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# Contingent Choices: The Future of United Kingdom Defence Procurement and Defence Industries in the post-Brexit era

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## Abstract

Prime Minister May's recent announcements strongly suggest that the Government will seek a "hard" Brexit in negotiations with the EU. For the UK government, this is likely to mean that the UK will seek to leave the Single European Market as well as the European Customs Union. Although this provides clarity as to the UK's government's position, it fails to recognize that the choices available to the Government are inherently linked to the choices made by others in the Brexit negotiations, the EU and the member states in particular. In this article, we explore what Brexit means for the UK's future defence procurement options and its defence trading relationships with the remaining 27 European Union member states. We explore two Brexit scenarios: in the first (and now less likely but still feasible) scenario, the UK remains within the EU Single European Market (SEM) provisions for defence procurement and trade. In the second (and now more likely) scenario, the UK leaves the SEM and operates outside EU rules, regulations and directives. Within this scenario, we see two options. In the first place, the UK could successfully negotiate a Free Trade Agreement (FTA) with the EU which allows for tariff- and barrier-free access to the SEM. Second, the EU could insist on particular trade-offs (e.g. tariffs on key sectors or particular forms of free movement of people and goods) that are unacceptable, causing the FTA to collapse and forcing the UK to follow World Trade Organisation rules. We argue that in both scenarios, old tensions and logics will play out in the new post-Brexit system and will have deep ramifications for defence procurement and industries. We also argue that the post-Brexit choices available to the UK government will not be "hermetically sealed" from other players in the negotiations; rather they are contingent on the extent to which the remaining EU states pursue further defence procurement integration and the potential responses of major UK-based defence contractors.

**Keywords:** Brexit; defence procurement; defence industry; UK; EU; EDTIB; Single European Market

## Introduction

On the 17<sup>th</sup> January 2017, Prime Minister Theresa May gave a major speech in which she outlined, for the first time, the UK's government's 12 "objectives" for the forthcoming Brexit negotiations. These ranged from "protecting workers' rights" to "supporting science and technology", but key amongst them all was the stated intention to leave the the Single European Market (SEM) and to develop a new Free Trade Agreement (FTA) with the EU that will provide "the greatest possible access to the Single Market" whilst retaining control over UK laws and regulations. For many – us

amongst them – this was a formal statement that the UK would seek what is widely being called a “hard” Brexit (The Economist, 2017; Payne, 2017). But within a “hard” Brexit, there different options, each with its own chorus of advocates: there are those, like the Prime Minister, that suggest the UK must seek a “bespoke” settlement, such as an FTA, combining free trade deals with continued access to the SEM where inward EU migration is controlled (Curtice, 2016); and there are those who advocate that UK might be forced to abandon the SEM entirely and pursue a free trade policy under World Trade Organisation (WTO) rules. Ranged against them are others who say the “hard” Brexit will be fundamentally damaging and the UK should seek to protect tariff and barrier-free access to the SEM (Munro, 2016, p. 4). Moreover, it may be that the Prime Minister’s stated position is not so straightforward after all. As many have argued, post-Brexit choices are available to the UK, but they are, at best, contingent on the choices of the 27 remaining EU member states (Garton Ash, 2016). A successful “hard” Brexit will rely on the successful negotiation of – and practical advantage derived from – a new Free Trade Agreement with the EU. But successfully negotiating such an agreement will depend not so much on the UK’s intent and desire, but far more on the choices by the other 27 EU member states. They, for their part, have signalled their unwillingness to consider formal negotiations of any kind on potential post-Brexit settlements until Prime Minister May formally activates Article 50 of the Treaty on European Union withdrawal procedures.

Despite Theresa May’s stated preference for a “hard” Brexit, then, we are not much further forward. The exact details of a “hard” Brexit remain a mystery, as well as its feasibility in practice, or what its implications are for the UK. Whilst all this is true for numerous sectors and policy areas, the potential implications for the future of UK defence have been rarely discussed or thought through. Indeed, as we argued elsewhere before the referendum (Uttley & Wilkinson, 2016), defence has been rather overlooked in pre-Brexit policy and academic analysis and nor did it form a key part of the referendum debates or capture the public imagination. Indeed from the beginning of the campaign to the moment that the queues outside polling stations started to form, little was said on defence other than some rather loose claims, counter-claims and speculation about Britain’s future security and “place in the world” if a Brexit were to occur (Whitman, 2016; Oliver & Williams, 2016; Witney, 2015; Daddow, 2015). If the implications of Brexit for defence are somewhat overlooked, then the implications of Brexit on defence procurement or defence industries have been all but completely forgotten.

There has been a near complete absence of policy analysis or academic research on the ramifications of a hard Brexit for the UK, for industry and, indeed for the EU in these sectors. And yet understanding the implications will be crucial, not least because defence industries are important areas of the UK’s economy as well as vital parts of the country’s national security infrastructure. The UK’s defence industry has an annual turnover of £30 billion per annum, including defence and security exports worth £11.9 billion, which employs 215,000 predominantly highly skilled personnel and supports a further 150,000 jobs in supply chains (HM Government, 2015). There remain crucial questions, too, about the post-Brexit future of pan-EU initiatives intended to achieve “ever closer union” through internal market liberalisation, and aspirations to develop a European Defence Technological and Industrial Base (EDTIB) to support the EU’s Common Security and Defence Policy (CSDP). These questions are not straightforward.

In this article, we attempt to fill this gap by exploring two scenarios for the future of UK’s defence procurement and defence industries based on potential models of the UK’s wider trading relationship with the EU (see figure 1). In the first scenario the UK remains within the EU SEM provisions for defence procurement and trade. In the second “hard” Brexit scenario, the UK leaves the SEM entirely, and operates outside EU

rules, regulations and directives. In this scenario we can see two possible options. First, the UK successfully negotiates an FTA with the EU that all parties see as mutually beneficial, which contains some form of tariff-free/low-barrier trade agreement and excludes requirement for free movement. In the second option, the UK's attempt to negotiate "bespoke" access to the SEM through an FTA fails because the trade-offs imposed by the remaining 27 EU member states are politically unworkable in the domestic context. The FTA agreement falls apart, and the UK is forced to operate under WTO rules and regulations. The key point in all these scenarios is the UK's access and relationship to the SEM. Indeed, whilst we recognize that the first appears less likely in light of the Prime Minister's January speech, we still see it as a feasible option should the FTA negotiation fail, and if the alternative of trading under WTO rules ultimately proves too economically and politically unpalatable to particular British industry sectors and the UK government. Ultimately, we argue that whilst the UK has stated a negotiating position, and whilst the Government might be clear about its preferred outcomes in the negotiations – a "hard" Brexit – the other players in this game have choices which could force adjustments to the UK's position in the course of the negotiations.

On this basis, our analysis falls into four sections. The first section analyses the pre-Brexit "rules of the game" in terms of the current resolution of tensions between national sovereignty and supranational integration in EU defence procurement and industrial policy. In doing so it identifies the current frictions between the UK's commitment to EU internal market liberalization and EU initiatives intended to develop a more integrated European defence industrial policy as the Brexit negotiations approach. The second and third sections explore UK and EU choices, trade-offs and implications if the outcome of Brexit negotiations result in a scenario where the UK remains within SEM provisions along the lines of Norway's European Economic Area model, which would involve the least disruption to existing pre-Brexit arrangements, and the most disruptive situation whereby the UK leaves the SEM and operates outside EU rules, regulations and directives. In doing so, it identifies the main contingent choices and potential trade-offs for the UK and remaining EU member states under each scenario. In the concluding section, we draw these elements together.

[Figure 1 here]

### **The "rules of the game": pre-Brexit EU defence procurement and industrial policy**

Although Brexit represents a political upheaval that is likely to up-end well-established structures, the pre-Brexit "rules of the game" are deeply embedded and likely to continue to drive various choices and trade-offs. In essence, the pre-Brexit "rules of the game" in EU defence procurement and industrial policy are a fractious conflict between two competing logics: national sovereignty and integration. The logic of sovereignty is reflected in the normative assumption that EU member states should retain the right to autonomy in developing, producing, procuring and trading in military goods for national security reasons. This assumption is enshrined in Article 346 of the Treaty on the Functioning of the EU (TFEU Lisbon), which states that "Any Member State may take such measures as it considers necessary for the protection of the *essential interests of its security* which are connected with the production or trade in arms, munitions and war material" (italics added). Whilst there is a commitment to security, defence procurement expenditure and domestic defence industries are also important for national employment and economy. A long-standing feature of EU defence markets has been that member states with domestic industrial capability have used Article 346 provisions to

justify spending “the majority of any investment in defence domestically to protect the industry from any competition and to sustain what has long been seen as a manufacturing sector of strategic significance nationally” (Edwards, 2011, p. 4). A consequence has been that while the EU has succeeded in creating a single market for public procurement of civil goods and services, the application of Article 346 by member states – motivated either by national security or domestic economic and industrial motives – has meant that market liberalisation in the EU defence procurement sector has been limited (Bitzinger, 2009).

The logic of sovereignty sits in contrast to, and conflict with, another normative assumption, that of integration and “ever-closer union” (Bátora, 2009). This logic is largely encapsulated in supranational EU institutional initiatives designed to liberalise and “Europeanise” EU defence procurement and defence markets. The rationale for this is built on several studies that have sought to identify the “costs of non-Europe” arising from existing gaps in and protectionist barriers to a truly integrated and competitive EU single market in defence contracting. They show that “the existence of 28 compartmentalised national markets ... hinders competition and results in a missed opportunity for economies of scale for industry and production” (European Parliamentary Research Unit, 2015) when compared to procurement and defence-industrial arrangements in the United States. It is precisely this logic that has led the two EU-level institutions responsible for devising defence-industrial policy – the European Commission and European Defence Agency (EDA) – to attempt to reduce fragmentation and duplicative national defence programmes. Two mechanisms are at play here. In July 2009, the European Parliament and Council adopted Directive 2009/81/EC on defence procurement, which sought to liberalise EU markets and affirm the primacy of EU competition law by confining the use of Article 346 by member states to “clearly exceptional cases” in an attempt to eradicate national protectionism on economic grounds (Blauberger & Weiss, 2013; Castellacci, Fevolden, & Lundmark, 2014; Hoeffler, 2012). In 2013, a second approach was developed in the European Commission document entitled “Towards a More Competitive and Efficient Defence and Security Sector” (European Commission, 2013) in the context of CSDP, and goals and aspirations for future EU defence policy (Black, 2016, p. 7). Under this initiative the European Commission is currently seeking to strengthen the EDTIB in areas that include “designing a security of supply regime for EU defence markets that may include certain protectionist elements” and has worked with the EDA on preparatory action that could “see it funding defence-specific R&D programmes on behalf of the member states directly from the EU’s budget” (Fiott, 2015, p. 162).

Faced with these two competing logics, the UK’s stance is simultaneously supportive of the liberalisation of EU and transatlantic defence equipment markets and of maintaining sovereignty over key areas of procurement. Indeed, this is reflected in the UK’s own procurement and defence industrial strategy. The 2012 *National Security Through Technology* White Paper (Ministry of Defence, 2012, p. 12) reflected the UK’s commitment to pursue “open procurement” by fulfilling its “defence and security requirements through open competition on the domestic and global market” (Ministry of Defence, 2012, p. 13). This commitment to open procurement via global markets is essentially Euro-Atlanticist and reflects the primacy of the NATO alliance in its national strategy. At the same time, UK sovereignty is ensured through the principle of “technology advantage”, whereby the Ministry of Defence (MoD) takes action in procurement decisions to protect “operational advantage” (the national ability to maintain and upgrade its defence technology) and “freedom of action” (the ability to operate defence systems free from external intervention) where this is considered essential for national security. These principles are evident in the UK’s alternative weapons acquisition strategies and

defence industrial policy. In addition to national programmes (e.g. the Queen Elizabeth class aircraft carrier), its weapons acquisition strategy embraces transatlantic collaborative ventures (F-35B), the manufacture within the domestic industry of US-designed systems (e.g. the AugustaWestland Apache AH-1 attack helicopter) and “off-the-shelf” import of complete weapons systems from the US (e.g. the Boeing C-17 Globemaster III strategic lift aircraft; Boeing P-8 Maritime Patrol Aircraft). Approximately 26 per cent of total MoD equipment expenditure is allocated to European collaborative weapons programmes with other EU member states (e.g. Typhoon aircraft) through intergovernmental agreements such as the A400M tactical and strategic airlift aircraft. On the supply side, successive governments have claimed that the UK has “one of the most open defence markets in the world” (Ministry of Defence, 2005, p. 15). The “British defence industry” is defined as “all defence suppliers [to the MoD and export markets] that create value, employment, technology or intellectual assets in the UK”, including “both UK- and foreign-owned companies” (Ministry of Defence, 2002, p. 4). Britain’s “logic of liberalization of defence markets” has enabled major European and US defence firms to establish onshore operations, compete without discrimination for MoD contracts and export orders, and develop local supply chains in the UK through forms of “industrial engagement”.

The same approach plays out at the European level, where the UK is a vocal supporter of the liberalisation of EU defence markets, but a staunch opponent of further European Union and EDA integration initiatives that might dilute the legitimate application of Article 346. On the one hand, Britain’s commitment to “open procurement” and market liberalisation has been reflected in its support for Directive 2009/81/EC. This was evident in the British government’s “review of the balance of competences between the United Kingdom and the European Union” in July 2012, which sought to audit “what the EU does, how it affects the UK, where competence lies, how the EU’s competences are used, and what that means for the UK’s national interest” (HM Government, 2012, p. 6). The review reaffirmed the UK government’s support for efforts to open up the EU defence market to more competition and eliminate economically driven “buy national” policies, “while respecting member states’ right to maintain certain strategic industrial capabilities for reasons of national security” (House of Commons Defence Select Committee, 2013; House of Commons Library, 2013, pp. 85-90). It also identifies that there is scope for the Commission to take a more proactive stance within its existing competence, notably preventing “abuses” of article 346 by those member states using it as a pretext to discriminate against non-national bidders for non-sensitive defence contracts (HM Government, 2014, pp. 85-86). On the other hand, the review concluded that the European Commission has progressively claimed “more competences in this particular area” and “sees an even broader role for itself”, and reaffirmed that the UK government “does not support any extension of Commission competence” (HM Government, 2014, p. 42).

These factors are significant when it comes to Brexit negotiations. As far as defence procurement and industrial strategy go, the UK is likely to favour gaining tariff- and barrier-free access to the increasingly integrated defence markets in the EU, because it supports their desire for competitive markets. Simultaneously and in direct contrast to this, the UK will also want to retain the kind of sovereignty over defence procurement provided by Article 346, though how this will be achieved will be dependent on the terms of the FTA. Ultimately, the availability of such a position will be heavily dependent on internal factors in the EU, and the desire of the remaining 27 member states to give the UK ‘what she wants’. This in turn, is likely to be dependent on the degree to which the EU desires to move beyond the internal market liberalisation provisions in Directive 2009/81/EC towards closer integration in the form of an EU defence industrial policy.

### **Scenario 1: post-Brexit Britain in the EU Single European Market**

In mid-January 2017, Prime Minister Theresa May stated that the UK will seek a “hard” Brexit which will, amongst other things, mean the UK will seek to leave the SEM and the European Customs Union. However, whilst this is the UK’s preference, there are other players in this game whose choices could force adjustments to the UK’s position in the course of the negotiations. Although we recognise this is unlikely, there is merit in exploring the implications if this does emerge as the UK’s preferred position. In this case, there are alternatives to EU membership modelled on a variant of the Agreement on the European Economic Area Agreement (EEA Agreement). In essence, this option would provide the UK with the highest level of post-Brexit continuity through unrestricted access to the EU’s SEM and, in return, it would be required to adopt the same future SEM-related legislation as EU member states (European Parliament, 2016). A post-Brexit relationship based on the EEA Agreement – modelled on a “bespoke” variant of the “Norwegian model” (Figure 1) – is the scenario that is likely to result in the highest degree of continuity in existing UK-EU defence procurement arrangements. Nevertheless, it would also have the effect of recalibrating the contingent choices and potential trade-offs for Britain and the remaining 27 EU states as they develop new “rules of the game” in managing their mutual interdependence in the defence procurement and defence industrial arenas.

For the United Kingdom government, a post-Brexit relationship based on the EEA Agreement is unlikely to affect the country’s choices concerning foreseeable major defence procurement plans and commitments, nor the domestic legislative basis on which its defence procurement is based. In October 2015 the MoD published its Defence Equipment Plan, which detailed the government’s latest plans cumulatively to spend approximately £178 billion on new equipment and equipment support up to 2024/25 (Ministry of Defence, 2015). A significant proportion of expenditure on major projects is already contractually committed.<sup>2</sup> A Brexit modelled on the EEA Agreement in place between the EU and Norway would enable Britain to retain *de facto* Article 346 provisions (Agreement between the European Economic Community and the Kingdom of Norway, 1973), which would mean that it would not alter the MoD’s current ability to select from domestic systems, European and US collaborative programmes, and off-the-shelf purchases when placing future orders funded from the currently uncommitted equipment budget. It is likely to incur limited disruption to existing foreign companies operating as part of Britain’s onshore defence industrial because it provides firms with continuing access to EU-wide markets and supply chains. Similarly, if the UK were to secure a relationship based on the EEA model then its domestic defence procurement regime “would very likely remain the same, and continue to evolve as the EU regime does, including continuing to be influenced by the case law of the European Courts and the requirements of the EU treaty principles” (Moorcroft, 2016). In this regard, the 2011 EU Directive 2009/81/EC relating to the procurement of defence and security related goods and services was transposed into UK law in 2011, so this Brexit settlement would require no modification to existing domestic procurement legislation (House of Commons Library, 2011).

Nevertheless, a Brexit relationship based on the EEA Agreement is likely to constrain the future influence and choices that the UK currently enjoys over EU supranational defence procurement policy. Although the UK would be required to contribute to the common EU budget to remain in the single market, it is likely to incur a “democratic deficit” by losing formal influence in shaping the direction and rules governing Europe’s evolving defence internal market. It is noteworthy that the EU has

been unambiguous about the status of Norway and other EEA European Free Trade Association countries:

... [their] position outside the EU was chosen by them rather than imposed by the EU, so any “democratic deficit” resulting from their obligation to adopt EU law, despite not having a voice in EU decision-making, can be seen as the “price” they have chosen to pay for retaining full access to the Single Market, whilst shunning EU membership (European Parliament, 2016).

This situation would inevitably constraint Britain’s future choices and present new risks when it ceases to be an EU member state. First, the UK’s new status “outside the core EU political and economic circle” would result in reduced influence over the future evolution of EU defence procurement directives and the process of priority setting for the dispersal of future EU funding, “including a first-time dedicated defence R&D budget worth potentially €3.5 billion” (Balis, 2016). In effect, the UK would cede considerable influence over the content and direction of the implementation of aspects of the European Commission’s “Towards a More Competitive and Efficient Defence and Security Sector” initiative, with its associated goals and aspirations to foster a more integrated and potentially more protectionist EU-wide defence industrial policy. Second, a chief UK government concern about defence procurement is that the remaining 27 EU states should not be seen to be discriminating against US suppliers and that the UK freedom to buy equipment from the US should not be qualified. Reduced British influence arising from its “democratic deficit” increases the potential risk of both eventualities materialising.

On the face of it, the post-Brexit deficit in the UK’s influence and choices under an EEA Agreement scenario might be reflected in increased options for the remaining 27 EU states to increase the tempo and extent of “Europeanisation” of EU defence procurement and defence markets. Paradoxically, however, with this Brexit scenario there would be a shift in the balance of power and influence from those EU member states seeking more liberalisation of EU defence markets including Britain and Sweden towards other member states, notably France and Spain, who believe that the EDTIB should shield states from non-EU competition while helping to promote a “buy European” policy (Fiott, 2015). That is to say, with reduced UK influence, it is questionable whether another major weapons-producing EU member state “would continue to push for competition and efficiency in the defence industry” (Bond, I. *et. al.*, 2016, p. 10).

The potential barriers to European Commission attempts to intensify intra-EU market liberalisation in a situation of reduced UK influence are evidence in statistics on the implications of initiatives to date. The latest EDA estimates indicate that despite the pan-EU adoption of Directive 2009/81/EC, approximately 80 per cent of EU defence expenditure not assigned to international collaborative weapons projects is spent nationally, indicating that the degree of openness to suppliers from other member states has been “relatively low” (European Commission, 2013). A recent study for the European Parliament (2015, p. 6) of the impact of Directive 2009/81/EC demonstrated that its impact on pan-EU tendering for defence contracts has been limited. Since the Directive came into force all of the major equipment contracts issued by the EU member states were awarded using article 346 provisions, and where pan-EU tendering has been adopted by the member states it has been for contracts “dealing with services, the acquisition of equipment deemed to be of low value, and sub-systems” (European Parliament, 2015, p. 6). More recent reports suggest that the 2009 Directive has been mostly ignored by member states, and that “most European countries have acknowledged the directive selectively, continuing to favour domestic industries”

(Kington, 2016). Consequently, rather than permitting the EDTIB and CSDP to advance unhindered, this form of Brexit “might reveal deep cleavages in approach that other member-states have been able to hide behind Britain’s blanket veto” (Bond *et. al.*, 2016).

### **Scenario 2: the UK operates under World Trade Organisation arrangements**

Following Theresa May’s January 2017 speech, the most likely Brexit scenario – and, in our analysis, most disruptive to the existing “rules of the game” that govern EU defence procurement and industrial policy – is one where the UK leaves the SEM altogether. Within this scenario, there are a variety of different options, each presenting the UK and EU with a different range of potential choices and trade-offs. The UK’s government’s stated preference is to negotiate a bespoke FTA, modeled on the EU’s agreement with Canada, that will allow tariff-free access to the SEM in most industrial sector. Counter-intuitively, if an FTA of this kind is successfully negotiated, it is likely to provide many of the same advantages and benefits in defence procurement as membership of the SEM. Such an agreement is likely to ensure free trade, without significant tariffs and barriers to the wider, and increasingly integrated, EDTIB. Simultaneously, however, it will enable the UK to ensure its own continued sovereignty in defence procurement when it comes to national security. In other words, the most desirable FTA is likely to offer most of the same provisions offered by full membership of the SEM: tariff- and barrier-free access to competitive, intergrated defence markets in the EU, with a *de facto* option to retain sovereignty when needed through Article 346, all without the need to comply with EU free movement of people requirements.

In practice, one suspects that because an FTA of this type will so closely mirror membership of the SEM that it will be unappealing to European partners unless it comes with British concessions such as stipulations relating to free movement of people. In turn, these trade-offs might make such a deal so politically unpalatable for UK domestic audiences that it is ultimately rejected in favour of an alternative “hard” Brexit solution. As such, the negotiations over trade-offs associated with the FTA will be the key pivot for the UK’s future relationship with the the EU. If the FTA negotiations fall through, the UK will at least temporarily be forced to operate outside EU rules, regulations and directives by following WTO regulations (see Figure 1). For some, the ramifications of such a move on defence industrial policy in the UK and EU are likely to be limited. As one analyst puts it, the EU,

...currently has little impact on UK defence policy, which tends to be more open to competition than is required by EU directives. Consequently, leaving the EU would have little impact on UK defence procurement. Of greater importance is wider European Defence co-operation, which the UK could still play a significant part in outside the EU given its largely intergovernmental nature (Bungay, 2012, p. 18).

In this analysis, a Brexit based on WTO arrangements might be expected to have a limited impact on the UK’s major defence procurement plans and commitments where contracts are in place, or its future ability to engage in co-operative intergovernmental defence procurement initiatives with the US and EU states. Similarly, the major markets for UK defence exports are outside the EU: some 4 per cent of UK defence industry turnover is accounted for by EU sales, with the remainder going to domestic sales (58 per cent) and non-EU export destinations (38 per cent) (Béraud-Sudreau, 2015, p. 18). This suggests that any dislocation if the UK were to operate under WTO rules would be limited in terms of national defence trade.

A key consideration is whether future UK governments will seek to increase intergovernmental defence procurement with the European member states to compensate for its departure from EU institutions, or whether the Brexit vote will lead to a further disassociation from European ties. The combination of President Trump's recent call for the European NATO states to shoulder a greater burden for their own defence and growing concerns over Russia's military activities on the alliance's eastern flanks would make this latter course difficult. Moreover, recent post-referendum signals including the UK's recent commitment to the next phase of the collaborative Anglo-French Maritime Mine Counter Measures (MMCM) project signals that bilateral and multilateral cooperation with EU states is likely to remain a cornerstone of UK procurement.

Nevertheless, a Brexit predicated on WTO arrangements would provide the UK with new choices to mould a more independent national procurement and defence industrial policy. Britain would have choices over whether to retain or dispense with some or all its existing defence procurement legislation currently derived from EU directives, and decisions of the European Court and EU case law would no longer be binding on the British courts (Moorcroft, 2016). This raises the potential for more variance in UK defence procurement rules and policies as governments change (Moorcroft, 2016). It would, for example, allow UK governments to adopt defence procurement and industrial strategies that factor economic and employment implications into weapons acquisition choices, which is currently prohibited in UK procurement law derived from Directive 2009/81/EC. This option is unlikely to be pursued by the current Conservative administration, which recently reaffirmed its commitment to a "default" principle of "open procurement". It could accommodate the aspiration of the opposition Labour party to "reverse this trend with a new Defence Industrial Strategy which, while accepting the importance of value for money, aims also to safeguard Britain's industrial base, secure high quality jobs throughout the supply chain, and protect our national sovereignty" (Labour Party, 2016) if it were to be elected in a future General Election.

Correspondingly, a Brexit based on WTO arrangements could potentially have adverse effects for future UK government defence procurement options because of the responses of defence firms with a presence in the UK to the new realities of operating outside the EU SEM. The UK-based defence industry made no secret of its antipathy towards a Brexit in the run-up to Britain's "in-out" referendum. The 2015 ADS survey report *The UK aerospace, defence, security and space industry and the EU* found that 73 per cent of UK-based firms believe that EU membership is positive for their business against 1 per cent who said it was negative, and that 86 per cent of ADS members would vote for the UK to stay in the EU against 2 per cent who would vote to leave (ADS, 2015, p. 11). Significant areas of concern identified by industry respondents were that a Brexit might jeopardise the opportunities for free trade with the remaining EU member states, impede their access to EU suppliers and supply chains, and undermine their ability to recruit skilled workers if the free movement of EU labour is curtailed (ADS, 2015, p. 14).

These concerns remain, and domestic and non-European defence firms with an established presence in the UK stand to lose out if Brexit results in WTO arrangement in terms of reduced access to EU funds and the potential for increases in taxes and administrative burdens in trading with the remaining 27 member states. A particular concern is the future investment behaviour of the larger defence companies with operations in the UK that are headquartered in Europe, particularly Leonardo, Airbus Group and Thales UK, and investments by large US firms, notably Northrop Grumman Europe, which is based in the UK (Uttley & Wilkinson, 2016, p. 581). The risk for the UK government here is that a Brexit settlement based on WTO rules might lead these

key industrial players to relocate within EU member states to maintain access to the benefits of the SEM and EU-wide supply chains (Black, 2016, p. 14).

For the remaining 27 EU member states, a Brexit modelled on WTO arrangements offers similar choices and constraints to a Brexit modelled on an EEA agreement. Britain's status outside the EU internal market would offer opportunities for the remaining 27 EU states to pursue greater liberalisation and "Europeanisation" of EU defence procurement and defence markets. At the same time, the achievement of these goals might be impeded by the loss of a British voice and influence in advocating market liberalisation. A primary difference arising from a Brexit modelled on WTO arrangements is that the EU would have lost one of the most capable military powers that currently accounts for approximately 21 per cent of the EU defence budget (Bond *et. al.*, 2016). A key question for EU policy makers would be over the extent to which the EDTIB initiative could progress with Britain's absence. The EU will lose also one of the few countries that meet the 'gold standard' by spending 2 per cent of GDP on defence. As President Trump questions the utility of NATO, this may be poor timing.

### **Conclusion: Contingent Choices – and their limits**

Prime Minister May's decision to pursue a "hard" Brexit has implications for the future of UK defence, particularly in the areas of defence procurement and onshore defence industries. On the face of it, if the Government is successful in negotiating a satisfactory Free Trade Agreement, there are options available in the realm of defence acquisition. The UK government is likely to claim that it has recouped wider sovereignty, by gaining control over inward migration, while maintaining its ability to pursue 'open procurement' via EU and global markets and supply chains as well as through bi-lateral and multi-lateral collaboration. Perhaps ironically bearing in mind the vitriol of the referendum campaign, there may be benefits for the EU in a British "hard" Brexit: member states will finally have the opportunity via EU institutions to deepen the integration of defence markets in the form of the EDTIB.

However, the future remains deeply uncertain. Although the Prime Minister has clearly stated a negotiating position, she may well be forced to adopt a new position if the EU refuse to offer satisfactory terms in a Free Trade Agreement. In this sense, the UK's options are contingent on the choices and trade-offs of 27 EU member states. It may be that the UK is forced to retain some form of membership. This will be the most limiting but least disruptive scenario for the UK's defence procurement and industrial strategy. This may involve "buying in" to the EEA thus allowing the UK to retain access to the SEM along current lines. In the longer-term, however, this may be little more than a mirage; if the EU continues to pursue further EDTIB integration, ultimately the current scope and utility of Article 346 will be called into question. In this case, the UK, as an "associate" member of the EU, would be bound to follow whatever new directives were passed, and would not be able to bargain for similar provisions. Correspondingly, a Brexit based on WTO arrangements provides a veneer of greater British sovereignty over defence procurement but risks the flight of key sections of the domestic industry to the EU, and calls into question the future viability of the notion of an EDTIB.

Thus, although the announcement to pursue a "hard" Brexit has provided a *sense* of certainty, it has provided no more than that. The future of UK defence procurement and acquisition will be forged in the negotiation process. Each scenario comes with benefits for the UK and for the EU, but each equally is likely to come at a cost. In short, a "hard" Brexit with an advantageous FTA which carries all the benefits of membership of the SEM without any of the trade-offs over free movement or tariffs seems to be little more than an ideal vision of the future; indeed, the future of UK defence procurement

and industrial strategy, is likely to rest on the choices made, not by the UK Government, but by its negotiating partners.

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## **Notes**

1. The current level of EU duplication and inefficiency in defence procurement and production is stark when compared to arrangements in the United States: the EU states have in operation 36 major weapons equipment production lines, compared to eleven in the US (Briani, 2013).
2. Approximately 70 per cent of the Equipment Plan was contractually committed in 2015/16 falling to 16 per cent at the end of the decade. (Ministry of Defence, 2015, p. 10).

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