

# WORLD COMMERCE REVIEW

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# A smooth Brexit

**T**he prophets of doom have been proved wrong, for now. Some people, conceded Matteo Renzi the Italian prime minister, had suggested that 'after Brexit, Europe would come to an end'. However, there are still potential problems for Europe and the world economy. One is that China is exporting deflation. Morgan Stanley estimates that China's trade-weighted devaluation is running at an annual rate of 11%, and factory gate deflation adds another 2%. This is a tsunami coming from the epicentre of global overcapacity.

The other danger is that British and European politicians fail to understand what is coming straight at them from Asia. Britain's Brexiteers must come up with a coherent policy on trade very fast, and the EU must come off their ideological high-horse and face the reality that they have absolutely no margin for economic error.

Much of the current discussion about Britain's future relationship with the EU is about access to the single market. Some people have argued that the UK should seek a deal like Norway's or Switzerland's. Others argue that the United Kingdom should like all other countries in the world; that is to say, outside the single market but trading extensively with it. The negotiations with the rest of the EU will centre over how many other changes they might like in the current arrangements. The UK need not seek any changes to minimise disruption. The other 27 will need to decide amongst themselves what additional barriers if any they want to place on their trade with the UK, and then negotiate them bilaterally. This negotiation starts from free trade and common rules for some services between Britain and the EU. The only question is why change anything? Won't it do the EU more damage than Britain, as they run a huge trade surplus with the UK?

What we have learnt from the market moves since Brexit is that Europe is just as vulnerable as Britain. The vote has already triggered a banking crisis in Italy, where the government is struggling to put together a rescue but is paralysed by the constraints of euro membership. The eurozone authorities never sorted out the structural failings of EMU. There is still no fiscal union or banking union. The North-South chasm remains, worsened by a deflationary bias. It should be dawning on the European political establishment that the economic fates of the UK and the eurozone are entwined, that if Britain goes over a cliff, so do they and just as hard. Their bargaining position is not as strong as they think. They cannot dictate terms.

Economic commentators say they need to wake up. It warns that the eurozone will suffer almost as much damage as Britain in a 'high stress scenario'. If so, it is hard to see how the eurozone could withstand such a shock, given the levels of unemployment and the debt-deflation dynamics of southern Europe, and given the intensity of political revolt in Italy and France.

The fall in sterling is a blessing for the British economy, and a headache for the eurozone. The pound needs to fall further. The International Monetary Fund said before Brexit that sterling was 12-18% overvalued, and may have to fall more than this to force a lasting realignment of the British economy. This cure has hardly begun. The more sterling falls, the greater the net stimulus for the British economy. The reverse holds for the eurozone. It is a further deflationary shock at a time when Europe is already in deflation, when inflation expectations are in free-fall and bond yields are collapsing below zero, and when the ECB is running out of options.

US Secretary of State John Kerry warned that nobody should lose their head, or go off half-cocked, or "start ginning up scatter-brained or revengeful premises.". Politicians on both sides of the English Channel need to heed this message, as there are plenty of other problems that could broadside Europe. ■

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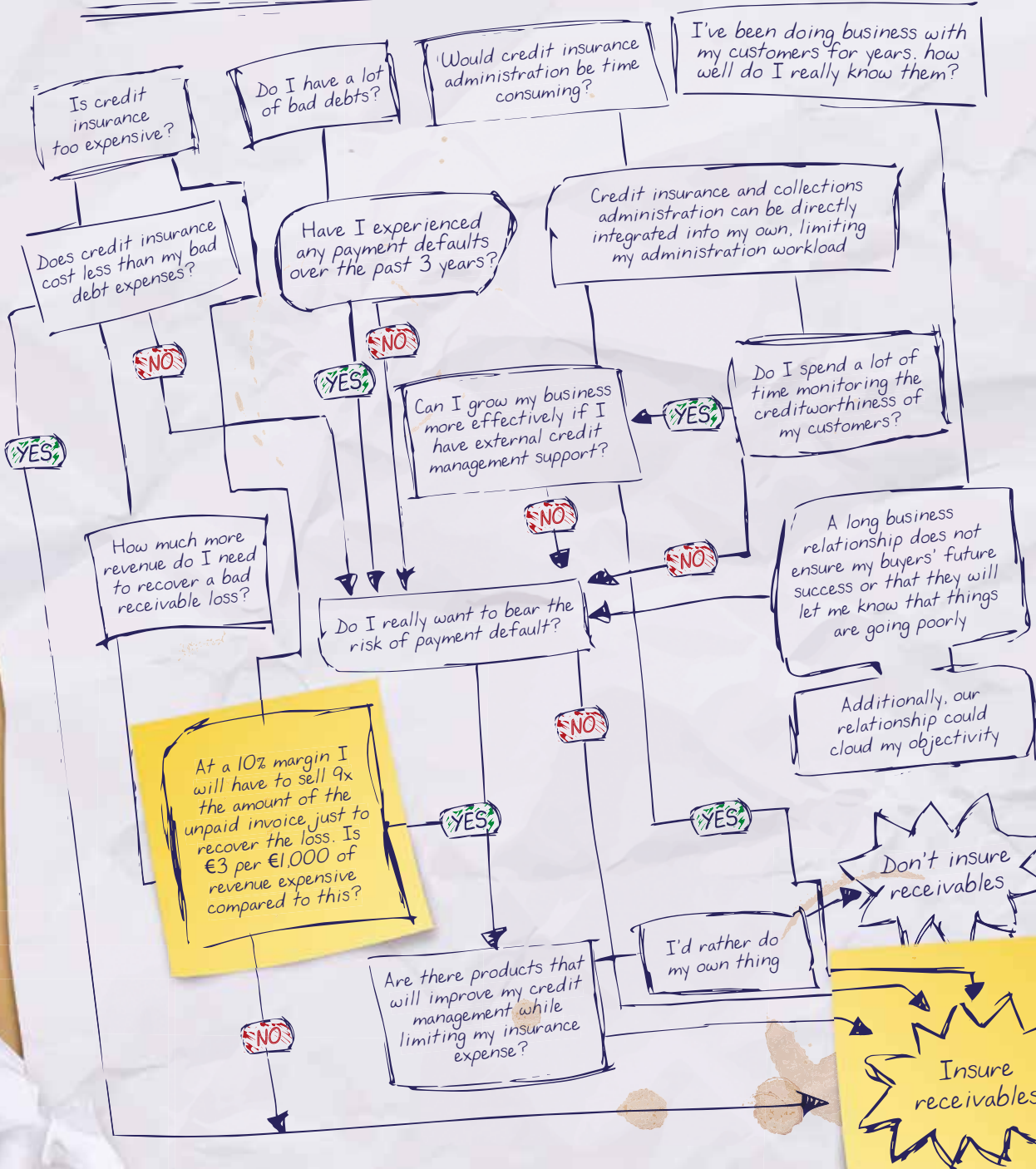
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# A roadmap for a post-Brexit EU

**Petros Fassoulas is Secretary General of the European Movement International**

**A**n entire summer has passed since the British people made the historic decision to leave the European Union. The outcome itself is a blow to the European idea, yet it also presents an opportunity for Europeans to stand up, take responsibility, and openly discuss a realistic future. In doing so, we must not shy away from offering and proposing bold solutions in order to deliver a better and more prosperous future for the European Union and, more importantly, for its citizens.

Over recent years, a dark cloud of nationalism, isolationism, fear of the other, and euroscepticism has swept the continent. These factors were brandished in the UK referendum and influenced the outcome, signifying the dangerous power that these bitter elements hold. The result was a nightmare-come-

to-life for pro-EU European citizens, while it has added fire to the flame of eurosceptics everywhere, who may now eagerly await their nation's turn to follow the path taken by Britain.

Therefore, it is at this time more than ever that we as citizens need to stand together, united in our belief that we can confront these challenges head-on. Whether it is in facing the issue of Britain's exit from the EU, migration, the economy, globalisation, climate change, or security threats both within our Union and on our doorstep, we need a clear political vision. The European Union in this post-Brexit world must be built on solid and meaningful pillars that deliver for its citizens. The European Movement aims to deliver just this type of thought-leadership, which we are developing on several fronts:



### Legitimising politics

Leave-voters in the UK and large swathes of demographics across the EU feel that their voice is unheard and diminished. They no longer feel represented by politicians, both nationally and particularly in Brussels. Rebuilding this trust between European citizens and the role of politics and policy-making at national and European level is critical to building legitimate European policies that tackle real problems. This means establishing greater participation in the democratic process for citizens and a clearer role for civil society organisations in keeping a check on the work of the institutions.

Each and every citizen of the EU must feel that their voice is valued and that the path of the Union is influenced by them. Only then can we encourage meaningful participation that will create a brighter post-Brexit EU. The lobbying process should be made more transparent and the presence of the European political parties more obvious. Moreover, the European political system needs to be updated for the twenty-first century with more online accessibility, and more emphasis on generating public debate around policy issues.

### Fighting economic frustration

Europe is facing a period of economic stagnation and widespread unemployment, particularly youth unemployment in the likes of Spain and Greece. These citizens hardest hit by the global recession, policies of austerity and globalisation feel left behind. This pattern is extensive across the north of England in regions of former

*“Bold decisions and courageous acts are needed by all citizens of this Union if we are to deliver a better, safer, and more prosperous European Union in this post-Brexit world”*

traditional industries and this frustration was evidenced in the UK referendum on its EU membership. To ensure that this is not repeated, we need to create sustainable economic growth with enhanced social rights that will help even our least protected citizens to prosper.

This will mean securing greater investment to build a system that works for everyone, and offering incentives such as minimum wage criteria across the Single Market. Enhanced social convergence must also be at the forefront of a post-Brexit European Union in order to help the least protected citizens of our Union.

The Brexit referendum has thrown Britain’s access to the European Single Market into question. Months of negotiations between both sides lie ahead as the UK aims to retain this privilege while gaining greater control over its immigration and stopping the complete freedom of movement of people, something that the EU is vehemently against. However, while these talks take



place, we must not be distracted and must ensure we strive to improve the Common Market for the remaining 27 EU states.

There are many important innovations currently being considered to further the effectiveness of the Single Market, and these should provide opportunities for more job creation and progressive citizen-centric policy-making. However, one crucial area for improvement is to ensure businesses, especially SMEs, face fewer barriers to trade and are thus at the forefront of adding skills and jobs to the workforce.

Lastly, much debated trade agreements such as TTIP and CETA can only succeed if the concerns of all stakeholders and citizens are thoroughly recognised and addressed in an open and fair manner. A post-Brexit EU needs the greater prosperity that these trade agreements can deliver, but only if citizens are adequately consulted.

### **Fundamental freedoms**

The four freedoms of movement of the EU are foundational pillars upon which the entire Union has been built. Without these core freedoms, the EU we have today and all the benefits it brings to its citizens would cease to exist. In addition, the Schengen Agreement has directly benefitted Europe's economic prosperity through the reduction of internal barriers. While Britain may have voted to leave the EU largely in opposition to the principle of free movement across borders, a post-Brexit Union must be steadfast in its commitment to maintaining this principle.

The greater freedoms associated with the free exchange of goods, services, labour and capital has led to the exchange of ideas and best practices across our continent. Greater travel opportunities have also led to increased cultural exchanges and understanding as a result both of targeted programmes such as ERASMUS and increased cross-border interactions. The European Movement will continue in its work to promote all forms of European exchange that aim to offer shared solutions to common problems. The recent refugee crisis has been a point-in-case for many who are keen to highlight both the weaknesses of Europe's external border management and the problems of shared internal borders. However, the large-scale and human nature of this challenge means that we must forge ahead with a Common European Immigration and Asylum System, which should respect EU citizens' and refugees' rights alike.

### **One voice on the global stage**

Britain's decision to leave the EU impacts on the EU's international position, but not as much as eurosceptics hope. The remaining 27 states will continue to stand as a leading voice and figure in an increasingly competitive global environment. However, we must do so in a united manner, offering one voice on the global stage.

Unfortunately, Brexit has come at a particularly unstable time in global security. The deterioration in relations between the EU and Russia brought about by the annexation of Crimea has deepened fears on our Eastern border. Radical Islamic terrorism has intensified as horrific atrocities are committed across our Union. Future

challenges will include further cross-border assaults, including cybercrime, which necessitates joined-up security thinking that is above any one member states' individual interests.

While Brexit may impact on the stability of the European Union, it will not break it. It is built beyond one member. The enlargement policy of the European Union has undoubtedly been one of its most successful policies, and has spread peace, democracy and security across our continent. The outcome of the UK referendum has thrown open the door to further enlargement prospects, which should be foreseen as an integral part of the EU Global Strategy on Foreign and Security Policy. Indeed, a clear enlargement perspective is the surest way to develop democracy and the rule of law in areas such as the Western Balkans.

### **Inalienable rights**

The European Union is a values-based entity - respect for human dignity, liberty, democracy, equality, the rule of law and human rights are its inalienable features. Whether it is the challenge of the UK leaving the EU or any future obstacle that may present itself, the Union should never and will never stop defending these core European values and rights. As such, these rights should be demonstrably linked to a notion of EU citizenship alongside other EU-level guarantees, including certain social, environmental and employment protections.

A post-Brexit European Union must make it its priority to ensure that no citizen of the Union ever suffers the loss or deterioration of rights. We at the European Movement International will remain committed to building a Union that protects the citizenship of every individual.

A European Union without one of its strongest members will no doubt be severely tested and strained. The challenges may seem potentially overwhelming. However, the Union, which was born out of a period of immeasurable conflict, has overcome difficulties in the past and will do so again. Perhaps the fallout of the UK referendum will act as a reminder to European citizens of the wealth of benefits that the EU brings to every individual. Too often we take such rights for granted and politicians are quick to smear the EU as the cause of any setbacks that arise, rather than standing up and taking responsibility.

We should take pride in the fact that we are citizens of such a unique family of nations. That said, we should not be distracted from acknowledging the faults that lay within it. Bold decisions and courageous acts are needed by all citizens of this Union if we are to deliver a better, safer, and more prosperous European Union in this post-Brexit world. ■



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# An age of ultra-low interest rates?

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**T**he financial cycle has ended up in a very deep financial crisis. Very low interest rates, ultra-low, even negative policy rates epitomize this crisis; they have raised concerns about the global economy and have triggered heated debates among economists and decision-makers (Wouter den Haan, 2016). Central banks, especially those which set the tone in a world deeply interconnected via financial markets, are under scrutiny, taking the centre-stage of debates.

Top ECB officials cite structural conditions in the European and the world economy as an explanation for the very low interest rates. In essence, these conditions refer to the balance between investment and saving<sup>1</sup>. The IMF also got involved in the debate by saying that ultra-low rates (even negative)<sup>2</sup> are not unjustified in the current context. The BIS, instead, warns repeatedly about side-effects of non-standard measures.

## **The natural, equilibrium rate**

Demographic and productivity trends, globalization, the financial crisis, overburdening debts, income distribution, new technologies, growing uncertainties, all these have impacted strongly on investment and saving.

More specifically:

- increased saving relates to demographics, income distribution, uncertain revenues, etc.
- the crisis has dented investment appetite, a natural reaction if one considers exuberance and bad investment choices in pre-crisis years; heightened uncertainties are reducing overall risk appetite - as Hyman Minsky remarked in his interpretations of Keynes, uncertainty is fundamental for understanding economic cycles<sup>3</sup>;
- over-indebtedness ('debt overhang') generates a slowdown of economic activity, a balance-sheet recession (via deleveraging) as Richard Koo noticed for Japan ever since the early 1990s;
- productivity growth diminished in the US as well as in other economies over the past decades, which made Robert Gordon, Lawrence Summers and others to suggest that we have, quite likely, entered a period of lasting stagnation (secular stagnation, as Alvin Hansen put it back in 1938). Such an assumption may seem strange if it is juxtaposed to the thesis of an incoming new Industrial Revolution, but it is not without plausibility when new technologies are likely to eliminate more than create jobs;

- decreasing inflation after large emerging economies entered global competition; an import of disinflation has occurred, from China in particular. The financial and economic crisis was a shock in itself, that combined effects on both supply and demand sides. The decline in commodity prices (ie. oil) speeded the fall of inflation.

The factors mentioned above suggest that the equilibrium interest rate, at which there is full resource utilization, has fallen significantly in industrial economies. This is also seen in the trends of long-term real interest rates and yields on 10-year bonds (BIS data, King and Low, 2014; Rachel and Smith, 2015). In the context of a chronic under-use of resources, with intense hysteresis taking place (depreciation of idle capacities, of human capital), real policy rates would need to turn negative. If inflation is very low (even negative), central banks would be forced to take policy rates below zero (hitting the zero-bound).<sup>4</sup>

Finally, the financial and economic crisis, the decline in economic activity and potential GDP, fuel governments' propensity for intervening in a drive to prop-up their economies. As a matter of fact, there is a worldwide competition via competitive devaluation.

If monetary aspects are disregarded, the natural, equilibrium interest rate - according to Knut Wicksel's definition - balances investment and saving at full utilization of resources. This can be shown in a diagram that relates investment (I) and saving (S) to the interest rate (r) - Figure 1. The hypothesis of full resource utilization, that the economy is not in the vicinity of, or immediately after a recession, or a major crisis, is implicit. The natural interest rate (R) reflects the trade-off between current consumption versus future consumption. As the interest rate goes up, the cost of postponing spending becomes more tempting.

As regards investment, a higher interest rates (credit cost) reduces its volume. The movement along the two curves reveals the dependency of saving and investment on the interest rate level; shifts of these curves indicate a change in the propensity for saving, for investment. During a major crisis both preferences might change substantially. The level of investment influences potential GDP. Such a thesis is valid provided good resource allocation takes place. If too many investments are misguided, the seeds of a crisis are sown. Figure 2 outlines the IS curve that shows the equality of saving

and investment at various levels of the equilibrium rate, in line also with agents' expectations. In the same diagram,  $Q_n$  represents potential output, while  $R_n$  is the corresponding equilibrium rate.

The natural interest rate depends on the propensity to invest and save. If the appetite for saving is on the rise, due to, say demographic trends and/or uncertainties, there is a shift of the  $S$  curve to the right, which, *ceteris paribus*, means a fall of the equilibrium interest rate (in Figure 1,  $S_1$ ). In such a case, for the same returns on their capital, companies are inclined to save more. In other words, at a higher volume of saving ( $S_1 > S_0$ ), the equilibrium interest rate edges down, more investments could therefore be financed at its level and this might push up future output. But the structure and quality of investment remains key, given their effects on the potential GDP.

The preference of households/consumers, of companies, for investment may change due to circumstances. Therefore, the investment curve may shift sideways, with the appetite for investment on the rise, or on the wane. For example, fear of what the future may bring weakens investment propensity as long as expected returns stay the same. A more unfavourable economic, social, political or geopolitical environment, as well as various uncertainties as we see now in many economies, are to be included here. And a lower cost of machinery and equipment will diminish investment volume at constant interest rates. When both curves drift sideways, the interest rate deemed appropriate for potential output would fall considerably, even below zero (see  $R_1$  in Figure 1).

### Monetary policy in a depressed economy

The US economy - by size and depth the nearest to a closed economy model - has witnessed a steady decrease of real interest rates over the past decades, from 4-5 percent toward almost zero at present (Williams and Laubach, 2003, King and Low, 2014, Summers, 2014, Haldane, 2015, Williams 2016, etc). In the global economy, which may be viewed as a closed one, real equilibrium interest rates had also fallen steadily over the past three decades (Figures 3 & 4; Rachel and Smith, 2015; Holston, Laubach and Williams, 2016); Figure 4 mentions factors that moved global saving and global investment.

Lawrence Summers argues that the equilibrium rate, which allows full capacity utilization, is negative at present (2014, 2016). But a legitimate question is posed by the pretty low

*"We need patience. We need to bank on the reinvigorating force of the entrepreneurial spirit and pragmatic policies"*

unemployment rate in the US, which is significantly below 5 percent currently; is it a sign of massive under-utilization of resources? Such a figure should nevertheless be adjusted for labour market participation and income levels.

If the severe unemployment case is dismissed, how does it come that inflation does not pick up? And why are inflation expectations persistently so low? It may be that, as James Bullard argues, there is need for another narrative. The latter should be centered on a Fisher equation ( $i = ir + \exp \pi$ ) where ( $i$ ) is the nominal interest rate, ( $ir$ ) is the real rate, and ( $\exp \pi$ ) is expected inflation; the line of reasoning is that, under conditions of persistent low inflation, and when output and unemployment gaps almost disappear, the Taylor's rule turns into a Fisher equation<sup>5</sup>. Bullard suggests that since the real rate is determined by markets, the 'pegging' of policy rates can be put in relation with persistently low inflation expectations.

It may be that markets take their cues from resilient low policy rates. And there can also be a 'regime shift', which depends on productivity growth, real interest rates on short term government bonds, and the state of the business cycle. Optimal monetary policy is regime dependent. But, would this policy rate pegging and its impact on inflation expectations imply that policy rates need to climb again in order to move inflation expectations upwards? This would fit into BIS' view that policy rates need to move upwards to combat new speculative bubbles. On the other hand, what if markets would not see it as a credible policy change, and inflation expectations may continue to stay low due to low economic growth, low productivity, demographics? And what if raising the policy rate would be, yet, premature by risking a new recession? In any case, this is a huge policy conundrum<sup>6</sup>.

Two key issues emerge: a/ whether negative equilibrium interest rates are justified, and b/ whether negative policy rates are effective? If resource allocation were adequate, the

Figure 1. Investment (I) and saving (S), equilibrium rate

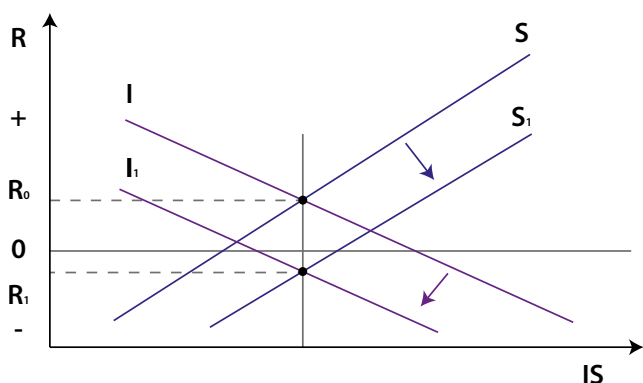
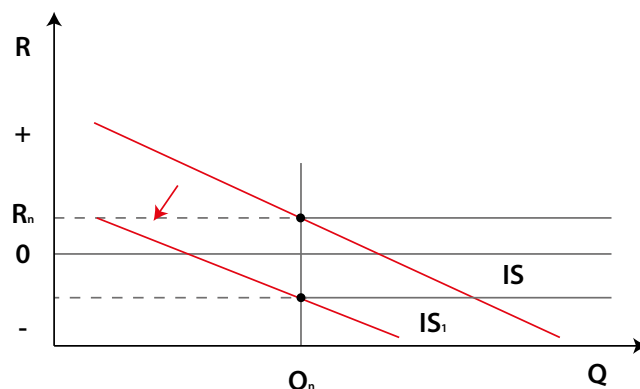


Figure 2. IS curve and potential output  $Q_n$

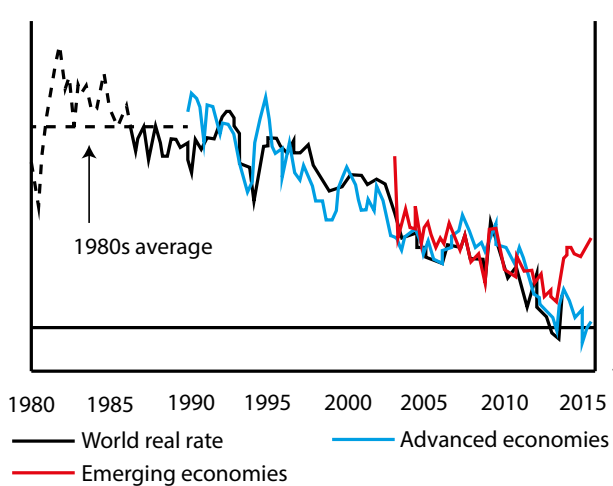




equilibrium rate should not be below zero. It is economic common sense to think so. But there is a different story when resources are grossly misallocated and structural conditions are unfavorable. During massive and chronic under-use of resources intense hysteresis may take place. Such circumstances may erode not only the value of current resources, but potential GDP too.

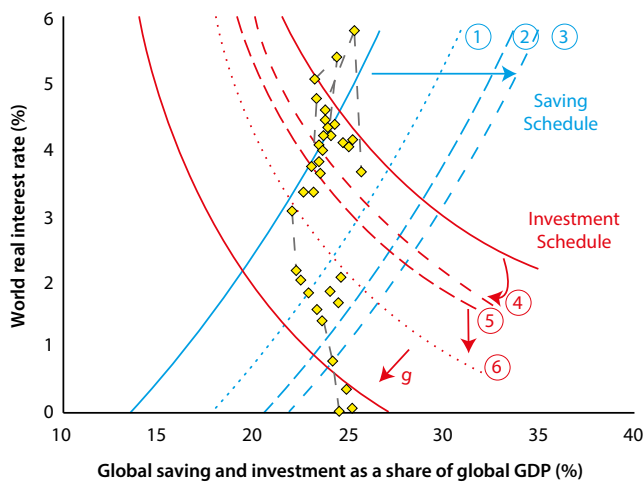
Therefore, there are arguments for policy intervention to exit the state of considerable under-use of resources and to avoid deflation, debt-deflation. If such arguments (the ECB's current

**Figure 3. The fall of real rates in the world (1980-2015)**



Source: Rachel and Smith, who quote King and Low (2014), Consensus Economics, IMF, Datastream

**Figure 4. Shifts in saving and investment schedules in the world economy (1989-2015)**



Source: Rachel and Smith, 2015

- ① Demographics
- ② Rising inequality
- ③ Global savings glut
- ④ Relative price of capital
- ⑤ Public investment
- ⑥ Spreads

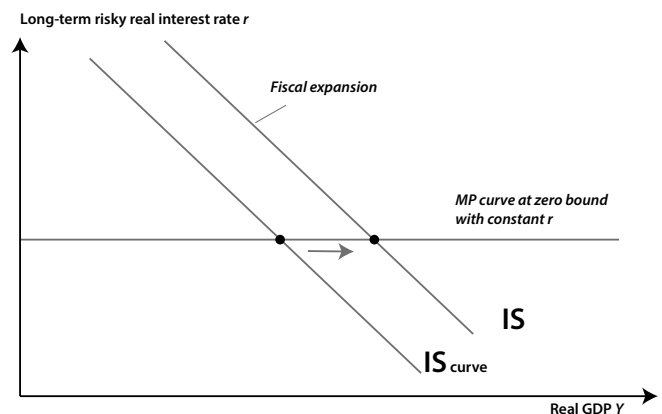
stance now, for example) are accepted, the issue that needs to be clarified is what kind of a policy mix should be used in the context of non-standard measures (such as those adopted by various central banks and which have entailed side effects (among which speculative bubbles and the impact on non-banks' financial balance-sheets).

Another important question is linked with resource misallocation and heightened bad distributional effects (Stiglitz, 2016) when policy rates are very low. Summers, in his secular stagnation argument, says that there is a trade-off between the need to boost output and financial stability, while monetary base expansion is fueling the search for yields and new speculative bubbles (2014). Therefore, he calls for increased resort to fiscal tools. According to Bradford DeLong and Lawrence Summers (2012), the main reason would be that at very low interest rates high budget deficits should not be a cause for concern, and that extra deficits would be easily financed via an increased fiscal multiplier and a rise in potential GDP.

This state of affairs would be the case in a depressed economy. As they say "...although the conventional wisdom articulated by John Taylor (2000) rejecting discretionary fiscal policy is appropriate in normal times, such policy has a major role to play in a severe downturn in the aftermath of a financial crisis that carries the interest rates down to the zero nominal lower bound" (2012, pp.233). Figure 5 describes fiscal expansion at the zero lower bound with a constant real interest rate (DeLong and Summers, pp.250). In this model, the MP curve is flat; thus, the real long term interest rates do not rise to mitigate the expansionary impact of fiscal policy. A variant of this model is with a downward sloping MP curve.

DeLong and Summers' view appears to gain traction when monetary tools lose much of their effectiveness and helicopter money would rather be avoided as an alternative policy tool. Nota bene: what seems affordable for the US economy (which issues the main reserve currency of the world) is not necessarily affordable in emerging economies facing inherent vulnerabilities (ex: high currency substitution dollarization/euroization).

**Figure 5. Fiscal expansion at the zero lower bound with a constant real interest rate**



Source: DeLong and Summers (2012)

### Negative policy rates?

When inflation is persistently very low, policy rates can hit the zero lower bound. If real rates need to be negative to bring output to its potential ( $R_2$  in Figure 2) and avoid damaging hysteresis (high structural unemployment, erosion of potential GDP) a dilemma and a technical problem appear: is it possible to take policy rates into negative territory? Looking at the past years' experience, the technical barrier can be overcome up to a point. However, the policy dilemma remains.

Massive capital movements complicate the picture. This is what Mario Draghi pointed out at the ADB's annual meeting in Frankfurt by referring to the balance between investment demand and the supply of saving<sup>7</sup>. Such a statement is well substantiated if one takes into account not only the savings glut (Bernanke 2005) in the global economy following past decades' development in China (where savings account for almost half of household income) and Asians and East Europeans' low wages in a global competition which favoured disinflation and deflation pressures. Moreover, the euro-area, which is highly divided in terms of competitiveness (North and South division) is showing a current account surplus of cca. 3 percent of GDP (2015), which is also putting pressure on the global investment and saving balance.

An economy may have an initial internal investment-saving equilibrium, but if massive capital inflows take place, interest rates may fall dramatically; output may exceed its potential for a while and speculative bubbles will quite likely occur. A speculative bubble emerged in the euro-area periphery, in the EU's emerging economies, where external imbalances grew dramatically in the pre-crisis years. It has also happened in the global economy due to recent QEs, which moved much liquidity to emerging economies.

The financial crisis led to a dramatic drop in investment and boosted saving. According to various estimates, average investment fell to 17-18 percent of GDP in the EU from 22 percent before the crisis. A basic question is whether the ECB has enough reasons to set negative policy rates; the debate cannot ignore the currency war in the global economy (a depreciated euro versus the US dollar can help the euro-area periphery), debt-deflation fears<sup>8</sup>, as well as how to discourage savings in a bid to boost consumption, etc.

All in all, real interest rates are low as a result of developments in the investment-saving balance. Central banks' moves may try to influence short-term rates, but, over the longer run, these steps are effective only if economies get out of the doldrums and the erosion of potential GDP is limited. Central banks cannot be all-problem solvers; reform measures are needed to address structural weaknesses which relate to demography, education, public investment, innovation, etc; fiscal policy may have to play a stronger role.

### Can equilibrium rates be pushed upwards?

Should central banks raise policy rates, for instance for reasons linked with an assumed policy shift? In Europe, this issue is rather complicated as the increase in credit cost along with a higher saving propensity (amid rising interest rates) might push the European economy back into recession, into a possibly new acute crisis with deteriorating again bank balance sheets).

A factual example is Sweden a few years ago, where the Riksbank tried to stem the boom in the mortgage market by

raising the policy rate; that pushed the economy back into recession, as Lars Svensson (who was deputy governor at the time) feared<sup>9</sup>. The fear of new recession is legitimate<sup>10</sup>.

Moreover, could large central banks induce an upward thrust in real rates in the global economy above the level implied by structural conditions? In the short run, maybe yes. Assuming concerted actions, such a development can be imagined. This actions would imply a massive absorption of liquidity (of base money), a large-scale drainage via sizeable bond sales that will take yields higher, would strain financial markets again, induce a new recession episode, heighten the debt-deflation threat, and trigger a string of bankruptcies.

Banks will face major asset losses similar to those in central banks' balance sheets (though, some may say that these losses should not be a concern for the issuer of a currency even in case of political impediments). Markets would freeze anew by forcing central banks to, supposedly, intervene again in the reverse. Therefore, structural changes are needed for long-term equilibrium interest rate to pick up; this means productivity growth, demographics, uncertainty, etc.

Returns on savings are slim, or almost nil, and insurers and private pension funds are hurt. But it is unfair to blame recent years' policies for the structural conditions in the global economy. The cheap money policies of the Great Moderation period, when massive misallocation of resources and the global financial cycle were fueled, is an issue for debate however.

### Emerging economies

Small and large emerging economies are trapped in this highly complicated and uncertain environment and bear the fallout from speculative capital flows. Countries with large budget and external deficits, high external debt, are more vulnerable and prone to balance of payment crises. The fall in commodity prices is also hitting hard countries which rely on basic commodity exports.

European emerging economies have undergone remarkable macroeconomic adjustments in recent years. They have an apparent advantage since their overall public and private debt is almost half as a share of GDP compared to developed EU countries (their *legacy problem* is much smaller). Likewise, their USD exposure is relatively low, which protects them somehow from the impact of Fed policy changes. But they are facing significant dilemmas:

- If inflationary pressures grow, should central banks in these countries raise policy rates while the ECB and other central banks continue setting very low, even negative rates? Would such moves lure speculative capital inflows? It is worth mentioning that wherever there is a gap between money markets and policy rates, it may dampen speculative inflows;<sup>11</sup>
- Is it reasonable to foster a reduction of the currency substitution (euroization) by all means when euro adoption is mandatory at one point?<sup>12</sup> One may be tempted to say yes due to the rise in the room for maneuver of monetary policy;
- If the *Impossible Trinity* (autonomous monetary policy, stable exchange rate, and free capital movements) is actually a dilemma (as Helen Rey says), then capital controls are needed – be they under the guise of macro-prudential measures. IMF itself has reassessed



the appropriateness of capital controls. These measures require a good coordination among central banks, regulators;<sup>13</sup>

- The ECB should ensure facilities similar to those available in the euro area, given the integrated EU financial market, the heavy presence of foreign banks from the euro area in the non-euro-area banking sectors, the high currency substitution (euroization) in some of these economies.

### High liquidity and, yet, sudden stop threats

Fresh financial market turmoil cannot be automatically prevented via lower real interest rates and an expansion of high-powered money in the global economy; markets may freeze again and balance of payment crises may occur if large macroeconomic imbalances operate. Unconventional shocks can also frighten markets. Real rates were actually low even in the pre-crisis years.

The global financial system is rife with vulnerabilities, not least because of a higher degree of interconnectedness, high leverage, and sophisticated financial instruments. In spite of more severe capital and liquidity requirements, of a new regulatory and supervision regime, transmission mechanisms continue to be precarious and sudden stops may emerge in areas of capital (money) markets, triggering contagion. This poses a tremendous challenge for governments and central banks, the latter having exhausted much of their ammunition.

This is why some voices (Adair Turner, Willem Buiter) mention helicopter money as a solution to repair financial intermediation. But this distribution of free purchasing power is not devoid of threats. On the other hand, if there is enough fiscal space, a boost in public spending may be used especially when it would target clear domains (like infrastructure), which can have a strong impact on the whole economy and would bolster aggregate demand.

The still fragile financial system is mirrored by developments across shadow banking, by systemic risks which evolve in capital markets. One should not rule out that the *lender-of-last-resort function* would be called upon for such markets too.

The bottom line is that there is need for continuing reforms of finance in view of the risks posed by interconnectedness, the too-big-to-fail syndrome, bad practices of this industry. A simpler and more transparent financial system, a reform of the international system aimed at cushioning negative externalities are badly needed.

### Final remarks

Let's sum up with a few inferences.

structural trends, oversize finance, and a drifted financial cycle provided the conditions for the eruption of the financial crisis;

the slowdown of the global economy (which is due to structural factors) was obvious before the eruption of the financial crisis;

structural factors have changed the propensity for investment and saving. Against this background, real interest rates have turned much lower since long;

over-indebtedness is a huge burden; it may be softer in the US where capital markets are well developed, whereas the EU relies heavily on banks, with their overloaded balance-sheets. The reduction of huge debts (deleveraging) is a lengthy process;

when inflation is so low, central banks may need negative policy rates to produce negative real rates –this is a big novelty in today's world, (Carmen Reinhart<sup>14</sup>).

income inequalities create tensions in society; this is fueling populist and protectionist movements in both developed and emerging economies; globalization limits come to the fore (Nancy Birdsell, 2016);

can new technologies bring in a new upswing? Can a better resource allocation, able to alter the distortions caused by policy errors and the exuberance of the past decades, help? It is not impossible, but it is time consuming given that debts are high, the financial sector is still fragile, and there are numerous tail events, big uncertainties;

global economic conditions are extremely unusual (the *New Normal*), fueling great confusion and uncertainties;

limits of cognitive models are increasingly clear and policies are navigating uncharted waters;

but we can take comfort in the fact that a generalized *Great Depression* was avoided, at least until now.

We need patience. We need to bank on the reinvigorating force of the entrepreneurial spirit and pragmatic policies (some call them non-standard). There may be a recovery underway, be it a very slow one. It is too early to speak about the long-term future of economic policies. And there are fundamental aspects still to be clarified better.

Are substantial negative equilibrium rates to be seen as normal? Are negative policy rates effective? If resource allocation were adequate, natural rates should not go below the zero-lower bound. Should we target a higher inflation rate (as Olivier Blanchard, John Williams, and other economists recommend) to reinforce the monetary policy instrument? This looks to be wishful thinking in the current circumstances, even though in theory it seems to make sense. ■



1. Mario Draghi, speech at the ADB annual meeting in Frankfurt, the ECB website (2016). Vitor Constancio (2016)
2. Jose Vinals, Simon Gray and Kelly Eckhold (2016). But an IMF staff paper argues that, at some point substantial interest rate cuts may outweigh the benefits from higher asset values and stronger aggregate demand. And that monetary accommodation may need to rely more on credit easing and an expansion of the ECB's balance sheet (Jobst and Lin, 2016)
3. Hyman Minsky, "John Maynard Keynes" (1975). This thesis is further elaborated in his "Stabilizing an Unstable Economy"
4. In practice, a central bank cannot take policy rates much below zero. There is a limit to how far central banks can lower their rates into negative territory. If commercial banks pass on the costs to their clients we could witness a variant of a bank run as clients rush to withdraw their savings. Though, such an inclination may be offset by the need to manage personal cash holdings, by transaction and protection costs.
5. In the circumstances of zero interest rate policy (ZIRP), of 'permazero', which has, arguably, characterized G-7 in recent years, a Taylor rule collapses into a Fisher equation. Thus,  $i = ir + \pi (exp) + \mu \pi(gap) + \beta Q (gap) = ir + \pi (exp)$ , where (i) is the nominal policy rate, ( $\pi (exp)$ ) is expected inflation, ( $ir$ ) is the real interest rate, and output and inflation gaps are considered. When the unemployment and the inflation gaps close (which is mostly the case of the US economy currently) the Taylor rule turns into  $i = ir + \pi (exp)$ , a Fisher equation (James Bullard, "A tale of two narratives", presentation, Saint Louis Fed, July 2016). See also his "Permazero in Europe", International Research Forum on Monetary Policy, Frankfurt am Main, 18 March, 2016
6. See also Evans and McGough (2016)
7. See also Gaulti Eggertson, Neil Mehrotra and Lawrence Summers (2016)
8. See also Guillermo Calvo (2016)
9. "Central Banks: Stockholm Syndrome", Financial Times, 19 November, 2014
10. There are here two additional questions. What if the ECB intervention was distortionary in the first place and now the answer should rather be a policy reversal? Second, what if the first ECB intervention (after 2008) was right, in order to address liquidity issues, while solvency related ECB intervention was less appropriate? Both questions need an answer to the issue of banks' legacy and the burden distribution across the euro-area. The problem with both these two questions, however, is that the ECB was the only institution that could intervene in order to rescue the eurozone. Moreover, distinguishing between liquidity and solvency problems is quite complicated in the real world.
11. It is the so-called Tošovský dilemma, specific to inflation targeters.
12. Though it is fair to say that euro adoption makes sense when the euro-area would have overhauled its policy design and arrangements and a candidate economy would have achieved a proper degree of real and structural convergence.
13. The 2006-2008 experience indicates that the strong rise in real credit growth was also stimulated loan externalization practiced by foreign banks' subsidiaries.
14. "...during and after financial crises and wars, central banks increasingly resort to a form of taxation that helps liquidate huge public and private debt overhang...financial repression...today this means consistent negative real interest rates...more often than not, negative real interest rates were accompanied by higher inflation (as during wars and in the 1970s), than we observe today in advanced economies..." (Carmen Reinhart, 29 July, 2016)

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# The Apple tax bill is not protectionism

International conflicts are inevitable when governments challenge the excesses of multinational corporations, Sebastian Dullien writes

**E**motions are running high after the EU commission ordered the Irish government to claw back €13 billion in unpaid taxes from Apple, with the US government threatening retaliation. Following Britain's decision to leave the world's largest trading block and declarations by French and German politicians that TTIP negotiations are dead in the water, commentators have suggested that the EU's 'protectionism' constitutes a threat to global economic integration.

This may be taking things a little too far. Protectionism is defined as measures which protect domestic companies against competition from abroad. It is very hard to see how Apple's tax bill meets this definition. Apple has used a complicated tax structure that takes advantage of idiosyncratic characteristics of the US and Irish tax systems, which leaves parts of their profits basically untaxed in either jurisdiction. Closing this loophole and clawing back unpaid taxes is not specifically aimed at hurting US companies. Moreover, it is not clear which domestic competitor might be protected: in Apple's line of business, there simply is no European supplier.

It is also worth comparing the Apple case to recent US fines against European companies. German car maker Volkswagen had to cough up \$15 billion when it cheated on emissions standards and French bank BNP Paribas was fined \$8.9 billion for breaking US trade sanctions on Sudan, Iran and Cuba.

In comparison with these cases, the Apple fines look relatively benign. After all, Volkswagen and BNP Paribas were competing neck-and-neck with US car makers and financial institutions. And while Apple can pay its new tax liabilities from idle cash reserves, the \$15 billion fine for Volkswagen is eating into its research and development budget, lowering its ability to compete in the future. No wonder that German and French policymakers have – at least behind doors – wondered whether the same fines would have been imposed had General Motors or Goldman Sachs committed the same crimes.

But what about the fact that Apple might have had 'legitimate expectations' that its tax engineering was legal (in contrast to the activities of Volkswagen and BNP Paribas), which would make a retroactive clawback unfair? After all, Apple had received assurances from the Irish government about the legality of its tax structure. But here one needs to remember that, at least in most European legal traditions, legitimate expectations have a limit. If a structure was chosen under which the company paid less than one percent in effective

taxes on their profits while statutory rates (which are paid by most European companies) run in the double digits, Apple managers should have known that something was wrong.

If I walk through a market in Bangkok and buy a dozen new iPhones for €50 each for my friends and family, even if the seller signs a form that the purchase is legit, I should not be surprised if the iPhones are confiscated at customs control



in Europe as counterfeit. Similarly, if Apple chooses a shady, complicated tax structure, even if it is assured of its legality at the beginning, it can have no complaint. There is no economic or moral way to justify such an absurdly low tax burden, and correcting this misbehaviour is not protectionism.

Instead, what this case demonstrates is that international conflicts are inevitable whenever governments challenge the excesses of multinational corporations, as any of these attempts will impact on other countries.

This was certainly true in the two cases cited above. In order to pay the US fine, Volkswagen was forced to use revenue that otherwise would have counted towards its taxable profit in Germany. In the German tax system, this disproportionately affects the local municipalities concerned. Wolfsburg, the town where Volkswagen has its main production site in Germany, has had to make large cutbacks in public spending as a result. BNP Paribas, France's most important bank, was also severely weakened by its fine.

It is an illusion that we can simply drive forward the international trade in goods, services, capital and intellectual property without also integrating the structures overseeing, regulating and taxing multinationals. If national (or the EU)

*“It is an illusion that we can simply drive forward the international trade in goods, services, capital and intellectual property without also integrating the structures overseeing, regulating and taxing multinationals”*

governments want to continue to regulate their own markets and collect taxes to pay for public goods (and this is the very essence of governments) without supranational structures, there will always be tensions. ■

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Simon is a member of the Chartered Institute for Securities and Investment and has in excess of 25 years' experience in the Isle of Man financial services sector. Having commenced his career with PKF in the mid-eighties, Simon went on to work for prominent PLCs and private trust companies in senior strategic and client facing roles, specifically in relation to the creation

of efficient and effective tax driven structures for private and corporate clients alike. In 2005 Simon was invited to be a part of the then newly established private client arm of an independent Family Office. Appointed to Managing Director in 2008, Simon played a key role in the extensive growth of the business, its two acquisitions and their successful integration. Early in 2011 Simon joined Knox House Trust Limited, having worked with its principal founder for the past five years and is tasked with heading up client services, business development and strategic operations. Simon also regularly features in the City wealth Leaders List of prominent trustees.

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#### James Porter

With over 18 years' experience in the offshore corporate services industry working for 2 large international corporate service providers, James is responsible for the on-going development and operations of Knox House Trust Limited's Marine and Aviation division. James also advises international entrepreneurs, expatriates, high

net worth individuals and professional intermediaries on all aspects of corporate structuring, specialising in aircraft and yacht ownership, management, registration services, VAT planning and importation services. James's role also extends to cover business development and attending various yacht and aircraft exhibitions.



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# Emissions scandal driving more regulatory scrutiny for automotive sector

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In the early part of the 2010s, banking was the industry hitting the headlines for protracted and expensive battles with regulatory authorities. Banking behemoths such as Deutsche Bank and Bank of America reported not only paying authorities billions of dollars in fines but also having earmarked similarly large numbers for legal fees.

Regulatory authorities have now also turned attention towards the automotive sector. In late 2015, news broke that Volkswagen had equipped vehicles with software designed to cheat on emissions tests. Volkswagen later admitted that 11 million of its vehicles were equipped with this software.

The company is now contending with the fallout from this scandal. Volkswagen has agreed to pay almost \$15 billion to settle claims in the United States, and it must buy back or fix affected vehicles by December 2018.

So far, Volkswagen has set aside €16.2 billion, or about \$17.9 billion, for costs related to the scandal but the American settlement with the government and car owners will consume a big chunk of that money. The company has recently reported record losses, and internally it has shaken up its leadership. Its chief executive, Martin Winterkorn, as well as the head of its American operations, have stepped down, and the company suspended several high-ranking executives. Volkswagen has also been facing mounting legal battles. The Justice Department filed a lawsuit against the company, as have the Federal Trade Commission, dealers and vehicles owners. Regulators across the globe have been conducting their own investigations.

The automotive sector is now under fierce pressure from consumers and regulators. Regulatory authorities worldwide have launched over 100 investigations, into the activities of car manufacturers and/or companies producing components used in car manufacture.

Given the importance of consumer confidence in the automotive industry many spokespersons are calling for more investigations and the implications are likely to be wide-ranging. Not only will automobile manufacturers themselves be at risk but investigations can also look into the activities of third parties and suppliers. Given the size of the industry, this represents a significant number of businesses placed under regulatory scrutiny.

## How can companies at risk from increased regulatory scrutiny prepare for investigations?

At this stage, companies involved in the automotive industry should consider their exposure to issues raised in

the Volkswagen scandal (eg. methods of measuring fuel emissions). Companies should also think in a wider context with regards to risk. Although a regulator may initially be investigating a specific issue, in this case the falsification of fuel emission reports, they will not turn a blind eye to other forms of misconduct.

Investigations into one product or issue can unearth evidence of other issues which need to be investigated and potentially reported on. For example, in addition to investigating emissions falsifications, the German competition authority has recently raided the office of BMW, Volkswagen, Daimler, ZF Friedrichshafen and Bosch regarding their steel purchasing practices.

## What happens in an investigation?

Practically speaking, although different regulators' methods will differ slightly from case to case and country to country, the aim of an investigation remains the same: to obtain evidence of misconduct. In most cases, this evidence will be found within electronic and paper documents.

To avoid the risk of a company deleting evidence, many regulators prefer to obtain data via a dawn raid on a company's premises. During a dawn raid, agents will seize electronic devices such as laptops, computers and phones as well as taking copies of data from servers and the Cloud. They may also take paper documents. The regulator will then examine this evidence as part of the investigation.

One of the best ways to prepare for an investigation is to mimic the regulators themselves and organise a so-called 'mock dawn raid'. Companies at risk from regulatory scrutiny often carry out mock raids in order to assess their level of readiness and, as a potential next step, to analyse what the regulator might find in the course of such an exercise.

Usually conducted by a third party such as an ediscovery provider, these mock dawn raids help to train a variety of personnel (including receptionists, in-house legal and IT) on how they should behave in these circumstances, including how best to respond to interview questions.

As part of this preparation, a contact list is often produced so appropriate personnel know who to contact and why, not just internally, but also relevant external resources. These mock raids are often facilitated by third parties including law firms and technology providers.

External advisors like law firms and ediscovery provider's work together to stage a raid, playing out the role of regulatory



officials and how the company should respond with. Other features of mock dawn raids include conducting personnel interviews to establish where key documents are held; taking copies of these documents by using forensic imaging techniques; and, where appropriate, maintaining a full audit trail.

After a mock dawn raid, it is possible to then analyse the data collected and get a full picture of what is happening in the company. This evidence can then be used by the company's law firms to form a case strategy.

### **How technology can reduce the legal costs associated with regulatory investigations**

Regulatory investigations require the submission and analysis of large volumes of unstructured data (emails, Microsoft Office documents etc.) and structured data (financial, operational and transactional data). In some regulatory investigation eg. a merger control investigation, the onus for submitting data is placed on the company and late submissions are subject to harsh fines.

It would be virtually impossible to manually search and read all of the data generated by a company, therefore companies under investigation rely on ediscovery technology to hone in on the evidence that needs to be produced and analysed. Over the years, ediscovery technology has evolved from being a simple search tool to something far more sophisticated including predictive coding technology.

Predictive coding is an advanced machine-learning technology which allows computers to predict how documents should be coded (ie. should a document be tagged 'responsive' or 'privileged') based on decisions made by human subject matter experts. Put simply, an experienced lawyer trains the computer by coding a sample set of documents, and the computer then learns what to look for based on this training. This technology can find key documents faster and with fewer human reviewers, thereby saving on cost and review time.

Any 'hot documents' or data custodians who are exhibiting suspicious behaviour can be quickly identified, allowing companies to take appropriate action and/ or submit the necessary data to the authorities in a timely manner thus avoiding fines.

As well as unstructured data, some investigations will also require that financial, operational and transactional data be examined for irregularities. Technology can assist by uncovering misconduct hiding within structured data such as spreadsheets or databases. As with unstructured data, there are specialist tools that can provide deep analyses and uncover patterns, anomalies and other evidence for a case. Once a company uncovers this evidence, it can take action.

The authorities often impose lower fines when a company comes forward of its own volition (known as a 'race for leniency'). For example, in 2015, The Royal Bank of Scotland was able to avoid a €115m fine by alerting the European Commission's competition watchdog of two attempts to fix the prices of key interest rates.

In the cases of both unstructured and structured data, technology can find the relevant evidence quicker which can in turn increase the chance of leniency from regulators.

*"Regulatory scrutiny has long been a burden for businesses but by implementing proactive compliance strategies and taking advantage of technology, the costs and fines associated with regulatory investigations can be significantly reduced"*

### **What steps can be taken so companies can prevent scandals from happening in the first place?**

The phrase 'knowledge is power' might be clichéd but it remains highly relevant in today's business world. Evidence of misconduct is found both in communications from employees such as email and from irregularities found in financial data. Without monitoring both types of electronic data, it is easy for misconduct in a business to thrive and grow in scale.

It is best practice for companies at risk of regulatory scrutiny to take a proactive approach in preventing scandals and misconduct from happening. For compliance officers and in-house counsel who want to stay ahead, two effective proactive methods of preventing scandals happening are conducting mock dawn raids and performing regular compliance audits.

Although mentioned previously in terms of reactive preparedness, mock dawn raids also serve a useful function in a proactive way by enabling a company to understand where data is and how long it can take to collect data. It also may act as a deterrent for those thinking about engaging in illegal or suspect activity as it sends a strong message to employees that compliance is taken seriously.

However, the biggest weapon in a compliance officer's arsenal is the compliance audit. In line with guidance from the authorities such as the European Commission and Competitions and Markets Authority, many companies are now also reviewing their electronic communications and information as part of their internal compliance monitoring and audit processes to ensure compliance with regulations and to uncover wrongdoing.

These reviews, typically focusing on emails, can be used in conjunction with interviews in order to provide an organisation with a more comprehensive view of the levels of risk it is exposed to. Some companies also opt to perform periodic 'spot checks' where, using ediscovery technology, compliance officers analyse random sample of emails for signs of misconduct or wrongdoing.

Regardless of the method chosen, organisations that carry out internal reviews to detect wrongdoing such as corrupt practices and anti-competitive behaviour are better-placed to defend themselves should a regulatory inquiry be held.

### **The shape of things to come**

Regulatory scrutiny has long been a burden for businesses but by implementing proactive compliance strategies and taking advantage of technology, the costs and fines associated with regulatory investigations can be significantly reduced. ■



# THE CANADA-EU COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT

## Ratification fears and implementation challenges

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**A**fter a lull since the publication of the final text of the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union (EU) at the end of February, CETA is now back at the forefront of Canadian and European trade agendas. On July 5<sup>th</sup> the European Commission announced that it had formally proposed the signature and ratification of CETA to the Council of the EU (formerly known as the Council of Ministers). The Commission, EU member states and the Canadian federal government are expected to sign the agreement at the next Canada-EU Summit, scheduled to be held in Brussels on October 27-28, 2016.

However, given the 'mixed' nature of the agreement from the EU's standpoint, there are concerns that CETA may never see the light of day. Nevertheless, there seems to be enough political support for the agreement on both sides of the Atlantic for CETA to come into force on a provisional basis sometime in 2017. When it does so, a lot of work will nonetheless remain to be done by Canada and the EU to implement the agreement's non-tariff related elements.

### Ratification

With its proposal, the Commission has made clear that it wanted to move forward with CETA's ratification in order to show that the EU would continue functioning normally in spite of the Brexit vote. It also wished to confirm the EU's commitment to maintain and deepen trade and investment links with the rest of the world. There are legitimate fears on the EU's side that the failure to sign and ratify a free trade agreement with a close economic and political partner like Canada would leave the EU's trade policy in tatters.

The Commission, nevertheless, had to take into account member states' concern about people's scepticism vis-à-vis globalization and free trade, also made vivid by the unexpected Brexit vote in the UK. As a result, for expediency reasons, it presented CETA as a 'mixed' agreement to the Council of the EU rather than as an agreement that is considered to be under the EU's exclusive competence. Apparently, several EU member states threatened to vote against CETA (with enough votes for a blocking minority in the Council) if the Commission did not propose the agreement as a mixed agreement.

In its proposal, however, the Commission clearly indicated that it was of the opinion that, from a legal standpoint, CETA is not a mixed agreement. Ultimately, it will be up to the EU

Court of Justice, which has been asked by the Commission to provide an opinion on the nature of the EU-Singapore Comprehensive Free Trade Agreement, to shed light on the legal nature of CETA. Because the Court's opinion is not expected before the end of 2016 or the beginning of 2017, the Commission felt that it could not wait that long before setting the EU's CETA ratification process in motion. This explains why it went ahead with the mixed-agreement proposal in spite of its own position on the matter.

If the Commission had sent CETA as an EU-only agreement, then a qualified-majority vote would have been required





in the Council of the EU to approve the agreement, unless the ministers unanimously voted in favour of changing the legal nature of the agreement to mixed one. CETA as a mixed agreement now means, however, that trade ministers in the Council will have to unanimously vote in favour of the agreement for it to move to the European Parliament (EP), where only a majority is required for approval.

Consequently, Bulgaria and Romania's threat to vote against the agreement, in order to get Canada to lift its visa requirement for Bulgarian and Romanian citizens, has become real. For this reason, Canadian immigration minister John McCallum visited Brussels in early July to discuss the issue. Canadian officials from the Department of Immigration, Refugees and Citizenship are said to have visited Bulgaria and Romania over the summer in order to try to settle this issue and prevent these two countries from vetoing CETA in the Council.

The Canadian government's commitment to lift visa requirements on Mexican nationals, which was announced at the end of June when Mexican president Pena Nieto visited Ottawa, provides a good degree of optimism that Canada will be able to settle the Bulgarian and Romanian visa matter in time for the Canada-EU Summit at the end of October.

CETA as a mixed agreement also means that the EU member-states' national (and in some cases subnational) parliaments will vote to ratify the agreement. These votes are considered by member states essential in order to increase the democratic legitimacy and acceptance of CETA in particular and free

*“Stakeholders ... will need to keep the feet of Canadian and EU politicians and bureaucrats close to the CETA fire”*

trade in general. This means that if a national parliament were to vote against CETA, then the agreement's so-called 'mixed' elements would not be in force in that particular member state. For instance, CETA's investment-state dispute settlement tribunal would not have jurisdiction in the member state in question. In other words, Canadian firms that wanted to launch a dispute against that state's government would not be able to do so under CETA's investment chapter rules. They would have to resort to the rules set forth by the existing bilateral investment treaty between Canada and this particular EU member state.

The real issue is what happens between ratification at the EU level (by the Council of the EU and the European Parliament) and ratification by national parliaments. Assuming the CETA will be ratified at the EU level, then the agreement will apply on a provisional basis until national parliaments have had their say. In those member states where the latter will have voted in favour of CETA, then the agreement will apply in its entirety. The much-debated question between the Commission and the member states is the scope of CETA's

**European Council President Donald Tusk, left, Prime Minister Justin Trudeau and European Commission President Jean-Claude Juncker, right, are expected to sign the Canada-Europe trade deal at a summit in late October.**



provisional application: ie. what parts of the agreement will be carved out until national parliaments have approved (or not) CETA?

At the time of writing, there seems to be a consensus on the provisional carving out of the investment protection (investor-state dispute settlement) elements of CETA's investment chapter. Whether the chapter's market access portion will provisionally apply is still under negotiation. The same applies to CETA's chapter 14 on International Maritime Transport Services, though Canada would welcome its provisional exclusion since the EU has an offensive interest in this case. In all, it is estimated that around 95 per cent of the CETA text would apply on a provisional basis until the national parliaments have had their say.

On the Canadian side, CETA's ratification should not be an issue. Technically, a cabinet decision is all that is necessary for the agreement to be ratified; it requires approval neither by the federal parliament nor by provincial parliaments. The only say that Canadian parliaments may have over CETA is if implementation legislation has to be passed in order to modify existing laws so that they accord with CETA provisions.

### Implementation

With ratification now under way, CETA is expected to come into force provisionally sometime in 2017. Immediately, business firms will be able to take advantage of the elimination of tariff lines on a large number of goods traded between Canada and the European Union. However, there are a number of obstacles to trade and investment that will remain, notably those related to standards, rules, regulations and procedures.

This is because CETA is much more than a traditional free trade agreement focused on the elimination of tariffs. It addresses a much wider range of issues with a view to increasing trade, labour and investment flows between Canada and the European Union: for example, regulatory cooperation, labour mobility, investor protection, public procurement, electronic commerce and intellectual property. Differences and duplications between Canada and the European Union on such issues represent additional transaction costs for Canadian (European) firms doing or wanting to do business with or in the European Union (Canada). These costs ultimately reduce the economic welfare of Canadians and Europeans.

If these so-called second-generation free trade issues are not dealt with in CETA's implementation phase, economic experts will most likely conclude that CETA has not performed according to expectations if they are asked to evaluate the agreement's economic impact 10 years after its entry into force. Such a conclusion will only reinforce the existing scepticism that many people have toward free trade and make it harder politically to negotiate new agreements or expand existing ones in the future. The problem in CETA's case, however, would not be the agreement itself but the effectiveness and completeness of its implementation.

The term 'implementation' herein is not limited to the adoption of implementing legislation to make existing laws conform with CETA's provisions, which is how the legal literature tends to define implementation. It means much more. It implies the adoption of concrete (ie. practical) rules, standards and procedures (in Canada as well as the European Union) so that businesses can take advantage of provisions,

such as, for example, the one that aims to facilitate the mobility of professionals, technicians and businesspeople between Canada and the European Union.

Making this kind of implementation possible requires a high degree of cooperation not only between Canada and the European Union, but also between the various levels of government in each jurisdiction. In many instances, it also requires close coordination across departments or ministries within each level of government.

In other words, Canada and the European Union have to develop institutions and procedures that will allow Canadian firms to export products, services and people to the European Union (and vice versa) without having to undertake lengthy and costly steps (assuming they exist in the first place), which would represent significant obstacles to CETA's goal of liberalizing trade and investment between Canada and the European Union.

For example, if an agricultural good has to obtain an official certification that it meets sanitary or phytosanitary standards (SPS) in order to be consumed in both Canada and the European Union, then it would make sense to develop a procedure whereby the enterprise producing this good would only need to have it certified once by one certification agency, which would be recognized by both Canadian and EU authorities.

Otherwise, the need to go through two separate certification processes — one in Canada and one in the European Union — may prove too costly for a firm, which may then decide that exporting the good in question to the other CETA party may not be profitable after all. This would be a lost opportunity in terms of trade and value creation (lost revenues and profits for the producer, lost variety for consumers, and so on).

This is why stakeholders, most especially the business community, on both sides of the Atlantic will need to monitor closely the implementation work being done to identify issues or areas that are not being dealt with in a properly and timely fashion. In other words, they will need to keep the feet of Canadian and EU politicians and bureaucrats close to the CETA fire.

To manage CETA's implementation in an effective and timely manner (ie. get the job done), the agreement has actually foreseen a complex institutional architecture with the CETA Joint Committee, the contact points and the specialized committees. However, this CETA institutional structure needs to be linked with the rest of the machinery of government operating at the federal and provincial levels in Canada and at the supranational and national levels in the European Union.

### Conclusion

CETA has come a long way, but it has yet to reach the end of the road. First, it has to navigate successfully through the EU's complex ratification process, given the agreement's proposed mixed nature. Second, once ratified, Canadian and European governments will have a lot of work to accomplish in terms of implementation if they want to realize the full extent of CETA's potential benefits. Such is the nature of 21<sup>st</sup> century free trade agreements that aim to reduce, if not remove, trade and investment barriers that are located not at the border but beyond it. ■

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# THE G20

## BUSINESS ENGAGEMENT FOR A SUSTAINABLE AND INCLUSIVE GLOBAL ECONOMY

This year, the annual G20 Leaders Summit took place in Hangzhou, China against a backdrop of sluggish GDP growth and slowing global trade. CEOs from across G20 economies rallied ahead of the meeting calling for a credible action plan to open markets, mobilize private sector capital and make it easier to trade internationally.

**T**he G20 has become a powerful force for shaping the rules of engagement for competing in an increasingly integrated global economy remaining the only forum in which leaders representing over 80% of the world economy get together to do two essential things:

1. advocate sound economic policies within G20 member economies, in common pursuit of strong, sustainable, balanced growth and job creation; and
2. seek international cooperation on an array of challenges that no one country can overcome alone.

While governments create necessary frameworks and conditions, it is businesses worldwide, large and small, which drive trade and investment and create jobs. The G20 agenda, and decisions taken by leaders at their annual Summit, impact business operations and increasingly shape intergovernmental policies that affect businesses everywhere.

In short, business has a clear stake in the success of the G20. And that is why, as they strive for progress towards inclusive and sustainably economic growth, G20 leaders must remain aware and responsive to the constraints that businesses face. Specifically, they must remain responsive to business policy recommendations that point G20 leaders to areas where tangible results can be made towards addressing these issues.

Leaders at the 2015 Antalya Summit missed an important opportunity to build momentum on the trade agenda but the G20's collective agreement on trade issues, including honouring the G20 standstill agreement on protectionism and implementation of the World Trade Organization's Trade Facilitation Agreement is just the type of leadership business wants to see from the world's major economies.

Comprising business leaders and CEOs from a wide range of companies from across G20 countries, ICC's G20 Advisory Group targets G20 policy development at the international level and engages in the G20 process to ensure business priorities are considered. Its mission is to press for the inclusion of business views in deliberations by G20 heads of government and to introduce fresh ideas and innovative approaches to support open trade and investment, economic growth and employment.

ICC CEO's held leadership positions in four of five taskforces established under the Chinese Business-20 (B20) process, and also served as a Network Partner for the B20 Trade and Investment Taskforce and the Anti-Corruption Forum held in Beijing in May.

Ahead of this year's Summit, ICC contributed significantly to the development of the 20 principle B20 China 2016 policy recommendations that aim to support G20 leaders with their on-going mission to implement structural reforms and drive sustainable and inclusive growth.

### **Seven steps to sustained economic growth**

While fully endorsing the B20 recommendations, ICC also published a supplemental set of recommendations covering seven policy areas not covered by the 20 principle 2016 recommendations.

Aiming to complement B20 work the proposed measures, ranging from climate change and anti-corruption to taxation and trade, covered salient issues impacting both governments worldwide and the millions of ICC member companies, large and small, that have a clear stake in the success of the G20.

The ICC recommendations were:

### **On taxation:**

- Achieve coordinated and consistent implementation of the G20/OECD BEPS Action Plan, ensuring that all countries - not just OECD states - work together towards a consistent international tax landscape.
- Continue efforts to align investment and tax policies to facilitate greater consistency internationally and incentivize cross-border trade, investment, jobs and economic growth.
- Ensure effective dispute resolution mechanisms are in place to mitigate double taxation cases and associated tax disputes.
- Maintain the confidentiality of commercially-sensitive business information in CbC tax reports and ensure that all countries and jurisdictions implement the global standards, including new tax transparency measures related to the automatic exchange of financial account information between national tax offices.

### On trade finance:

- Ensure equitable, risk-aligned and consistent regulatory treatment of trade finance to enable the engagement of developing and frontier economies.
- Advance and multiply the positive impact of trade financing and trade, by actively enabling the deployment of FinTech solutions and propositions in international commerce.

### On trade:

- Call on WTO members to continue to refrain from taxing electronic commerce, and create conditions for the further development of the global digital economy.
- Initiate sectoral negotiations at WTO that can make a significant contribution to economic growth by reducing the cost of trading.
- Make concrete progress on the liberalization of trade in services through alternative negotiating approaches, including plurilateral approaches such as the Trade in Services Agreement (TiSA), with the ultimate aim of transferring results into the WTO. It is estimated that removing barriers to global exports of tradable services could generate world trade gains of US\$1.0 trillion and global employment gains of almost 9 million jobs.
- Encourage more countries to join the recently announced plurilateral initiative to eliminate tariffs on environmental goods, expand product coverage using the widest possible definition of green goods and eliminate unilaterally-imposed environmental rules that are trade-restrictive or create barriers to trade. A meaningful WTO agreement in liberalizing trade on environmental goods, even on a plurilateral basis, could deliver US\$10.3 billion of additional exports and augment employment gains by 256,000 jobs.

### On investment:

- Include dispute resolution mechanisms in all investment agreements to ensure investors have direct access to effective and independent dispute settlement.

*“The Hangzhou Summit represents a major step forward in establishing a credible, action-oriented agenda to drive inclusive growth through trade”*

- Avoid sectoral discriminations in the negotiation of investment treaties, which have a direct impact on the inflow of FDI.
- Devote greater attention to state-owned enterprises (SOEs), which can enjoy a range of preferential benefits and compete with the private sector in investment and trade areas.
- Refrain from abusing ‘national security’ provisions in agreements and treaties for protectionist purposes. Such procedures should be applied in a transparent, fair and non-discriminatory manner if they are to be exceptionally used.
- Avoid forced localization provisions which have negative repercussions on both the investor and on the host country’s attractiveness as an investment destination.

### On energy:

- Encourage the utilization of broad energy mix including conventional fuels such as coal, gas, gas liquids and oil; nuclear power; and renewables such as bioenergy, geothermal, hydro, solar and wind to drive sustainable development and help alleviate environmental or other sustainability challenges associated with any one form of energy.
- Manage the long-term transition to secure and sustainable global energy systems by establishing stable regulatory frameworks that incentivize energy investment, ensure long-term energy security, and

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**“ We agree with the G20’s analysis that the benefits of trade and open markets must be communicated to the wider public more effectively. It’s vital that business and governments work together to explain how and why trade matters for all.”**

**JOHN DANILOVICH**  
Secretary General, ICC

promote sustainable energy delivery and consumption.

- Accelerate energy R&D investment for innovative energy technologies, and strengthen and encourage the expansion of well-trained scientists, engineers and technicians necessary to expand energy-related R&D.
- Continue to promote and support energy efficiency across industries, including establishing government efficiency standards and promoting energy-efficient behaviours and devices by energy consumers through education, regulation and incentives.
- Improve the global governance framework for energy policy, starting with establishing formal business representation in the G20 energy-related working groups. G20 Leaders should also: (i) encourage the completion of the International Energy Forum Joint Oil Data Initiative (JODI) work on oil, gas and coal information and (ii) reform current institutions (eg, International Energy Agency, International Energy Forum), including increasing collaboration among countries and international energy-oriented organizations.
- Increase access to clean, modern forms of energy in accordance with SDG 7, with emphasis on Africa and the Asia-Pacific region, including support for (i) the UN

SE4All initiatives and its High-Impact Opportunity (HIO) partners (including energy efficiency in district energy, green building, transportation, lighting and appliances); (ii) efforts by international organizations to improve energy access in developing countries (eg, the African Development Bank's New Deal on Energy for Africa).

**On climate change:**

- Support and prioritize the development of common rules of the COP21 Paris Agreement on Climate Change to measure, report, and verify commitments. Credibility and predictability will be essential for the long-term success of the Agreement and are vital considerations for private sector planning and investments.
- Promote market-based instruments to achieve the least economic cost emission reduction targets and include them in relevant considerations, documents and strategies at UN and national levels including Nationally Determined Contributions (NDCs) and other national climate policies where appropriate.
- Support global carbon pricing as a policy framework, such as through building upon and extending the G7 Carbon Pricing initiative.



**ICC joined 400 Chinese and international business leaders at the B20 China launch meeting in January**





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“The G20 will lead by example to lower trade costs, harness trade and investment policy coherence, boost trade in services, enhance trade finance, promote e-commerce development, and address trade and development.”

G20 LEADERS' COMMUNIQUÉ  
Hangzhou Summit 2016

- Generate funding and financial risk-mitigation mechanisms for necessary R&D, deployment and infrastructure.
- Implement mechanisms that rationally incentivize emissions reductions and climate adaptation.

#### On anti-corruption:

- Strengthen anti-corruption capacity-building by (i) promoting usage of self-regulatory codes and standards; (ii) supporting and scaling-up anti-corruption and compliance training; (iii) enhancing efforts to engage SMEs; and (iv) working together with the private sector to build capacity for high-level reporting mechanisms in G20 members.
- Strengthen enforcement of existing anti-corruption frameworks, with particular focus on enforcing the UNCAC through improved monitoring, peer review processes and partnering with the business community.

Led by ICC First Vice-Chairman John Denton, CEO of Corrs Chambers Westgarth, the ICC business delegation travelling to Hangzhou held high hopes for continued G20 responsiveness to business recommendations and tangible G20 action on longstanding business priorities that address SME development, trade and investment, infrastructure, financing, employment and anti-corruption.

Business was encouraged by the strong focus that Chinese G20 Presidency placed on trade and investment as well as the formal declaration issued by Trade Ministers for the first time, which was an important step forward in the G20 process on the crucial agenda for the global economy.

The G20 Summit was a major opportunity for China to demonstrate its commitment to promoting a strong, sustainable and balanced growth for world economy but

business says G20 action must match words to tackle trade crisis.

In a statement reacting to the G20 Hangzhou Leaders' Summit final communiqué, ICC Secretary General John Danilovich said:

*“We’ve been adamant in recent months that G20 must do more to tackle the worrying slump in world trade. The Hangzhou Summit represents a major step forward in establishing a credible, action-oriented agenda to drive inclusive growth through trade.”*

Danilovich said that G20 leaders must now put words into action. *“There is often a divide between summit commitments and real-world policies when it comes to trade,”* he said. *“With protectionism rising at an unprecedented rate there is no room for the G20 to fall short of its latest commitments to keep markets open.”*

ICC also commended the G20's focus on strengthening the multilateral trading system. *“We believe that with the right global policies in place there is an opportunity to unleash a new era of ‘inclusive trade’: one in which all companies—regardless of size, sector or location—can benefit from equal access to international markets. A central focus must be on ensuring small businesses can access cost-effective finance and make full use of e-commerce opportunities,”* Danilovich said.

In May this year, ICC launched #TradeMatters, a global campaign-to promote a balanced and evidence-based debate on the role of trade in today's economy. Danilovich concluded his G20 reaction statement on behalf of world business saying: *“We agree with the G20's analysis that the benefits of trade and open markets must be communicated to the wider public more effectively. It's vital that business and governments work together to explain how and why trade matters for all.”* ■



# High expectations



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**T**he G20, which came into being in response to the East Asian crisis in 1997-98, played a key role in responding to the global financial crisis of 2008-09. China's Presidency of G20 is being looked at with a lot of anticipation. The theme for the G20 summit in September was *'Towards an Innovative, Invigorated, Interconnected, and Inclusive World Economy'*, and the agenda of all the meetings in the run-up to the summit revolves around this theme. China has added another 'I', innovation, to the three 'Is' of the 2015 Turkish Presidency—inclusiveness, implementation, and investment. Under this framework, members can discuss how to formulate a G20 blueprint for innovative growth and deepen international cooperation in the areas of innovation and digital economy.

However, there are members, like India, which would focus on poverty alleviation and sustainable development besides trade and investment. Against the above backdrop, this note provides an overview of the Chinese Presidency of the G20, with a focus on its agenda and its role in making the G20 a success.

## Introduction

The G20 played a key role in responding to the global financial and economic crisis of 2008-09. Its decisive and coordinated actions in ensuring sufficient liquidity in their respective economies, strengthening the capital adequacy of financial institutions, protecting savings, and deposits, addressing regulatory deficiencies, unfreezing credit markets, and working to ensure that international financial institutions provide critical support for the global economy boosted consumer and business confidence and supported the first stages of economic recovery. The G20 continues to focus on measures to support global economic growth, with a strong emphasis on promoting job creation and open trade.

During 2008 to 2010, deliberations in G20 summits focused mainly on building consensus on measures required to stem the global financial crisis. Since the Seoul Summit in November 2010, the agenda has focused on issues such as building the framework for strong, sustainable, and balanced growth; international financial architecture; regulation and supervision of the financial sector; climate change finance; fossil fuel price volatility; clean energy and energy efficiency; green growth; food security; disaster risk management; labour and employment issues; corruption; and trade.

In sum, the G-20's efforts to date speak to its power as an emerging forum and suggest that the hard work of coordinating policy among the major economies can pay off. Apart from the success that the G20 has achieved by taking joint actions on financial regulation, the G-20 leaders have also helped marshal a collective response to other social and political challenges, like Ebola, hydro-fluorocarbons, and worker safety. The achievements of the G20 over the years can be grouped into four stages:

1. 2009: responding to the historic crisis;
2. 2010: the turn to consolidation;
3. 2011-12: keeping the euro area intact; and
4. 2013-14: addressing weak global growth.

From 2015 onwards, the G20 has focused on 'national growth strategies' that would collectively raise G20 GDP by 2 per cent by 2018. These efforts are still a work in progress.

Today, the global economy and international economic cooperation have reached another crucial juncture. As a result, the Federal Reserve's planned withdrawal of quantitative easing (QE), through which central banks purchase sovereign debt, is currently destabilizing India and other emerging countries. Accelerated fiscal adjustment in advanced economies may reduce the pressure on developing currencies, but given the extent that this negatively affects growth in advanced economies, their own faltering recovery would be at greater risk.

The asymmetric impact of fiscal management in advanced economies through the trade and financial channels is another conundrum that emerging market economies (EME) would need to sort out. It is imperative that the G20 nations get together and strengthen the foundation for a global recovery and growth and get over the crisis. The G20 is in a position to seize the historical opportunity presented by technological breakthroughs and a new industrial revolution and usher in a new round of global growth.

Henceforth, the G20 has promised to act with a broader vision and deliver concrete outcomes. It would continue to address critical issues affecting the global economy and endeavour

to promote strong, sustainable, and balanced growth. During and after the global financial crisis of 2008, while advanced economies experienced dwindling growth, India was one of the countries that continued to grow. In addition, India has not been a contributor to the global imbalance. By virtue of these, India has emerged as an important member of G20—one able to influence the reshaping of the world economic and financial order and contribute towards it. Thus, it is of utmost importance that India bring to the table its own assessment of the G20 agenda in the light of the global developments and offer considered views on global cooperation without compromising on its own interests.

### **China's role in international economic management and its Presidency of the G20**

With a population of 1.35 billion, China recently became the second largest economy and is increasingly playing an important and influential role in the global economy. The role that China plays in international economic management is significant, and in this year's G20 summit meeting, China is expected to guide world economic growth and international cooperation. China has assured the world community that it would work towards transforming the G20 from a crisis management mechanism to a long-term governance platform.

The G20 is a huge platform. It brings together the world's major advanced and emerging economies, and represents around 85 per cent of global GDP, 80 per cent of world trade and 67 per cent of the world population. Hosting the G20 is a huge opportunity for China as it provides a perfect platform to actively drive international economic management issues. As the host country for this year's G20 summit, China can play three leadership roles—bridge builder, facilitator, and catalyst.

The agenda of a G20 summit is generally set by the country holding the chair. China is expected to work together with other members to consolidate and strengthen the partnership within the G20; fully implement the commitments at Antalya and the previous summits; improve the effectiveness of the G20 in decision-making and implementation; and extend its influence. The economic backdrop of the Chinese G20 Presidency is not much different from other G20 presidencies. The global economy continues to face significant short- and long-term challenges associated with the sluggish recovery from the global financial crisis, and 2016 is likely to be characterised by disappointing growth and persistently high unemployment.

The world economy faces several risks, including the slowdown in the Chinese economy; slow and negative growth in emerging

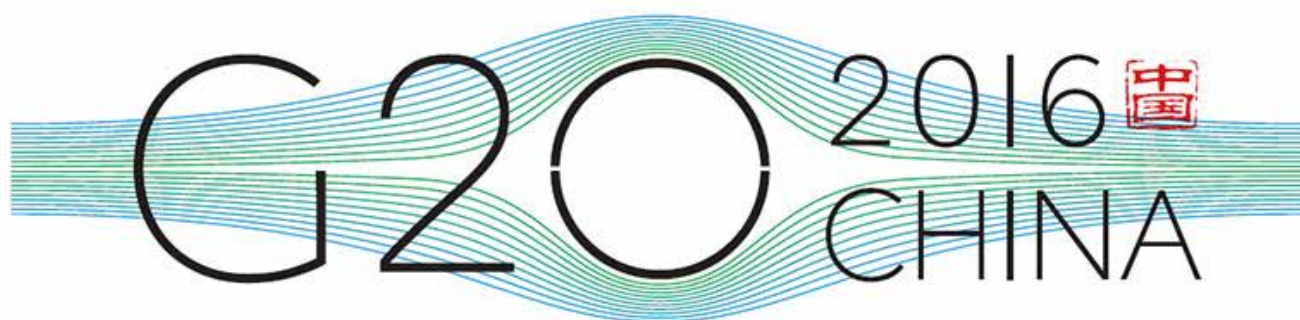
*“China hopes that its advocacy for an innovative, invigorated, interconnected, and inclusive world economy... can help coordinate and implement the national policies of G20 members for a robust and sustainable growth model for the world economy”*

markets such as Brazil and Russia; debt concerns in several G20 nations; and ongoing EU problems related to migration flows, Greek debt, and Brexit. Hence, economic policy makers and multilateral institutions like the G20 need to be alert to evolving economic conditions and stand ready to respond to events that can cause contagion. The G20's central mandate of strong, sustainable, and balanced growth, which has been repeated by successive G20 presidents, remains elusive. This has raised questions about the efficacy of the G20 as a forum for addressing key international problems.

Ultimately, the G20's credibility is linked to its ability to restore global growth on a sustainable basis. China has started with an ambitious and broad-based agenda, and has generated a sense that the G20 is back to focusing on pressing economic challenges. China faces the challenge to balance the high expectations of 2016 with the natural limitations of the G20 as a forum that has conspired to constrain its ability to address the primary global economic challenges (G20 Monitor, 2016).

It will be imperative for China to manage expectations about what the G20 can accomplish. If it can achieve this, it can to some extent defy critics and prove the credibility of the G20 and show that it is relevant, and also ensure that it makes a positive contribution to global economic governance and leave a positive legacy for future G20 hosts.

Another great opportunity for China's G20 Presidency will be the implementation of the post-2015 development agenda. Recognising its importance for global economic growth and stability, Chinese President Xi Jinping has highlighted this task as one of its priorities for the 2016 Hangzhou summit, in addition to fostering innovation and strengthening trade and





investment. China's 2016 Chairmanship can drive progress by formulating a roadmap and timetable for the implementation of the post-2015 UN Sustainable Development Goals and the Paris climate change agreement. With regard to fostering innovation, China could work with other G20 members to garner support for the promotion of innovation—including technological revolutions, infrastructure development, and green growth—thereby providing even more positive spillovers for the world economy.

In sum, it can be safely said that the China's role in international economic management has been significant. So far, China's influence has been constructive and, despite recent signs of political assertiveness in the Asian region and at home, China's policy strategies have worked to support the status quo in managing the global economic order, and not to undermine it. This is despite the fact that the Chinese economy has shown signs of slowing, and is grappling with the problem of severe excess capacity in its manufacturing industries, which reflects fundamental problems in the Chinese economy. It also has significant implications on international trade, given the growing influence of China in the global trading system.

China is trying to reform its growth model to reduce its reliance on investment and exports, and move up the global value chain. In light of the current economic slowdown, the capacity elimination programme is likely to continue in the medium run, while the Asian Infrastructure Investment Bank (AIIB) and the 'One Belt, One Road' strategy may help tackle the problem in the long run. Meanwhile, exports of industries with excess capacity have recovered to pre-crisis levels and will continue to grow.

Given these developments, it is imperative that China ensures the success of the G20 during the year of its Presidency. Internationally, the establishment of the G20 has opened up a cooperative space within which China and the other emerging economies can, together with established powers, contribute to constructing a more robust set of rules to make markets work better. Here, too, China can continue playing a constructive role, and its power and influence in the management of the international economic system is only set to increase.

### **G20 agenda-2016**

Because of the proliferation and intricacy of global challenges, the G20's agenda keeps expanding, but how can the process of setting the G20 agenda be streamlined and more coherent so that it still responds to the most important challenges to global governance? As the role of the G20 shifts from crisis response towards longer-term global economic governance, it is advisable to draw a medium-term plan, such as a five-year road map, to focus the group's priorities and agenda across several host countries. China can work with other stakeholders to help focus members' interests to articulate such a plan.

The agenda of all the G20 meetings in the run-up to the G20 summit in September would revolve around this year's theme '*Towards an Innovative, Invigorated, Interconnected, and Inclusive World Economy*'. This ambitious theme not only continues and expands on the three 'I's of the 2015 Turkish Presidency—inclusiveness, implementation, and investment—but also incorporates Chinese policy preferences and development concepts. China has added another 'I', innovation. The theme emerged from the fact that the G20 has reached another turning point since its formation.

Many countries are suffering from a series of unfavourable factors, including anaemic global growth, decline in potential output, volatility in financial markets, weakening global trade and investment, high levels of unemployment, and inequalities. Due to growing divergence in economic performance and policy priorities among major economies, the world economy is witnessing increasing difficulties in macroeconomic





policy coordination. The world economy needs a fresh impetus and therefore the theme of this year's G20 are apt and in line with the changing global needs and requirements.

### **Key items on the agenda of the Chinese Presidency**

#### **Breaking a new path for growth**

Since the 2008 global financial crisis, the G20 has stressed the importance of coordinated fiscal and monetary policies to stabilise the global economy and promote growth. The Pittsburgh summit in 2009 set up the framework for strong, sustainable, and balanced growth. Further, efforts were made at the Brisbane summit in 2014 in formulating a comprehensive growth strategy, implementation of which started in 2015. At the Turkey summit in 2015, leaders of the G20 reiterated the need to be bold in making more effective policies to achieve these goals. Hence, in keeping with the earlier mandates, China would continue to upload the spirit of partnership of win-win cooperation to enhance macroeconomic policy coordination and cooperation, address potential risks, and increase synergies in promoting growth.

#### **Maintaining the momentum of world economy recovery**

All G20 members would continue to remain committed to responsible macroeconomic policies and would continue to enhance coordination to increase the synergy of their policies and reduce negative spillovers, maintain financial market stability, increase investment and consumption, and jointly boost global economic growth.

#### **Lifting mid- to long-term growth potential**

To achieve this objective, the G20 is expected to enhance cooperation on innovation, including innovation in science and technology and in the development of concepts, institutional arrangements, and business models, to explore new growth engines of the world economy.

Second, the G20 needs to continue structural reforms to lift total factor productivity and potential output and expand growth boundaries. G20 members are encouraged to carry out and benefit from structural reforms in line with their own development status.

Third, the G20 needs to advance the merging new industrial revolution, taking full advantage of new technologies and new organisational models in industrial production to lift domestic production and create more jobs. Fourth, the G20 needs to enhance exchanges and coordination in economic innovation and entrepreneurship policies to reduce inconsistencies.

#### **Helping the implementation of the UN's 2030 Agenda for Sustainable Development**

Development was a key agenda item during the South Korean and Turkish presidencies in 2010 and 2015 respectively. In 2015, there were several key development milestones: the Third International Conference on Financing for Development in Addis Ababa in July; the Global Development Summit in September that endorsed the 2030 Agenda for Sustainable Development; and the Global Climate Summit in Paris in December, which reached a new agreement on climate cooperation.

The Presidency is an opportunity for China to build on these issues. China has been one of the best performers in meeting the Millennium Development Goals and, with special advantages in promoting a global development agenda, should maintain development as one of the ongoing priorities for the

G20 and propose the same to the G20's members. It needs to ensure that the 2030 agenda for sustainable development is a priority and key issue in all G20 policy discussions. It can help member countries, especially low-income countries; prepare a roadmap for implementing the 2030 development agenda, which focuses on health, education, occupational training, e-commerce infrastructure etc. China also needs to support and facilitate the participation of low-income countries in global value chains.

#### **Strengthening G20 collaboration in the energy sector**

The energy sector is core to almost every aspect of the world economy, including growth, poverty reduction, and environmental sustainability. All member countries have agreed to the G20 principles on energy collaboration, which include energy access; global governance, data, and market transparency; security; efficiency; technologies; and sustainability. These principles provide the G20 a systematic framework to deal with energy issues. The main objective of the Chinese Presidency would be to:

1. integrate energy into other items on the G20's agenda, in particular prioritising clean energy projects in infrastructure investment to improve energy access for low-income countries;
2. expand to all G20 countries the peer review mechanism for reduction of fossil fuel subsidies; and
3. Establish a Global Energy Network, as proposed by President Xi Jinping at the UN Sustainable Development Summit in September 2015.

Several other key aspects in the agenda include the promotion of global trade growth, developing green finance, improving international tax regime, implementing consensus on anti-corruption, etc. Undoubtedly, the agenda is not only comprehensive but also challenging. Given that expectations are high, China has to put its best foot forward and use all its experience in global governance to ensure that the G20 not only meets its objectives but also remains effective in addressing global challenges of low growth and downside risks.

#### **India's agenda and its role at this year's G20**

India has emerged as an important member of G20—able to influence the reshaping of the world economic and financial order and to contribute towards it. India has an ambitious multi-pronged agenda for the G20 summit; it ranges from deploying global surpluses for infrastructure development and inclusive development to energy efficiency and global action to mitigate terrorism, corruption, and black money. India's core agenda at the summit would centre on global economic growth and stability, stable financial markets, and global trading regimes and employment generation. India would also seek global support for accelerating its infrastructure development, which includes digital infrastructure and ensuring access to clean and affordable energy. India is also expected to highlight the importance of international cooperation against black money and tax evasion with respect to the Panama Papers.

According India's Sherpa at the G-20 Summit, India will push for poverty eradication and sustainable development, besides trade and investment, at the G20 meetings and the final summit this year. Although trade and investment have been on the G20 agenda from the beginning, China is trying to take



these to a higher level; therefore, it is imperative that India connects these to the issue of poverty.

Another important issue where India is going to push this year is clean energy. The US contends that India must commit to ending fossil fuel subsidies by a specific date, but India is not in a position to do so, although it is expected that India will endeavour to eliminate these subsidies at some time in the medium-term. Automatic exchange of information among countries to check black money is also a top-priority item on India's agenda; though there is an agreement among all countries on this issue, there has been hardly any concrete progress.

On India's agenda is also base erosion and profit sharing (BEPS), which refers to tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low- or no-tax locations where there is little or no economic activity, and which therefore result in little or no overall corporate tax being paid. The BEPS is of utmost significance for countries like India due to their heavy reliance on corporate income tax, particularly from multinational enterprises.

Since a new government came to power in India in 2014, China-India relations have been at an all-time high, and the last two years have been the most productive phase of the Sino-Indian relationship, as shown by frequent high-level exchanges, especially the two landmark visits by the leaders of the two countries.

In 2015, China and India, together with other BRICS partners, worked to launch the New Development Bank (NDB), which is headquartered in Shanghai and headed by an Indian president. India also supported China in establishing the AIIB last year; India is the second-largest shareholder. The two countries coordinated their positions before and during the international climate change conference at Paris in December 2015, and participated in the negotiations in a responsible and constructive manner.

Terrorism is another common threat for China and India. During the visit of the Indian Minister of Home Affairs to China in November 2015, China and India agreed on closer security and anti-terror cooperation. It is amply clear to the world that the vision of a prosperous Asia cannot be realized without a prosperous India and China.

Against the above backdrop, and given that the relations between the two countries are at an all-time high, China can expect complete cooperation and support from India at the forthcoming G20 summit in Hangzhou. It is apparent that in recent times they have approached several key global issues with similar perspectives and that this has led to greater collaboration between the two countries. Of course, it cannot be said that the relations are very smooth—they are still plagued by border disputes—but the two countries are firm

that they will not allow their bilateral issues and problems come in the way of projecting a unified front to the world and enhance mutual relations.

However, when it comes to international issues, it is not enough if the two countries merely exchange notes; it is essential that they actively shape the agenda and outcomes of all discourses at the international level. Further, India expects China to promote BRICS as a leading global platform that influences global economic issues. India believes that it is a good opportunity for the grouping to increase its influence in the forum and lay the foundation for posing as a unified voice for more representation in international institutions.

The grouping would also need to adopt a more coherent position on global economic governance. With the establishment of the NDB and the AIIB, the BRICS along with other emerging and developing economies can ask for greater role, power, and inclusion in multilateral finance institutions.

The expectations of India, as of the rest of the world, from the Chinese Presidency of the G20 are quite high. India hopes that China will use its Presidency to bring a new life to discussions on new sources of growth—such as structural reforms, infrastructure investments, and reform of the global financial system—which are important from India's perspective. India expects the focus to remain on core issues, especially infrastructure financing, poverty alleviation, and decrease in protectionism, and may not be interested in tackling broader issues, such as the international refugee crisis, which may be important for other countries.

## Conclusion

Despite many failures, the G20 still provides countries a very useful platform for discussion and dialogue. Information sharing is another area where the G20 has been very successful. Focusing on country-specific commitments instead of international ones was a good strategy on the G20's part.

Moreover, as the Chair of the G20, China is expected to attach great importance to, and take, advice and suggestions from non-G20 members. China has promised to invite international regional organisations as guests at the summit, and seeks contributions from UN, IMF, World Bank, WTO, ILO, and OECD. China has also sought to promote dialogues between the G20 and other groups like G77 and APEC.

China's Presidency of the G20 has raised huge expectations and excitement in the world economy. China hopes that its advocacy for an innovative, invigorated, interconnected, and inclusive world economy (4 'I's) can help coordinate and implement the national policies of G20 members for a robust and sustainable growth model for the world economy. However, it is important that expectations of China's Presidency of the G20 be realistic and that it be focused on what can be achieved in any single year. ■

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# THE RISE OF SUSTAINABLE FDI EMERGING TRENDS IN THE SADC REGION



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**T**he international investment landscape has been shifting over the past two decades. Governments are increasingly realising the potential for Foreign Direct Investment (FDI) to achieve not only economic growth, but developmental objectives as well. This realisation, coupled with pressing global concerns such as the international financial crisis and climate change, have led to an international trend of increasing government policy space in FDI regulation, as well as the desire to formulate better coordinated regional FDI policies.

As a response to growing FDI inflows into Africa, especially in the resources sector, various Southern African Development Community (SADC) countries have begun to re-examine their FDI policies with a view to aligning them with this international trend toward 'sustainable' FDI.

However, an interventionist policy stance that is too strongly biased in favour of governments has to be balanced with the risk of deterring FDI altogether. The shift in FDI approaches and its challenges has informed a recent study by the South African Institute of International Affairs, which examined current FDI trends in five SADC countries: South Africa, Botswana, Angola, Namibia and Mozambique.

Both the United Nations Conference on Trade and Development (UNCTAD) and the Columbia Center on Sustainable Investment (CCSI) define sustainable FDI as foreign investment that achieves local social, economic or environmental objectives. UNCTAD has released an investment policy framework for sustainable development, which acts as a guide for countries to carve out sustainable development policies and regulations.<sup>2</sup>

The CCSI outlines five pillars critical to sustainable international investment. They are: a transparent and mutually beneficial legal framework, a commitment to long-term planning and revenue management, a strategy to leverage investments for development through infrastructure and linkages, an approach that promotes human rights and integrated development, and a system to manage environmental risks and impacts.<sup>3</sup>

This shift towards sustainable FDI also aligns with the United Nations Sustainable Development Goals (SDGs), promulgated in 2015 as a path to end poverty by 2030 through promoting economic, environmental and social sustainability.<sup>4</sup>

## Shifting legal frameworks

The first of the CCSI's five pillars for sustainable international investment is 'a transparent and mutually beneficial legal framework.' South Africa, Namibia and Angola have recently tabled new domestic investment frameworks. These regulatory instruments support greater government regulation to ensure that FDI serves the developmental goals of these countries.

In South Africa, the Protection of Investment Act (PIA), which was passed in 2015, allows national legislation such as Broad-Based Black Economic Empowerment to be applied to international as well as domestic investors, in order to ensure that economic growth from FDI is inclusive. Namibia's New Investment Promotion Bill enacts certain performance requirements, which mandate various initiatives such as local employment, skills development and joint ventures, which investors must comply with or lose their business licenses.<sup>5</sup> It also reserves certain sectors of the economy for government and domestic investors.

Angola's Private Investment Law (PIL), also passed in 2015, mandates 35% Angolan shareholding as well as shared management in certain sectors, in addition to offering incentives to investors that are no longer automatic, but correspond to certain local development initiatives such as skills transfer and promotion of exports.<sup>6</sup>



However, these emerging regimes have also elicited controversy. Critics question whether the legislation is 'mutually beneficial' or might instead favour domestic over foreign investors disproportionately. This has raised legitimate fears that these instruments send a discouraging signal to potential foreign investors.

In South Africa's PIA in particular, concerns have arisen over the Act's treatment of expropriation, which abandons the international standard of compensation at market value for a vaguer 'equitable and just compensation.' While this standard is in line with South Africa's Constitution, it leaves investors with a sense of uncertainty as the determination of compensation is left to the whims of the government on a case-by-case basis.

A similar uncertainty arises from the Act's rejection of international recourse to arbitration to settle investors' legal disputes in favour of a domestic dispute settlement mechanism. This, investors fear, has the potential to remove the independence of the adjudication process and open it up to politicisation.

Namibia's Bill, on the other hand, evokes concern about the viability of performance requirements. For example, joint ventures in sectors where the local partner is severely under capacitated often do not foster a productive working relationship, and can lead to much less skills and technology transfer than is intended when it is forced. It also risks deterring FDI from certain sectors, other than natural resources where investors would likely have alternative country options to consider.

Enforceability and predictability is another challenge affecting certain FDI regulatory regimes, and Angola offers a prime example of such a shortcoming. Political corruption and uncertainty in the country raise concerns as to whether its PLI will be duly implemented by the government or even stand the test of time, as in Angola laws can be passed arbitrarily by executive decree and the country suffers from a weak judicial framework.

**Leveraging infrastructure in extractives for local benefit**  
CCSI's 3<sup>rd</sup> pillar of sustainable investment indicates there must be a strategy 'to leverage investments for development

*"... global pressure to manage environmental impact and risks from FDI (the CCSI's 5<sup>th</sup> pillar of sustainable investment), is increasing, and may reflect more prominently in SADC policy changes"*

through infrastructure and linkages.' Resource-seeking FDI is often dominant in sub-Saharan countries, and due to a lack of industrialisation in the region this in turn relegates them to the bottom rung of the value chain. The emphasis on the export of raw materials places them in a difficult position to achieve direct value-addition and local benefit.

Beneficiation seeks to offer the prospect of capitalising on resource wealth by upgrading to a higher level of value chain activities. Botswana, the world's largest producer of diamonds, is attempting to beneficiate this resource with the establishment of the De Beers Aggregation Company, which aims to make Gaborone a sorting and valuation hub for diamonds throughout the world. If successful, the company can contribute towards broader employment creation and capacity building in Botswana.

Such a venture can also increase the longer-term sustainability of Botswana's resource wealth as diamonds are predicted to run out by 2029. However, uncertainty surrounds the economic viability of this strategy because Botswana does not enjoy a competitive advantage in beneficiation, and capacitating a highly under-skilled population requires significant time and cost.

Mozambique also enjoys great resource wealth and interest from foreign investors, especially because of its coal abundance. However, additional broad-based benefits are more difficult to achieve as the coal sector is capital and export intensive.

In the Nacala Corridor, foreign investors have developed a railway linking Mozambique and Malawi to transport coal to the ports for further export. There is also the potential to stimulate local agricultural production by using this infrastructure to link smallholder farmers in Malawi, Zimbabwe and Zambia with larger commercial markets. Yet it remains to be seen whether the railway will stimulate local development beyond resource extraction, as is commonly the case with resource-based infrastructure.

Additionally, as is common with large infrastructure projects, the Nacala railway has negatively affected those living in the project vicinity due to the inevitable relocation of farmers, businesses and communities. Often the compensation is not perceived to be adequate to account for the loss of livelihoods when communities are uprooted. This calls into question the difficult balance of attracting FDI for economic growth and the CCSI's fourth sustainable investment pillar of protecting human rights, especially those of impacted marginalised communities.





## FDI and regional integration

A regional approach to foreign investment offers the potential to realise gains for individual countries and contribute to sustainable FDI. SADC has been reviewing and amending its regional investment legal framework which currently consists of the SADC Finance and Investment Protocol (FIP), passed in 2006. Operationalising a coordinated investment framework for the region could potentially increase the attractiveness of SADC as an FDI destination.

This is because investors will have access to a wider range of skills and resources as well as the potential to form regional value chains when policies and regulations are coordinated throughout the region. Intra-regional infrastructure development in SADC (such as the Nacala railway) will be crucial in facilitating this integration.

Additionally, a successful regional integration framework can help to mitigate the all too common 'race to the bottom' of investment incentives. In the latter situation countries battle to offer the most attractive incentives to investors and end up undercutting their own social, economic or environmental regulations and initiatives, impacting both the sustainability and benefit of investment. A better coordinated regional incentives framework could help to lessen this competition.

However, the effectiveness of the 2006 FIP has been hampered by the lack of political will among member countries to sacrifice some of their national interests in favour of regional integration. The FIP is an Organisation of Economic Co-operation and Development (OECD) Bilateral Investment Treaty prototype encompassing very stringent foreign investment protection standards including enforceability through Investor State Dispute Settlement (ISDS) arbitration. ISDS grants investors recourse to international arbitration for disputes relating to their investments. Its binding nature and limited room for policy space have led to the current desire for renegotiation.

SADC has recently promulgated a SADC Model Bilateral Investment Treaty (BIT) guideline for the region, which adopts a different approach. The SADC Model BIT mirrors most of the new domestic legislation and protections implemented by individual member states such as the Namibian Investment Bill and the South African Protection of Investment Act of 2015. It is important to note that the SADC Model BIT is not binding on any SADC member state but serves as a guideline when they conclude investment protection agreements with third parties or between themselves.

The SADC Model BIT is bound to be instructive should SADC move towards the conclusion of a regional investment regulation chapter after the FIP review. What is discernible, however, from the SADC Model BIT is that in terms of

aspiration, it is intended to be a new generation investment agreement by trying to achieve a greater balance between investor and host state governments' rights and obligations.

It will be interesting how the principle of sustainable development is negotiated and reflected in the Tripartite Free Trade Agreement<sup>7</sup> and subsequently the Continental Free Trade Agreement, and whether these regional groupings will elect to follow the more liberal FIP model or the more restricted SADC BIT model. Whatever the case, these broader regional agreement initiatives are likely to struggle with the same conundrum of garnering political will among all members to enforce a regional arrangement.

At the core of every rules-based system is an effective dispute settlement mechanism. The CCSI pillars would be mute if there is no proper dispute settlement mechanism or rule of law. With regards to the SADC, this is worrying as the region disbanded its investor-state tribunal and replaced it with one based on state-to-state adjudication.

Another issue which SADC member states, and African countries in general might wish to focus attention on within their individual jurisdictions and when negotiating regional agreements, is the proper regulation of State Owned Enterprises as harbourers of incoming FDI.

They should include the OECD guidelines on corporate governance of state-owned enterprises and the Santiago Principles for Sovereign Wealth Funds in the framing of their approach. SADC seems to not have caught up with the debate which has been going on for some time in the EU, US, Canada and Australia on how best to regulate SOEs in such a way that the best value can be extracted from their investments. It is important that they are treated equally to private investors considering that they benefit from state subsidies and might not only be profit driven.

## Conclusion

For now, SADC has focused its drive for sustainable FDI on deriving local socio-economic benefit from investment. This has manifested in both adopting new investment legislation frameworks and pursuing value-addition linkages from investment in natural resources. With poverty and inequality in the region still high compared to the rest of the world, such goals are appropriate.

However, they must be carefully operationalised in a way that does not significantly deter investment into the region, which is not easy to accomplish. Looking to the future, global pressure to manage environmental impact and risks from FDI (the CCSI's 5<sup>th</sup> pillar of sustainable investment), is increasing, and may reflect more prominently in SADC policy changes. ■

1. SADC is an intergovernmental organisation comprised of 15 Southern African states, which aims to increase economic and political integration among its members

2. [http://unctad.org/en/Pages/DIAE/International%20Investment%20Agreements%20\(IIA\)/IIA-IPFSD.aspx](http://unctad.org/en/Pages/DIAE/International%20Investment%20Agreements%20(IIA)/IIA-IPFSD.aspx)

3. <http://ccsi.columbia.edu/about-us/five-pillar-framework-for-sustainable-international-investment-2/>

4. <http://www.un.org/sustainabledevelopment/sustainable-development-goals/>

5. <http://www.namibian.com.na/index.php?id=138241&page=archive-read>

6. <http://www.embangola-can.org/pdf/LawEnglish%20Lei%20do%20Investimento%20em%20Ingles.pdf>

7. The Tripartite Free Trade Agreement is a proposed free trade agreement to link three Regional Economic Communities: The Common Market for Southern and Eastern Africa (COMESA), SADC and the East African Community (EAC)



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# EUROPE AFTER BREXIT

## A proposal for a continental partnership

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### Introduction

For nearly sixty years, a seemingly irreversible momentum towards integration within the framework of the European Union has, for many, defined the future of the continent. On 23 June 2016, the electorate of the United Kingdom made a sovereign choice to leave the EU. After the British decision to leave, Europe's trajectory, even its destiny, has again become a matter of choice. Brexit marks both a major constitutional change for the UK and a significant rupture for the EU. If only for this reason, the negotiation of the terms of Brexit must take a long-term view, beyond the possibly drawn-out negotiations that will begin in the coming months.

Over the next 15-20 years, the balance of economic and geopolitical power in the world is likely to alter significantly, with a new world Top Table of highly populated countries with massive economies. Our part of the world should want to have a seat at this table, so that our particular version of civilisation continues to be represented in the councils that seek to maintain peace, set rules and generate prosperity globally. Representation cannot be taken for granted. Of the EU's three largest countries, Germany, France and Britain, none can be confident of having a place at the new top table.

More immediately, the constellation of security threats in Eurasia calls for managing the Brexit divorce so that it does not weaken Europe further at a time of major challenges to the security, freedom and wellbeing of its peoples. The current situation is a worrying reminder of the unavoidable interdependencies of geographical neighbours: the UK can leave the EU but it cannot relocate away from Europe.

The same can be said of economic links. Nearly half a century after the first enlargement of the EU in the early 1970s, the economic circumstances of the EU and the UK are now so interwoven that their prospects cannot be independent over any foreseeable horizon. Perhaps the greatest economic uncertainty for the UK is the future course and prosperity of the euro area, by far the largest economy in this region of the world. EU reform matters hugely for the whole continent with or without Brexit.

EU-UK cooperation will therefore remain profoundly important. Ways must be found to put it on a new and secure footing. Different approaches will no doubt be needed to reflect the substantive differences between, for example, trade and security issues. But any new framework will need to recognise that economics and politics are not neatly segmented. For example, they are interwoven in decisions on economic sanctions designed to help maintain international order. The new arrangements will need to be able to cope with the fuzzy boundaries of different public policy spheres.

It is vital, therefore, that the EU and the UK enter exit negotiations not only with a clear view of their near-term goals but also of their long-run interests and likely interdependencies.

On the British side (and indeed, to policymakers all over the developed world), the referendum result is a signal that urgent efforts are needed to ensure that the benefits of future economic growth can be enjoyed by all. Beyond any costs from the unavoidable medium-term uncertainty surrounding Brexit, other risks need to be navigated, including undoing trade integration with the EU (Sampson et al, 2016)<sup>2</sup>.

On the EU side, there may be a temptation to apply punitive terms to the UK's exit and the new relationship. Certainly Britain cannot be rewarded and it will not be allowed to pick and choose at will policies that it wants to participate in or abstain from. The EU needs to avoid reaching a series of ad hoc agreements with partner countries that are not based on clear principles. But an exceedingly unfavourable deal would be liable to damage everyone and would not achieve cohesiveness within the EU itself. For the EU, continued support should rest on reforms that can regenerate growth and jobs and, in particular, provide more secure foundations for the euro area.

An outcome that isolated the UK and blunted the incentives for EU reform would, in short, be in no-one's longer-term interests. The issues of EU/euro-area reform and how to define the relationship between the UK and the EU are therefore interlinked. With or without Brexit, the UK would have had to define its relationship with a reformed euro area (Sapir and Wolff, 2016). Similarly, increasing policy integration within the euro area, for example on banking, was already raising questions before 23 June 2016 about the relationship with the UK (Pisani-Ferry et al, 2012).

This article leaves aside the issue of EU reform and focuses on the desirable EU-UK relationship after Brexit. Our starting point is the proposition that none of the existing models of partnership with the EU would be suitable for the UK. Nor would the off-the-shelf models recognise the importance of the multi-dimensional EU-UK relationship in other fields such as security and defence. The 'Norway' option would not allow limits on freedom of movement for workers, which is likely to be a priority for the UK government. It would also turn the UK into a pure rule-taker, a role that would be inadequate given the size and significance of the UK. Similarly, under the 'Swiss' model, the UK would become a pure follower of EU regulation in the sectors in which it would participate. Moreover, from an EU point of view this approach would be open to the justified



criticism of the UK cherry-picking its participation in a shared public good.

There is also the option of a free-trade agreement. This would be technically feasible and could be based on a close agreement that also incorporated bilateral dispute-settlement mechanisms if political agreement could be reached. Such a structure would not, however, provide an adequate basis for the kind of deep economic integration that some kind of continued participation in the single market would constitute.

The UK's comparative advantage is largely in regulated services, which require an agreed regulatory framework in order to be provided across borders. For example in banking, the ability of banks and other intermediaries based in the UK to operate across the EU is based not only on a single set of rules but also on elements of supranational supervision (Schoenmaker, 2016). A trade agreement would not include such 'passporting' rights and so would constrain not only the City of London but also service companies operating outside the capital.

We therefore make a new proposal for the EU-UK relationship that is considerably less deep than EU membership but rather closer than a simple free-trade agreement. Policymakers in the UK and the EU will ultimately face the political choice between either pursuing something along the lines of our proposal or establishing a distant free-trade arrangement.

Our proposal might also have broader significance for Europe over the long-run as a basis for relationships with other neighbours. Beyond the immediate priorities of the UK situation, Brexit challenges the EU to reconsider and reorganise its relationships with other countries in the region, such as the EEA countries<sup>3</sup>, Switzerland and, less pressingly, Turkey and Ukraine.

In the long run, our proposal could lead to a Europe of two circles, with the supranational EU and the euro area at its core, and an outer circle of countries involved in a structured intergovernmental partnership<sup>4</sup>.

We believe that departing from the standard templates is essential for the success of the UK exit negotiations. Without a common vision of their shared future over the longer term, the UK and the EU risk being dragged into unprincipled bargaining and, albeit in slow motion, weakening their positions in the wider world.

### **The future of EU-UK relations**

At its core, the EU has been a political project. It is not just a group of states that cooperate, but a group of states which have created supranational institutions that have executive and judicial authority over EU member states and that can pass laws that are directly applicable throughout the EU. This is perhaps most visible in the form of the European Court of Justice, which can overrule national jurisdictions, or the European Parliament, which can, with the Council, pass laws that effectively replace national laws. The supranational authority of the EU is also manifest in the European Commission's regulatory remit in, for example, competition policy and state aid.

A majority of the participating British electorate have in effect rejected this vision of the supranational exercise of voluntarily pooled sovereignty. It was especially significant that the UK

## *“Brexit is now a reality. It carries risks. It can be turned into an opportunity”*

electorate rejected one of the constituting elements of the single market: the free movement of workers. As of 2014, there were 5.3 million non-UK nationals resident in the UK, of whom EU nationals accounted for 2.9 million. Of those, 2.2 million currently work in the UK<sup>5</sup>. While there appears to be little conclusive evidence that the number of foreigners in an electoral district was a determining factor in the likelihood of that district voting to leave (Darvas, 2016), there can be no doubt that the Leave campaign tapped into seams of genuine concern about the scale and speed of immigration.

In our proposal, we take those two political constraints as given. The relationship between the UK and the EU that we propose would therefore be based on an intergovernmental form of collaboration, with no legal right to free movement for workers but a regime of some controlled labour mobility and a contribution to the EU budget. The goal of the proposal is to create a framework for continued close cooperation, even integration, on matters of common interest.

For some, the most controversial question is likely to be whether it is possible to have close economic integration comparable to the single market while partly limiting labour mobility. There are two ways of characterising the deeply integrated market. One is functional, and the other constitutional.

The functional definition of a deeply integrated market consists of its central functional elements: (i) the absence of tariffs; (ii) a single set of rules or minimum standards; (iii) enforcement of those rules and standards under shared, supra-national jurisdiction; (iv) a single competition policy and state-aid control; and (v) the contribution to shared public goods, including through EU budget.

But the EU's market is also often defined in terms of the dimensions of an economic-political constitution. Essentially those dimensions are the so-called 'four freedoms' in goods, services, capital and people of the single market (eg. Balassa, 1961). In that conception, free movement of workers is an essential element of the single market established with the Treaty of Rome.

We endorse the first view of a deeply integrated market. It is inconceivable that firms should operate freely in an economic area without ensuring a single set of rules or minimum standards that provide a level playing field across all the participating countries. State-aid control, competition policy and common rules or minimum standards are therefore indispensable parts of the single market, as is participation in an essential core of social rights, consumer protection and health and safety regulations. Future rules, standards and other policy areas that affect the integrated market may give rise to political controversy, as in any region seeking cooperative agreement.

As a political project the single market consists of all four freedoms. Arguably, freedom of movement of workers, whereby EU citizens are entitled to look for a job in another



EU country and to work there without needing a work permit, constitutes the element that makes the single-market part of the EU into a political project<sup>6</sup>. Granting access to the domestic labour market to some 510 million citizens is a significant political choice and a powerful symbol of integration amongst EU countries. It is this political project that the UK electorate has effectively rejected.

From a purely economic viewpoint, however, goods, services and capital can be freely exchanged in a deeply integrated market without free movement of workers, though not entirely without some labour mobility. It is also possible for capital to move freely and for banking services to be provided across borders without free movement. Free movement of workers is, thus, not indispensable for the smooth functioning of *economic* integration in goods, services and capital.

On the other hand, some degree of labour mobility is an essential counterpart of the free flow of goods, services and capital. Firms that operate in foreign countries need to be able to transfer workers abroad, at least for temporary periods, in order to produce efficiently. The four freedoms of the European single market are therefore closely economically connected, but not inalienable for deep economic integration<sup>7</sup>. Free movement of workers can be separated from the rest, but some temporary labour mobility is needed. Our proposal is, accordingly, about how to manage the governance of the single market in this functional sense without everyone being a full member of the EU.

The same logic applies to other areas of EU competence. As indicated, some of the chapters of the *acquis communautaire* are essential to the proper functioning of an integrated market for goods, services and capital. They should be retained in a new framework for the EU-UK relationship. Other chapters, such as energy or research, are however not essential and should be regarded as optional.

### **A proposal for structuring EU-UK relations**

Our proposal is about how a less-political definition of economic cooperation-cum- integration can be framed and organised. We propose the creation of a Continental Partnership (CP). The aim of this CP is to sustain deep

economic integration, fully participating in goods, services, capital mobility and some temporary labour mobility, but excluding freedom of movement of workers and political integration. The CP should involve:

- Participation in a series of selected common policies consistent with access to the Single Market;
- Participation in a new CP system of inter-governmental decision making and enforcement;
- Contribution to the EU budget;
- Close cooperation on foreign policy, security and, possibly, defence matters;

The CP would build a wider circle around the EU without sharing the EU's supranational character, except where common enforcement mechanisms were needed to protect the homogeneity of the single market. Members of the CP would be the EU, all EU-countries, the UK together with any other countries that participated.

The obvious challenge for EU-CP cooperation will be to preserve the processes and structures of the EU as a supranational entity and at the same time to ensure that CP members that are not part of the EU have a say in common matters. Two basic cases must be distinguished. The first concerns matters for which the EU already has an intergovernmental decision-making process. Here, the issue of cooperation can be relatively easily solved as the CP by its very nature is intergovernmental.

Politically, this area of intergovernmental cooperation is important. In particular, the activity of the CP in the fields of foreign, security and defence policy – the areas in which Europe has to face a range of complex, persistent and existential threats – would be included.

The second, and arguably more difficult case, concerns areas in which the EU acts as a supranational body with (partial) sovereignty, including in particular all single market matters. Cooperation in this area means that although a CP member is not a member of the EU, it would get full access to the respective parts of the single market with all rights, opportunities and obligations other than freedom of

movement for workers. In the following, we discuss how this cooperation could be organised.

One issue concerns the law making itself: We propose that CP countries would meet in a CP council, in which EU institutions would participate. At the level of the CP council, the UK would thus continue to participate in the numerous different formations where the details of single market regulation and other policies in which it would continue participating are discussed and negotiated. Obviously, the CP council could not pass EU legislation but CP partners would be involved in CP council readings of draft EU legislation and they would have a right to propose amendments.

EU law on the single market would, however, continue to be adopted through the normal EU legislative process. In practice, in the areas that concern the CP, the CP council would deliberate the legislative proposals before they are formally passed in the council of the European Union and the European Parliament, so that positions expressed by non-EU members could be taken into account throughout the legislative process and in the final decision.

Formally, it would be a *political* – not legal – commitment by EU member states to take into account the positions and deliberations in the CP council. Our CP council would therefore deal with this major political task. If the EU and its partners disagree within the CP council, the final say would formally remain with the EU. The non-EU CP members would then still have to implement the single market legislation in their national legislation or face restrictions on participation in the single market. The CP partners therefore would not have veto rights over the EU decisions but they would be closely involved in law-making at the intergovernmental level of the CP council<sup>8</sup>.

Conversely, CP members would have to accept the enforcement measures and jurisprudence that safeguards the relevant freedoms of the single market. Otherwise the integrity and coherence of the single market would erode. The key challenge will be to balance fairness with the necessity of homogeneity in application. In the case of EEA countries, an EFTA court is responsible. It consists of judges from the three EEA countries.

However, rules ensure that the court follows the relevant case law of the ECJ (Allen and Overy, 2016; Wikipedia, 2016). Whether such a mechanism would be sufficiently strong in the case of the CP with a major country as the UK is for political and legal debate. We think that it may be necessary to contemplate instead an extended ECJ court composition involving judges from all CP countries. However this court would still be bound by ECJ case law.

Another important question is competition policy enforcement and state aid control (Petropoulos, 2016). In the case of EEA EFTA countries, the European Commission is largely in charge for any cases that have repercussions beyond borders<sup>9</sup>. Whether this is a feasible model for the CP should be for political debate.

Participation in the EU budget would also be vital. While many spending items of the EU budget might look outdated, the budget still constitutes an essential element of the integrated economic space. It is indispensable in the area of agricultural policy but, with its aim of structural convergence, is also

important for opening up economic opportunities for less-developed parts of the EU.

The EU budget also provides support for ‘catch-up’ countries. While the effectiveness of Structural Funds is a matter for debate, they serve as a *quid pro quo* for the adoption by cohesion countries of demanding single market legislation that might exceed what would be appropriate at their development level. Participation in the budget is therefore the necessary counterpart to participation in the single market. The UK would need to make a budgetary contribution.

From a political point of view, our proposal would constitute a significant concession by the EU to the UK on the free movement of workers. Politically, there may be a tendency in continental Europe to demand limits in other areas of the single market such as financial services. We would note, however, that under our proposal there is already a political ‘price’ to be paid by the UK, as CP membership entails significantly less political influence compared to EU membership. Whether that price is appropriate is a matter for political judgement.

### Other CP policy areas

We see three areas in which the CP would operate. The first, as we have outlined, consists of accepting the *acquis* in all single market areas except those relating to the free movement of workers. Here, we would see the emergence of a system under which the UK would impose a quota-system of some kind on the EU as a whole, while the EU would impose a quota on the UK<sup>10</sup>.

Second, the CP would deal with shared external economic policies, in particular in trade and financial regulatory matters. The CP should aim for global influence in trade, financial regulation and climate and energy policies. Its creation would ensure that Brexit does not result in a long-term weakening of Europe’s voice in global negotiations, bearing in mind the growing dispersion of international power.

Trade policy is an exclusive competence of the EU. We could see an interest of non-EU CP countries participating in EU trade policy through the CP council, thereby choosing to give up their ability to negotiate individually new free trade agreements. Again, ultimate decision making would, however, remain with the EU, which legally would retain formal competence. But there are also substantial obstacles and it will therefore be a matter of intensive political discussions (Sapir, 2016).

Financial regulatory matters are often negotiated and agreed on in global institution such as the Basel committees. In these fora, Europe is represented by a combination of EU institutions and the authorities of some of its member states. In the medium to long term, we would expect an increasing concentration of the external representation of the EU through EU institutions such as the European Central Bank. It would make sense to coordinate the positions of the Bank of England, other CP central banks and the ECB. Whether or not CP countries will ever want to cede their representation to common institutions would be a matter for future discussions.

Finally, energy and climate policies are also areas for the CP. This could involve participation in the EU emissions trading system (ETS), coordination of CP positions in international climate negotiations and participation in an energy union if it progressed.



The third area of CP policy should consist of an active role in foreign, security and defence matters. Russia's annexation of Crimea and military incursion into Eastern Ukraine are not bilateral issues, but threaten Europe's peaceful order as a whole. This new status quo is not just a challenge for EU countries. The same holds for the turmoil in the Middle East and North Africa. The spill-over effects from the conflicts in this region to Europe are unprecedented in recent times.

No European nation state will be able to manage these and other future threats single-handedly. The CP should emerge as a forum and even an active participant in foreign security and defence policy<sup>11</sup>. Justice and security affairs are a shared EU competence, which means that it is not a purely intergovernmental set-up and EU institutions have formal roles. This raises difficult, but hopefully surmountable, legal questions of how the CP-EU collaboration should be structured<sup>12</sup>.

The UK, one of the two permanent European members of the UN Security Council and one of the current EU members able to project forces overseas, will remain a crucial partner on these matters. The Europeans cannot and must not solely rely on the US as the guarantor of European security. The Cold War is over, the Pacific sphere is of growing significance, new threats in forms of cyber-conflict and terrorism have materialized, and US politics is likely to face its own domestic challenges for some time to come. For this reason we believe that closer cooperation in this area is important and will be even indispensable over the medium-term if Europe is to be able to adequately react to threats.

### Geographical scope

One advantage of the proposed Continental Partnership is the flexibility of its governance model. At its core it consists of participation through the CP Council in the EU law-making process while simultaneously accepting the ultimate authority of the EU and the enforcement of commonly agreed rules or minimum standards. Its nature is thus essentially intergovernmental. The Continental Partnership could thus be open to other European countries that might want to join.

It will be important not to overstretch the flexibility of the CP in the economic area. The central issue here is the move away from free movement of workers. But the CP should be flexible in relation to the security and defence policy area and potentially also external economic relations. Since security and defence policy are at the core of national sovereignty, we could see some CP members participating in the joint security partnership while others would not.

One important question is about the members of the European Economic Area (EEA) that are not part of the EU (Iceland, Liechtenstein and Norway). These three countries fully participate in the single market but do not have any significant say in the law-making process of the single market. We could imagine that these three EEA countries could have the right to join the CP if they wished<sup>13</sup>. We could also see the CP as an attractive model for Switzerland since it wishes to limit free movement – but, as a counterpart to joining CP, it would have to adopt the full set of single market regulation in other areas.

The creation of a Continental Partnership might also provide a basis for coming to honest terms in the negotiations with

Turkey<sup>14</sup>. Arguably, one of the reasons why some EU member states would never accept Turkey joining the EU is free movement and, more broadly, the political nature of the EU. Framing the relationship with Turkey in terms of EU accession was, therefore, always liable to be awkward.

But provided there is a shared will to strengthen the partnership and provided that essential political conditions are met, we see it as possible and perhaps even desirable to move towards including Turkey in the Continental Partnership in the medium- to long-term. Offering Turkey the prospect of a structured partnership with the EU in which it would have a voice could contribute to deterring a drift away from democracy and associated values.

In the longer term, the CP might also provide a framework for a strengthened relationship with EU neighbours in the east (Ukraine). It is an open question whether a similar template might be used for relationships with neighbours to the south (Morocco, Tunisia). Again, the intergovernmental character of the partnership and the exclusion of free movement of workers could contribute towards addressing existing stumbling blocks.

Becoming a member of the CP would require compliance with criteria, assessed via clear procedures. For the UK, the negotiations over its participation in the CP should be held in parallel with the EU exit negotiations to avoid unnecessary and mutually damaging disruption. EEA members could also qualify for CP. Other countries would have to comply with the necessary legislative *acquis* before being admitted to the CP. There should also be a definition of shared values of the CP, including issues such as the rule of law and democracy.

### Conclusions

The British vote to withdraw from the EU marks a major constitutional change for the UK and a significant rupture for the EU. Our proposal is to turn the rupture into an opportunity to reorganise Europe in two circles. The inner circle constitutes the EU with political aims and supranational constitutional structures. The outer circle, of European cooperation, adding countries not in the EU would have more flexibility and be based on an intergovernmental structure, the Continental Partnership. Most important, CP countries would not participate in the freedom of movement of workers, would not share the political commitment to ever closer union, and would have less political influence over decisions of common interest.

Our proposal requires the UK and the EU to make tough choices. The UK will have to answer the question of whether it wants to continue to maintain close economic cooperation with the EU and whether it wants to maintain and potentially even strengthen its engagement in security and, conceivably, defence matters. This is ultimately a political choice that must be spelled out unambiguously.

The EU will have to agree among its members to put aside punitive motives and reach an economic settlement that grants control over labour mobility to the UK while allowing continued access to and participation in important parts of the single market. This is a political choice on which clarity is needed. The EU countries will also need to reflect on whether this model would be adequate for other neighbouring countries<sup>15</sup>.

Finally, our proposal should be combined with a strengthened EU and a strengthened euro area. As a start, it involves concrete progress using the community method. Rendering the EU's own construction more effective and increasing political legitimacy is not only desirable for its own sake but also essential for the political stability of Europe with different levels of cooperation. We see the deepening of the euro area and the building of a continental partnership, in what would amount to concentric circles, as close complements that are in the interest of both the UK and the EU.

Our proposal is driven by the firm belief that neither the EU and its member states nor the UK have an interest in an

escalation of tensions or costly disengagement following Brexit. Neither the UK nor the continuing members of the EU can escape their geographical interdependencies. Both have a stake in economic and political stability in Europe. Today's volatile and dangerous world requires its nations to collaborate to confront new and multiple challenges. The longer-run prospect of a future world in which Europe is only one amongst many powerful regions demands the same.

Brexit is now a reality. It carries risks. It can be turned into an opportunity. We hope that our proposal can provide a benchmark, even a vision, for the undoubtedly difficult negotiation that lies ahead. ■

1. This article is the outcome of a dialogue among the five authors during the summer. It is published simultaneously in several European capitals under the sole responsibility of the authors, who write in their personal capacities. Jean Pisani-Ferry is Professor at Hertie School of Governance; Norbert Röttgen is Chairman of the Foreign Affairs Committee of the German Bundestag; André Sapir is Professor at the Université libre de Bruxelles and Senior Fellow at Bruegel; Paul Tucker is Chair of the Systemic Risk Council and a Fellow at the Harvard Kennedy School of Government; Guntram Wolff is Director of Bruegel.
2. There will be costs in the way of replacing trade with the EU with trade with other, more distant countries due to the gravity law in international trade.
3. Iceland, Liechtenstein, Norway.
4. In 2002, Romano Prodi, when he was president of the European Commission, wanted "to see a 'ring of friends' surrounding the Union and its closest European neighbours, from Morocco to Russia and the Black Sea", who would be "sharing everything with the Union but institutions" (Prodi, 2002).
5. As of Q1 2016 (Office for National Statistics, 2016). That number has increased from 752,000 in 2003 (before EU enlargement). Immigrants to the UK have been shown to be significant net contributors to public finances and to economic growth (Dustman and Frattini, 2013; Wadsworth et al, 2016).
6. Labour mobility is economically desirable because workers can move to the places where their productivity is highest. It is also socially desirable because it constitutes a fundamental personal freedom to go and work where one wishes.
7. We therefore contradict the current view of the European Commission President (Juncker, 2016).
8. Our proposal therefore goes well beyond the participation of EEA countries such as Norway that meet in the EEA Joint Committee at the level of ambassadors some 6 times per year with little influence on the council of the EU.
9. For a detailed discussion, see Allen and Overy, (2016).
10. We assume that the EU will define a joint migration policy. We would reject a quota system by which the UK would impose quotas on individual EU countries.
11. Theresa May (2016) in her speech on April 25 as home secretary said that in the EU the UK would benefit from issues such as the European arrest warrant, which has allowed the UK to bring 675 suspected or convicted criminals to face justice in UK. It has also been used to get terror suspects. Arguably, the CP should find a way to continue that useful cooperation, in line with EU laws.
12. Justice and security affairs are formally a shared competence in the EU: EU member states cannot exercise competence in areas where the Union has done so. It is conceivable that the EU may want to move significantly further in this area in the next 10 years. This would raise political and legal questions for the cooperation via the CP.
13. Specific grandfathering provisions might be needed to allow them to continue to be full member of all elements of the single market thereby continuing to participate in the freedom of workers.
14. For an earlier proposal to include Turkey in the wider circle, see Sapir and Wolff, (2014).
15. In our discussion, we leave aside the already variable geometry within the EU, in particular the differentiation between the euro area and the EU. Arguably, the management of that differentiation will increase in importance after Brexit as non-euro area countries will constitute only 15 percent of EU GDP. Its importance will also grow with further integration in the euro area.

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# Negotiating Britain's new trade policy



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**F**or over four decades, the EU has managed most international trade policy on behalf of the UK. After Brexit, the UK government will have to reconstitute trade links with EU, with third nations while disentangling the UK from the commitments that the EU made on its behalf in the WTO. This article suggests some strategies for the UK government to follow in reconstituting its trade policy. The watch words should be simplicity and cooperation. Maintaining the goodwill of trading partners will be a very high diplomatic priority.

For over four decades, the EU has managed most international trade policy on behalf of the UK. Brexit changes all this. The UK now needs to debate and define its ambitions for international trade and then negotiate them with its partners.

In leaving the EU, it will reassert its status as an individual member of the WTO and will need to determine all the details of its trade policy within the framework of WTO rules. However, WTO rules offer considerably less market access than do the Single Market in the EU or the FTAs that the EU has negotiated with other partners to their markets.

Moreover, extracting the UK from the EU's commitments in the WTO entails complications and negotiation. This column warns that the 'WTO option' for UK trade is not a simple or attractive way to continue UK trade – ie. that maintaining exports requires that we do better than that. It also argues that the key to being able to do better is to cultivate cooperation and goodwill with the remaining members of the EU (the EU27) and our other WTO partners. It is a diplomatic challenge.

## **The situation today and after Brexit**

Until the Article 50 procedures are completed, the UK remains a full member of the EU with access to the Single Market and trade policy determined by the EU and implemented by the EU Commission. All existing EU agreements with other WTO members would still apply and the treatment of UK imports from and exports to EU partners and third countries should receive exactly the same treatment as before the referendum.

After Brexit, the UK government has complete control over the treatment of imports (subject to WTO commitments) and it could choose to continue to apply the same measures as previously, which would be consistent with the tariff and





services schedules it agreed to as a member of the WTO in the WTO's Uruguay Round and as subsequently revised to take account of subsequent enlargements of the EU.

If Britain decides to raise barriers, this would, in principle, give rise to renegotiations with affected WTO members. We would strongly advocate against this. The UK should not raise barriers. It should maintain or even lower them from current levels and this for two reasons. First, this would be good policy, but second it would be efficient in terms of reducing the burden of renegotiations. Raising barriers angers foreign exporters in a way that would complicate many of the trade negotiations that the UK must conduct in the years to come.

### The three big questions

As of today, we do not know what the British government's goals are when it comes to trade policy. As a consequence, we do not know how other nations are going to treat UK exports. There are three classes of trading partners:

- The EU27;
- Those countries which have negotiated, or are negotiating, preferential trading arrangements with the EU (eg. Turkey); and
- Those countries which have a most-favoured nation (MFN) relationship with the EU based on tariffs and services schedules negotiated in the WTO (eg. the US).

The relationship with the EU27 is complex because it is unclear whether the Treaty on the Functioning of the European Union (TFEU) allows negotiation of the post-Brexit arrangements between the UK and the EU27 in parallel with the Article 50-mandated negotiations on the terms of the exit.

If the EU27 will not allow a new trade relationship to be negotiated until the UK has left the EU, or if the trade agreement were not completed by the end of the exit negotiations, the default position would be that both sides treat each other on MFN terms, which is unlikely to be desirable for either. For example, 44% of UK exports go to the EU and face zero tariffs

*“Reconstituting UK trade policy will be complex and time-consuming, and if Britain is forced to trade just on ‘WTO terms’ rather than with the preferences it has become used to on around three-fifths of exports, its trade performance will suffer”*

and very low non-tariff barriers courtesy of the Single Market. If that trade were carried out on an MFN basis, around 16% of UK exports to the EU27 would face tariffs exceeding 7%, of which half would be motor cars, which would face a tariff of 10%. The average MFN tariff levied by the EU is 5.3%.<sup>1</sup>

### Disentangling the UK's and EU's commitments at the WTO

There are also some gritty little problems to resolve in traditionally very sensitive areas. For example, the EU's expenditure limit on trade-distorting agricultural subsidies under the WTO's Agreement on Agriculture is a single figure which will need to be divided up between the UK and the EU27. This will require a three-way negotiation with third parties, which may have material interests in the division because the UK and other members will subsidise different bits of agriculture.

Turning to services, the EU again takes about 50% of UK exports and is the single most important trading partner across all major types of services, of which the main components are, in order, professional, scientific and technical services, information and communications services, and financial and insurance services.

Here it is much more difficult to gauge the change in trade barriers that Brexit implies because the Single Market is incomplete (ie. some services barriers persist within the EU even now) and because there is no uniform EU external trade policy for services. Rather the EU's GATS schedule sets out a framework for market access which is punctuated by individual countries' derogations in particular subsectors and modes of supply. The latter also means that the negotiation of a long-run agreement will be complex and time-consuming because it will require negotiations with all individual EU member states as well as with the Commission. Moreover, although EU members' applied policies towards services imports are often more liberal than their GATS commitments, only the latter are guaranteed, so that even if the former are more favourable, they could be removed at any time and thus are afflicted by considerable uncertainty that does not pertain while the UK is within the EU.

### A temporary extension of the status quo?

A gentler alternative to dropping straight to MFN trade would be to temporarily extend the status quo in EU-UK trade while a long-run relationship is worked out, although that requires finding a balance between access to the Single Market on the one hand, and free movement of labour on the other.

Other WTO members may object to this as a violation of MFN, but any dispute would take a considerable time and it is also possible (likely?) that, recognising the disruption of a sudden unprepared change, other WTO members would allow de jure or de facto temporary waivers to allow the EU-UK negotiations



to continue without pressure from Geneva. Of course, that does assume goodwill on all sides.

The post-Brexit relationship with countries that have preferential trade agreements with the EU (mostly FTAs) may be easier than the EU27 one, because they may be more relaxed about having informal discussions about allowing the existing bilateral arrangements to continue while a formal FTA or similar agreement is drawn up. And the stakes are higher in these markets because in general, their MFN policies are less liberal than those of the EU. Trade with those countries in 2015 represented 14% of UK exports and the average MFN tariffs that they would face vary from under 5% (Israel) to almost 30% (Egypt) and, perhaps most notably, 17% in Korea. At a more detailed level, tariffs could be considerably higher.

The situation is similarly varied for services, but if the UK no longer received the terms of the EU's flagship trade deal with Korea, for example, the UK would lose considerably.

It is not easy to compare the Korea-EU FTA and the GATS schedule because they differ in structure. For example, the FTA incorporates rules about the establishment of foreign firms into its investment conditions rather than as an element of services trade. Nonetheless, in many specific areas the EU-Korea agreement goes well beyond Korea's GATS commitments. For example, in financial services it opens up the Korean market in several respects, and in particular allows EU firms the right to offer new financial services as they develop. It also opens telecommunications markets by reducing local ownership requirements, as well as the legal services and shipping services markets. Moreover, the Korea-EU FTA is similar to the Korea-US FTA, so that if the UK could no longer trade under the FTA, it would suffer disadvantages relative to both the rest of the EU and to the US.

The extension of current bilateral arrangements again requires goodwill – on the part of the partner countries and also, to an extent, on the part of the EU27 in not trying to block such extensions.

Finally, for countries with which the EU currently has MFN-based trade relations, a continuation of these after Brexit seems to be the line of least resistance. There is much talk about concluding trade agreements with some of these countries over the two-year exit negotiation period, so that they can be implemented immediately on exit. This underestimates the time and effort that is required to negotiate half-decent agreements under the best of circumstances, and also the complexity (on both sides) of the UK negotiating with third parties while its relationships with the EU and the current FTA partners remain unclear.

Moreover, there may be more important things to sort out than FTAs. For one, the UK has membership of the WTO's Government Procurement Agreement (GPA) only through its membership of the EU; the EU ratified the GPA on behalf of

its members but the UK has not, so far, done so individually. The annual value of procurement activities opened up to international competition by the 43 GPA parties amounts to US\$1.3 trillion according to European Commission figures, and if it does not ratify/accede in the interim, the UK will lose its rights of access to all GPA members' procurement markets on exit from the EU.

Given its large market and the generally liberal attitude of British governments to buying foreign goods, an important share of the benefit of the EU schedule under the GPA to other members stems from UK purchases (PwC, Ecorys and London Economics 2011). This means that Brexit will change the deal third nations struck with the EU on government procurement. In the world of trade, such changes trigger renegotiations. Thus the new GPA deal for the UK will probably require a three-way negotiation (UK, EU27 and third nation) with each of the 18 other parties to the GPA. The complexity and need for goodwill is obvious.

### Conclusions

Reconstituting UK trade policy will be complex and time-consuming, and if Britain is forced to trade just on 'WTO terms' rather than with the preferences it has become used to on around three-fifths of exports, its trade performance will suffer. Thus the watch words should be simplicity and cooperation. The latter makes maintaining the goodwill of trading partners a very high diplomatic priority.

We recommend that the UK government should:

- In the first instance, adopt existing EU WTO schedules covering imports of goods and services;
- Try to extend current EU-UK trade arrangements (ie. the Single Market or something very like it) for a finite period in which a new long-term agreement can be negotiated;
- With respect to countries that currently have preferential agreements with the EU, push to initiate informal discussions immediately to maintain the access that these provide (where these arrangements are quite deep – as with Korea, for example – this will be important for service providers);
- Not privilege negotiating new agreements above preserving/modifying those that already exist;
- Examine the EU's WTO commitments carefully to ensure that the WTO rights and privileges that Britain currently gains from its membership via the EU are preserved after Brexit. ■

*Authors' note: this article is based on the Observatory's Briefing Paper No. 1 "The World Trade Organisation: A Safety Net for a Post-Brexit UK Trade Policy?", to which several other members of the UK Trade Policy Observatory contributed.*

1. MFN applied tariff, unweighted average, total trade 2014 (source: WTO tariff profiles)

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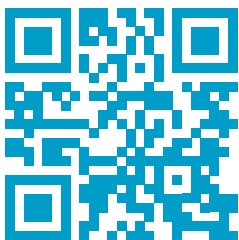
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# Basic income - free money for everyone?

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Over the past few months intensive discussions have been taking place in several West-European countries about the introduction of some form of unconditional basic income. Some Dutch municipalities have prepared plans for pilots at a local level, which will probably remain restricted to those currently receiving social welfare benefits. The Finnish government intends to start a pilot no later than 2017, whereby only the amount of the payment is still subject to discussion.

In early June of this year, the Swiss population were able to express their opinion through a referendum about an elaborate plan for an unconditional basic income for all citizens. Every adult Swiss citizen would receive an amount equivalent to €2,250 a month, and on top of that, all parents would receive the amount of €560 per child. An overwhelming majority of 78% of the voters decisively dismissed the plan in the referendum. Those who voted 'No' gave unaffordability, in particular, as their reason for doing so, as well as the disastrous effect it would have in disincentivising the labour market.

One interesting aspect of the discussion about the basic income is that those advocating and opposing it cannot easily be classified into political right and left. Perhaps against

all odds, socialism, liberalism (of both the classical and social variety) and libertarianism are not facing each another head-on on this issue, which makes the concept of a 'basic income' an exceptionally interesting one for further consideration.

## Historical background

Ideas about forms of a basic or minimum income, whether conditional or unconditional, for all adults in a society have existed for a long time, and the forms taken vary from a guaranteed minimum subsistence income for everyone, or only for those who need it, through an unconditional, one-off lump sum for everyone, to a combination of these forms; the basic income as it is being discussed today.

Various thinkers have contributed their ideas about matters such as social security, the need for a minimal level of subsistence or even an unconditional basic income for everyone to the discussion. A concise exploration of the way in which these ideas have developed will be provided before the benefits and drawbacks of an unconditional basic income are analysed.

As early as the sixteenth century, the humanist philosophers raised the idea of a minimum income for all members of a



community. The English humanist, Thomas More, published his work *Utopia* in 1516. In this – prompted by his dissatisfaction with the political and economic situation in his own country – he sketched the contours of an ideal state. More linked the idea of a minimal income for all to the fight against theft. Severe punishments were common in his time, not only for serious offences but also for minor felonies such as theft.

The main character in the book – Raphael Hythlodæus – is of the opinion that hanging as a punishment for thieves is not only unjust but also ineffective. If theft was the only way to procure food for basic survival, then no threat of punishment, no matter how severe, would be likely to change the behaviour of thieves.

In *Utopia*, More speculated that theft was therefore not a choice, but an evil which was necessary for the thief to stay alive, and according to More, this was precisely the issue which must be solved. *'Instead of inflicting these horrible punishments, it would be far more to the point to provide everyone with some means of livelihood, so that nobody's under the frightful necessity of becoming, first a thief, and then a corpse.'* In this context, it should be noted, though, that *Utopia* was not written as a practical example, but rather as a form of satire.

The idea of a guaranteed basic income was worked out more seriously by the Spanish humanist Juan Luis Vives, who was a good friend of Thomas More. With his essay *De Subventionem Pauperum* he addressed the city council of Bruges in 1526. In the essay, Vives advocated a centrally organised local policy for the poor, providing a minimum subsistence income for all residents of a local community. He sustained his plea not with an appeal to justice, but rather to efficiency in fulfilling the moral obligation to be charitable.

In the view of the humanist, local authorities could judge much more efficiently who should be eligible for poor relief than the churches, which had assumed this task so far. The idea

*'Ultimately, the affordability or unaffordability of an unconditional basic income for all citizens in a society can only be convincingly demonstrated in practice'*

was taken up by Charles V in his *Eternal Edict* of 1531, which constituted the basis for communal legislation for districts in the Habsburg Netherlands, and in which cities were obliged to institute an urban fund for the poor; the so-called Common Fund. So in this instance, minimum subsistence was only envisaged for those who actually needed it. The Common Fund was to be managed by local worthies.

According to Vives, this minimum subsistence should not be unconditional: poor people had to earn it by demonstrating their willingness to work, and Vives felt that some kind of work should be found for everyone. He felt that even those who had frittered away their income in gambling, fornication or excessive luxury should not be allowed to perish, and were also entitled to food.

However, the income paid to such people should be so minimal that it only just prevented them from dying of hunger; they would still have to endure the feeling of hunger. Only in that way could they serve as a role model for others, as well as having an incentive to work. Vives was of the opinion that there was appropriate work available for everyone in society. In this way, the poor would not only contribute to their own income, but would also be prevented from being seduced by the bad ideas and behaviour that would emanate from idleness. With his ideas, Vives laid the basis for general state-provided care for the poor.

Various Enlightenment thinkers elaborated on the ideas previously published by humanists with regard to a minimal subsistence income. However, by the end of the eighteenth century new ideas about ownership and redistribution had begun to emerge. In 1797, the British-American political philosopher and activist Thomas Paine – one of the American Founding Fathers – published the pamphlet *Agrarian Justice*, in which he went into the individual right of ownership.

*It is a position not to be controverted that the earth, in its natural uncultivated state was, and ever would have continued to be, the common property of the human race. In that state every man would have been born to property. [...] But the earth in its natural state, as before said, is capable of supporting but a small number of inhabitants compared with what it is capable of doing in a cultivated state. And as it is impossible to separate the improvement made by cultivation from the earth itself, upon which that improvement is made, the idea of landed property arose from that inseparable connection; but it is nevertheless true, that it is the value of the improvement only, and not the earth itself, that is individual property. Every proprietor, therefore, of cultivated land, owes to the community a groundrent (for I know of no better term to express the idea) for the land which he holds; and it is from this groundrent that the fund proposed in this plan is to issue.<sup>2</sup>*





Further on in his pamphlet, Paine explains that a 'National Fund' would have to be created: ...*out of which there shall be paid to every person, when arrived at the age of twenty-one years, the sum of fifteen pounds sterling, as a compensation in part, for the loss of his or her natural inheritance, by the introduction of the system of landed property. And also, the sum of ten pounds per annum, during life, to every person now living, of the age of fifty years, and to all others as they shall arrive at that age.*<sup>3</sup>

Whereas Paine still emphasised the idea of communal ownership of the earth as a basis for the one-off refund to which everyone was entitled, later thinkers worked out the idea in more detail on the basis of righteousness and equal opportunities. The idea was that the one-time payment of a certain sum of money when citizens reached the age of eighteen, irrespective of their background, would give all people an equitable chance of a good start.

The idea of making a one-off payment of starting capital to anyone who reached the age at which they could work autonomously and start a family had already been briefly suggested in the work of Marie Jean Antoine Nicolas de Caritat, Marquis de Condorcet, *Esquisse d'un tableau historique des progrès de l'esprit humain*, published after his death in 1795. Condorcet, however, did not work out this particular idea in detail. In his book, he mainly outlined the contours of a system of social security for all citizens not unlike that which was introduced in many western European countries in the nineteenth and twentieth centuries. Condorcet felt that a system of social security, in addition to abolishing unjust inequalities, uncertainty and poverty, would also reduce corruption and theft; in this he was following the reasoning applied by the humanists earlier.<sup>4</sup>

Criticism of too much state interference with care for the poor through re-distribution came from another quarter early in the nineteenth century. The French philosopher Alexis de Tocqueville delivered his speech *Mémoire sur le pauperisme* to the Royal Academic Association of Cherbourg after a journey through England in 1833. Whereas other thinkers had speculated about the possibilities of social security, a minimum subsistence income for those who needed it, or a one-off lump sum for everyone starting their adult life, Alexis de Tocqueville perceived mostly dangers. '*Man, like all organised beings, has a natural propensity for idleness. However, there are two motives that induce him to work: the need to stay alive and the wish to improve his conditions of life.*'<sup>5</sup> By making available state-funded care for the poor, these essential stimuli would be taken away from people.

Poverty may have been a persistent issue to Tocqueville, but it was also a logical consequence of economic progress. The Frenchman was very sceptical about the possibility of solving inequality, dissatisfaction and poverty through state-funded care for the poor, not only because it would take away essential incentives to work, but also because it would become a bottomless pit, with new needs continually emerging which demanded relief. In addition, the anonymous character of public care for the poor would mean that those who benefitted did not feel any moral imperative to change their situation.

Tocqueville expected more from private care for the poor; the individual moral obligation of those citizens who could afford it. Looking after one another in this way created a bond between provider and receiver, whereby the latter would feel

the moral obligation, or so Tocqueville thought, to at least use the benefit properly, and in addition, to do anything possible to avoid dependence on charity in the future.

It goes without saying that Tocqueville would consider an unconditional basic income for everyone to be a disastrous idea. Nevertheless, others elaborated on earlier ideas about a minimal subsistence income or a one-off lump sum, and this eventually resulted in the current plan for an unconditional basic income for everyone. In 1836, the ideas of the utopian socialist Charles Fourier laid the foundations for the unconditional basic income, although he proposed that it should be strictly limited to those who really needed it.

In *La Fausse Industrie*, Fourier argues that the violation of anyone's fundamental right to hunt, fish, pick fruit or have his cattle graze on communal land, implies that society owes at least a bed in a basic hostel and three modest meals a day to those who cannot fend for themselves.

Several of Fourier's disciples – known as Fourierists – elaborated on these ideas, always with the conviction that the guarantee of a minimum income would not detract from the willingness to earn money over and above that by working. The British philosopher, John Stuart Mill, a very famous thinker among liberals, pronounced his views on the basic income in his book *Principles of Political Economy*.<sup>6</sup> Next to a basic income for everyone, Mill left room for 'inequality' in the distribution of other resources.

### **The pros and cons of an unconditional basic income**

The recent discussion in Finland about the introduction of an unconditional basic income for everyone concerns a monthly allowance of between €800 and €1,000, without any effort being required on the part of the beneficiary. In the Netherlands, discussions concern a similar amount. This means that this basic income is situated around the poverty threshold; those who received it, however, would have the right to earn as much additional income as they themselves considered to be desirable. What are the arguments raised by advocates and opponents today as to why the unconditional basic income should, or should not, be introduced?

Advocates of the basic income see in it a number of advantages. For example, the unconditional basic income would mean an end to the so called 'poverty trap', the situation faced by many recipients of benefit, the consequence of which is that they would be worse off if they were to work. Because of the poverty trap, working provides less, the same, or only a little more income than welfare benefits, particularly because various additional sources of income supplements and subsidies are also lost when a recipient no longer receives state benefits.

Advocates of the minimum income feel that a basic income would allow people to do jobs to increase their income without losing the money they receive. Working would thus still be rewarded, and in spite of the 'free money', people would be incentivised to participate in the labour market.

The potential to significantly reduce government infrastructure is considered by advocates to be another advantage. Not only could today's complicated system of social security involving many different kinds of benefits and subsidy arrangements be greatly simplified, multiple controls (for example, the current obligation to apply, or dealing with



benefit fraud) could be abandoned, and an entire army of integration consultants could be dispensed with.

Advocates feel that the re-distribution would, at any rate, be 'fairer'. After all, many people who really need support get lost in the web of social security arrangements, whereas clever benefit recipients who manage to 'work the system' can secure a substantial income by applying for every potential subsidy.

Finally, advocates appeal to the expectation that people with an unconditional basic income would be able to lead a happier and more worthwhile life. No longer harassed by the obligation to apply for benefits or by checks on, for example, cohabitation, people who do not work – for whatever reason – could also lead a worthwhile and happy life.

Advocates do not express themselves quite so emphatically when it comes to the affordability of the idea, apart from their expectation that the costs are bound to be covered by the abolition of complex benefit and subsidy regimes, and by the consequent reduction in the number of civil servants required to operate them. So, on the one hand, advocates of an unconditional basic income expect that people will continue to be incentivised to go to work, while on the other hand, they see an important advantage in the expectation that people without work would also be enabled to lead a happy and worthwhile life.

Opponents invariably start by highlighting the unaffordability of the idea. A broad calculation for the Dutch situation that has meanwhile been presented in the media by several economists shows that the costs of the unconditional basic income will amount to nearly €200 billion a year. About €130 billion could be funded from the savings derived by abolishing benefits, subsidies and income tax allowances, but this still leaves a gap of €70 billion, which could only be bridged by means of significant tax increases for the working population of the Netherlands. Furthermore, this calculation model does not take account of those people who will still need to appeal to the collective system for additional benefits on top of the basic income, for example, because of illness.<sup>7</sup>

The necessary tax increases would have a disruptive effect on the economy. There is also the risk that raising taxes would lead to an increase in illegal employment with a view to dodging the higher taxes. Additional controls on this 'black economy' would then seem to be unavoidable, so that more staff to do the monitoring would then be required in another domain.

Opponents from the classical-liberal school also dispute the assumption on which the idea of an unconditional basic income is based, ie. that there is a substantial communal fund that can, or even needs to be, re-distributed. Ultimately, it is individual working citizens who bring such collective resources together. In that context, classical-liberals are definitely in favour of supporting, from collectively funded financial resources, those people who through no fault of their own cannot fend for themselves either temporarily or permanently. Such support, however, is always aimed at ensuring that people are enabled to be as self-sufficient as possible in the long run. In a manner of speaking, the basic thought behind the basic income is not part of liberal DNA.

Left-wing opponents, in particular, disagree with the idea that the unconditional basic income is in fact a major re-distribution operation, because a large group of people who have no need of it at all would also receive money from collective resources. These opponents would be much more in favour of a minimum subsistence level only for those who need it.

The distortion of competitive forces is also a potential threat, according to some opponents. Those who wished to do so would be enabled to do work they enjoyed for less money, since they would be assured of a minimum basic income. On the other hand, it would become virtually impossible to find applicants for less attractive work which was poorly paid, especially low-skilled or unskilled jobs.

Opponents do not share the optimism of those who advocate such a scheme that people would keep working despite having a minimal income, or that due to the abolition of the poverty trap they would be more incentivised to earn money in addition to their basic income. Quite the contrary; opponents anticipate that such a financial safety net would make people extremely lazy. After all, the need to work would become less urgent, particularly for low-skilled and unskilled workers. This is because it follows from the unconditional nature of the basic income that no reciprocal action is demanded of the recipients.

Ultimately, the affordability or unaffordability of an unconditional basic income for all citizens in a society can only be convincingly demonstrated in practice. Until such time, whether the arguments of the advocates or those of the opponents best reflect reality remains nothing more than guesswork. The principle-based objection to the assumption that there should be a large common fund that could be re-distributed at will naturally still stands. ■

1. Thomas More, *Utopia*, 1963, pp. 40-46, p. 44.

2. Thomas Paine, 'Agrarian Justice', in: *The complete writings of Thomas Paine, collected and edited by Philip S Foner*, New York, 1945, pp. 605-623, p. 611.

3. *Ibidem*, p. 613. Paine held the explicit opinion that the National Fund had to make a payment to everybody – rich and poor – because all people possessed right of ownership. 'It is wrong to say God made rich and poor; He made only male and female; and He gave them the earth for their inheritance. . . .' *Ibidem*, p. 609.

4. Marie Jean Antoine Nicolas de Caritat, Marquis de Condorcet, *Outlines of an historical view of the progress of the human mind Philadelphia*, 1796, p. 621; consulted through: <http://oll.libertyfund.org/titles/1669>.

5. Alexis de Tocqueville, *Over het pauperisme*, 's-Hertogenbosch, 2007, pp. 25-26.

6. John Stuart Mill, *Principles of Political Economy*, second edition, New York, 1849, pp. 212-214.

7. Refer, among others, to: Raymond Gradus, 'Experimenten basisinkomen zeggen helemaal niets', *MeJustice*; <http://www.mejustice.nl/artikelen/detail/experimenten-basisinkomen-zeggen-helemaal-niets>.



# Economic incentives to create better workplaces



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**H**ealth and safety at work is a topic in labour economics and policy making that has been important for a long time. According to a definition by the WHO, health is not merely the absence of disease or infirmity but a state of complete physical, mental and social well-being. Therefore, good workplaces cannot merely be characterized by the prevention of accidents and diseases, but should be defined by a health-, competence- and skills-enhancing atmosphere throughout the employees' working lives.

This suggests that workplace quality covers a broad range of topics. The responsibility for a health- and skill-oriented workplace lies mainly, but not exclusively, on the labour demand side—employers have a key role to play in preventing accidents and health problems at work. A good occupational environment encourages continuous, possibly outstanding, performance and innovation of employees, thereby raising firm competitiveness. Bad working conditions, however, cause the wearing down of the workforce and thus can endanger the company's long term perspectives, possibly creating negative external effects likely left for the public to pay.

In the case of occupational accidents and illnesses, it is usually the responsibility of social insurance to pay for the expenses. Also, and in a similar vein, if a company does not invest in further education and training of their employees, it not only harms itself by not tapping the full potential of their employees but also evokes external costs since the individual risk of unemployment increases and might put the burden of the cost on social insurance.

Could external economic incentives as a policy instrument promote health and skill investments by employers? Taking into account the complexity of the relationship between health and the workplace, which design would be most effective?

## **Policy framework**

Of course, economic incentives alone cannot sustain and enhance employability, they rather need to be part of a comprehensive approach consisting of mainly three domains.

The first pillar is to **establish challenging workplace standards and ensure proper enforcement**. Despite significant variation between EU member states, the overall number of occupational accidents has been decreasing

in most developed countries in recent years. This can be attributed to many reasons, amongst others, to policies that have successfully prevented physical hazards at work. In the context of workplace standards and controls, particular attention must now be paid to psychosocial hazards. These risks are more characteristic of a post-industrial, highly flexible and performance-driven economy. 'Psychosocial risks at work' refer to the likelihood that certain aspects of work design—the organization and management of work and their social contexts—may lead to negative physical, psychological and social outcomes.

In 2010 within the scope of the *5<sup>th</sup> European Survey on Working Conditions (ESWC)*, 25% of workers reported that they experience work-related stress for at least most of their working time. A similar proportion claimed that work affected their health negatively.<sup>1</sup> The *6<sup>th</sup> ESWC* reveals that a significant share of workers in Europe is exposed to very high levels of work intensity. Figure 1 shows two aspects of excessive work intensity in European countries most associated with psychosocial risks. As seen in Figure 1, in nearly all EU-15 countries, at least one-fifth of workers report in 2015 that their job involves working at very high speed and to tight deadlines almost all of the time.

But even the most ambitious and progressive regulations to promote better workplaces only work out in combination with reliable and regular monitoring and enforcement. This is particularly challenging with regard to psychosocial hazards at work. In Germany for example, psychological strains have been part of the statutory risk assessment in every company since 2013. But, because an objective identification of respective risk factors is impossible and the legislation does not articulate details, the employer's scope is wide.

In addition, factors of psychosocial risks are highly sensitive to the individual and the context; for example, psychosocial hazards are not always necessarily related to negative health outcomes. Rather, it depends on the individual employee, the industry sector and the type of contract (job insecurity is, for example, related to some negative health outcomes). Therefore, further guidelines, technical assistance and monitoring to enhance working conditions are essential.

A cultural change and the awareness of the relevance and long term benefits of sustainable working conditions cannot

be realized by regulation and enforcement alone. Thus, a second pillar is needed: **campaigns to raise awareness**. This means, for example, awarding companies that have developed innovative methods to promote mental health or offer effective training. By providing this information, the as of yet unconvinced employers can in principle be reached.

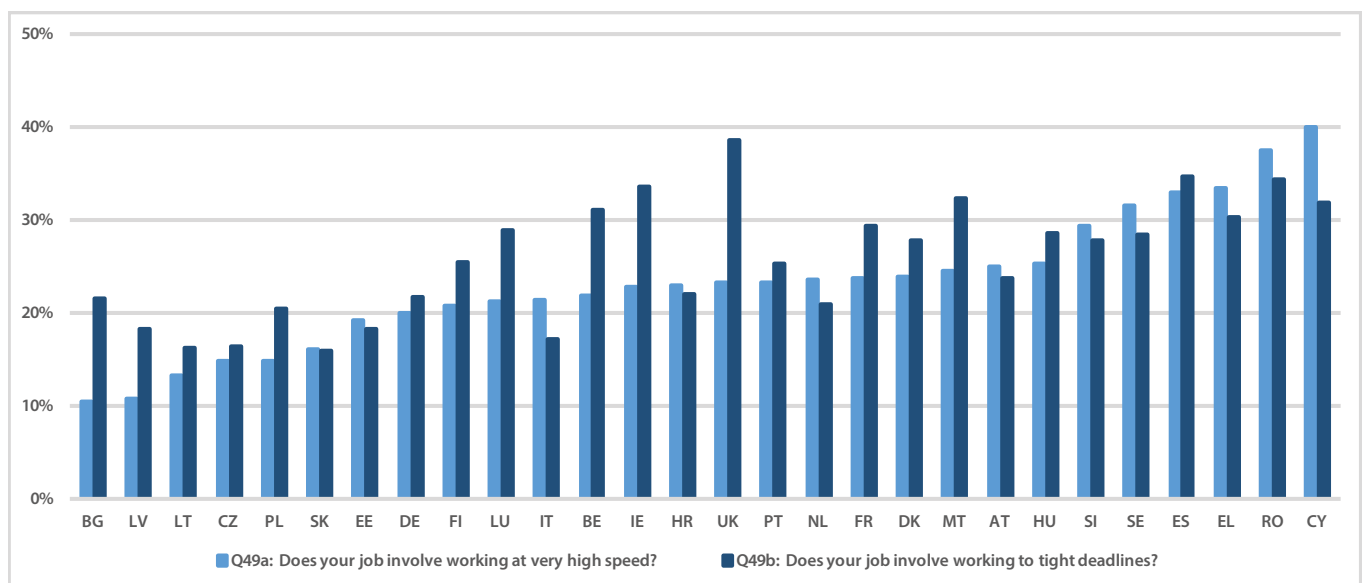
The third domain of the policy framework consists of administering **economic (dis)incentives** that pass on extra costs to employers that invest too little or none at all in the worker's employability. Technically, to promote preventative measures, economic incentives could reward companies that invest in the health and skills of their employees and punish companies that do not. There are several approaches to set incentives, for example, taxes, subsidies or a bonus-malus system for social security contributions.

*"... good workplaces ... should be defined by a health-, competence- and skills-enhancing atmosphere throughout the employees' working lives"*

**How to measure improvements?**

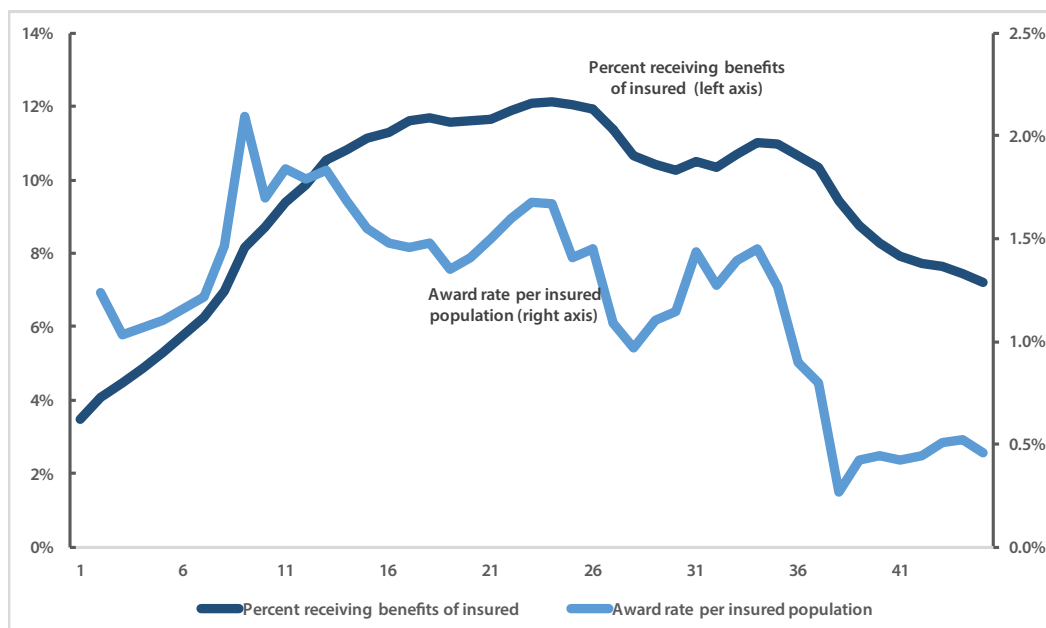
For economic incentives to be effective, the intended prevention activity of the enterprise should directly influence the expected reward. To evaluate intended effects within companies, it needs to be clarified which measurements are most suitable. Input and output criteria, therefore, come into consideration.

**Figure 1. Work intensity: working at very high speed and working to tight deadlines almost all of the time**



Source: Eurofound, Sixth European Working Conditions Survey 2015

**Figure 2. Disability Insurance award and enrolment rate per insured worker in the Netherlands, 1968-2012**



Source: Koning und Lindeboom, 2015





Input parameters include in-plant interventions, processes and expenses that can be shown to drive employability—for example, an improvement of work organization, possibly with the collaboration of work councils. The input-based measurement requires consensus about the indicators to be measured and an evaluation at the company level.

Output parameters provide a larger range of choices on how to improve workplace conditions and can be evaluated more easily (for instance, absence due to mental illness or inflow in disability insurance). Yet, besides the challenge of establishing the direct link between employer behaviour and outcomes,

output criteria pose a challenge since data on social insurance systems cannot be readily used due to the need to preserve privacy and challenges in conducting direct comparisons among employers.

### **A short review of already existent incentive schemes**

#### **1. Unemployment insurance in the USA**

The most well-known example is the 'experience rating' in the unemployment insurance system in the US (UI henceforth), that is, pricing premia that are based on the group or individual's history of claims. The US UI scheme captures the effects of experience rating because it penalizes layoffs and

thereby enables the allocation of costs to those employers deemed 'accountable,' at least for the most part.

The basic structure is as follows: each firm pays a payroll tax on its current wage bill. For each employee, the firm pays a tax on a capped base salary determined by each state. The layoff cost is priced in when a firm lays off a worker and the employer is, according to the experience rating method, assessed a higher tax rate in the future. Thereby, the experience rating reduces firm's incentive to hire and fire.

Moreover, economic incentives set by experience based premia have also been established in some social insurance designs of European countries and also provide some valuable insights.

## 2. Statutory accident insurance in Finland and in Germany

In Finland and Germany the statutory accident insurance (AI henceforth) is part of the social insurance system that covers all employees and both occupational accidents and diseases at a relatively high rate of compensation.

The Finnish AI is entirely financed on the basis of premia paid by the employer. The insurance companies are allowed to calculate the premia with their own schemes (generally based on statistics collected over a five-year period), with up to a certain degree defined by law. The premia must be proportional to the insurance costs: specific accident risks have to be taken into account, and in certain cases individual accident rates have to be considered.

In Finland, SMEs pay insurance rates based on the size of the company and the 'risk per mill,' the pooled collective risk of the branch, whereas for large companies special rates are applied. The level of the premium is experience-based according to the accident rate of the company itself. Especially for larger firms, it pays to invest in preventive measures to improve their overall occupational safety.

In the German occupational AI, prevention is also regarded as an essential task of the several AI companies, and this is then reflected in the design of the premium. In Germany every company, regardless of their size, is placed in a hazard group, and each hazard group is subsequently assigned to certain rate brackets. Within the bracket, the sum of wages determines the insurance premium. The actual incentive for preventive care is set by reductions or additional charges depending on the number and severity of a company's accidents in relation to the average in the relevant hazard group.<sup>2</sup>

## 3. Disability insurance in the Netherlands

The Netherlands and Finland are the only countries with experience ratings for public disability insurance (DI henceforth) benefits. In the Netherlands, the number of workers receiving DI benefits dramatically increased between the late 1960s and the early 1990s (compare Figure 2, which displays DI stock and DI inflow). After DI enrollment peaked at 12 percent of the labour force, the Dutch government extensively reformed the DI scheme to reduce the number of beneficiaries.

The old system was unique in terms of generosity and accessibility and therefore often abused as an alternative pathway into unemployment. In the course of structural reforms, the responsibility of firms was gradually increased: experience rating was introduced in the late 1990s, and the new DI scheme WIA (Work and Income according to Labour Capacity Act) came into force in 2006. Hence, the reformed Dutch design provides an interesting setting, especially with respect to the evaluation of economic incentives.

The experience rated DI premium for Dutch firms is based on the individual disability risk, which itself depends on the disability costs of firms as well as on the insured wage costs, both registered with a delay of two years. The experience rated design has significantly reduced the number of DI claims and increases the firm's awareness of costs that are incurred by occupational disability.

But even the Dutch system provides a loophole: DI benefits in the case of temporary and flexible workers are financed instead by collective funds. This is especially problematic since, in order to be effective, most prevention investments in the workplace need to be designed on a long-term basis.

### What makes economic incentives challenging?

As mentioned above, psychosocial risks have gained much attention in the context of a highly flexible and performance-driven work environment that depends on employability and performance. These hazards are particularly challenging to assess due to the fact that the exposure to work-related psychosocial risks highly depends on the organizational culture as well as on the worker's perspective. Beyond the legal requirements, however, one foundational aspect in promoting health and safety at work—and/or continuous skill adaptation—is providing effective economic incentives.

This can most clearly be shown in the design of the current Dutch disability insurance system, which, by basing the premium on the individual disability risk, puts much emphasis on employer's incentives to invest in the health and safety of their workers. On the other hand, these incentives for employers also bear the risk of unintended side effects. Human resource practitioners might focus on hiring (probably especially young) workers with discernibly good health conditions or skill profiles, potentially opening the door to the risk of discrimination.

Finally, any investment in a health- and skill-enhancing environment pays off primarily over a long period. Thus, incentives need to be geared towards long-term profitability. Overall, linking economic incentives with social insurance is justified since the effects of bad working conditions are potentially externalized. Therefore, connecting employer's investments in the workplace, or some long-term oriented output criteria, to a related branch of social insurance via an experience rate premium design could be considered as a possible solution. Nevertheless, concrete policy design issues to implement these plans still need to be discussed and debated very carefully. ■

1. (Eurofound, 2014)

2. (EU-OSHA, 2010 and DVUV, 2016)



# How Chinese parties can prepare for increasing outbound disputes



Shaun Z Wu and Andrew D Wang are lawyers at Kobre & Kim LLP

**D**riven by a need to hedge against a slowing domestic economy and drawn by opportunities for access to technology and expertise, Chinese parties continue to invest increasingly large sums of capital into foreign ventures. Indeed, while 2015 was a record year for China outbound ventures with deal volume totaling US \$109 billion, the US \$101 billion figure for China outbound ventures in the first quarter of this year alone has almost matched that figure. By contrast, global activity elsewhere has been dropping precipitously. Thus, as the volume of China outbound ventures continues to rise, they will represent an increasingly large share of global activity as a whole, solidifying China's position as a paramount economic power.

However, greater opportunities also mean greater risks. As Chinese parties continue to park their capital on foreign shores, whether in the form of joint ventures or other structures, they will inevitably face more disputes or litigation arising from those investments, oftentimes in foreign and unfamiliar venues. Fortunately, while it is impossible to predict future disputes with any precision, Chinese parties can mitigate risks

by including thoughtful dispute resolution provisions in their joint venture agreements that can help them deal with any later problems. By being aware of and planning for possible disputes down the line, Chinese parties can maximize value from their outbound ventures.

## **China-foreign joint venture disputes and deadlock provisions**

As an alternative to an outright acquisition, a Chinese party can gain access to foreign markets through a joint venture with a foreign company. Joint ventures offer certain advantages over outright acquisition, such as avoiding the need to expend or commit as much capital, limiting losses by spreading risk across the partners, and ensuring greater flexibility for all parties. For Chinese parties, they may also provide similar levels of access to technology and expertise as in acquisitions.

On the other hand, joint ventures may sometimes present an even greater risk of disputes, given that each parent company maintains its separate business identity, may have conflicting





priorities, and has varying levels of decision making power. In the case of Chinese-foreign joint ventures specifically, the risk of disputes may be compounded by differing cultures, management styles, and working relationships within each parent company.

#### **Deadlock provisions for resolving discrete disputes**

Disputes between Chinese and foreign joint venture partners can take many forms, such as decisions over management and control, funding structure, dividend policy, etc. A well-drafted joint venture agreement will include deadlock provisions that will streamline the resolution of disputes. There are certain commonly used deadlock provisions designed to treat the partners fairly while at the same time allowing the business to continue. For example, in the event of a tie vote among the board of directors, a disagreement can be decided by a tie-breaking vote rendered by an independent, non-executive director.

Another commonly used mechanism is stipulating that certain disagreements be resolved by mediation first. The provision may provide that in the case of a deadlock, the parties must engage an impartial mediator in an attempt to reach a compromise. Although a mediator does not have the power to impose a settlement on the parties, often he or she can help the parties reach their own negotiated settlement especially for Chinese-foreign joint venture disputes.

#### **Types of deadlock provisions for dissolving the China-foreign joint venture**

If a dispute between the Chinese and foreign parties cannot be resolved, oftentimes they may have no choice but to terminate the joint venture. However, many joint venture agreements require unanimous agreement among the board of directors for dissolution. What happens if a Chinese partner wishes to unilaterally dissolve the venture with a foreign partner due to changing market conditions, new business

*“The pace of China outbound ventures has exploded in recent years, and that trend will likely only continue”*

opportunities, or significant economic events in China? Without a clear exit strategy, the Chinese partner may have no choice but to continue participating in a joint venture that no longer suits its strategic needs.

A Chinese party looking to enter into a joint venture with a foreign company can avoid such problems by incorporating into the joint venture agreement deadlock provisions entitling it to unilaterally terminate upon certain specified events, or to buy out interests from, or sell interests to, its counterparty at a designated price. The following are some commonly seen termination devices:

- **Russian Roulette** – One deadlocked partner serves notice on the other partner and names a price per share of the joint venture. The partner receiving the notice then has the option to either buy all of the notifying partner's shares at that price, or sell all of its shares to the notifying partner at that price.
- **Texas Shoot-Out** – Each deadlocked partner submits a sealed bid stating the price at which it would be willing to purchase all of the other partner's shares in the joint venture. The partner with the higher bid must then buy the other partner out at the price per share of its bid.
- **Dutch Auction** – Each deadlocked partner submits a sealed bid stating the lowest price at which it would sell all of its shares in the joint venture. Whichever sealed bid contains the higher price 'wins,' and that bidder must then buy the other partner's shares at the price contained in the 'losing' bid.
- **Adjusted Fair Market Value** – One deadlocked partner serves notice on the other partner indicating that a deadlock has arisen. An outside third party, usually an expert or auditor, then determines the 'fair market value' of each share of the joint venture. Once a valuation is made, the partner triggering the termination provision must either buy the other partner's shares at a set premium (eg. 10%) or sell its shares to the other partner at an equivalent discount.

Rarely will a single deadlock provision be able to address all possible termination scenarios. Each joint venture has its own unique set of circumstances, so what may work for one joint venture may not be the best solution for another. Before executing joint venture documents, Chinese parties should carefully consider their own strategic positions and explore which deadlock provisions would best protect them. For example, if a Chinese party has a firmer liquidity position than its joint venture partner, certain deadlock provisions may offer more leverage in the event of a forced buyout.

Ultimately, even the most thoughtful of joint venture agreements cannot predict every scenario, and some disputes will end up in litigation or arbitration. But even if a dispute ends up in litigation or arbitration, the more clearly



defined deadlock provisions are, the easier it will be to resolve the dispute. Accordingly, Chinese parties should always take a broad view when thinking about how to structure their joint venture agreements and craft deadlock provisions as precisely as possible.

### **Forum selection and solutions for Chinese outbound disputes**

Just as Chinese parties engaged in foreign joint ventures need to carefully negotiate deadlock provisions, they must also consider how best to protect their interests through dispute resolution provisions that may have an impact on future litigation. One of the most significant such provisions is the forum selection clause, which may specify a court in China, the foreign country, or an arbitral tribunal in a third-party state.

For a Chinese party engaged in a foreign joint venture, the most natural forum is of course China, where familiarity with the court system and laws will offer a significant advantage. Moreover, in certain circumstances such as when the foreign partner uses a local Chinese subsidiary to enter into the joint venture and the joint venture is governed by PRC law, it may even be a requirement that any disputes arising from the joint venture be resolved in China.

On the other hand, given the heavy interest in acquiring or partnering with companies in developed western countries, the default forum for resolving disputes will often be in common law jurisdictions, which may be unfamiliar to Chinese parties accustomed to settling disputes in a civil law legal system. Nevertheless, if a Chinese investor and its operations are based entirely in China, then selecting the foreign country as a forum may even be more protective of the Chinese party's assets, due to the difficulties in recognizing a foreign court judgment in China.

Alternatively, arbitration is a popular choice for cross-border business disputes, with the International Chamber of Commerce (ICC), Hong Kong International Arbitration Center (HKIAC) and Singapore International Arbitration Center (SIAC) being popular options for China-foreign joint venture disputes. Arbitration may afford the parties significant advantages including confidentiality, flexibility, and the right to choose their own arbitrators. China is also a signatory to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), which allows many arbitral awards to be enforced not only in China, but also across almost 160 states worldwide.

Finally, it is worth noting that the vast majority of China's outbound investment is structured via 'offshore' jurisdictions such as Hong Kong, the Cayman Islands, and the British Virgin Islands (BVI). Regardless of what the joint venture agreements themselves may specify, it can sometimes be worth considering out-of-the-box solutions in offshore jurisdictions to achieve commercial objectives. For example, in the Cayman Islands and BVI, it is sometimes possible to obtain a preliminary freezing order restraining another party's assets if there is sufficient evidence that assets of the joint venture are being dissipated. Knowledge and strategic use of such solutions can enhance a Chinese party's leverage.

### **Potential regulatory risks**

Chinese parties interested in acquiring foreign companies outright also need to be aware of potential regulatory risks,

both before and after the acquisition. Regulators in certain developed countries have the power to review proposals by a foreign company to acquire a local company. For example, in the US, proposed acquisitions of US companies by foreign companies are subject to an opaque review process by the Committee on Foreign Investment in the United States (CFIUS).

Given political sensitivities, China outbound ventures sometimes receive more scrutiny, especially because such outbound activity has concentrated in strategic sectors such as natural resources, agriculture, technology, and finance. Unfortunately, in several recent proposed acquisitions, regulatory uncertainty has led Chinese parties to agree to larger-than-average reverse termination fees—an amount paid by the proposed acquirer to the target company in case the deal should not be consummated due to certain circumstances. For the moment, this trend appears likely to continue.

Should a Chinese party successfully acquire a foreign company, it may then become subject to other countries' regulatory requirements via the newly acquired subsidiary. Far-reaching anti-corruption laws in particular can expose a Chinese party to criminal prosecution or regulatory enforcement actions, either of which can lead to substantial fines and other serious legal consequences, based on the actions of a foreign subsidiary. Accordingly, part of the calculus for any Chinese party planning on acquiring a foreign company should be consideration of relevant local laws and regulations that may impose new and unfamiliar compliance responsibilities.

The US Foreign Corrupt Practices Act (FCPA) is a prime example of a broad anti-corruption law with global reach. The FCPA has two main provisions: (1) an anti-bribery provision that prohibits corrupt payments to foreign officials to obtain or retain business; and (2) an accounting provision that requires accurate recordkeeping and adequate systems of internal controls. The accounting provision only applies to companies with securities traded on a US exchange or entities that are otherwise required to file reports with the US Securities and Exchange Commission. The anti-bribery provision is broader, extending to any company with its principal place of business in the US. Moreover, a parent company can face FCPA exposure based on the actions of a US subsidiary in unexpected ways. First, the FCPA covers the actions of US companies anywhere in the world, not just in the United States. Second, the FCPA may be implicated based on the conduct of a third-party agent acting on behalf of the US subsidiary.

Given the breadth of laws such as the FCPA, a close study of local laws and the implementation of robust compliance controls are crucial for Chinese parties interested in acquiring foreign companies. But should problems arise, engaging with local regulators and conducting an internal investigation can often mitigate the damage. In such an event, Chinese parties should engage counsel experienced in handling such matters to ensure a smooth resolution.

### **Conclusion**

The pace of China outbound ventures has exploded in recent years, and that trend will likely only continue. However, despite the risks that abound for Chinese investors, the good news is that they can avoid potential pitfalls ahead of time through careful planning. Ultimately, that will benefit all parties to outbound deals. ■



# LET THE GAMES BEGIN

## RIO OLYMPICS AND THE IP MINEFIELD

Ian Johnson is Head of IP Legal at CPA Global

**A**ugust's opening ceremony in Brazil's Maracanã Stadium kick-started 17 days of the Olympiad: 10,500 athletes from 206 countries competing across 306 events. Since winning the bid for the Olympic Games in 2009, Rio de Janeiro has worked to make South America's first Games a success.

The government has invested in new stadiums and sporting venues, building new transport links including the \$8 million elevated cycle path over the sea. In the build up to the event, Olympic organisers expected significant media focus, but were they prepared for the issues surrounding intellectual property (IP) and what this would mean for sponsors and the Olympic brand?

### A giant leap for sporting technology

The 2016 Rio Olympics has been the most technologically advanced Olympics to date—embracing digital systems and innovative start-ups to stage a multiscreen, virtual Games. For the first time the Olympic Broadcasting Service (OBS) broadcast high-definition images of the opening ceremony in virtual reality, and will show one event each day in the same way. GPS technology has been implemented in long distance races, allowing fans to follow the canoe sprint and rowing events more closely than ever before. GPS devices are attached to every vessel so spectators can view key data relating to the speed and direction of boats in real-time.

Traditional scoring systems in archery and shooting have also been electronically upgraded: target shooting now incorporates laser technology for millimetric precision. While in archery, to add to the tension, Rio spectators will be able to monitor athletes' heart rates in real time. Radio-frequency tags have even been attached to guns so that organisers know where each weapon is at any given time.

In 2014 investors spent more than \$1 billion<sup>1</sup> in venture deals for sports-related start-ups, representing a shift from investors who once shunned the sports sector, now flocking towards it. IP management and protection plays a key role in enabling innovation in sports and the continued investment in research and development of more effective and affordable technologies for athletes. With the amount of sophisticated technology on show in Rio, there is a promising future for IP in sports.

How did so many new technologies make it to Rio? After the inception of an idea, it would have been vital for inventors to protect their IP with a patent or other form of security. A

worldwide sporting stage is not the place for a trade secret technology to debut. In most countries an industrial design must be registered to be protected under industrial design law. However, the patent process can be a lengthy and costly investment. In the lead up to the Games, Brazilian authorities recognised the space for new technology and made moves to accommodate new innovations. The Brazilian patent trademark office (PTO) issued Resolution No.167—fast tracking the processing of industrial design applications related to sporting goods.

To meet the criteria for the fast tracked examinations, industrial design patent applications had to exclusively concern sporting goods and have been requested prior to 16 June 2016. Resolution No.167 also helped to curb the effect of territorial patent rights. In general, exclusive rights are only applicable in the country or region in which a patent has been filed and granted, in accordance with the law of that particular location. Brazil's fast tracked patent process secured IP as soon as an application was accepted—new technologies could be introduced in Rio safe in the knowledge that Brazil's PTO would protect IP.

### The social media takedown

Intellectual property was supported by Resolution No.167 and embraced by the Rio Olympics. However, in an attempt to protect its own IP the International Olympic Committee (IOC) issued a ban on non-official sponsors sharing Olympic content:

*"...Any use of USOC trademarks on a non-media company's website or social media site is viewed as commercial in nature and consequently is prohibited."*

With the US tightening its grip on IP regulation, trademarks are a key method of protection: trademarked brands, sporting venues and even, athletes. Some of the most famous athletes in the world use IP rights to control the use of images with which they are associated. Jamaican sprinter Usain Bolt's 'Lightning Bolt' pose, US basketball star Michael Jordan's 'jumpman' pose, and English Rugby star Jonny Wilkinson's distinct kicking stance are all registered trademarks.

With future of IP evolving, social media watching is becoming increasingly important. While regulating the use of certain terms and words on social platforms is not new - banning hashtags is. The first US applications for trademark hashtags were submitted in 2013, and the United States Olympic Committee (USOC) now owns a number of words and phrases.



## *‘The Olympics is a shining example of why IP owners must adapt to the changing landscape of IP’*

In the lead up to Rio 2016, USOC successfully trademarked *#Rio2016* and *#TeamUSA*, as well as *‘going for the gold’* and even *‘let the games begin.’*

Rule 40 was implemented to protect investment from official sponsors. Big corporations such as Coca Cola, McDonalds and Samsung have all sponsored Olympic cycles, paying an estimated 100 million euros each to the IOC to advertise directly with the Olympics. Rule 40 reminds companies: if you have not paid for access to IP rights you cannot use popular hashtags to self-promote. It could be argued that the strict enforcement of rule 40 is not only restricting companies from

benefiting from ‘Olympic fever’ but the athletes themselves, too. The by-law not only deters non-official sponsors, but establishes a ‘blackout period’ during which an athletes name and image cannot be used by any non-official sponsors during the Games.

*‘Olympic-related terms’* are also off limits to non-official sponsors from 27 July until midnight on 24 August 2016. According to the IOC, *‘Olympic-related terms’* include: effort; challenge; summer; Rio; games; victory; and among many others – medal (including pictures of a medal). If an athlete breaches Rule 40, they can be barred from competing and even stripped of medals they have already won. This may seem extreme, but strict measures are a way for the IOC to establish IP ownership and stop non-official sponsors financially benefitting from its property.

National Olympic committees are responsible for enforcing regulations in each jurisdiction, and some countries are choosing to edit rule 40’s strict application. Olympic Team GB published its guide in December and chose to introduce the by-law with slight exceptions:



*“For London 2012 and in recognition of the important role personal sponsors play in athletes’ careers, the #BOA [British Olympic Association] relaxes the provisions of Rule 40 to allow athletes to appear in personal sponsors’ advertising during Games (subject to certain conditions).”*

While individuals, news outlets and official sponsors are generally free to post about the Games and Olympic athletes, most businesses and brands are excluded from anything close to a direct discussion. Some non-profits, small businesses and even individuals, have been on the receiving end of the IP debate - including a knitting group<sup>2</sup> that used the term ‘ravelympics’ for a knitting competition, a charcuterie<sup>3</sup> in Portland named ‘Olympic Provisions’, and a Philadelphia sandwich shop<sup>4</sup> called ‘Olympic Gyro’ – all receiving cease and desist letters.

### Tackling the heavyweight sponsors

However, some brands have leveraged the enthusiasm of the games without breaking the rules. These tactics include alternative hashtags, patriotic Snapchat lenses, and using animals and animated fruit in place of humans when depicting athletic events in adverts.

Under Armour - a manufacturer of athletic clothing - is not an official sponsor of the Rio Olympics, but the company has ties with some of sports most high-profile names: Michael Phelps; Andy Murray; Jordan Spieth; and Kelley O’Hara. Despite not paying to sponsor Phelps’s Olympic performance, the company is using social media to associate themselves with the Olympian, using creative ways to congratulate the swimmer without breaking IOC rules.

One tweet read: *‘It’s what you do in the dark, that puts you in the light,’* posted minutes after Phelps won his record breaking 20<sup>th</sup> gold medal. Under Armour tagged Phelps in the post alongside its *‘Rule Yourself’* slogan, an American flag and an applause emoji – Olympic connection with no Olympic reference.

Historically the Olympic Games has been about bringing people together in sporting competition, but the nature of this year’s official sponsorship guidelines has questioned this, fuelling the debate over the future of IP in the digital age. Twitter should be significantly populated by Olympic interaction, but Rio 2016 has barely been present in trending topics. The threat of a lawsuit from a multi-million pound organisation is enough to stop free speech in its tracks. The IOC may be upsetting social media users by staking ownership over hashtags, but as owners of Olympic IP – are they wrong to protect what is theirs?

The Olympics is a shining example of why IP owners must adapt to the changing landscape of IP. The IOC is a non-profit organisation that uses its IP assets to generate revenue. Enforcing restrictions on social media and banning the use of Vines and GIFs is a means of IP protection: restricting individuals who do not own – or sponsor – the Olympics from

financially benefitting from its IP. Social media watching is crucial in today’s digital landscape to ensure infringement is not taking place across any form of media.

Internet monitoring for the misuse of trademarks is a growing business and it is vital for IP owners to have a trademark strategy in place that covers both PTOs and the internet. The internet vs IP debate raged on through the duration of the Olympics, but it highlighted some of the issues IP owners will face in the future and why organisations need to be ahead of the changing game with a concrete strategy in place.

### The future is bright for Olympic IP

Before the Rio Olympics had even begun, innovators were looking ahead to the 2020 Games in Tokyo. Already being described as the most futuristic Games – Tokyo promises to showcase the latest and greatest in technology. When Tokyo last hosted the Games in 1964, the nation made transportation history by debuting the Shinkansen world-famous bullet train, and Japanese technology looks to dominate the latest Olympic offering too.

What can we expect to see? Famed for its world-leading robotics industry, Japan will be embracing automation. The Games will introduce a ‘robot village’ in Tokyo’s Odaiba neighbourhood, which will also be home to the athletes’ Olympic Village. Organisers are looking to employ robots to help manage the 920,000 visitors expected in Tokyo each day during the Games: they can be called upon for language translation, directions, or beckon transport - likely to be a self-driving taxi. Japan’s robot strategy will mean tripling the country’s spending on robotic technology - making it a \$20.2 billion industry. Worldwide, the industrial robotics industry is poised to reach \$40 billion by 2020, and Japan has every intention of leading the charge with the Tokyo Games.

Heavyweight Japanese companies such as Panasonic are also contributing innovative technologies: installing tens of thousands of fixed and mobile cameras to work in tandem with restricted-area sensors to secure the stadium; and a translation project that will allow Olympics visitors to wear a tablet around their neck to translate Japanese into 10 languages – instantly. Similarly, Japanese start-ups are contributing to Tokyo’s technology legacy. ALE is designing a microsatellite to launch into space that shoots out tiny spheres of a secret chemical that burns and glows like a star – an eye-catching artificial meteor shower that will dominate Tokyo 2020’s opening ceremony.

The impressive technology displayed at the Rio Olympics will motivate innovators to create something even more special for the Tokyo Games – more automation, robotics, security and accuracy through electronics. With four years to go, inventors must act now. It is paramount IP owners employ a sophisticated and scalable IP strategy to accommodate changing technology trends and monitor competitor behaviour. If you are looking to show your technology in a global arena, Tokyo 2020 will be the place to do it. ■

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# Winning the race to launch and protect trademarks

Rob Davey is Senior Director, Global Services, at Thomson CompuMark

**T**oday's law firms and corporate legal teams are being asked to clear new trademarks quicker than ever before. In the current market, decisions have to be made on the use of new marks against a challenging backdrop of tighter turnaround times and no extra resource. In light of this pressing 'need for speed', trademark practitioners are looking at new ways to effectively produce the most rapid, effective and accurate response rate required for their clients.

This increased urgency has prompted a need for change in the industry and one growing trend in the legal trademark arena is the use of automation and more efficient workflow tools, introduced to deliver decisions of the required quality, far more quickly.

## The inside view

The views of legal professionals and brand owners on the biggest issues facing the trademark industry were reflected in some recent research<sup>1</sup> carried out by Thomson CompuMark<sup>2</sup> at an industry symposium on brand protection. Budget pressures, new brand channels, globalisation and technology support were cited as major challenges to staying ahead in the evolving trademark landscape. In fact, 44% of respondents said budget was the biggest challenge and 28% felt that new channels was another critical area, saying that social media had a real impact on clearing and protecting trademarks.

The rate of new marks being launched into the social media sphere has increased substantially in recent years, in terms of both volume and speed, and this has had considerable implications on professionals working in the trademark industry. 61% of those questioned in the research felt that social media is either very or moderately important to their trademark strategy, and more than a third (34%) said they would be open to new technology in their day-to-day work.

Even though the sample size of the research was relatively small, the research is highly significant as it represents the views of those people working at the heart of the trademark and brand protection industry. The results highlight the level of complexity facing organisations looking to clear, launch and protect their brands and how many are exploring the concept of bringing in new technology to solve their clearance challenges.

## The worldwide challenge of globalisation

As we have seen from the research, new markets, emerging market channels and the impact of the internet have all played significant roles and contributed to the demand for quicker, more comprehensive trademark clearance searches.

However, globalisation remains an underlying factor across all industry sectors.

The market today is worldwide and businesses want brands that can grow geographically, as well as across different products and services. Organisations can now enter a new market almost instantly, potentially exposing the brand to prior rights in another country.

In the majority of cases it is no longer viable to clear marks in just one core area, it has reached the stage where clearance has to include all possible markets of expansion. This places greater pressure on legal professionals to clear trademarks quickly and more broadly, so businesses can ensure they can secure local rights to that mark.

## Made in China

Globalisation creates risks that are often overlooked by brand owners, particularly when it comes to China. While China has greatly improved its practices in recent years, it still remains the single largest market for bad faith trademarks. Launching





a brand in just one market, whether it is on social media or any other public space, then exposes it to the rest of the world and leaves it open for registration by other parties in countries like China. The potential risks further reinforce the importance of organisations registering a mark, rather than relying on their prior rights as a brand owner.

### The rise and rise of social media

The greatest impact in this area has been brought by marketers spending less time on brand building and focusing almost exclusively on getting the brand on to the market quickly, to meet the demands of the digital consumer and social media users.

While social media has become a powerful tool for advertising and marketing a brand, it has also brought an additional layer of complexity to trademark professionals. The immediacy and instantaneous nature of social media means that speed is key. Marketing departments now want to get new brands out there as quickly as possible to maximise the online market, and registrations are getting easier and cheaper.

The prolific use of social media has been a catalyst that has prompted a need for change in the sector. With any new digital marketing campaign, the best protocol is for businesses to seek counsel as early as possible. Even prior to selecting the brand itself, trademark professionals are called upon to offer advice on whether that brand is available and the likelihood of being able to acquire it as a username across key social media sites.

The challenge is providing the necessary guidance to determine which trademarks are relatively clear for a company's use and registration, and those that may cause an issue with any existing marks. Social media throws up a number of specific issues during this process, particularly surrounding the use of generic terms for marks and, more

*“One fundamental step in enforcing trademark rights is being aware of potential conflicts and identifying those marks before they reach the marketplace”*

recently, businesses attempting to register social media hashtags as trademarks. Another important reason why both in-house legal teams and law firms are changing their business models and readjusting their workflows to suit ever-evolving client demands.

### Competition between firms

Alongside the growth in trademark applications, the increase in the number of practising solicitors has intensified the competition between legal firms and placed additional pressure on the sector. In the UK alone, the number of practising solicitors has risen by 20 per cent since 2009, according to the latest figures released by the SRA<sup>3</sup> (Solicitors Regulation Authority). This is reflected in the US too, as the number of licensed lawyers increased by 32,694 between 2013<sup>4</sup> and 2015<sup>5</sup>. The need for trademark professionals to differentiate their offering from their competitors has never been greater and many law firms are embracing change by exploring new methods of innovation and the latest technological solutions.

### Changing workloads and workflows

The evolving trademark landscape has resulted in many in-house legal departments and law firms realigning their operating approach in a way that better meets the needs of their clients. In this demanding environment, trademark practitioners have had to change their thinking and subsequently readjust their workflows in order to remain competitive and successful. With changes, and indeed growth, in how businesses commercialise their brands, the number of channels that need to be considered has also expanded—both from a brand development and protection point of view.

The growth in trademark applications was captured in the latest full year statistics from WIPO<sup>6</sup> (World Intellectual Property Organization) published in October 2015. The statistics showed that the growth rate in trademark applications has continued its upward trend, increasing by 6%. Interestingly, what is not included in those statistics are the marks of which businesses decided not to seek registration. For example, if the mark is not going to appear on a product and is being used for an internet advertising campaign, or if the mark is going to be used on a seasonal product or on a sub brand of a global brand, companies may choose not to follow the normal clearance and registration process.

For those organisations, this may seem like the cheapest option in the short term, however the level of risk involved could be higher than expected. In response, trademark practitioners have had to tailor their approach and modify the search and filing strategy to make the risk level and budget acceptable to the client.

### Technology changing the trademark landscape

While there are many changes affecting the trademark sector, one critical element that has remained the same is the need



to clear new trademarks in the most robust and appropriate way. Not clearing a brand effectively is a false economy for the organisation involved, and it is no secret that the financial fall out can be significant.

Managing a complex digital workload within ongoing budgetary constraints has seen a number of law firms change their working models in order to maintain a successful practice. Whether that differentiation is special expertise in niche sectors, innovative forms of client service delivery and fee structures, or with the help of the latest technological solution.

Technology is considered to be an integral part of trademark firms' changing models. Alongside the Thomson CompuMark research, according to a recent report by Raconteur<sup>7</sup> into legal innovation, 78 per cent of UK lawyers believe that technology in a law firm is critical and further evidence is illustrated in the *PwC 2015 Annual Law Firms survey*<sup>8</sup> showing that the vast majority of firms (95 per cent) plan to invest in IT in 2016 to improve their efficiency and competitive edge.

Adopting the latest technology could provide the foundation needed to respond to clients' differing needs. The solution that trademark professionals require is a set of more efficient tools, and a growing number are introducing workflow and automation tools to help speed up the process.

#### Full search and self service

There are emerging technological solutions in this space designed to simplify the clearance process and put the power of search firmly in the control of legal professionals—technology that can allow informed counsel to be delivered on new brands faster and more efficiently, would be an attractive proposition for clients. Fundamentally, any solutions that could help to speed up the process of clearing trademarks, while producing immediate and tailored search results, would have a positive impact in terms of reducing the workload and allow legal teams to clear marks more efficiently.

Solutions that incorporate specific decision support tools and allow an instant and graphical representation of the results could also give legal teams a competitive edge and in-house departments would be more effective internally. In addition, clearing marks in these digital times demands a solution that has the ability to conduct trademark searches across key content areas simultaneously, such as social media, domain names, common law sources and global PTOs. The results would provide quick and easy insight, to mitigate brand risk.

Whether the need is for a full availability search for a major brand, or for secondary and seasonal brands and slogans,

technology can be used to bring the required level of flexibility, speed and affordability to the clearance process. Fortunately, the new trend for self-service trademark clearance is being reflected in some of the latest technological solutions on the market.

There are cloud-based solutions that allow professionals to carry out quick and cost-effective clearance searches and mitigate risk for brands, as well as full search 'gold standard' solutions for primary brands or those with large results sets. These online platforms incorporate a number of analysis tools that assist in streamlining the review and reporting process.

#### Policing trademarks

Moving forwards from the initial stages of launching and clearing trademarks, it is also critical for brand owners to police their marks to preserve their trademark rights. The substantial increase in new brands being introduced means that the chance of a trademark conflict, unintentional or not, is on the rise. However, with so many channels, managing the brand risk within limited budget and time constraints presents another challenge.

Proactively protecting valuable trademarks has to be a strategic priority for every organisation. The fallout of not enforcing a mark could have a devastating impact on the brand and if the worst case scenario did happen and the name was being used by multiple people, the hard earned brand name could become more of a generic or descriptive term.

One fundamental step in enforcing trademark rights is being aware of potential conflicts and identifying those marks before they reach the marketplace. The most effective solution is to have brands on a trademark watch, and receiving watch notices when a new application is filed and subsequently published. Proactively watching trademarks from the start of the process will allow potential infringing trademarks to be addressed before a product is in play.

The trademark world is being influenced by several critical external factors, from globalisation and commercialisation, to corporate budget cuts and the explosion of new channels. The most innovative client delivery service models and the latest technological solutions will enable trademark practitioners to differentiate themselves in the market and better meet the evolving needs of clients and the growing number of marks needing clearance.

The evidence is clear in the industry research—law firms are beginning to embrace change and those at the forefront of innovation and technology will be the ones that really make a mark in this competitive industry. ■

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# Service Assured.



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## We provide:

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- An efficient registration turnaround and a professional approach
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We are happy to talk through future registrations or answer any question you might have. Please contact:

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# A yearly rendezvous to celebrate innovation and achievement



The TechAwards trophy is an original by local crafts creator Dockyard Glassworks

In Bermuda and all over the world, technology is recognised as today's greatest enabler of progress. The Department of E-Commerce within the Ministry of Economic Development in Bermuda recognises this principle and consistently promotes initiatives that encourage technology innovation and e-entrepreneurship. As such, year after year, it partners with public and private entities island-wide to assist in bolstering progress through technology, specifically by empowering the Island's entrepreneurs with the tools which they need to launch e-businesses and write their own success stories.

Year after year, Global Entrepreneurship Week (GEW) takes the Island by storm in November, through a full calendar of events and activities targeting current and potential entrepreneurs. GEW provides the opportunity to recognise, celebrate, congratulate, and inspire the Island's entrepreneurs in a frenzy of happenings all through the community. During that time and worldwide, over 160 countries participate in the global event and approximately 25,000 organisations plan more than 30,000 events, directly engaging over 10 million people globally.

In Bermuda, the Department of E-Commerce partners with the Bermuda Economic Development Corporation (the BEDC) and the Youth Entrepreneurship Initiative of Bermuda (YEI) to grow the GEW Bermuda presence. As a result, as early as October, the GEW buzz is palpable and much is achieved and celebrated: several times, Bermuda has won the *Champion Catalyser Award* at the yearly Global Entrepreneurship Congress.

The aim of GEW is to inspire Bermuda's entrepreneurs of all ages, backgrounds, and experience levels to join in the full calendar of workshops, activities, and competitions and to turn their entrepreneurial dreams into reality. Through the variety of encounters, they meet like-minded people, network with subject-matter experts, harness technology, and unleash their ideas.

Specifically, the Department of E-Commerce provides sponsorship and other forms of assistance for the following GEW events:

- The Technology Innovation Awards, or TechAwards, which are a highly -anticipated signature GEW Bermuda event, and
- PitchTECH, a sub-category of the annual Rocket Pitch Business Idea Competition, another popular competition that culminates during GEW.

### The TechAwards

The TechAwards are the Island's opportunity to celebrate innovation and achievement among the ranks of Bermuda's residents and companies. They allow the Department of E-Commerce to recognize the Bermuda residents and Bermuda-based organizations which have provided notable technology solutions to Bermuda and its residents. Every year, the winners demonstrate that the Island, despite (or thanks to?) its small size, has what it takes when it comes to technological innovation and achievement. The Bermuda public is the driving force of TechAwards as it is called to nominate local innovative achievements that are to be recognized and applauded.

### PitchTECH

The Rocket Pitch competition gives individuals the opportunity to pitch a business idea in a bid to win seed funding and business services to launch it. PitchTECH is the category dedicated to new and innovative technologies or e-business ideas with a technology focus.

The Department of E-Commerce, through many partnerships and year after year, strives to ensure that technology plays its part in empowering Bermuda's entrepreneur and bringing recognition to the winners of the various GEW challenges. It takes a committed, hard-working community of dedicated entities and individuals to make a busy calendar like that of Bermuda's GEW a success in serving, empowering, and celebrating the Island's entrepreneur.

Every time a Bermudian is given the opportunity to strive for success, they impress us with their drive, creativity, and hard work. The technology-themed GEW events continue to show that in the right context, where opportunity meets hard work, technology enables creativity and innovation. ■



**TechAwards winners are congratulated by the Minister of Economic Development Dr the Hon. E Grant Gibbons, JP, MP, and the Chair of the E-Commerce Advisory Board Aaron Smith**

# The new economics of virtual meetings in the race to digital transformation

**Virtual collaboration is now a critical tool for corporations. It's not just a cost saver anymore but a catalyst to transform business models and no longer the exclusive domain of IT, Sam Chon and Carol Zelkin write**

**T**he current era of the digital business promises to remake every industry. The winners will be decided by who seizes the possibilities and how quickly. The explosion of data, mobility, advanced analytics, and new digital technologies offer tremendous opportunities. And challenges. How employees collaborate with each other and with partners and customers is an important part of the digital transformation of every business.

Twenty years ago, videoconferencing was expensive, complex, and didn't provide the expected savings from reduced travel that companies were expecting. Back then, video's limited use, high cost, quality problems, and the tradition of face-to-face meetings were part of the explanation.

Today, not only has the technology evolved: business culture itself has changed dramatically as well. The pace of business has quickened so businesses must be more agile to adapt to changing market dynamics. In 2014, nearly 25% of employees were remote or mobile workers, according to a study by Frost and Sullivan, and that number will grow. The work day has expanded for many beyond 9 to 5. Consumer devices have entered the workplace. Many teams are spread across different states, countries, and even continents, so remote

communications for day-to-day activities are vital. And the Millennial Generation has brought a passionate embrace of technology and a desire for work/life balance, meaningful job roles, and a lower tolerance of poor working conditions.

A study of nearly 50,000 businesses in 34 countries by Gallup in 2012 cited employee engagement as a major factor in low employee turnover, high levels of job satisfaction and productivity, and many other factors-including the bottom line success of companies. Among ways to increase employee engagement is a collaborative environment between employees, management, and partners wherever they are located. What is the downside of low employee engagement? The study estimated that it costs the US economy alone about \$370 billion a year.

So as companies reorganize to take advantage of digitization, the networked society, and globalization, virtual collaboration is contributing meaningfully to important metrics that support growth and a company's continued prosperity.

## **The value of richer communications experiences**

The new generation of virtual collaboration technologies includes audio conferencing, immersive telepresence,

## **Virtual collaboration meeting experiences**





videoconferencing, and unified communications. These products are much better, cheaper, and more readily accepted in today's business culture than past solutions.

Videoconferencing in particular produces much more impactful meetings. What does that mean? The ability to see body language and facial expressions. To share and jointly review documents and media. To include multiple participants from different locations. To record and playback meetings. All of these features and many others contribute to better outcomes, such as lower travel and administrative costs, increased sales, higher productivity, better decision making, and happier employees, partners, and customers.

No wonder virtual collaboration is catching on in corporate departments and as part of innovative marketing strategies. So it isn't surprising that the virtual collaboration products market is set to double between 2013 and 2020, going from \$3.31 billion to \$6.4 billion, according to a 2015 Transparency Market Research study.

While videoconferencing has been adopted in corporate board rooms by executives, it hasn't been made available in many companies to all employees. But now, the costs for the solutions have come down dramatically and can be covered by savings from minor changes to corporate travel guidelines, workplace modifications, and other adaptations.

If you're a line of business manager, it's time to sit up and take notice.

### **Moving collaboration technology out of corporate IT silos**

Two business trends are helping to further accelerate the spread of collaboration solutions. First, corporate lines of business are increasingly acting independently of IT to get the tools they need. This 'shadow IT' phenomenon has been going on for a decade or more.

A 2014 study by the Corporate Executive Advisory Board found that 40% of technology investments in large organizations now occur outside of IT departments. And that is expected

*“Virtual collaboration is available, affordable, and ready for prime time”*

to increase to 90% of tech spending by 2020, according to Gartner, with CMOs spending more on IT than CIOs by 2017.

Many factors are contributing to this trend. Cloud as-a-service models. Consumers bringing their own technology into the workplace. The greater user friendliness of devices and apps.

So to manage the demands of employees and teams, now groups such as Facilities, Corporate Travel, and Human Resources feel empowered to purchase and support technology, including collaboration solutions. The digitization of business is thus freeing diverse departments to get what they need and redefining job roles within those departments.

A second trend is the popularity of the Integrated Business Services model. The model goes beyond individual departments sharing resources. It represents the elimination of departmental silos in favor of enterprise-wide access to resources and strategic knowledge.

According to a 2016 report by Deloitte Consulting GmbH, 'A move to Integrated Business Services requires much more than simply asking shared service centers to co-operate. It represents a fundamental change in how businesses utilize global assets and capabilities to most effectively deliver multiple functions, including Finance, HR, Procurement and IT.'

Among those different functions are a range of services and solutions that help individuals to do their jobs better. Offices, desks, computers, phones, cleaning services, caterers, employee benefits plans-the list of such services and solutions goes on. Within businesses adopting the Integrated Business Services model, different departments are now transitioning



from being administrators and operators of these services to experts, business partners, and value enablers.

They are actively using their tools and expertise to provide strategic support throughout the organization. Their value is measured not only in the ability to trim costs and increase productivity but also in the ability to enable scale and growth. So the budgets in these departments are now seen less as sunk operational costs of doing business and more as investments with future returns.

Voice, video, and Web-based collaboration solutions are a perfect example of such a value enabler from within individual company departments. They are seen as strategic resources that can be adapted by those with imagination to serve many different types of jobs, cross-departmental teams, partner and supplier relationships, and other use cases.

**Virtual collaboration and business travel**

Human Resources. Facilities. Corporate Travel. These three corporate departments are believed to incur the highest total spend for most businesses. It's time to value-enable them in the spirit of the Integrated Business Services trend with virtual collaboration solutions. At stake are tremendous savings that will more than pay for the new technology. And that's just the beginning of the benefits to be had.

Virtual collaboration gives employees greater flexibility in how and where they can work. It helps companies consolidate office space and use it more efficiently. And it is being used in some very novel approaches to institutional knowledge retention. They include encouraging soon-to-retire workers to record videos to pass on their experience and knowledge and retaining other retired workers part-time to be available by audio or videoconferencing links as expert resources.

**Total business travel spending (BTS)  
Top 15 Markets (2015)**

	Total BTS (\$ billion)	Annual growth in BTS (%)
China	291,276	11.4
United States	289,837	2.2
Germany	63,534	9.8
Japan	62,101	1.0
United Kingdom	47,138	8.3
France	37,103	3.0
South Korea	32,598	1.5
Italy	31,621	2.2
Brazil	30,521	-4.1
India	29,629	11.0
Canada	23,134	2.7
Australia	21,767	6.4
Spain	19,393	7.8
Netherlands	18,160	2.0
Russia	17,241	-18.2
<b>Global total</b>	<b>1,236,848</b>	<b>5.0</b>

Source: Global Business Travel Association

In 2015, corporations spent \$1.3 trillion on business travel (air, hotel, and car rental costs only), according to a 2016 report by the Global Business Travel Association. Approximately 75% of that (\$975 billion) is business travel that delivers top-line value to corporations, including sales meetings, customer visits, or the performance of a service that generates revenue. The remaining amount (\$325 billion) is for internal travel within company offices for training or internal meetings.

It's no secret that there is very little if any oversight over or tracking of how business travel decisions are made. Corporations tend to decentralize these decisions over thousands of employees in different departments. With the amount of money spent on travel and the countless hours in lost productivity for people on the road, today's business now has the opportunity to rethink travel decisions and propose viable alternatives.

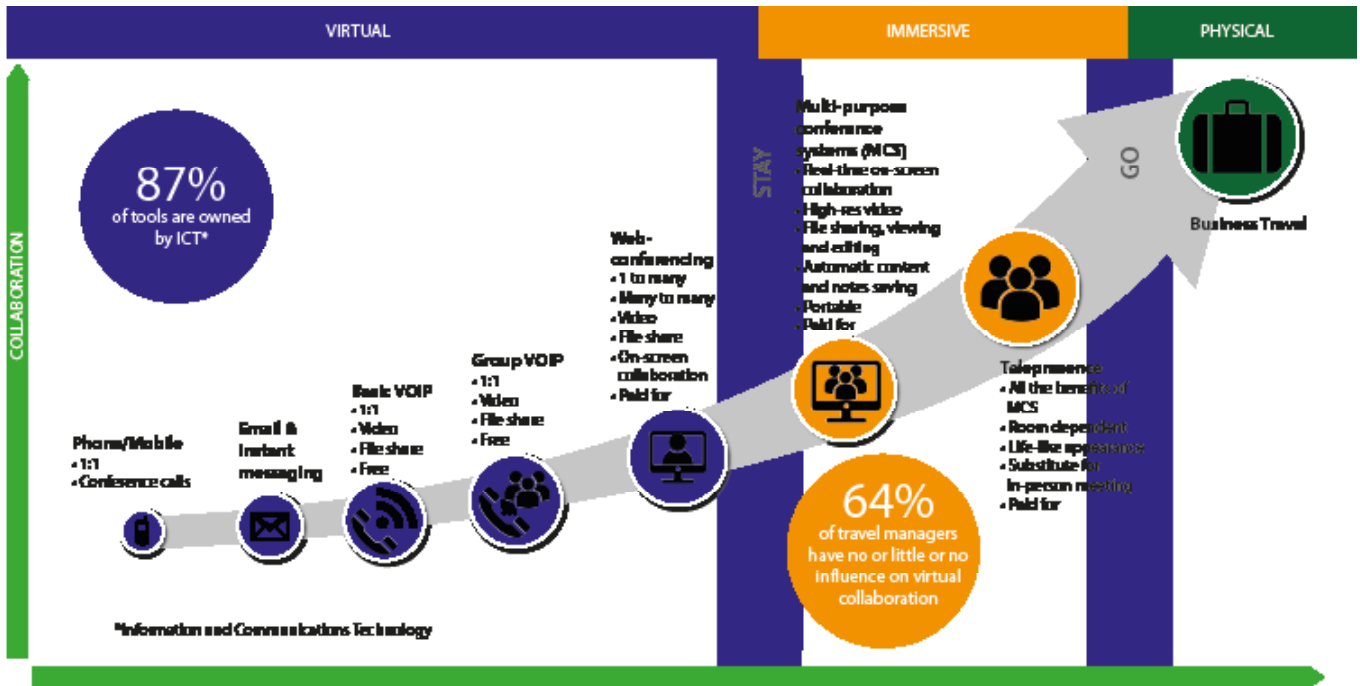
A key opportunity is to reduce internal travel within companies by encouraging employees to meet virtually instead of holding face-to-face meetings. With more control over videoconferencing resources, travel managers can determine what travel to approve or indicate what might be better handled through virtual or immersive technologies.

An emerging practice within the travel management sector focuses on adopting a data-driven approach to analyze which corporate travel is necessary and which may be replaced or augmented with virtual meetings and collaboration technology options. Travel management consultancy firms, like Advito, are also building advisory services to aid organizations in analytics, policy management, strategy development to integrate traditional travel and virtual collaboration options.

Approaches evaluate travel policy including looking at the purpose of trips, expenses by department and user, frequent travel routes for internal vs external travel and other factors to determine where less optimal spend is occurring. Once this is known, the corporation can target specific behaviors, departments, and individuals to provide suggestions for reduced spend outcomes for trips deemed less necessary than others (as shown below). This is a balanced approach to travel analysis with the goal of discovering opportunities for reducing unnecessary travel time and costs using virtual collaboration tools where appropriate.

Cost and productivity savings are just two of many other benefits from using virtual collaboration. A South American healthcare organization used video collaboration to link doctors with patients, saving 500,000 miles in annual travel and providing 40% more consultations. A global financial services firm used video in branches to link remote experts and customers, seeing sales increase 15%. A large European manufacturer reduced travel costs by 50%, increased productivity 30%, and cut time-to-market 10%.

Budgeting for virtual collaboration from bottom line savings Within individual companies, the savings from reduced internal travel should be enough to more than cover the costs of new collaboration solutions. The sample travel optimization worksheet below is based on a company with \$1 billion in gross revenues. The estimated amount of 1.5% of revenues spent on travel is based on industry averages. So are the estimated percentages of total and internal-only travel for average corporations and the 10 largest North



Source: Advito, 2016

Travel Optimization Worksheet	
<b>Variables</b>	
Gross revenue	\$1,000,000,000.00
Total estimated travel spend for most North American corporations (1.5% of gross revenues)	\$15,000,000.00
Internal travel spend for most corporations (33%)	\$4,950,000.00
Internal and external travel spend for top 10 locations in North America (35% of \$15 million)	\$5,250,000.00
Internal only travel from top 10 locations in North America (38% of \$5.25 million)	\$1,995,000.00
Suggested annual savings target from reducing internal travel among top 10 locations in North America (25% - \$1,995 million)	\$498,750.00
Total annual travel savings as percentage of budget	3.3%

American locations. The sample target of reducing internal-only travel through the use of virtual collaboration by 25% would produce savings of nearly \$500 million among a top 10 corporation. These savings would more than cover the cost of the collaboration solutions and all related costs.

This worksheet may be useful to you. Just plug in the numbers from your own company and industry and see how much different percentages of reduced internal travel can generate in savings. Chances are, even small reductions will more than pay for new virtual collaboration solutions. After these one-time capital costs, the savings will continue to accrue. In the example above, over five years the company will save \$2.5 million in travel (\$500,000 x five years) on a single investment in collaboration solutions.

So if you've been wondering how to help in the digital transformation of your company, wonder no longer. It's time to reevaluate collaboration technologies to better manage your travel budget. Look into how you can use it throughout your company to do things faster, better, and less expensively. Virtual collaboration is available, affordable, and ready for

prime time. Your employees will love it. And the budget is readily available from the savings you'll reap from even minor changes to your travel budget. ■

#### ABOUT THE AUTHORS

Sam Chon is Sales Business Development Manager, Collaboration, at Cisco Systems, and Carol Zelkin is IMCCA Executive Director. The IMCCA is a non-profit industry association resolved to strengthen and grow the overall conferencing and collaboration market by providing impartial information and education about people-to-people communication and collaboration technology and applications. Founded in 1998, the IMCCA membership is open to end users, vendors and other interested professionals who wish to share their disciplines and knowledge for the benefit of members and the interested general public. The IMCCA offers an open and interactive environment for these activities, including participation in trade shows and industry events and the IMCCA website. If you are interested in more information about the IMCCA please visit our website [www.imcca.org](http://www.imcca.org) or contact the Executive Director, Carol Zelkin at +1 516 818 8184 or [czelkin@imcca.org](mailto:czelkin@imcca.org)





# SERVICE ASSURED

In a wide-ranging interview, *World Commerce Review* talks to Chris Kelleher of Jersey Aircraft Registry (JAR) about how the current uncertain economic environment is driving growth



## What is the background to JAR?

Jersey is a stable and respected base for all registration services and has, for a long-time, been a popular choice for boat registration and, as well as its Register of Ships, it also offers a Companies Registry and an online Security Interest Registry. Developing an aircraft registry was thus a natural next step to meet the needs of both those high net worth individuals physically relocating to Jersey, as well as those who structure their wealth management here and are looking for a convenient place to register their aircraft and yacht assets. As a result, JAR was launched in November 2015 with its first registration ZJ-THC - a brand-new Citation CJ4.

JAR focuses on registering high-value private and corporate aircraft, with safety uppermost and professional expertise, along with priding itself on exceptional client service.

## What is the approach to registration taken by JAR?

Our clients are busy individuals, so in establishing JAR we considered very seriously the need for speed and flexibility along with a competitive scheme of charges. The Registry is run as a commercial operation by the Government of Jersey with the technical services managed by a highly competent and professional aviation services provider, AVISA Aviation Safety Systems Ltd.

AVISA has a global presence spanning Europe, North America, the Middle East and Far East and this enables us to combine the benefits of a truly worldwide reach whilst staying true to our high-standards, offering a personal service and responding swiftly to clients.

## What benefits can clients expect?

JAR offers registration services to both private and corporate aircraft, as well as aircraft mortgages. Also, a unique service from JAR is the registration of commercial aircraft engine mortgages, as the engines can be registered separately to the airframe.

Aircraft registered with JAR will be issued with a neutral nationality registration prefix 'ZJ' followed by three characters of the client's choice, 'ZJ-JAR', for example. Conscious that clients are operating around the world and increasingly online, JAR has been designed to make it easy to register that way, and once fully launched, the system will be available 24 hours a day, allowing clients to access the system simply and across all time zones.

Crucially, all clients with JAR benefit from registering within a safe, robust and internationally-endorsed regulatory framework, the offer of a competitive scheme of charges, efficient registration turnaround and a professional approach.

## How have JAR helped clients?

The bespoke and personal approach is proving particularly attractive to potential clients. We are receiving enquiries from around the globe at all hours of the day, for instance, and clients appreciate our commitment to responding to all of those as quickly as possible.

One of the Registry's specialist services will be the registration of commercial airliners between leases, or when parked awaiting the next lessee. Our speed and flexibility will enable clients to re-register at the end of a lease, complete necessary maintenance at any European Aviation Safety Agency (EASA) maintenance organisation without any additional authorisations, and then quickly export and de-register to their next lessee.

Our Airworthiness Surveyors are airline experienced and JAR is able to validate European and American flight crew licences to allow ease of positioning flights.



## How is JAR progressing in the market?

Jersey remains a financially and politically stable jurisdiction, and this is proving attractive in the current uncertain economic environment for security and wealth planning reasons. As the newest aircraft registry, JAR is competing well with other established offshore registries and we expect the initial strong interest to continue.

We are a small commercially-minded Registry team, which means we work very efficiently with AVISA to ensure aircraft registry is turned around as quickly and effectively as possible, to include applications, validations and certifications, and that clients receive the personal attention they are looking for. We feel that this bespoke approach will set us apart in the market.

## How do you see the future for JAR?

The response from industry has been very positive and we have received numerous enquiries from around the globe. In particular, the establishment of JAR has created the opportunity for local intermediaries to add the Registry to their range of services, further enhancing the options offered by Jersey as a competitive finance centre working with high net worth clients and international businesses.

With currently one fixed based operation at Jersey Airport and another site under development, there will be further opportunities for providing an expanded portfolio of services,

that could include aircraft maintenance and repair which if aircraft, and aircraft ownership meet the criteria, local Goods and Service Tax (GST) will be 'zero-rated'. Likewise, for new high net worth individuals, with private or corporate aircraft, considering moving to the Island, GST may also be 'zero-rated', again if they meet the agreed criteria.

Overall, we anticipate that JAR will expand very rapidly to meet client demand and we welcome the opportunity to talk to any new clients looking to register aircraft in a stable and tax-efficient environment. ■

*For all aviation enquiries, please contact the JAR Team through [www.jar.je](http://www.jar.je)*







# NBAA-BACE WELCOMES INTERNATIONAL BUSINESS AVIATION COMMUNITY TO ORLANDO

**Ed Bolen is President and CEO of the National Business Aviation Association (NBAA)**

**T**hroughout history, all great civilizations have been built upon, and advanced, in large part through the promotion of commerce between nations. In today's fast-paced and increasingly competitive international marketplace, business aviation is a vital asset towards promoting this high level of economic activity in a safe and secure environment.

Business aviation makes companies of all sizes, in all parts of the world, more efficient, productive and successful. It provides the means for these companies to visit customers and operations in outlying areas more quickly and conveniently than any other means of transportation available.

This vital industry offers the unparalleled capability to link large cities with smaller regional markets, including areas that may offer limited infrastructure for ground transportation. This directly serves to increase economic activity and investment in those areas, boosting regional economies in the process.

In much the same way business aircraft transcend borders and cross oceans to link cities and communities around the globe, so too will the issues and concerns in one country or region often reverberate across vast distances.

That is one reason why, despite being held in the US, NBAA's annual Business Aviation Convention & Exhibition (NBAA-BACE) has increasingly served as a keystone event for the international business aviation community. Last year, NBAA-BACE welcomed attendees representing 96 countries, as well as all 50 US states.

For 2016, NBAA-BACE will take place November 1-3 in Orlando, FL, bringing together leaders from across the globe to examine the latest products and services, and discuss the latest issues affecting our industry. About 27,000 current and prospective business aircraft owners, manufacturers, and customers at the Orange County Convention Center (OCCC).

More than 1,100 exhibitors will feature their latest products and services, while nearly 100 aircraft will be on display throughout two sold-out static displays, including NBAA's largest-ever indoor static display inside the OCCC.

This indoor display complements the expansive the Outdoor Static Display of Aircraft at nearby Orlando Executive Airport (ORL) featuring aircraft of all sizes and for all missions, ranging from single-engine piston aircraft to large intercontinental

business jets. New for 2016 will be the National Aircraft Resale Association (NARA) Member area, featuring approximately 25 preowned business aircraft for demonstration and sale.

As with all NBAA events, NBAA-BACE 2016 will also include several education sessions focused areas of interest for business aviation operators worldwide. These include sessions clarifying the latest developments in aircraft maintenance technologies, and the growing use of digital, fly-by-wire flight controls.

Additional sessions will address how to advance your flight department's Emergency Response Plan (ERP); the cybersecurity landscape affecting business aviation, including international regulations on data privacy and the threat of hackers; and the growing use internationally of unmanned aircraft systems (UAS), or drones.

Returning to NBAA-BACE is the International Operations and Security Hot Topics forum, where the NBAA Security Council will present its overview of current security and customs issues concerning business aviation, covering best practices for safety and security for those traveling abroad. Another session will highlight training requirements for the International Standards for Business Aviation Operations (IS-BAO), including recommendations for pilots, mechanics, cabin crew, scheduler/dispatchers, line service, and administrative personnel.

Safety will also be an important focus during NBAA-BACE, including the return of NBAA's Single-Pilot Safety Standdown, a day-long event featuring presentations from top industry experts, and panel discussions on topics such as best practices and areas of concern, which will offer attendees a variety of perspectives on today's most pressing safety issues.

The 'Meet the Regulators' session, taking place Wednesday, will provide an important opportunity for attendees to have their questions answered firsthand by Federal Aviation Administration (FAA) officials. On Thursday, November 3, NBAA's second-annual National Safety Forum will bring together top government and industry leaders to discuss the principal safety issues confronting business aviation operators.

On the OCCC Exhibit Floor, NBAA's Innovation Zone will also host several forward-thinking presentations, including discussions about methods for protecting airport air traffic from unmanned drones; possible industry uses for emerging

*“NBAA-BACE offers a powerful and impressive venue in which to demonstrate the size and scope of the business aviation community with influential policymakers from across the globe”*

consumer technologies; and how to be a leader in your company, even if you aren't in management or a supervisory role.

Impressive guest speakers are another hallmark of NBAA events, and NBAA-BACE will welcome several industry legends and leaders to the session stage. That includes David McCullough, author of *New York Times* bestseller *The Wright Brothers*, and US Customs and Border Protection Commissioner Gil Kerlikowske, as the featured speakers at the event's November 1 Opening General Session.

With the US presidential election taking place less than a week after NBAA-BACE, political veterans James Carville

and Mary Matalin will return to NBAA-BACE to provide their enlightening and entertaining perspectives about the 2016 election year landscape at the Second-Day Opening Session on Wednesday, November 2.

NBAA-BACE also offers many networking opportunities, including the NBAA Coffee Social, and NBAA's Young Professionals in Business Aviation (YoPro) reception. Thursday is Careers in Business Aviation Day, where NBAA hopes to inspire the next generation of industry leaders by exposing local high school and middle school students to the many career paths available in our exciting industry.

Whether speaking about business aviation in the US, or the international reach and influence of our industry, NBAA-BACE offers a powerful and impressive venue in which to demonstrate the size and scope of the business aviation community with influential policymakers from across the globe, and showcase our collaboration across borders on methods to further improve this industry.

I invite the *World Commerce Review* readership to also come to Orlando this November, and add your voices to this incredible demonstration of the strength and importance of business aviation worldwide. ■





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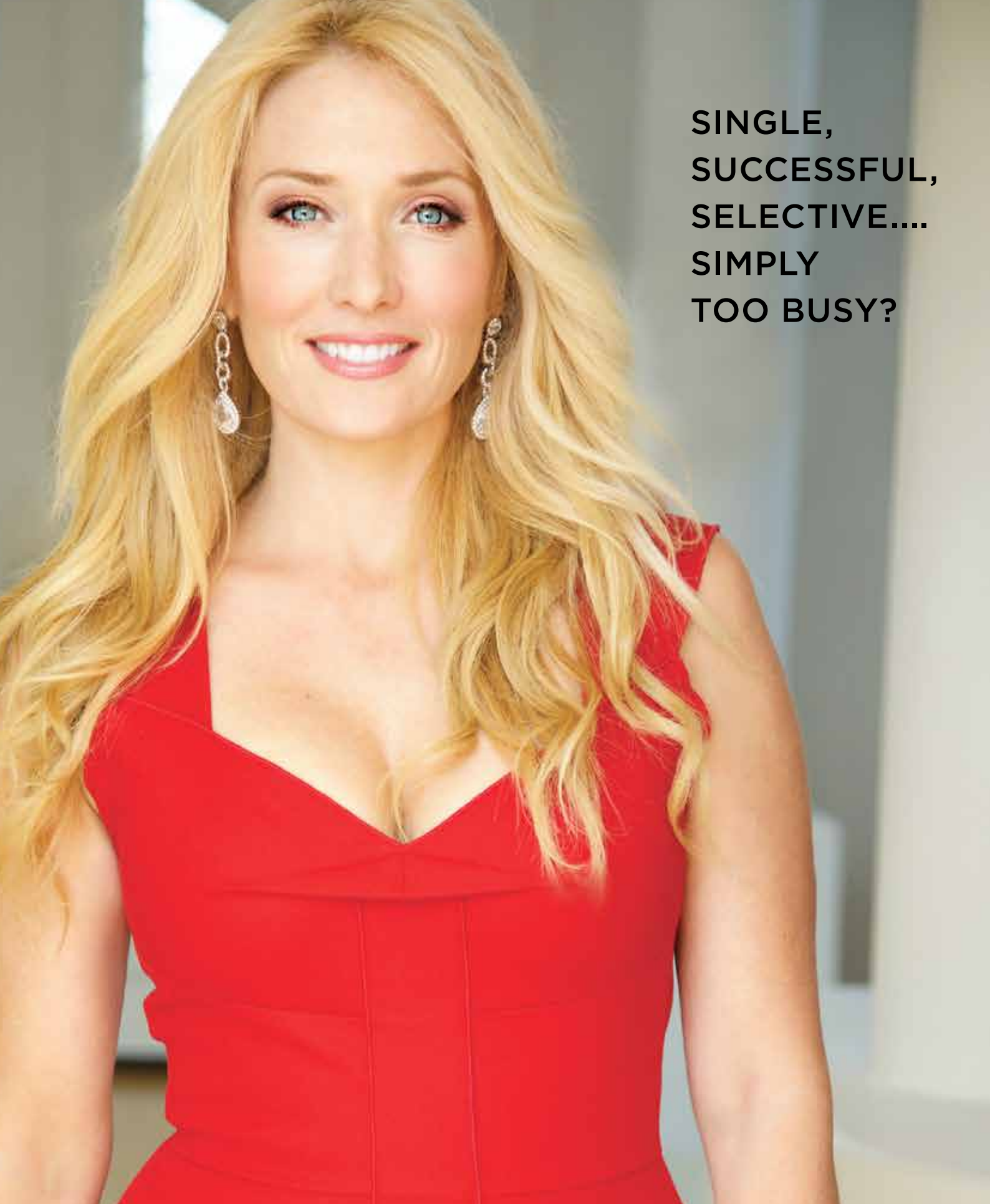
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