

<b>Institution:</b> University of Cambridge		
<b>Unit of Assessment:</b> UoA 18		
<b>Title of case study:</b> Brexit and the UK's trade agreements: Advising and training the executive on international trade law		
<b>Period when the underpinning research was undertaken:</b> 2007-2019		
<b>Details of staff conducting the underpinning research from the submitting unit:</b>		
<b>Name(s):</b>	<b>Role(s) (e.g. job title):</b>	<b>Period(s) employed by submitting HEI:</b>
Dr Lorand Bartels	Reader in International Law	01.09.2007-present
<b>Period when the claimed impact occurred:</b> 2016-present		
<b>Is this case study continued from a case study submitted in 2014?</b> No		
<p><b>1. Summary of the impact</b> (indicative maximum 100 words)</p> <p>Since Brexit, Bartels' research on the law of the World Trade Organization (WTO) and free trade agreements (FTAs) has propelled him to the forefront of policy debate in the UK. His research has had a direct impact on the UK Government's approach to its independent membership of the WTO; he has advised the UK and Scottish governments and parliamentary committees on trade agreements; he has had a central role in the UK Government's expert level training programme for over 500 trade negotiators; and his work has had a significant impact on public understanding of the UK's negotiations, including an FTA with the EU.</p>		
<p><b>2. Underpinning research</b> (indicative maximum 500 words)</p> <p>Trade, which may be defined as the buying and selling of goods and services, principally by private actors, is regulated by governments by means of customs duties, taxes and other laws. International trade agreements limit the ability of governments to use such regulation to protect domestic industry, while allowing them to regulate for legitimate purposes, such as health, environmental protection, consumer protection, and national security. Since 1973, the UK's negotiations of these agreements has been managed by the EU (formerly EEC). After Brexit, the UK has needed to establish itself as an independent actor in trade at the international level, including at the WTO, and by negotiating new trade agreements with other countries (including the EU). These issues are of the utmost significance to the UK, regularly being reported in the news on an almost daily basis.</p> <p>Bartels is one of the leading trade law academics in the UK, with research publications over a period of many years centering on the law of the WTO and free trade agreements. The impact of his expertise has crystallised since the Brexit referendum in 2016. International law in general is a contested area in which doctrinal arguments based on legal scholarship play a key role in shaping practice, given the multiplicity of sources of law and the relative absence of authoritative interpretations; this is particularly the case with a rapidly emerging area like trade law; and so this is the context in which Bartels' research has been pivotal. [R1] was published on SSRN immediately following the 2016 Brexit referendum. At a time in which the legal position of the UK's post-Brexit position in the WTO was unclear this was the first scholarly treatment of the topic, and has been a reference point for subsequent writings on the topic. It focuses on the UK's status as an independent WTO member, and argues that the UK's WTO commitments are (in part) shared with the EU, and do not need to be renegotiated or 'inherited' from the EU post-Brexit.</p> <p>Post-Brexit the UK is in the process of negotiating new free trade agreements, both with the EU and with other countries, and Bartels is one of the leading scholars on these issues. [R2] [R3] represent broader work on this topic, setting out the similarities and differences between different types of free trade agreement (and customs union, a species of free trade agreement), both in practice and as regulated by WTO law. [R4] is a scholarly analysis (and still the only one) of an issue that was specialised but which became publicly prominent in the post-Brexit debate; namely the conditions placed on 'interim' free trade agreements prior to their transformation into comprehensive free trade agreements. It considers the practice of</p>		

such agreements over several decades, and critically comments on WTO members' efforts to circumvent the WTO's rules on these agreements. [R5] [R6] are concerned with other trade issues that are important to the UK. [R5] analyses provisions in one recent free trade agreement (the 2017 EU-Canada 'CETA' FTA) permitting, and to some extent requiring, the EU and Canada to regulate to protect human rights, as well as environmental and labour standards. CETA is not the first trade agreement to contain provisions along these lines, but is innovative in several respects, and this was the first article to analyse these aspects comprehensively. [R6] is a comprehensive legal treatment of the EU's trade policy, as expressed in trade agreements, since its birth in 1958. This is a topic that has been discussed by political scientists, but this was the first legal analysis of the issues, and goes into greater depth in interpreting the agreements by which the EU's trade policy has been effected than the existing literature.

### 3. References to the research (indicative maximum of six references)

[R1] Bartels, L. (2018). The UK's legal position in the WTO after Brexit. In R. Schütze and S. Tierney (Eds.), *The United Kingdom and the federal idea* (pp. 227-249). Hart Publishing. [\[DOI\]](#) This reference was first published as a working paper on SSRN in 2016 [\[Link\]](#). It has had 2,434 (as of 12/02/20) downloads.

[R2] Lester, S. N., Mercurio, B. and Bartels, B. (Eds.). (2016). *Bilateral and regional trade agreements: Commentary and analysis* (Volume I) and *Case studies* (Volume II) (2<sup>nd</sup> ed.). Cambridge University Press. Volume I: [\[DOI\]](#). Volume II: [\[DOI\]](#)

[R3] Bartels, L. (2012). Regional Trade Agreements. In R. Wolfrum (Ed.), *Max Planck encyclopedia of public international law* (Volume VIII, 853-863). Oxford University Press. ISBN: 9780444862402

[R4] Bartels, L. (2009). 'Interim Agreements' under Article XXIV GATT. *World Trade Review*, 8, 339-350. [\[DOI\]](#)

[R5] Bartels, L. (2017). Human rights, labour standards and environmental standards in CETA. In E. Vranes, A. Orator and D. Führer (Eds.), *Mega-regional agreements: TTIP, CETA, TiSA: New orientations for EU external economic relations* (pp. 202-215). Oxford University Press. ISBN: 9780198808893. [\[DOI\]](#)

[R6] Bartels, L. (2007). The trade and development policy of the European Union. *European Journal of International Law*, 18(4), 715-756. [\[DOI\]](#)

Research quality: research outputs are in peer-reviewed international journals or academic books.

Research Funding: L. Bartels (PI) - The Legal Structure of the Trading Relationship of the United Kingdom and Canada after Brexit - ESRC – 15.06.2018-14.06.2019 - GBP8,715.64.

### 4. Details of the impact (indicative maximum 750 words)

Based on his research, Bartels has had a significant impact on the UK's Brexit trade negotiations; informing several hundred government officials and the wider public (Bartels has over 9,000 Twitter followers and his Parliamentary appearances are often broadcast publicly) around the technical and legal aspects of the new arrangements that will be required and analyzing their legal implications. This has led to greater understanding by policy makers and enhanced skills and capacity of the executive in a very specialized area at a crucial time for policy makers and others in official capacities.

Supporting parliamentary and government committees through official appointments and expert evidence

During late 2016 Bartels was invited to give evidence as part of an expert panel to the House of Commons International Trade Committee. As a result of his expertise and also '*ability to communicate with [committee members] as lay people in an intelligible and accessible manner*'. Bartels was appointed as the first Specialist Adviser to the Committee, helping to produce the Committee's first report, *UK Trade Options Beyond 2019*. [E1] The report set the framework for a series of further reports, and early in the Brexit process, was a point of reference for those (including MPs) grappling with a set of new and complex issues. In this capacity Bartels '*helped to plan and conduct the inquiry, which involved selecting themes and witnesses [...33], as well as advising on areas of questioning for nine oral evidence sessions.*' He provided regular face-to-face briefing to the committee so that they were '*able to make the best use of the witnesses appearing*' and '*assisted in digesting and analyzing 46 written evidence submissions*'. [E1] At the end of the inquiry, Bartels assisted in ensuring that the report was '*factually accurate in respect of any matters relating to trade law*'. According to the chair of the committee, '*Dr Bartels worked closely with the Committee staff, both helping them to assist the Committee and significantly raising their level of understanding ... in relation to trade law ... and providing assistance to staff on other committee teams who were dealing with aspects of Brexit that were relevant to trade law*'. [E1]

Bartels was invited to give expert evidence to several parliamentary committees, including the UK House of Commons Committees on International Trade (2018, 2019 and 2020), Exiting the EU (2018), and Public Bills (2018); UK House of Lords Subcommittee on Financial Affairs (2019); UK Joint Committee on Human Rights (2019); and Scottish Parliament Committee on Culture, Tourism, Europe and External Affairs (2019). His testimony was broadcast on the UK Parliament TV website, and gained a significant audience, and it was quoted in the Committee on Exiting the EU's report *The future UK-EU relationship* [E2 pp. 14, 17 and 18] and International Trade Committee's report *UK-US Trade Relations* [E3 pp. 25 and 26]. The chair of one of these committees said that '*in his evidence he greatly clarified for us the trade-law implications of possible arrangements to avoid a hard border on the island of Ireland as a result of Brexit*', and, in relation to another appearance as witness in July 2019, that he '*considerably enhanced our understanding of the trade-law issues around the possibility of a "no deal" Brexit occurring at the end of October 2019*'. '*In conclusion, the Committee's level of understanding and the quality of its output has undoubtedly been much enhanced by his involvement*'. [E1]

On more than one occasion, Bartels' testimony was the basis for questions to other subsequent witnesses in parliamentary committee inquiries, including then Minister for Exiting the EU, Mr David Davis [E2 p. 14]. His work [R5] was cited in parliamentary proceedings [E4 p. 21].

In 2019 Bartels was appointed to the UK Government Technical Advisory Group on alternative arrangements to the Northern Ireland 'backstop'. This was an advisory committee chaired by a UK cabinet minister, and its meetings were also attended by other ministers, including at cabinet level. Bartels was the only generalist trade lawyer appointed to this group, and he contributed to finding a means of facilitating trade in goods across the border [E5].

Bartels also contributed to professional and industry bodies in order to provide expert, independent advice on the development and delivery of UK trade policy to government. Since 2019 he has participated in the Professional Business Services Expert Trade Advisory Group, organized by Deloitte, at which civil servants give regular briefings on Brexit preparations and receive input from the professional services industry. In this capacity Bartels authored a report on the UK's ability to export legal services to the EU in a 'no deal' scenario. He was also a major contributor to policy notes produced by the Law Society (on customs unions) and the Financial Markets Law Committee on other aspects of government trade policy [E6]. He also

sits on the consultative group on Business and Professional Services (Deloitte Trade Technical Group 'MMWG', an industry/government forum).

*'Lorand Bartels' research on WTO law and policy is the most frequently cited work that I have seen in internal working documents. This has made an important contribution to the development of policy across a number of Government Departments particularly as it concerns the development of WTO schedules of concessions and commitments'* (statement from permanent civil servant, UK department for International Trade, May 2019) [E7].

#### Use of expert analysis by UK government in trade negotiations

Expert analysis by Bartels has had a major impact on the formulation of UK Government policy on its position in the WTO in the immediate aftermath of Brexit. The current UK government's policy on its WTO 'schedules' of trade concessions has followed the analysis presented in [R4] extremely closely: *'As the UK's Ambassador to the WTO during this period, I can confirm that [R4] was highly influential in shaping our policy response. I first came across the article on Twitter, and promptly circulated it to colleagues in the UK Mission in Geneva and Whitehall ... It is fair to say that it shaped the policy for our transition in the WTO agreed by the Cabinet in October 2016, and remains our policy today.'* [E8]

#### Training government officials

Since 2017 Bartels has been academic director of the Linklaters Trade Institute, established to train UK civil servants under contract with the UK Foreign and Commonwealth Office's Diplomatic Academy, which has responsibility for training UK trade negotiators. Bartels has had oversight of content and together with Linklaters project managers and partners, delivery of training on all aspects of free trade agreements as well as negotiation skills for which he drew significantly on the material contained in [R2-R6]. Training was delivered in 13 separate four-day modules from 2018-2020 to over 500 civil servants, including FTA 'chapter leads' and chief negotiators [E9]. The Dean of the FCO's Trade Policy and Negotiations Faculty, has stated that:

*'The impact of this expert programme, steered by Bartels, has been considerable. Over 500 civil servants are now prepared for frontline trade negotiations and have increased their awareness of the implications of policy choices. ... [H]is session for Chief Negotiators on the use of law during a trade negotiation was taken up by the Chief Negotiators for the UK's future trade negotiations with the EU, US and other countries.'*

*'Bartels' extensive knowledge of trade policy and law has had a uniquely significant and positive impact on the way UK civil servants prepare for and conceive of trade policy and negotiations'* [E9].

Another civil servant states that [the programme] *has provided the platform for policy debate and formulation in the trade sphere and ensured that the required level of expertise was acquired rapidly and effectively. The material developed has been subsequently reused in different ways for different cohorts of policy makers. Lorand was central to this programme not only putting faculty together but developing materials and delivering much of the content. It was a major milestone in the establishment of the Department for International Trade.'* [E7]

#### Increasing understanding and learning about UK trade relations

Bartels has been heavily engaged in disseminating his knowledge about and research on the UK's trade relations in various fora. [R4] is the only treatment of one of the foremost issues in both substantive and public debates around Brexit; namely, the legal nature of a 'standstill' FTA in the event of a hard Brexit. The paper was cited in a UK House of Commons Library Briefing, 'No-deal Brexit and WTO', which had wide circulation, and was picked up for discussion by experts in a session of the UK House of Commons Committee on Exiting the EU



at which he was not present (Oral Evidence, *The progress of the UK's negotiations on EU withdrawal*). Building on this, and to illustrate the point practically, Bartels wrote a short 'one-page' FTA to show what is required at a minimum by WTO law and to refute notions that 'GATT 24' (as it has become known) can be unilaterally invoked by the UK. This exercise had a dramatic impact on public debate, as shown by the attached graph, which shows the increasing number of citations of the phrases GATT 24 and Article 24 in thirty-two UK media outlets, Hansard, Twitter, and Facebook over the period from Jan 2017 to Jun 2019. [E10]

Since the Brexit referendum Bartels has provided expertise on trade law for journalists and commentators and is regularly quoted. In a piece entitled 'Brexit and the issue of the WTO schedules' (28 February 2017), the Financial Times correspondent and senior legal practitioner David Allen Green refers to the use of Bartels' work [principally R1] by the UK Ambassador to the WTO as well as referring directly to Bartels' work on the obligations of WTO members and necessity of WTO renegotiation following Brexit. He states that 'As Cambridge trade law academic Dr Lorand Bartels explains (in the fascinating comments under that post by Mr Braithwaite [UK Ambassador] – some of the best "below the line" comments I have seen on any post): The other 163 WTO members do not have a veto of the UK's scheduled commitments'. [E11] Green goes on to directly reference further work by Bartels in the article.

In a testimonial, Tony Connolly, the Brussels-based Europe Editor for the Irish broadcaster RTE, states that 'I've found Lorand's writings and social media contributions absolutely invaluable in providing an immediate, accessible, and understandable guide to whatever issue involving world trade which the Brexit machine has spun into the foreground. The role that Lorand plays has been vital in equipping journalists like me with knowledge that can refute, or support, a particular claim by one side or another'. [E12]

##### 5. Sources to corroborate the impact (indicative maximum of 10 references)

- [E1] Testimonial: Chair of the International Trade Committee (ITC), House of Commons
- [E2] House of Commons. Exiting the European Union Committee. (2018). *The future UK-EU relationship. Fourth report of session 2017-19.* [\[Link\]](#)
- [E3] House of Commons. International Trade Committee. (2019). *UK-US trade relations. Second report of session 2017-19.* [\[Link\]](#)
- [E4] House of Commons. Exiting the European Union Committee. (2019). *Response to the vote on the Withdrawal Agreement and Political Declaration: Assessing the options. Twelfth report of session 2017-19.* [\[Link\]](#)
- [E5] Press release: Department for Exiting the European Union. (2019). *Technical advisory group on alternative arrangements to the backstop established.* [\[Link\]](#)
- [E6] Financial Markets Law Committee. (2017). *Issues of legal uncertainty arising in the context of the U.K.'s withdrawal from the E.U. - the application and impact of World Trade Organization rules on financial services.* [\[Link\]](#)
- [E7] Testimonial: Assistant Director, World Trade Organization Trade Policy Group, Department for International Trade
- [E8] Testimonial: UK Ambassador and Permanent Representative, UK Mission, Geneva
- [E9] Testimonial: Dean, Trade Faculty, Trade Diplomacy Department, Economic Diplomacy Directorate, Foreign and Commonwealth Office
- [E10] Media graph and collated media sources
- [E11] Newspaper article: Green, D. A. Brexit and the issue of the WTO schedules, *Financial Times*, 28 February 2017. [\[Link\]](#)
- [E12] Testimonial: Europe Editor, RTÉ News and Current Affairs