the percentage of UK GDP accounted for by cross-border trade has increased markedly in recent decades. For example, in 1973, the year in which the UK joined the Common Market, the precursor to the modern EU, the UK's trade-to-GDP ratio was just over 46 per cent of GDP. By 2011, this had risen to 62.71 per cent. However, since this 2011 high-water mark, the percentage of UK GDP accounted for by cross-border trade has drifted downwards. In 2016, the UK's trade-to-GDP ratio was 58.08 per cent – the second lowest ratio of the 2010s¹⁹³. In this context, Brexit should not be regarded as being a turning point in the country's reliance on cross-border trade. Rather, the downward drift began several years before the Brexit vote took place.

In a wider international context, the UK's 2016 trade-to-GDP ratio is practically identical to the latest 2015 OECD average of 56.43 per cent, marginally lower than the latest 2015 global average of 58.04 per cent¹⁹⁴, and considerably lower than the latest 2016 EU average of 82.68 per cent. More granular data also confirms that the UK has a distinctly average participation in world trade, in terms of exports and imports. In 2015, 27.63 per cent of the UK's GDP was accounted for by the export of goods and services – globally the world average was fractionally higher, at 29.49 per cent. And, in terms of the imports of goods and services as a percentage of GDP, the UK figure was 29.22 per cent in 2015, compared with a global average of 28.71 per cent¹⁹⁵. It is therefore possible to state that the UK is not unusually dependent on cross-border trade for its prosperity, when compared with other similar countries around the world. Indeed, compared with the EU specifically, the UK's trade-to-GDP ratio is noticeably smaller. Of course, what sets the UK apart from many of the world's leading economies is that it, unlike them, it has recently opted to terminate the RTA which governs its trading relationship with many of its key partner nations: the 27 other members of the EU (EU27).

188 Gov.uk. *Why the government believes that voting to remain in the EU is the best decision for the UK*, 6 April 2016

189 UK Electoral Commission. *EU referendum results*.

190 EU treaty, article 50.

191 *Ibid*, article 218.

192 BBC News. *Election 2017 – results*.

193 World Bank data. *Trade (% of GDP) – UK*

194 *Ibid* - World.

195 For more information, see <http://data.worldbank.org> – various tables.

Table 24: UK dependency on cross-border trade as a percentage of GDP, compared with other national groupings, selected years

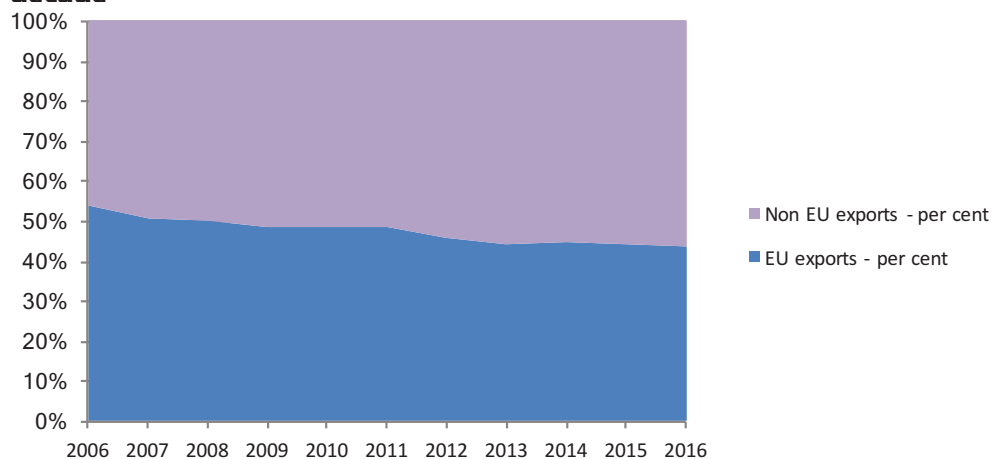
Country / country grouping	Trade as a % of GDP (selected years)					
	1973	1983	1993	2003	2013	2015
EU	42.34	52.97	50.32	64.68	82.16	83.21
OCED	28.80	36.30	35.66	44.54	57.25	56.71
World	30.16	37.57	40.75	51.24	60.31	58.32
UK	46.16	49.41	48.38	49.64	61.77	56.46

Source: The World Bank¹⁹⁶

The extent of the UK's reliance on trade with the EU

To illustrate the ongoing importance of the UK's trade with the EU27, it is worth noting that, in 2016, 43.93 per cent of the UK's goods and services were exported to these states. In addition, 53.37 per cent of all UK imports of goods and services came from these same EU27 countries¹⁹⁷. As figures 19 and 20 illustrates, the relative importance of the UK's trade with the EU27 – compared with the rest of the world – has been broadly stable for most of the past decade.

Within that overall appearance of stability, the precise value of trade between the UK and EU27 fluctuates on an annual basis, in relation to imports and exports, and also in relation to goods and services. But, within these fluctuations, one shift in trading behaviour stands out: notably, the value of UK goods exports to non-EU states was £65.10 billion greater in 2016 than it was in 2006 – £157.23 billion compared with £92.13 billion. By contrast, the value of UK goods exported to the EU27 was actually £7.65 billion lower in 2016 than was achieved in 2006 – £144.18 billion, compared with £151.83 billion. In very broad terms, therefore, the UK's shift towards non-EU good exports has nudged the country's overall trade away from the EU in recent years, and towards the wider world¹⁹⁸.

Figure 19: how UK exports have shifted – slightly – away from the EU during the past decade

Source: ONS¹⁹⁹

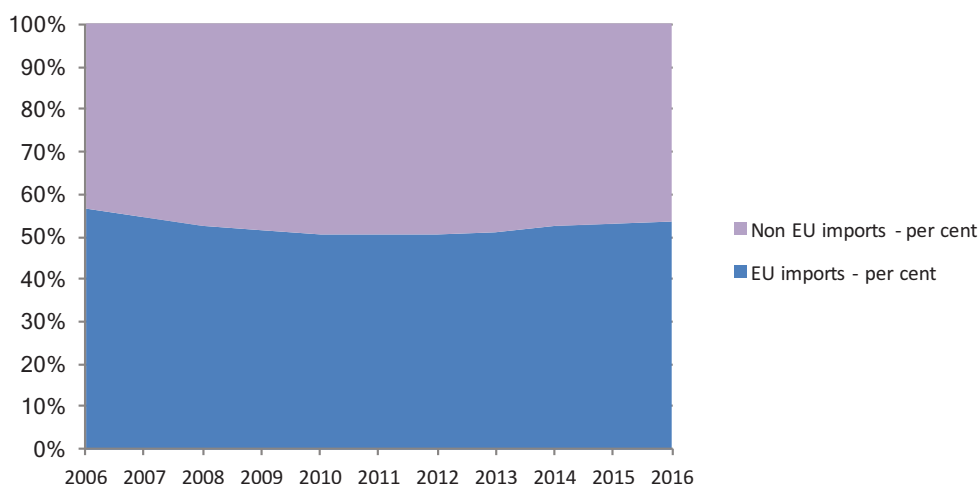
196 The World Bank. Trade (% of GDP).

197 ©UK ONS. *Balance of payment annual geographical tables – various*, February 2017 (2006 – 2015 data).

©UK ONS. *Balance of payments, publications tables UK trade – 2. TiG by area table (2016 data)*. These resources are licensed under the UK government's Open Government Licence 3.0.

198 Ibid.

199 Ibid.

Figure 20: the changing percentages of EU versus non EU imports, 2006 – 2016


Source: ONS²⁰⁰

Turning to the UK's trading relationships with specific countries: the split in the country's trade dependency between the EU27 and the wider world is also evident from table 25 below. In 2016, six EU states were among the 10 largest importers into the UK in value terms. Similarly, EU states comprised seven out of the 10 leading export destinations for UK goods and services, also on a value basis. It is therefore not surprising that, as the country prepares for Brexit, the UK government is actively seeking new trade deals, both with the EU27 and also with other states around the world²⁰¹.

Table 25: the UK's leading export and import markets in 2016. Also shown are annual average growth rate in UK trade between 2009 and 2016

IMPORTS				EXPORTS			
Rank	Country	Value, £bn	Annual average growth rate %	Ranking	Country	Value, £bn	Annual average growth rate %
1	Germany	63.93	6.1	1	United States	46.01	4.0
2	United States	40.18	3.3	2	Germany	32.27	3.3
3	China	35.78	5.8	3	France	19.41	0.9
4	Netherlands	34.43	5.8	4	Netherlands	18.86	0.6
5	France	24.69	2.4	5	Ireland	16.92	1.1
6	Belgium	23.38	5.8	6	Switzerland	14.98	14.5
7	Switzerland	21.88	7.3	7	China	13.52	12.9
8	Italy	17.27	4.3	8	Belgium	11.61	1.2
9	Spain	16.01	7.1	9	Italy	9.67	1.9
10	Norway	13.45	-1.4	10	Spain	9.60	0.7
Total		£291.00 bn		Total		£192.85 bn	

Source: HM Revenue and Customs / UK Trade info²⁰²

200 Ibid.

201 UK government. *The United Kingdom's exit from and new partnership with the European Union*, chapters eight and nine.

202 © www.uktradeinfo.com, *Summary of import and export trade with EU and non-EU countries - annual 2009 – 2016*. This data is licensed under the UK government's Open Government Licence 3.0.

Moreover, the need to secure new trade deals with non-EU states is also apparent from the UK's export growth rates, also shown on table 25. These growth rates, which are averaged over a seven year period between 2009 and 2016, further illustrate the point made previously: that a substantial percentage of the UK's export growth is being driven by the country's increasing trade with non EU states, such as China, the US and Switzerland.

That said, the fact that the UK is actively seeking post-Brexit RTAs with countries such as Australia, New Zealand and India²⁰³ – none of whom are among the UK's top trading partners – also reinforces a point made previously in relation to both the EU and US: often, RTAs are entered into because they are politically achievable and not – necessarily – because they are economically essential.

The economic and strategic challenges of the Brexit negotiations

As the UK moves towards a post-Brexit trading relationship with the EU27, it will have to negotiate its replacement RTA with the EU as a single "block". This will be required because, under article 218 of the EU treaty, the EU will negotiate any post-EU RTA with the UK collectively. As part of this process, the EU states will use their "strong" qualified majority voting (QMV) procedure to internally agree their negotiating position.

In order to secure a post-Brexit EU/UK RTA, the agreement will, depending how it is formulated, almost certainly need to win the support of 72 per cent of the EU27 states – i.e. at least 20 of them – representing at least 65 per cent of the EU's population. A simple voting majority in the European Parliament will also be required²⁰⁴. The QMV voting threshold in particular has the potential to make the UK's negotiating position difficult: not only will the UK government need to win over the large EU states, with whom the country trades extensively, it will also need to keep onside many smaller EU states over which the UK has relatively little trading leverage²⁰⁵. This point is illustrated in the UK's 2016 trading data, shown below. Table 26 identifies those EU27 states where the total value of UK trade was less than £1 billion in 2016 – 11 states in relation to UK exports, and 10 states in relation to UK imports²⁰⁶. Of course, the success – or otherwise – of the UK's post-Brexit trading position with the EU27 will not be determined by trade values alone. Nevertheless, specifically in relation to trade leverage, table 26 clearly illustrates the weakness of the UK's negotiating position in relation to a significant minority of the EU27 states.

Table 26: the "sub £1 billion EU trade club"

UK trade rank	EU export partner	Value £M	UK trade rank	EU import partner	Value £M
17	Greece	909	18	Greece	793
18	Slovakia	529	19	Lithuania	778
19	Bulgaria	495	20	Latvia	672
20	Malta	391	21	Luxembourg	429
21	Lithuania	327	22	Bulgaria	412
22	Cyprus	320	23	Slovenia	393
23	Slovenia	244	24	Estonia	238
24	Latvia	237	25	Malta	198
25	Estonia	232	26	Cyprus	175
26	Luxembourg	210	27	Croatia	100
27	Croatia	164			

Source: HM Revenue and Customs / UK Trade info²⁰⁷

203 UK government. *The United Kingdom's exit from and new partnership with the European Union*, p55.

204 European Commission. *Article 50 of the Treaty on European Union – Q&A*, 29 March 2017.

205 To test various QMV outcome scenarios, visit the European Council's voting calculator.

206 © www.uktradeinfo.com, *Summary of import and export trade with EU and non-EU countries - annual 2009 – 2016*. This data is licensed under the UK government's Open Government Licence 3.0.

207 Ibid.

In terms of its forthcoming departure from the EU, the UK is also in the difficult position in relation to securing post-Brexit RTAs with other states around the world: because the UK currently has no legal competency over its trade policy, the country is prohibited from entering into its own RTAs until it leaves the EU. Moreover, while some countries – notably Australia²⁰⁸ – have indicated a willingness to enter into post-EU RTAs with the UK, these states have also made it clear that it will be necessary for the approximate scope of the UK-EU RTA to be clarified before any substantive, post-Brexit, RTA talks can take place. Not surprisingly, the complexities surrounding the negotiations of the UK's post-EU trade relationships have been described as akin to “a multidimensional game of chess”²⁰⁹.

Furthermore, when the UK leaves the EU in 2019, the country will no longer be a party to the numerous RTAs that the EU has previously entered into. As a result, the UK will be forced to negotiate its own replacement trade deals with the EU's current RTA partners. The question of whether the UK should seek to “grandfather” existing EU RTAs into its own UK-specific trade deals is a matter of some debate. On the one hand, this appears to be one option that the UK government is considering²¹⁰. Indeed, it has been suggested that existing EU RTAs could be improved on and customised²¹¹. On the other hand, it is also the UK government's stated position to “strike deals better suited to the UK and to make quicker progress with new partners, as well as those where EU negotiations have stalled”²¹².

Somewhat more positively, as previously discussed on p42, it is worth reiterating that the EU's track record of negotiating RTAs with its main trading partners is poor. In this context, assuming the country is successful in negotiating a new RTA with the EU, the UK would only need to secure one new RTA with one key trading partner – the US – in order to facilitate preferential access to a market that exceeds the EU's entire 41-strong portfolio of RTAs. It has been estimated that just 13 per cent of UK exports go to the third party states with which the EU currently has an RTA in place²¹³. By contrast, the US singlehandedly accounts for 14.88 per cent of UK exports and around 9.99 per cent of imports into the UK²¹⁴. It is therefore not surprising that the UK government has systematically lobbied various arms of the US government, including US President Trump²¹⁵ and the US trade representative Robert Lighthizer²¹⁶, for a standalone RTA since Brexit was announced. For this potential trading partner, at least, an RTA makes economic as well as political sense for the UK.

Industry sectors particular risk from Brexit

Table 27, below, summarises the UK's leading exports of physical goods on a sector-by-sector basis, dividing them into EU and non-EU exports. Table 27 therefore provides an approximate indicator of the level of harm to which the UK economy might be exposed, should the UK fail to negotiate a post-Brexit RTA with the EU27. This table clearly indicates that manufactured goods are the UK's stand-out exports to other EU states, worth far more than all other broad sectors combined. This sector would therefore benefit the most from ongoing “frictionless” free trade with the EU27 post Brexit. That said, it is also worth noting that just over half of the UK's manufactured products exports already go to non-EU countries. As a result – largely due to the EU's inability to sign RTAs with its key trading partners – many UK manufacturers will already be trading on WTO-only terms in relation to a significant percentage of their exports. To a certain extent, the UK manufacturing sector will therefore be shielded from the worst impact of Brexit, should no EU/UK RTA be agreed.

208 The Guardian. *No free trade deal until Brexit settled, says Australian minister*, 7 September 2016.

209 Civil Service World. *Oliver Letwin: Brexit talks a “supreme task of complicated analysis” for the civil service*, 5 October 2016.

210 UK Parliament International Trade Committee. *UK trade options beyond 2019*, 7 March 2017, p51 – 55.

211 UK House of Commons Hansard. *Exiting the UK: new partnerships*, 2 February 2017.

212 UK government. *The United Kingdom's exit from and new partnership with the European Union*, p55.

213 The Telegraph. *China lays ground for free trade talks with Britain*, 15 October 2016.

214 World Bank World Integrated Trade Solution. *Trade summary for United Kingdom 2015*.

215 Gov.uk. *PM press conference with US President Trump*, 27 January 2017.

216 Office of the United States Trade Representative. *Joint release by the UK International Trade Secretary, Dr Liam Fox and US Trade Representative Robert Lighthizer*, 19 June 2017.

Table 27: the UK's key export sector for physical goods in 2016 – EU and non-EU

UK's key exports – ranked by value	Total exports £ billion	EU exports £ billion	% of total exports	Non EU exports £ billion	% of total exports
Manufactured products	270.53	128.94	47.66	141.59	52.34
Mining & quarrying	14.53	10.03	69.03	4.50	30.97
Arts, entertainment & recreation	5.47	0.15	2.69	5.32	97.31
Water supply, sewerage & waste management	4.20	1.11	26.52	3.09	73.48
Information & communication services	3.48	1.71	49.17	1.77	50.83
Products of agriculture, forestry & fishing	3.02	2.11	69.73	0.92	30.27
Electricity, gas, steam & air conditioning	0.10	0.10	100.00	0.00	0.00
Professional, scientific & technical services	0.08	0.03	34.62	0.05	65.38
Other services	0.00	0.00	0.00	0.00	0.00
Total exports	301.41	144.18	47.83	157.23	52.17

Source: ONS²¹⁷

Note: Figures rounded

The relatively low value attributable to certain sectors – notably professional, scientific and technical services (PSTS) – in table 27 above can be explained by the fact this industry classification's title is slightly misleading: it refers to physical goods, rather than intangible products. Goods within the PSTS classification include architectural plans and drawings, and also exposed photographic film.

At a more industry-specific level, UK trade data indicates that a handful of sectors are at particular risk, should the UK and EU fail to agree an RTA by the time Brexit occurs. Most notably, motor vehicle exports single-handedly comprised around one tenth of UK exports to the EU, worth £14.53 billion in 2016. Indeed, the total UK export market to the EU for the vehicles sector, including parts and accessories, was even larger – worth £18.26 billion that year. Other key UK export sectors to the EU include pharmaceutical products and preparations (£12.08 billion exported in 2016), chemicals and chemical products (£14.71 billion) and air / spacecraft and related machinery (£8.96 billion)²¹⁸.

The risks associated with a no-RTA Brexit are particularly acute in relation to the UK automotive sector, for several reasons. Firstly, the overall value of UK/EU trade in this sector is very high – it is therefore a significant source of the country's foreign earning, not to mention a substantial source of UK employment. Secondly, EU tariffs on automotive imports are also relatively high. In the absence of a trade-enhancing RTA, average tariffs on imports into the EU are currently 2.56 per cent²¹⁹. But, in relation to the automotive sector specifically, EU import tariffs can reach 10 per cent. Thirdly, and even more problematically, due to integrated supply EU chains, it is not unusual for automotive components to cross between the UK and mainland Europe several times before a vehicle is completed and sold – suggesting that tariffs might be imposed on multiple occasions during the automotive production process. The UK's Society for Motor Manufacturers and Traders (SMMT) has estimated that a WTO-only UK/EU trading arrangement would burden the county's automotive sector with an additional £1.8 billion of tariff-related EU export costs. Arguably,

217 © UK ONS. *Publication Tables, UK Trade in goods, CPA (08), Oct to Dec 2016*, 15 March 2017. 2016 data consolidated. This data is licensed under the UK government's Open Government Licence 3.0

218 Ibid.

219 World Bank data. *Tariff rate, most favored nation, weighted mean, all products (%)*, EU.

in comparison with the sector as a whole – which is worth £71.6 billion²²⁰ – this figure would not be a huge additional financial burden for the UK automotive industry to bear. Nevertheless, it is a cost that the SMMT understandably wishes to avoid – especially as automotive manufacturers could avoid this cost entirely by switching production away from the UK and into one of the EU27 states.

The possibility of high EU import tariffs may pose significant challenges to other, smaller, UK industries. For example, the UK dairy sector – which is highly integrated with its equivalent in the Republic of Ireland²²¹ – could potentially be hit with EU tariffs of 39.4 per cent²²² if no post-Brexit RTA is secured. Worst, UK tobacco manufacturers face the prospect of being hit with an average tariff rate of 43.7 per cent²²³ when exporting to the EU27. Compared with motor manufacturing, the export value of both of these sectors is modest: in 2016, UK dairy exports to the EU were worth just £0.95 billion, while tobacco exports to the EU were valued at just £0.13 billion²²⁴. Nevertheless, for both of these sectors, a favourable RTA may well be essential, in order to ensure that their EU27 exports are not rendered economically unviable by the EU's punitive external tariff wall.

Other potential hindrances to cross-border EU trade

The post-Brexit trading relationship between the UK and the EU27 will not simply focus on tariffs. Rather, a crucial issue affecting many sectors will be trade-hindering non-tariff measures (NTMs). According to the UNCTAD “Trains” database of non-tariff measures, the EU currently has a total of 643 NTMs in place. Table 28, below, indicates the scale and scope of the various forms of EU-imposed NTMs, as recorded in Trains. From a UK perspective, the most significant EU-imposed NTMs are its technical barriers to trade (TBT) and sanitary / phytosanitary measures.

Table 28: The EU's trade-restricting non-tariff measures

Type of NTM	Areas of focus	Number of measures in place
Technical barriers to trade	Numerous rules, including product-specific regulations, certification schemes, traceability and labelling requirement, and restrictions on the use of chemicals in products.	324
Contingent trade-protective measures	Numerous anti-dumping measures, with a heavy focus on Chinese imports.	100
Sanitary and phytosanitary measures	Broad range of issues, including plant health controls, rules regarding the preservation of tinned fish, food labelling rules, GM seeds, pesticides and veterinary medicine residues.	100
Quality control measures	Heavy focus on Belarus textiles. Also includes a ban on cat and dog furs and hemp imports.	60
Pre-shipment inspection	Heavy focus on clothing trade with Belarus and Uzbekistan.	29
Export-related measures	Heavy focus on clothing trade with Belarus.	28
Other measures relating to imports	Focuses on agricultural products and radioactive materials.	2
Price control measures	N/A	-

Source: UNCTAD “Trains” database²²⁵

220 SMMT. *Automotive priorities for the UK's withdrawal from the European Union – SMMT position paper*, 7 December 2017.

221 Agriculture & Horticulture Development Board. *Horizon bitesize: dairy*. 12 December 2016.

222 Civitas. *Potential post-Brexit costs for EU-UK trade*, p5 – 6.

223 Ibid.

224 UK ONS. *Publication Tables, UK Trade, CPA (08), Oct to Dec 2016*, 15 March 2017. 2016 data consolidated.

225 <http://i-tip.unctad.org>

Of course, UK companies that currently trade with the EU27 will start Brexit from a position of compliance with EU legal rules. The key challenge, going forward, will be new restrictions that seek to hinder future cross-border UK / EU27 trade. Already, there are signs that politicians from both the EU and UK are manoeuvring to impose such restrictions. Proposals under discussion range from planned limitations on the right for organisations operating in London to process certain euro-denominated transactions²²⁶ to the banning of live animal exports from the UK²²⁷.

Constraints on post-Brexit protectionism?

As the UK leaves the EU, both organisations will be constrained from raising new trade barriers – at least to some extent – by WTO rules. For example, even in the absence of an EU / UK RTA, both the EU27 and the UK would be obliged to trade on most-favoured nation (MFN) terms. That is, neither party would be allowed to offer each other trade terms that were less favourable than they already offer to other WTO members²²⁸. Unfortunately, in some sectors, the EU's definition of "most favoured nation" should not be regarded as being synonymous with "favourable". For example, the average MFN duty imposed on the import of sugars and confectionary into the EU is 20.2 per cent.²²⁹

In addition to this MFN regime, a variety of WTO-related agreements hinder WTO members' ability to discriminate against their peers. For example, the EU – and, by extension, the UK – are parties to the WTO-backed agreement on Agreement on Government Procurement (GPA), which requires that signatory states adhere to "fair and transparent conditions of competition" in relation to government procurement²³⁰. Assuming the UK joins the GPA independently on broadly similar terms to the EU, this may help mitigate against the risk of the UK being subject to a hostile new "buy European" procurement regime – an idea recently floated by France's President Macron²³¹.

Nevertheless, the UK will almost certainly move towards a regime where enforcement of free trade with the EU27 is less robust, post-Brexit. Historically, the UK – like all EU members – has benefited from the supervisory jurisdiction of the European Court of Justice (ECJ). This court has the power to effectively compel EU states to cease their bans on the importation of goods from elsewhere in the Union where those bans are in breach of EU law – on pain of financial penalties²³². In the past, this power has been exercised on numerous occasions by the ECJ, including the time the court effectively ended the French ban on British beef imports²³³. However, it is currently the policy of the British prime minister, Theresa May, to leave the jurisdiction of the ECJ following Brexit²³⁴.

Unfortunately for UK exporters, the WTO's rarely-used²³⁵ dispute mechanism will not offer a comparable alternative to the ECJ's enforcement powers. In WTO disputes, if one of their trading partners breaks WTO rules, the ultimate sanction open to states is not that the trade-hindering measure is rescinded. Rather, states are permitted to take retaliatory action²³⁶. Of course, this does not solve the root cause of the protectionist act being complained about. Moreover, the WTO's dispute mechanisms are state-centered, not individual claimant centered. Unlike the proceedings before the ECJ, non-state actors have few opportunities to participate in WTO disputes²³⁷.

226 Business Insider UK. *83,000 City jobs could disappear if the EU takes a hardline post-Brexit*, 14 November 2016.

227 Politics home. *Theresa Villiers MP: Leaving EU allows UK to reaffirm and strengthen standards for animal welfare*, 24 January 2017.

228 WTO. *Principles of the trading system*.

229 WTO. *World tariff profiles 2016, EU28, part A2, p81*.

230 See www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm

231 Policits.eu. *Commission vice-president: EU 'cannot afford' Macron's Buy European Act*, 8 May 2017.

232 Lisbon Treaty, article 260.

233 Case C-1/00 *Commission of the European Communities v French Republic*

234 The Conservative Party. *Prime minister. Britain after Brexit. A vision of global Britain*.

235 Prospect. *How will we enforce post-Brexit trade deals?*, 28 October 2016.

236 WTO. *A unique contribution*.

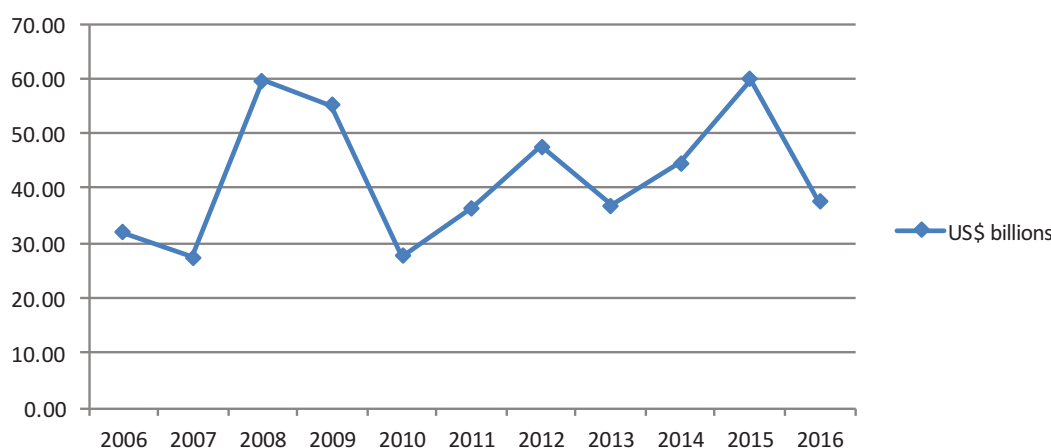
237 WTO. *1.4 Participants in the dispute settlement system*.

Post-Brexit investment in UK companies – no clear sign of a slowdown

Far removed from the often esoteric debate about world trade regulation, the international business community appears to be taking Brexit in its stride. In 2016, the year in which the Brexit vote took place, the UK was the second largest recipient of inbound FDI investment, second only to the US²³⁸.

Less positively, it is also notable that – according to recently-released UNCTAD data – the value of announced greenfield FDI into the UK fell by 37 per cent during 2016, when compared with 2015. Between these years, the value of greenfield FDI fell by £22.29 billion, from £59.87 billion (2015) to £37.58 billion (2016)²³⁹. More positively, as figure 21 below illustrates, FDI levels in 2016 were broadly in line with the “band of normality” over the past decade. To a significant degree, the 2016 drop in UK FDI investment was more a reflection of a sharp spike in energy sector inward investment that occurred during 2015²⁴⁰ – which was not repeated in 2016 – than anything more fundamental.

Figure 21: UK greenfield FDI trends, 2006 – 2016



Source: UNCTAD²⁴¹

In terms of the number of UK Greenfield FDI projects announced in 2016, the year's total – 1,175 – was lower than in 2015, when the figure was 1,332. However, the 2016 UK greenfield FDI total was also higher than three out of the past five years²⁴². Yet again, these figures illustrate that we should be wary of extrapolating market-wide behaviours from one year's FDI figures²⁴³.

In terms of cross-border M&A involving a UK target, post-Brexit activity was substantial. During the second half of 2016 – the Brexit vote took place on 23 June – the value of acquisitions of UK companies by foreign entities reached a new high, when compared with the same half-year periods over the previous three years. In reality, the exceptionally high value of the deals undertaken in H2 2016 can mostly be accounted for by a small number of mega-acquisitions taking place during that period, including the £83.3 billion acquisition of the UK-based SABMiller by Anheuser-Busch InBev of Belgium. However, as table 29 below shows, the total number of deals during H2 2016 was also considerably higher during the equivalent periods over the previous few years. Clearly, some of these transactions may have been encouraged by the significant devaluation of sterling in the second half of 2016. Nevertheless, the figures below also show that the UK remains a country in which international businesses wants to invest – notwithstanding Brexit.

238 UNCTAD. *Global investment monitor no.25*, 1 February 2017, p3.

239 UNCTAD. *World investment report 2017: annex table 19*, 7 June 2017.

240 Financial Times. Dealwatch: Greenfield FDI into the UK declines in 2016, 3 February 2017.

241 UNCTAD. *World investment report 2017: annex table 19*, 7 June 2017.

242 UNCTAD. *World investment report 2017: annex table 22*, 7 June 2017.

243 Ibid, *annex table 19*, 7 June 2017.

Table 29: M&A transactions into the UK by foreign companies – multi-year H2 comparisons

Year (second half only)	Volume	Value (£ billion)
2013	89	4.81
2014	53	7.61
2015	86	17.49
2016	102	114.32

Source: ONS²⁴⁴

Post-Brexit inward investment – where are we heading?

In relation to the UK's future desirability as a key target for cross-border M&A activity, various projections offer sharply different prognoses, depending on their area of focus.

In terms of projected cross-border inbound M&A activity into the UK, a recent Baker McKenzie / Oxford Economics study offers a generally downbeat forecast for the next few years. This study – which is based on modelling of past transaction flows – suggests the value of UK cross-border M&A investment will not reach US\$ 100 billion in any year between 2017 and 2020, despite doing so in both 2015 and 2016. In terms of deal volumes, the Baker McKenzie / Oxford Economics projection suggests cross-border transaction volumes will take until 2020 to surpass a total previously achieved in 2016. This 2016 total was, in itself, considerably lower than the volume achieved in 2015²⁴⁵.

By contrast, a recent EY survey of 2,300 executives at large corporations around the world was noticeably more upbeat about the UK's future attractiveness as an inward investment destination. After a post-Brexit blip in the UK's popularity, during which time the country fell out of the "top 10" rankings of most desirable destinations for inward investment, the EY study found that the UK was once again included in this ranking in its latest analysis²⁴⁶.

Table 30: EY survey: top investment locations, as ranked by international corporate executives

Ranking	Country
1	United States
2	China
3	United Kingdom
4	Germany
5	Canada

Source: EY²⁴⁷

One point that is notable about the EY ranking, above, is that all five of the above states – including the UK – were also identified as leading investment locations in UNCTAD's survey-based study, discussed previously on p35. Collectively, this suggests a degree of consensus among the world's leading corporate decision makers regarding the UK's ongoing desirability as a focal point for inward investment – notwithstanding Brexit.

244 © ONS. *Mergers and acquisitions involving UK companies: Oct to Dec 2016*, 7 March 2017, p32. This data is licensed under the UK government's Open Government Licence 3.0.

245 Baker McKenzie, Oxford Economics. *2017 global transactions forecast – from apprehension to appetite*, p40, p44, 50.

246 EY. *Global capital confidence barometer, 16th edition, April 2017*, p18.

247 EY. *Cautious UK companies turn to deals to drive growth*, 8 May 2017.

Another striking finding from the EY study was that a significant minority of the executives surveyed appeared to pay relatively little attention to the politics surrounding Brexit when deciding on their investment strategies. When asked if greater clarity surrounding Brexit had increased or reduced their likelihood of investing in the UK, 48 per cent said that this greater clarity had had “no impact” on their decision-making processes. This compared with the 23 per cent of respondents who said that Brexit clarity had “increased” the likelihood of their company investing in the UK, and 29 per cent who said that the likelihood of investment had reduced²⁴⁸. As with so many issues surrounding cross-border commerce, the behaviours and attitudes of business leaders appear to be remarkably divergent from the parallel political debate surrounding the economics and priorities of Brexit.

Conclusions – a “no deal” Brexit represents a real and present danger for the UK economy

Historical data regarding the UK’s trading behaviours is unambiguous: collectively, other EU states have long been some of the UK’s most important trading markets. On recent trends, future growth in trade with other countries around the world may shift the UK’s trade dependency on the EU27 – a little. But, in all likelihood, non-EU trade will supplement, rather than substantively replace, the UK’s trade with the EU27. To a large extent, therefore, the UK’s exporters will simply have to try to make a success of Brexit, however it manifests itself.

In light of long-term trading behaviour, a post Brexit EU/RTA would clearly be exceptionally helpful to UK cross-border traders, especially in light of the punitive tariffs and extensive trade-restrictive measures that the EU imposes on non-EU members. However, it is quite possible to envisage numerous scenarios where “no deal” may be the end result of post-Brexit trade talks. Internally within the UK, the ambiguous result of the recent general election has left the UK government with no legislative majority in favour of any particular form of post-Brexit EU/UK RTA. Externally to the UK, the arithmetic of the EU’s Brexit oversight process means the UK government will be heavily reliant on the political support of EU states with which the UK has little trading leverage. One only has to recall the near-death experience of the EU-Canadian trade deal over the issue of Canadian beef and pork exports to appreciate how a very narrow sectional interest group has the potential to torpedo trade deals. It is entirely possible that such a fate could befall the EU/UK RTA negotiations.

If no EU/UK RTA materialises, the UK faces not only a steep rise in tariffs in specific sectors, but also the introduction of a host of trade-hindering non-tariff measures. Helpfully, the UK and EU’s membership of the WTO will impose some constraints on the ability of the EU to behave in an overtly protectionist manner towards the UK. However, if the UK also leaves the compulsory jurisdiction of the ECJ, the country’s ability to make use of international legal dispute resolution mechanisms to mitigate against any EU protectionism would be severely reduced. In no way are the WTO’s state-centred dispute resolution procedures remotely comparable to the widely accessible, and institutionally robust, enforcement powers of the EU’s ECJ.

248 EY. *Global capital confidence barometer, 16th edition, April 2017*, p11, p13 and p18.

The UK and Brexit – points for law firms to consider

- Realistically, the complexities of the Brexit negotiations means it is almost impossible to know whether it will be possible to secure a post-Brexit EU/UK RTA. However, experience tells us that even minor sectional interests have the potential to disrupt RTA negotiations, even at the very last minute. In conducting their ongoing analyses of the likelihood of an EU/UK RTA deal, law firms should consider fully utilising their industry and geography-based networks, in order to establish whether any potentially explosive issues are “bubbling up” below the surface of mainstream commentary.
- The likelihood that the UK will continue to be a significant source of FDI post-Brexit is good news for law firms who undertake this type of work. However, whether this type of legal work would compensate for a more generalised retrenchment in transactional advice arising out of a “no deal” Brexit scenario is another matter entirely. Law firms may find it helpful to evaluate the extent to which their revenues are dependent on legal advice which relates to day-to-day cross-border trade, which may be curtailed in the event of a “no EU/UK RTA” situation.
- Law firms may find it helpful to evaluate their UK clients’ exposure to the EU market, in terms of the percentage of trade they undertake with the EU27. If individual clients trade significantly with the EU27, might their businesses be subject to punitive tariffs if no post-Brexit EU/UK RTA is agreed? In such circumstances, law firms may be able to assist clients in identifying alternative markets where a more benign trading regime exists.
- Law firms should consider monitoring attempts – by either side of the Brexit negotiations – to introduce non-tariff measures that may hinder currently free-flowing cross-border UK / EU trade. If such measures are proposed, it may be helpful for firms to try to identify alternative, low barrier, markets that their clients might instead wish to target.

Chapter five

US trade under Trump: key risks and possible opportunities

Introduction

This chapter briefly explores the nature of US cross-border trade. In light of the “America first” policy agenda pursued by US President Donald Trump, the chapter identifies those countries – and those industry sectors – with which the US trades most highly. The aim of this section is to identify those stakeholders which might be most exposed by any shift towards overt US economic nationalism.

The following section then identifies various “normal” levels of foreign direct investment (FDI) into the US, to allow for future benchmarking of whether the Trump presidency signifies a departure from these norms. There is then an outline of recent US FDI trends since the start of 2017, a period which coincides with the first few months of the Trump presidency. The chapter concludes with a summary of various predictions regarding future FDI into the US during the next few years.

Setting the scene – the declining significance of the US to cross-border trade

In recent decades, the ratio of US GDP to cross-border trade has increased significantly, rising from around 19 per cent in the first half of the 1990s to more than 30 per cent in 2011. However, since then, this percentage has broadly plateaued. Indeed, in 2015, the last year in which globally comparable figures are available, this percentage fell to around 28 per cent²⁴⁹. The election of Donald Trump as US President did not, therefore, represent the start of a period where cross-border trade began to matter less to the US economy – this trend had already begun before he took office.

In terms of the relative importance of the US to cross-border trade generally, the country has fared relatively well in recent years, notwithstanding growing competition from China and other industrialising nations. The percentage of total world trade attributed to the US varies annually, and also depends on whether the statistics relate to imports or exports, goods or services. But, in broad terms, US trade has typically accounted for between nine and 16 per cent of world trade over the past decade²⁵⁰. This means that, while the US is one of the most significant participants in world trade, it does not come remotely close to dominating it. Any debate about the possible global impact of US President Trump’s trade policy should therefore be framed with this fact in mind.

US cross-border trade: with whom, and in relation to what?

In common with many other nations, US trade relationships are highly concentrated among a limited number of partner countries. As table 31 below shows, a mere 10 countries supplied more than 70 per cent of all goods imported into the US in 2016, while 64 per cent of US goods exports went to just 10 countries globally. As table 31 also shows, the relative value of trade between the US and other nations falls away quickly, outside a limited number of principal trading relationships.

249 World Bank. *US profile - trade (% of GDP)*.

250 UNCTADstat Data Center. *Various “trade trends” data tables, “percentage of world total”*.

Table 31: the leading US export and import markets for goods, 2016

Imports				Exports			
Rank	Country	Value, US\$bn	% of total imports	Rank	Country	Value, US\$bn	% of total exports
1	China	462.80	21.10%	1	Canada	266.80	18.30%
2	Mexico	294.20	13.40%	2	Mexico	231.00	15.90%
3	Canada	278.10	12.70%	3	China	115.80	8.00%
4	Japan	132.20	6.00%	4	Japan	63.30	4.30%
5	Germany	114.20	5.20%	5	United Kingdom	55.40	3.80%
6	South Korea	69.90	3.20%	6	Germany	49.40	3.40%
7	United Kingdom	54.30	2.50%	7	South Korea	42.30	2.90%
8	France	46.80	2.10%	8	Netherlands	40.40	2.80%
9	India	46.00	2.10%	9	Hong Kong	34.90	2.40%
10	Ireland	45.50	2.10%	10	Belgium	32.30	2.20%
Total, top 10 countries		1,544.00	70.40%	Total, top 10 countries		931.60	64.00%
Total, all countries		2,188.90	100.00%	Total, all countries		1,454.60	100.00%

Source: US Census Bureau²⁵¹

For many countries, these percentages would appear to put the US in a very strong bargaining position, in terms of negotiating future trade relationships. For example, although 81 per cent of all Mexican exports went to the US in 2016²⁵², Mexico accounted for barely 14 per cent of US merchandise imports during the same year²⁵³. Similarly, for many countries seeking new RTAs with the US, it should be appreciated that, even with a favourable trade deal in place, these countries' exports to the US will typically comprise a very small percentage of its imports. The UK is a case in point. In 2016, around 15 per cent of all UK exports went to the US²⁵⁴ – but the UK only accounted for 2.5 per cent of US imports during the same year²⁵⁵. Bluntly, on a US\$ basis, many countries need US trade far more than the US needs them.

In relation to services, US ties to its key trading partners are slightly less intense. Nevertheless, as table 32 below illustrates, just 10 partner countries accounted for almost half of both US services imports and exports export during 2016.

251 US Census Bureau. *Top trading partners – December 2016*. List shorted to only include top 10 partner states.

252 www.worldstopexports.com. *Mexico's top trading partners*, 9 July 2017.

253 US Census Bureau. *Top trading partners – December 2016*.

254 www.worldstopexports.com. *United Kingdom's top trading partners*, 3 May 2017.

255 US Census Bureau. *Top trading partners – December 2016*.

Table 32: selection of leading US export and import markets for services, 2016

Imports				Exports			
Rank	Country	Value, US\$bn	% of total imports	Rank	Country	Value, US\$bn	% of total exports
1	United Kingdom	51.70	10.24%	1	United Kingdom	65.73	8.72%
2	Germany	33.40	6.62%	2	China	54.16	7.19%
3	Japan	31.00	6.14%	3	Canada	53.96	7.16%
4	Canada	29.95	5.93%	4	Japan	44.15	5.86%
5	India	25.81	5.11%	5	Mexico	33.05	4.39%
6	Mexico	24.57	4.87%	6	Germany	31.64	4.20%
7	France	16.45	3.26%	7	Brazil	24.34	3.23%
8	China	16.14	3.20%	8	South Korea	21.06	2.79%
9	South Korea	10.97	2.17%	9	India	20.63	2.74%
10	Hong Kong	8.75	1.73%	10	France	19.67	2.61%
Total, top 10 countries		248.74	49.29%	Total, top 10 countries		368.38	48.90%
Total, all countries		504.66	100.00%	Total, all countries		753.37	100.00%

Source: US Census Bureau²⁵⁶

Note: Figures rounded

Also noticeably, there is a substantial overlap in those countries which comprise the US' most significant partner markets in relation to both goods and services, and also in relation to imports and exports. In total, seven countries – China, Canada, Germany, Japan, Mexico, South Korea and the UK – consistently appear in all four rankings, shown in table 31 and table 32 above. Additionally, a further six countries – Belgium, France, India, Ireland, Hong Kong, and the Netherlands – each appear in two out of these four rankings. In value terms, commerce with these countries would be at particular risk, in the event that the US became more overtly protectionist in relation to its cross-border trade policy.

As will be discussed further shortly, many of these above-mentioned countries have been on the receiving end of both insults and threats by US President Trump in recent months. It would appear that, unusually, the current US President is quite prepared to antagonise the governments of those countries with which the US trades most extensively.

US cross-border trade is highly focused on a relatively small group of nations. Similarly, a comparatively small group of industry sectors account for a majority of US imports and exports of physical goods, when calculated on US\$ value terms. Tables 33 and 34 below show the 15 industry sectors that comprise 57.14 per cent of US goods imports and 50.76 per cent of US goods exports.

Notably, different sectors have sharply differing US\$ values, relative rankings and import / export trade balances. For example, apparel and textile imports were worth US\$ 49.36 billion in 2016²⁵⁷ – making the sector the 10th largest US import group. By contrast, US exports in the same sector were worth a comparatively trivial US\$ 0.45 billion²⁵⁸, placing them well outside the equivalent leader board, shown in table 34 below. Other sectors were more evenly balanced between US imports and exports that year. For example, in the industrial machines sector, imports (US\$ 48.80 billion) broadly matched exports (US\$ 50.64 billion). Finally, some US industries – such as the civilian aircraft sector – were notably more export, rather than import, focused. In this industry, both imports and exports had a significant dollar value in 2016: US\$ 13.84 billion and US\$ 60.63 billion respectively. Nevertheless, export values outweighed import values by more than four to one.

256 Adapted from: US Census Bureau. *US international trade in goods and services April 2017*, 2 June 2017, p28.

257 US Census Bureau. *US international trade in goods and services - annual revision for 2016*, exhibit 7 – US imports of goods by end-use category and commodity, 2 June 2017.

258 US Census Bureau. *US international trade in goods and services - annual revision for 2016*, exhibit 6 – US exports of goods by end-use category and commodity, 2 June 2017.

Table 33: industry sectors with the highest aggregate US import values, 2016

Rank	Industry type	Value, US\$bn	% of total imports
1	Automotive vehicles, parts, and engines	350.12	16.00
2	Pharmaceutical preparations	111.70	5.11
3	Crude oil	101.29	4.63
4	Cell phones and other household goods	97.07	4.44
5	Goods not classified elsewhere	90.80	4.15
6	Telecommunications equipment	71.93	3.29
7	Computers	60.88	2.78
8	Computer accessories	53.64	2.45
9	Semiconductors	51.55	2.36
10	Apparel, textiles, non-wool or cotton	49.36	2.26
11	Industrial machines, other	48.80	2.23
12	Electric apparatus	48.11	2.20
13	Apparel, household goods - cotton	43.90	2.01
14	Medicinal equipment	36.99	1.69
15	Toys, games, and sporting goods	33.94	1.55
	Totals	1,250,062	57.14

Source: US Census Bureau²⁵⁹

Note: Figures rounded

Table 33 above and table 34 below helps identify those industry sectors that would be most at risk, should the US move towards a more protectionist stance in relation to cross-border trade. Additionally, these tables also help contextualise a key policy area of Trump administration that is highly relevant to US cross-border trade: the US automotive sector and, in particular, the US' vast automotive trade deficit, worth US\$ 200 billion in 2016. This trade imbalance matters because US President Trump is widely regarded by commentators as being "obsessed" by US trade deficits.

259 US Census Bureau. *US international trade in goods and services - annual revision for 2016*, exhibit 7 – US imports of goods by end-use category and commodity, 2 June 2017.

Table 34: industry sectors with the highest aggregate US export values, 2016

Rank	Industry type	Value, US\$bn	% of total imports
1	Automotive vehicles, parts, and engines	150.31	10.36
2	Civilian aircraft	60.63	4.18
3	Goods not classified elsewhere	60.29	4.15
4	Pharmaceutical preparations	53.28	3.67
5	Industrial machines, other	50.64	3.49
6	Semiconductors	44.09	3.04
7	Electric apparatus	41.32	2.85
8	Telecommunications equipment	41.16	2.84
9	Petroleum products, other	40.90	2.82
10	Engines-civilian aircraft	37.84	2.61
11	Medicinal equipment	34.82	2.40
12	Plastic materials	32.55	2.24
13	Computer accessories	30.31	2.09
14	Chemicals-other	29.31	2.02
15	Fuel oil	29.07	2.00
	Totals	736.50	50.76

Source: US Census Bureau²⁶⁰

Note: Figures rounded

President Trump's aversion to trade deficits can help explain why, in recent months, he has repeatedly called on foreign-based auto manufacture to increase their US vehicle production²⁶¹, proposed a 35 per cent import tax on Mexico-built cars arriving in the country²⁶², criticised the German car industry for selling "millions" of cars into the US²⁶³ and pushed for more US-built cars to be sold in Japan²⁶⁴.

Some of President Trump's solutions for dealing with the US automotive trade deficit may well be unpalatable, unworkable – or both. But, in terms of identifying which countries are principally responsible for the current US automotive trade deficit, the targets of his anger have some merit. As table 35 below shows, Germany, Mexico and Japan – which President Trump has singled out for particular criticism – were collectively responsible for a significant share of the US automotive trade deficit during 2016. For all three countries, the mismatch between the value of auto imports into the US, compared with US auto exports, is striking. This suggests that, at least to some extent, President Trump takes an evidence-based approach when picking his trade battles. This suggests that other sectors, and countries, that have a significant trade imbalance with the US may potentially become the focal point of President Trump's trade-related ire in the months and years ahead.

260 US Census Bureau. *US international trade in goods and services - annual revision for 2016*, exhibit 6 – US exports of goods by end-use category and commodity, 2 June 2017.

261 Fortune. *What Donald Trump told America's biggest automakers*, 24 January 2017.

262 CNBC. *Trump threatens BMW with border tax on cars built in Mexico*, 15 January 2017.

263 Bloomberg. *BMW, Mercedes become latest car makers caught in Trump crossfire*, 26 May 2017.

264 Japan Times. *Abe's Trump dilemma: getting Japan to buy US cars*, 26 January 2017.

Table 35: the countries at the heart of the US automotive trade imbalance, 2016

Country	Imports into US		Exports from US	
	Value, US\$bn	% of total automotive imports	Value, US\$bn	% of total automotive exports
Germany	32.30	9.19	8.76	5.73
Japan	54.69	15.55	2.11	1.38
Mexico	107.66	30.62	33.58	21.97
Rest of the world	156.94	44.64	108.38	70.92

Source: US Census Bureau²⁶⁵

Trump on trade – a focus on “America first” trade enhancement, rather than protectionism?

To date, many of Donald Trump’s pronouncements have given the appearance of being both protectionist, and also hostile to various trade deals. In terms of protectionist rhetoric, the US President has notably threatened China, Mexico²⁶⁶ and Germany²⁶⁷ with significant tariffs on imports. Meanwhile, his antipathy towards RTAs has been clearly demonstrated in his threat to terminate both NATFA²⁶⁸ and KORUS²⁶⁹, the US-Korean trade deal. Indeed, if one adds Trump’s withdrawal from the Trans-Pacific Partnership – the proposed RTA that includes Canada, Japan and Mexico among its signatory nations – it is clear that President Trump has now directly threatened to upset trading relationships with countries that account for more than half of all US imports and exports.

Nevertheless, it should also be appreciated that virtually none of this bluster has yet translated into protectionist actions. Rather than imposing steep tariffs on Chinese imports, President Trump’s team has since initiated a “100-day action plan”, aimed at facilitating additional trade between the two nations across a small number of industry sectors²⁷⁰. Similarly, President Trump’s threat to terminate NAFTA has since been downgraded into a plan to “renegotiate” the agreement in a way that improves opportunities for the US to trade with Canada and Mexico²⁷¹. Here, the emphasis now appears to focus more on the removal of “unwarranted sanitary and phytosanitary measures and technical barriers to trade imposed by Canada and Mexico²⁷²” rather than the erection of new trade barriers by the US. In a similar vein, the current focus of the Trump administration in relation to KORUS appears to relate more to “levelling the field”, and the removal of South Korean-imposed barriers on US trade, rather than introducing new protectionist measures intended to hinder South Korean trade with the US²⁷³ – notwithstanding the latter country’s substantial trade deficit with the former.

The impact of the above-mentioned attempts to recalibrate US trade relations will take time to become clear. However, if there is an emerging Trump doctrine in relation to US trade policy, it appears to be one based on the aggressive pursuit of “free and fair trade” between the US and its main trading partners, coupled with an intolerance of what he believes are “unfair and discriminatory practices”²⁷⁴ by those trading partners. In pursuing this agenda, the Trump administration has made it clear that it is willing to consider punitive actions against those countries which it perceives to be trading on unfair terms with the US – including the ultimate sanction of cancelling existing RTAs with such countries.

265 US Census Bureau. *US international trade in goods and services - annual revision for 2016*, exhibit 17 – *US trade in motor vehicles and parts by selected countries: 2016*, 2 June 2017.

266 Reuters. *Trump’s tariff plan could boomerang, spark trade wars with China, Mexico*, 24 March 2016.

267 Reuters. *Trump threatens German carmakers with 35 percent US import traffic*, 17 January 2017.

268 Reuters. *Trump was “psyched to terminate NAFTA” but reconsidered*, 28 April 2017.

269 Reuters. *Trump vows to fix or scrap South Korea trade deal, wants missile system payment*, 28 April 2017.

270 Financial Times. *Trade war averted as China and US agree 100-day plan*, 9 April 2017.

271 Office of the US Trade representative. *Trump Administration announces intent to renegotiate the North American Free Trade Agreement*, 18 May 2017.

272 US Federal Register. *Request for comments on the negotiating objectives regarding the modernization of the North American Free Trade Agreement with Canada and Mexico*, 23 May 2017.

273 Financial Times. *US to renegotiate South Korea trade pact*, 18 April 2017.

274 The White House. *Presidential executive order regarding the omnibus report on significant trade deficits*, 31 March 2017.

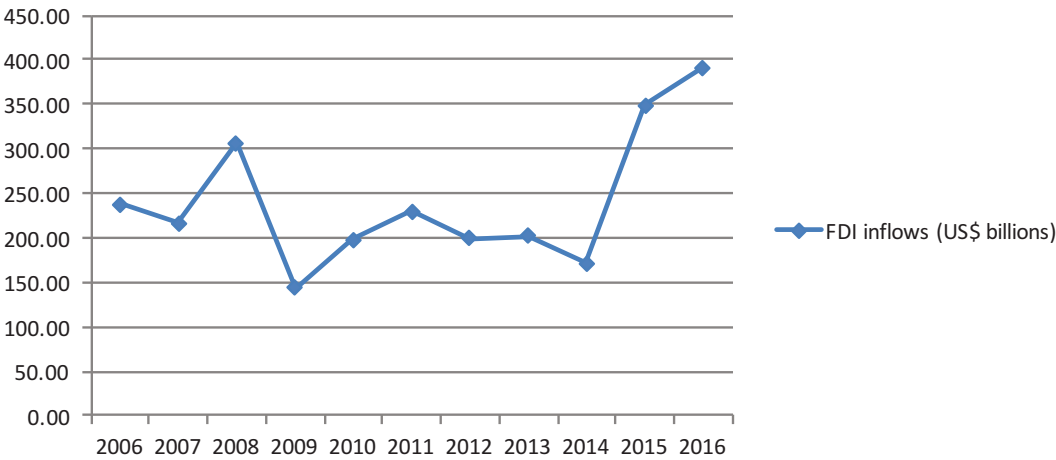
Nevertheless, it also appears that the Trump administration would be willing to accept new or updated trade deals, in the event that such deals have the effect of reducing a trade deficit between the US and its most important partner nations. Despite his sporadically protectionist, and often inflammatory rhetoric, President Trump's approach appears to be more based on muscular economic liberalism rather than outright economic nationalism.

FDI into Trump’s America – benchmarking normality

We are now less than a year into the presidency of Donald Trump. Is it therefore too early to say whether his “America first” policy is having a significant impact on foreign direct investment into the US – although initial data in relation to Q1 2017 will be discussed shortly. This section therefore “benchmarks” what might be considered normal levels of FDI, based on 10-year averages. These averages can, in turn, be used to help evaluate full-year 2017 US FDI once it published. UNCTAD FDI data is used for the majority of this analysis, on the basis that it is standardised globally, and also allows for multi-year comparisons.

Over the past decade, the value of FDI inflows into the US has averaged US\$ 240.23 billion per year. On a more granular basis, the annual value of FDI flowing into the US has ranged from a post-crash low of US\$ 143.60 billion in 2009 to a recent high of US\$ 391.10 billion in 2016. When it becomes available, the 2017 data should therefore be evaluated on the understanding that FDI into the US has been above average for the past two years²⁷⁵. Any fall in FDI that does occur should not, invariably, be regarded as a direct response to the Trump Presidency – it could equally indicate a return to recent market norms.

Figure 22: FDI inflows into the US, 2006 – 2016



Source: UNCTAD.²⁷⁶

275 UNCTAD. *World investment report 2017. Annex table 01. FDI inflows, by region and economy, 1990 – 2016 (US and world data only, between 2006 and 2016)*, 7 June 2017.

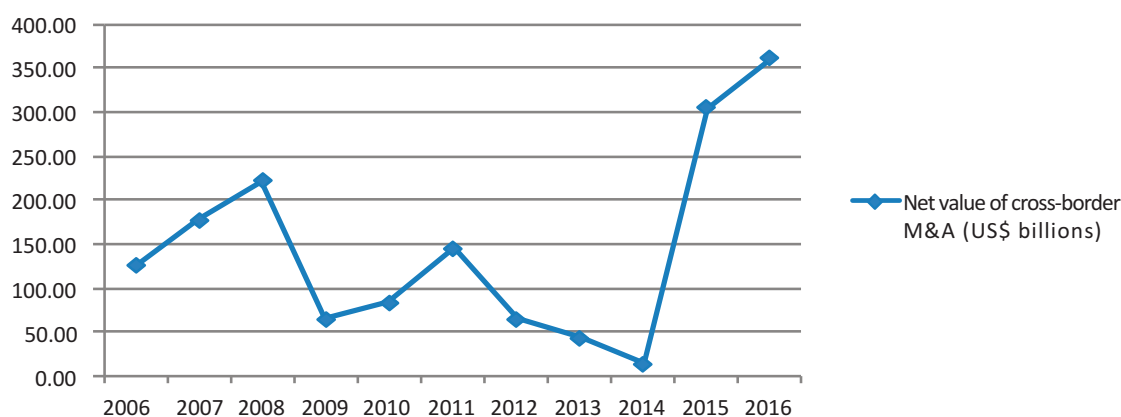
276 Ibid.

To put US FDI in its global context, the US represented an average of 15.52 per cent of world FDI inflow between 2006 and 2016, when measured in US\$ value terms²⁷⁷. This suggests that, while the US is a globally important destination for FDI, it nevertheless only comprises a limited percentage of world FDI annually. Globally, the impact of any US-specific FDI slowdown would be quite small.

In terms of M&A-led FDI into the US, UNCTAD data suggests that the 10-year average values between 2006 and 2016 was US\$ 146.17 billion per year – with the important proviso that UNCTAD M&A FDI data is reported on a net basis, and can therefore be significantly influenced by large-scale investments and divestments involving companies operating in the US.

As figure 23 below shows, the past two years have been substantially above the 10-year average. In 2015, the net value of in-bound cross-border M&A into the US was US\$303.98 billion, while in 2016 the figure was US\$ 350.80 billion²⁷⁸. Even if net US M&A-led FDI falls significantly during 2017, it is possible that it will remain above its 10-year, US\$ 145.17 billion, annual average.

Figure 23: net value of cross-border M&A deals where the seller was based in the US, 2006 – 2016



Source: UNCTAD²⁷⁹

UNCTAD data suggests that, in relation to the number of cross-border M&A deals involving a US seller, the annual average was 1,575 per year between 2006 and 2016. Additionally, the UNCTAD data suggests that the years 2015 and 2016 were both above this long-term average, with 1,657 deals taking place in the former year and 1,684 deals taking place in the latter year²⁸⁰. In both of these years, there were in excess of 60 completed US\$ 1 billion + deals, where the US was the host economy²⁸¹. This, then, is a useful short-term benchmark against which US cross-border deal values and volumes in 2017 can be judged – with the clear proviso that both of these years were exceptional, in terms of the high overall value of cross-border M&A activity involving a US target.

277 UNCTAD. *World investment report 2017. Annex table 01. FDI inflows, by region and economy, 1990 – 2016 (US and world data only, between 2006 and 2016)*, 7 June 2017.

278 UNCTAD. *World investment report. Annex table 09. Value of cross-border M&A by region / economy of seller (US data only, 2006 - 2016)*, 7 June 2017.

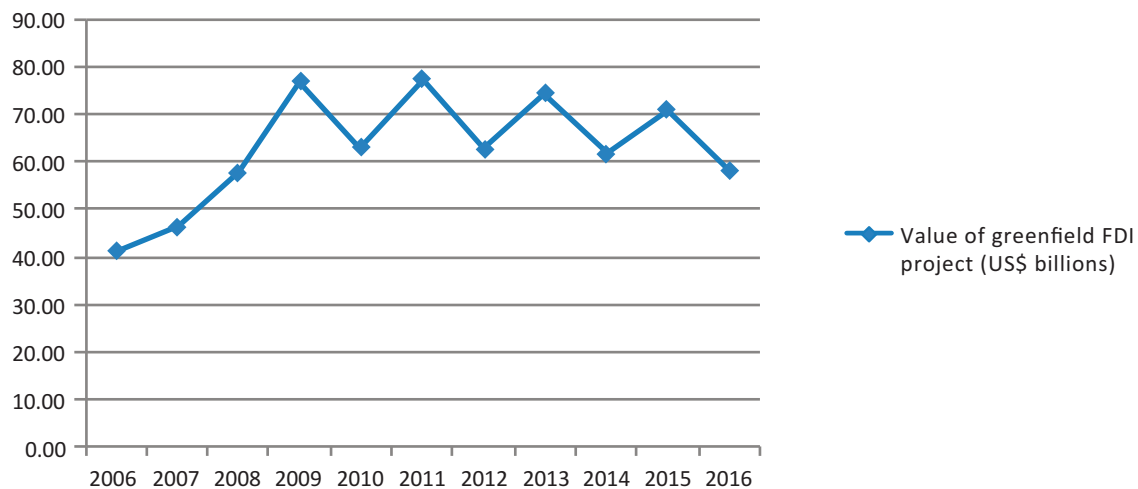
279 Ibid.

280 Ibid, Annex table 11. *Number of cross-border M&As by region/economy of seller, 1990-2016 (US data only, 2006 - 2016)*, 7 June 2017.

281 UNCTAD. *World investment report (s), 2016 and 2017. Annex table 17. Cross-border M&A deals worth over \$1 billion completed in 2015 / 2016 (US host economy data only)*.

Compared with the sharply fluctuating net values of M&A-led FDI into the US, the value of announced greenfield FDI into the US over the past decade has remained somewhat more consistent. Between 2006 and 2016, UNCTAD data suggests the average annual value of greenfield FDI into the US was US\$ 62.70 billion. Within that average, the 10-year low was reached in 2006, when US greenfield FDI fell to US\$ 41.09 billion. Conversely, the 10-year high was reached just three years later, in 2009, when the value rose to US\$ 76.67 billion. More recently, figure 24 below suggests that annual US greenfield FDI investment values of between US\$ 60 billion and US\$ 80 billion²⁸² should be regarded as falling within a “band of normality”. It would be helpful to evaluate the forthcoming 2017 US greenfield FDI data with this band of normality in mind.

Figure 24: value of announced greenfield FDI projects into the US, 2006 – 2016



Source: UNCTAD²⁸³

In terms of announced greenfield FDI projects into the US, UNCTAD data suggests the long-term average was 1,356 per year between 2006 and 2016. However, within this 10-year average, the number of projects have tended to be considerably higher in recent years, peaking at 1,933 in 2013. More recently, the number of greenfield FDI projects into the US were 1,735 in 2015 and 1,784 in 2016²⁸⁴. This might therefore be considered a “normal” level FDI activity against which the first year of the Trump presidency might be evaluated.

More generally, over the past decade, the US has attracted an average of 7.57 per cent of global greenfield FDI, in US\$ value terms. Once again, this is a substantial percentage of global FDI for one single country to attract. However, it is also not an overwhelming percentage of global FDI.

282 UNCTAD. *World investment report (2017). Annex table 19. Value of announced greenfield FDI projects, by destination, 2003-2016 (US host economy data only)*, 7 June 2017.

283 Ibid.

284 Ibid. *Annex table 21. Number of announced greenfield FDI projects, by source, 2003-2016 (US data only), 2006 – 2016*, 7 June 2017.

FDI into Trump's America – where are we going?

UNCTAD does not produce in-year statistics regarding FDI. Nor, somewhat oddly, does the US Bureau of Economic Analysis, the principal US agency tasked with capturing US cross-border trade data. It is therefore not possible to establish, using official government or quasi-government sources, whether FDI into the US is “on trend” during the first few months of the Trump presidency.

That said, respectable non-governmental sources suggest that significant cross-border inbound investment into the US has continued during the first few months of the Trump presidency. Indeed, according to mergermarket, the value of inbound M&A investment into the country rose by 27.4 per cent during the first half of 2017, when compared with the equivalent period in 2016²⁸⁵. However, subsequent mergermarket research has also suggested that this US inward investment mini-boom later went into reverse, when evaluated over the first three quarters of 2017: compared with the first nine months of 2016, 2017 investment levels were 27.2 per cent lower. Mergermarket partially attributes this fall to the abandonment of several cross-border mega-deals, potentially worth US\$ 6.6 billion, by organisations linked to China²⁸⁶. Furthermore, at least one of these deals – the US\$ 1.3 billion purchase of the US-based Lattice Semiconductor by the China-backed Canyon Bridge Capital – was vetoed by President Trump on national security grounds²⁸⁷. This action offers further evidence of President Trump's activism with regards to cross-border trade.

More positively, various surveys suggest a relaxed attitude towards the Trump presidency among executives at large multinational companies. For example, UNCTAD's recent survey found that international executives believed that the US was the “top prospective host economy between 2016 and 2018” – receiving more than double the percentage points of its nearest competitor, China²⁸⁸. In a similar vein, EY's recent survey-based Global Capital Confidence Barometer, also found that US was the most favoured destination for future investment, similarly ranked above China²⁸⁹.

Moreover, when asked “are recent policy announcements by the new US administration creating more or fewer M&A opportunities?”, 41 per cent of respondents to the EY survey said “more”, 24 per cent said “fewer”, and 35 per cent said the policy announcements would have “no impact” on the M&A opportunities available²⁹⁰. This suggests a degree of pragmatism amongst MNE executives about the current US political environment, and a willingness to make the best of the M&A opportunities offered by the Trump administration.

285 mergermarket. *Global and regional M&A: H1 2017 – including league tables of legal advisors*, June 2017, p3.

286 mergermarket. *Global and regional M&A Q3 2017 – including league tables of legal advisors*, p3 and p14.

287 The White House. *Order Regarding the Proposed Acquisition of Lattice Semiconductor Corporation by China Venture Capital Fund Corporation Limited*, 13 September 2017.

288 UNCTAD. *Global investment trends monitor. No 24. Global investment prospects assessment 2016 – 2018*, 6 October 2016, p12.

289 EY *Global capital confidence barometer, 16th edition, April 2017*, p13.

290 *Ibid*, p11 – 13.

Conclusions: cross-border trade in Trump's America – where is it heading?

Almost a year into his presidency, it is becoming increasingly clear that President Trump's "America first" policy is not translating into a general policy of US isolationism in relation to cross-border trade. True, there have been numerous industry-specific skirmishes, covering issues as diverse as Canadian softwood lumber²⁹¹, Chinese steel²⁹² and German car imports²⁹³. But, in itself, such trade skirmishes are neither new, nor unique to the US²⁹⁴ – and should not be treated as if they were.

It is clear that the Trump era has ushered in a new, and more overtly hostile, US policy in relation to specific regional trade agreements – notably, NAFTA²⁹⁵ and the US-South Korean KORUS deal. However, the top-level hostility to these deals within the US administration does not, necessarily, mean they will be abandoned altogether. Rather, they signal a refusal to accept the status quo, where that status quo is perceived to be harmful to US interests. Indeed, the hostile rhetoric in relation to these RTAs should be weighed against the clear desire for the Trump administration to boost US cross-border trade with key trading partners²⁹⁶, and to enter into new trade agreements²⁹⁷.

President Trump's gun-boat style of delivering his policy trade objectives is unusual in modern times, as is his willingness to engage in political brinkmanship. But, fundamentally, his actions to date do not indicate a president who is implacably hostile to cross-border trade in principle. That said, his willingness to pull out of international agreements, and also upset key trading allies and industries, suggests his frequently aggressive rhetoric in relation to cross-border trade issues should be taken seriously. Much of it may be bluster. Some of it is not.

Moving away from US trade politics, the recent behaviours of international corporates regarding their investment decisions suggest that the US remains a favoured destination for foreign direct investment – a perception reinforced by various surveys of MNE executives. It remains to be seen if FDI into the US during 2017 exceeds the high levels of deal activity that has occurred in the recent past. However, FDI into the US would have to drop by a considerable margin before it fell below its recent long-term average. Data from the first quarter of this year tentatively indicates that no such fall has yet occurred.

291 US Department of Commerce. *US Department of Commerce issues affirmative preliminary antidumping duty determination on softwood lumber for Canada*, 26 June 2017.

292 Reuters. *Trump targets cheap Chinese in probe, rallying US steel stocks*, 21 April 2017.

293 CNBC. *Trump reportedly calls Germans 'very bad', threatens to end German car sales*, 26 May 2017.

294 WTO. *Summary and status of G-20 trade and trade related measures since October 2008 (Excel database)*, 10 November 2016.

295 Office of the United States Trade representative. *USTR: Trump administration announces intent to renegotiate the North American Free Trade Agreement*, 18 May 2017.

296 The Washington Post. *US and China end summit with 100-day plan to boost trade and cooperation*, 7 April 2017.

297 Office of the United States Trade representative. *Joint release by the UK international trade secretary, Dr Liam Fox and US trade representative Robert Lighthizer*, 19 June 2017.

Trading under Trump: lessons for law firms

- Fundamentally, there is every reason to believe that the US will continue to attract large scale M&A inward investment and large scale greenfield inward investment. Firms active in these areas should be wary about reading too much into short-term fluctuations in activity, and assuming any fall represents the “new normal” under President Trump. UNCTAD data suggests 2016 FDI was above the long-term trend. When published, full year statistics for 2017 should be understood in that context.
- While it is currently difficult to distinguish between US presidential bluster and genuine threats to cross-border trade that this bluster represents, it is probably best to err on the side of caution in terms of where US trade-hindering presidential actions might be taken. Helpfully, President Trump’s “obsession” with rectifying trade imbalances offers law firms some guidance about which industry sectors, which US trading partners, and which RTAs, are most at risk of regulatory upheaval. Industry sectors, countries and RTAs that are perceived to be disadvantageous to US interests are likely to be at particular risk of regulatory intervention.
- President Trump’s, perhaps surprising, pro-“fair” trade agenda offers the possibility for law firms and their clients to secure new work in jurisdictions that have been traditionally closed to US suppliers.

Chapter six

Final thoughts

Report conclusions

Perhaps one of the most surprising findings of this study is the mismatch between the popular narrative of the “retreat from globalisation” in the post-Trump, post-Brexit era, and what appears to be occurring. The global slowdown in cross-border trade did not occur in 2016, the year in which these events took place. Rather, the slowdown began a year earlier – and a modest return to growth is now underway. Meanwhile, Brexit and the election of US President Trump did not signal a shift away from the world’s willingness to embrace trade deals: their number continues to increase. These developments illustrate the importance of looking behind the news headlines when considering how to respond to apparent upheavals in cross-border trade. There is now a rich body of comparative data available, which allows popular narratives to be evaluated for their accuracy. Law firms may find it useful to draw on this data when formulating their cross-border developmental strategies.

Trade data can also help temper unrealistic expectations regarding the real-world impact of changes to countries’ trade policies. Nowhere is this more evident than in relation to regional trade agreements (RTAs). Many countries have RTAs in place with countries with which they do little business, and no RTAs in place with countries with which they do a great deal of business. Law firm leaders should therefore be wary of assuming that, by simply entering into a new RTA, cross-border trade between signatory countries will invariably blossom, and that an avalanche of new advisory work will follow. RTAs can help facilitate cross-border trade, but they do not compel it to occur. Cross-border trade happens because individual companies – not politicians – decide to make it happen.

Although this report paints a broadly positive picture of cross-border trade, it nevertheless highlights a number of highly-specific flashpoints. For example, the recent spate of trade restrictive measures placed on steel exports was accompanied by a sharp fall in exports from key iron and steel producing markets. Similarly, the UK’s forthcoming departure from the EU may usher in a new era of high tariffs for specific export sectors, if no RTA can be agreed as part of the UK’s Brexit negotiations. In general, cross-border trade may be increasing. But, in specific circumstances, there is a very real possibility that it will decrease – and not always for benevolent reasons.

And this cross-border trading complexity is, arguably, the key challenge for law firms: making sense of global mega trends, and spotting threats and opportunities for both firms and clients among the noise. Used wisely, trade data can help identify new markets for law firms to enter, and also highlight commonly occurring trade flashpoints that clients should be wary of.

Just as importantly, trade data can help law firm leaders understand whether their own “home state”, or industry-specific, experiences in relation to cross-border trade reflects what is happening more in the wider economy. The leaders of Anglo Saxon firms in particular may benefit from taking a global view of cross-border trade trends which, contrary to a common narrative in their own home states, indicates reasonable prospects for modest growth in the months and years ahead.

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