

Trade Implications of Brexit: Lessons from Austria's Accession and Greenland's Withdrawal

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Contents

Introduction.....1

Austria.....3

Greenland.....12

Introduction

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On June 23, 2016, the United Kingdom (UK) held a referendum on whether to leave or to remain in the European Union (so-called “Brexit”), with 51.9% of the people voting in favor of leaving.¹ The procedure for withdrawal from the European Union (EU) is governed by article 50 of the Treaty on European Union (TEU),² as introduced by the Treaty of Lisbon in 2007.³ It states that “[a]ny Member State of the EU may decide to withdraw from the Union in accordance with its own constitutional requirements.”⁴ Before the Treaty of Lisbon, a Member State’s right to withdraw from the EU had been highly controversial.

Article 50 of the TEU has never been used and presents uncharted political and legal territory. It is only applicable to the withdrawal of Member States. The UK’s withdrawal process was officially commenced on March 29, 2017, when British Prime Minister Theresa May notified the European Council of the UK’s intention to leave the EU.⁵ The notification triggered a two-year period of negotiations.⁶ The EU intends to finish the withdrawal process (“divorce”) before it negotiates its future relationship and trade deal with the UK. There will be no parallel negotiations of the two issues.⁷

As there is no precedent for a Member State leaving the EU, negotiations surrounding the accession of new member states or the withdrawal of countries or territories that are associated with an EU Member State might provide some guidance for trade implications and a future trade deal. This report will look at the accession of Austria to the EU as an example of a General Agreement on Tariffs and Trade (GATT) and World Trade Organization (WTO) member joining the EU. Austria has been a member of GATT since October 19, 1951 and a WTO member since January 1, 1995. Its relationship with the EU slowly intensified from 1960 to 1989, when it submitted an application to become a full member. It joined the EU after its accession was

¹ *EU Referendum Results*, THE ELECTORAL COMMISSION, <http://www.electoralcommission.org.uk/find-information-by-subject/elections-and-referendums/past-elections-and-referendums/eu-referendum/electorate-and-count-information> (last visited Apr. 12, 2017), archived at <http://perma.cc/NR4X-35PH>.

² Treaty on European Union (TEU), 2012 O.J. (C 326) 13, http://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF, archived at <http://perma.cc/D6TR-LVCF>.

³ Treaty of Lisbon, 2007 O.J. (C 306) 1, http://publications.europa.eu/resource/cellar/688a7a98-3110-4ffe-a6b3-8972d8445325.0007.01/DOC_19. (File too large to archive).

⁴ *Id.* art. 50, para. 1.

⁵ Article 50 Notification Letter from Theresa May, Prime Minister of the United Kingdom, to Donald Tusk, President of the European Council (Mar. 29, 2017), http://www.consilium.europa.eu/en/press/press-releases/2017/03/pdf/070329_UK_letter_Tusk_Art50_pdf/, archived at <http://perma.cc/6FJJ-JJK8>.

⁶ *Id.* art. 50, para. 3.

⁷ European Commission, Speech by Michel Barnier, Chief Negotiator for the Preparation and Conduct of the Negotiations with the United Kingdom, at the Plenary Session of the European Committee of the Regions (Mar. 22, 2017), http://europa.eu/rapid/press-release_SPEECH-17-723_en.htm, archived at <http://perma.cc/9CYK-MHWL>.

approved in a referendum in 1995. The different stages of cooperation between Austria and the EU, and the evolving trade relationship as well as the negotiations to become a full member, could serve as an example of how the relationship between the EU and the UK can be disentangled or what a future trade relationship could look like.

As an example of a withdrawal, this report will examine the withdrawal of Greenland, an autonomous territory within the EU Member State Denmark, from the EU's predecessor, the European Economic Community (EEC). Greenland was part of the EEC from 1973 until 1985. It acceded to the EEC in 1973 with Denmark, after Denmark as a whole voted in favor of joining while a substantial majority of voters in Greenland opposed. When Greenland attained greater authority over its sovereignty, it withdrew from the EEC following a referendum in 1982. It is now associated to the EU under the Overseas Association Decision.⁸ The Overseas Countries and Territories (OCTs) are twenty-five countries and territories that have special links to Member States Denmark, France, the Netherlands, or the UK.⁹ As a consequence of the withdrawal, Greenland needed to renegotiate its fisheries agreement with the EEC. Its fisheries rights now are similar to those it had while still part of the EEC, but it has the opportunity to renegotiate the agreement every six years, and tariffs and quotas are renegotiated on an annual basis.

Another example sometimes mentioned with regard to a “withdrawal” from the EU is Saint Barthélemy (St. Barths). In 2007, St. Barths, at the time an outermost region (OR) of France, separated from Guadeloupe. That decision had no influence on its position under EU law. In 2010, France submitted an initiative based on article 355, paragraph 6 of the Treaty on the Functioning of the European Union (TFEU) to the European Council to change the EC law status of St. Barths from an OR to an OCT. The status change became effective on January 1, 2012.¹⁰ The relationship between the EU and St. Barth is now governed by the Overseas Association Decision.

⁸ Council Decision 2013/755/EU of 25 November 2013 on the Association of the Overseas Countries and Territories with the European Union (Overseas Association Decision), 2013 O.J. (L 344) 1, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013D0755&from=EN>, archived at <http://perma.cc/T5E2-8Z8R>.

⁹ Consolidated Version of the Treaty on the Functioning of the European Union (TFEU) art. 198, 2012 O.J. (L 326) 47, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=en>, archived at <http://perma.cc/6ZXF-JAHS>.

¹⁰ Council Decision 2010/718/EU, European Council Decision of 29 October 2010 amending the Status with Regard to the European Union of the Island of Saint-Barthélemy, art. 1, 2010 O.J. (L 325) 4, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010D0718&qid=1492547878104&from=en>, archived at <http://perma.cc/6F7P-VRNT>.

Austria

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SUMMARY The relationship between Austria and the EU intensified slowly from 1960 until 1995 when Austria became a full member. In 1960, Austria and six other states founded the European Free Trade Association (EFTA) to provide a framework for the liberalization of trade in goods. After unsuccessful attempts to conclude an association agreement with the EU, the trade relationship between Austria and the EU was first governed by a general free trade agreement and other bilateral agreements. The conclusion of the European Economic Area Agreement between the EFTA members and the EU allowed Austria to participate in the EU internal market. In 1989, Austria submitted an application for full membership. Formal negotiations were conducted from 1993 until 1994. The Austrian people approved the accession to the EU in a referendum in June 1994.

I. General Membership Criteria

According to article 49 of the Treaty on European Union (TEU), “[a]ny European State which respects the values referred to in Article 2¹ and is committed to promoting them may apply to become a member of the Union.”² Any country wishing to join has to fulfill key political and economic criteria for accession, as defined at the 1993 European Council in Copenhagen (“Copenhagen criteria”).³ The Copenhagen criteria overlap to some extent with the conditions spelled out in article 49 of the TEU. They must be taken into account when a membership application is considered.⁴

The Copenhagen criteria state that a country must have stable institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities; a functioning market economy and the capacity to cope with competition and market forces; and the administrative and institutional capacity to effectively implement the *acquis communautaire* (acquis)⁵ and the ability to take on the obligations of membership. In addition, the EU must have the capacity to integrate a new member. When the EU decides that a country is ready to fulfill these criteria, it becomes an official candidate for membership.⁶

¹ The values referred to are human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, including the rights of persons belonging to minorities.

² Treaty on European Union (TEU) art. 49, 2012 O.J. (C 326) 13, http://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF, archived at <http://perma.cc/D6TR-LVCF>.

³ Presidency Conclusions, Copenhagen European Council (June 21–22, 1993), http://www.europarl.europa.eu/summits/copenhagen/co_en.pdf, archived at <http://perma.cc/AN3K-ZKVC>.

⁴ TEU art. 49, para. 1, sentence 4.

⁵ The *acquis* is a constantly evolving body of EU primary and secondary law and obligations that are binding on all EU member states.

⁶ Presidency Conclusions, *supra* note 3.

The application for membership is addressed to the Council of the European Union (EU Council), which is made up of one government representative from each EU Member State.⁷ The European Parliament and the national parliaments are notified of the application. Formal membership negotiations with a candidate country cannot start until all EU member governments agree on a framework or mandate for negotiations with the candidate country in an intergovernmental conference. The framework will address the conditions and timing of the applicant country's adoption, implementation, and enforcement of the EU acquis. The acquis is divided into thirty-five different chapters (covering topics such as the four EU freedoms of the internal market, transport, energy, environment, financial arrangements, etc.), each of which is negotiated separately.⁸ For some chapters, rules will be phased in gradually. The process is monitored by the EU Commission, which regularly updates the EU Parliament and the EU Council on its progress.⁹ The duration of the negotiations varies depending on how prepared a country is to join.

At the end of the screening and monitoring process, the EU Commission delivers a final opinion to the EU Council on whether it recommends accepting the application. In addition, the EU Parliament must approve the application by a majority of its members. The requirement that the EU Parliament has to consent was added in 1986.¹⁰ The EU Parliament can therefore prevent the accession of new members.

The EU Council has the final say on whether the candidate country should be allowed to join. The Council's decision must be unanimous.¹¹ After the application is accepted, the political agreements are codified in a legal text (known as an accession treaty) which is then signed by the EU Member States and the candidate country. The accession treaty spells out the conditions for admission of the candidate country and the adjustments to EU treaties.¹² Each EU Member State and the candidate country need to ratify the accession treaty in accordance with their respective constitutional requirements and deposit the instrument of ratification with the Italian government.¹³

⁷ TEU art. 16, para. 2.

⁸ *Chapters of the Acquis*, EUROPEAN COMMISSION, https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership/chapters-of-the-acquis_en (last updated Dec. 6, 2016), archived at <http://perma.cc/5CM2-4VTY>.

⁹ *Conditions for Membership*, EUROPEAN COMMISSION, https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership_en (last updated Dec. 6, 2016), archived at <http://perma.cc/C7NG-H9RK>.

¹⁰ Single European Act art. 8, 1987 O.J. (L 169) 1, http://eur-lex.europa.eu/resource.html?uri=cellar:a519205f-924a-4978-96a2-b9af8a598b85.0004.02/DOC_1&format=PDF, archived at <http://perma.cc/SV5Y-T99L>.

¹¹ TEU art. 49, para. 1.

¹² TEU art. 49, para. 2, sentence 1.

¹³ TEU art. 40, para. 2, sentence 2. As the original EEC Treaty was signed in Rome, the Italian government is the depository for EU treaties and any amending treaties and acts.

II. Austria's EFTA Membership

Austria was one of the founding members of the European Free Trade Association (EFTA), an intergovernmental organization established by the Stockholm Convention on January 4, 1960.¹⁴ The other founding members were Denmark, Norway, Portugal, Sweden, Switzerland, and the United Kingdom. Finland became a full member in 1986. Iceland acceded to EFTA in 1970. The aim of EFTA is to provide a framework for the liberalization of trade in goods amongst its member states. At the time, it was also seen as a counterbalance to the emerging European Economic Community (EEC).¹⁵ EFTA is only a free trade agreement and not a customs union, so members retain responsibility to set their own tariffs with countries outside of EFTA and may conclude other free trade agreements with third countries.

On May 2, 1992, the European Economic Area Agreement (EEA Agreement) was signed by the EU Member States and the EFTA states.¹⁶ It entered into force on January 1, 1994. Liechtenstein joined on May 1, 1995. Switzerland rejected the EEA Agreement in a referendum held on December 6, 1992.¹⁷

One of the aims of the EEA Agreement was “to contribute, on the basis of market economy, to worldwide trade liberalization and cooperation, in particular in accordance with the provisions of the General Agreement on Tariffs and Trade.”¹⁸ It obligated the EFTA countries to implement EU legislation covering the free movement of goods, services, persons, and capital in order to participate in the internal market, but left them without the possibility of taking part in the decision making.¹⁹ The EEA members therefore already fulfilled approximately half of the conditions of accession to the EU. The EEA Agreement did not cover the Customs Union, the Common Trade Policy, the Common Foreign and Security Policy, Justice and Home Affairs, the Economic and Monetary Union, or the Common Agriculture and Fisheries Policies (although it did contain provisions on various aspects of trade in agricultural and fish products).²⁰

¹⁴ Übereinkommen zur Einrichtung der Europäischen Freihandelsassoziation [Convention Establishing the European Free Trade Association], Jan. 4, 1960, BUNDESGESETZBLATT [BGBL.] [FEDERAL LAW GAZETTE] No. 100/1960, https://www.ris.bka.gv.at/Dokumente/BgblPdf/1960_100_0/1960_100_0.pdf, archived at <http://perma.cc/V3P2-8T66>.

¹⁵ The EEC was later renamed the European Community (EC) and would eventually become the EU.

¹⁶ Agreement on the European Economic Area (EEA Agreement), 1994 O.J. (L 1) 3, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31994D0001&from=EN>, archived at <http://perma.cc/9FEX-D4ZJ>.

¹⁷ Bundesratsbeschluss über das Ergebnis der Volksabstimmung vom 6. Dezember 1992 (Europäischer Wirtschaftsraum [EWR]) [Decision of the Federal Council on the Result of the Referendum of Dec. 6, 1992 (European Economic Area [EEC]), 1993 BUNDESBLETT [BBL.] [FEDERAL GAZETTE] I at 167, <https://www.amtsdruckschriften.bar.admin.ch/viewOrigDoc.do?id=10052502>, archived at <http://perma.cc/AP4Z-P4NM>.

¹⁸ EEA Agreement pmbl.

¹⁹ EEA Agreement art. 1.

²⁰ EEA Agreement, EFTA, <http://www.efta.int/eea/eea-agreement> (last visited Apr. 18, 2017), archived at <http://perma.cc/KGU5-SV5J>.

For most countries, membership in EFTA was only the first step to joining the European Economic Area (EEA) and/or subsequently becoming a member of the EU. Membership in EFTA was the first step for Austria towards European integration.

III. Application for Association

In 1961, Austria applied for the first time for association with the European Community along with the other neutral EFTA members Sweden and Switzerland on the basis of former article 238 of the Treaty Establishing the European Economic Community (EEC Treaty). Article 238 of the EEC Treaty allowed the EEC to conclude agreements “establishing an association involving reciprocal rights and obligations, common action and special procedure” with one or more third countries or international organizations.²¹ The negotiations failed mainly as a result of the neutrality issue.²² Austrian and Finnish neutrality in the post-World War II period resulted from their situation as smaller and weaker states located between powerful countries in the East and West. For them it was more opportune to act as a buffer between the powerful military alliances.²³ Austria’s neutrality is laid down in the Federal Constitutional Law on the Neutrality of Austria.²⁴

In 1963, Austria submitted another application for association based on article 238 of the EEC Treaty. Negotiations were conducted from 1965 to 1967, but failed because of various political problems, among them the hostility of the Soviet Union towards a closer relationship between the EEC and Austria and the question of autonomy of South Tyrol between Italy and Austria.²⁵

IV. Free Trade and Bilateral Agreements between Austria and the EEC

Due to the failure of the conclusion of a far-reaching association agreement, Austria and the EEC instead entered into negotiations to abolish tariffs for goods. In 1972, on the basis of former article 113 of the EEC Treaty,²⁶ Austria and the EEC concluded an interim free trade

²¹ EEC Treaty art. 238 (as in effect 1961) (now Consolidated Version of the Treaty on the Functioning of the European Union (TFEU) art. 217, 2012 O.J. (L 326) 47, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=en>, archived at <http://perma.cc/6ZXF-JAHS>).

²² European Parliament, Directorate-General for Internal Policies of the Union, *The Accession Negotiations with Austria, Sweden, Finland, and Norway* at 6 (June 1994), http://bookshop.europa.eu/en/the-accession-negotiations-with-austria-sweden-finland-and-norway-pbQAPOLIE02/downloads/QA-PO-LI-E02-EN-N/QAPOLIE02ENN_002.pdf;pgid=GSPefJMEtXBSR0dT6jbGakZD00009LKmv2EI;sid=xhB2Wflml3R2WaGQyXXo_ptDwcNwilulukA=?FileName=QAPOLIE02ENN_002.pdf&SKU=QAPOLIE02ENN_PDF&CatalogueNumber=QA-PO-LI-E02-EN-N, archived at <http://perma.cc/A4KP-6FYX>.

²³ *Id.* at 29.

²⁴ Bundesverfassungsgesetz vom 26. Oktober 1955 über die Neutralität Österreichs [Federal Constitutional Law of October 26, 1955 on the Neutrality of Austria], Oct. 26, 1955, BGBl. No. 211/1955, https://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/10000267/Neutralitätsgesetz_Fassung_vom_24.04.2017.pdf, archived at <http://perma.cc/22S9-REPL>, English translation available at https://www.ris.bka.gv.at/Dokumente/Erv/ERV_1955_211/ERV_1955_211.pdf, archived at <http://perma.cc/MKS6-MOK4>.

²⁵ European Parliament, *supra* note 22, at 6.

²⁶ EEC Treaty art. 113 (as in effect 1961) (now TFEU art. 207). It allowed the conclusion of trade agreements with third countries or international organizations in the area of the common commercial policy.

agreement²⁷ which entered into force on October 1, 1972.²⁸ It was replaced by a general free trade agreement (FTA) shortly thereafter, which entered into force on January 1, 1973.²⁹ It was negotiated by the EEC in parallel with FTAs with other EFTA members. During a brief period of fifteen months, Austria alone qualified for a greater initial tariff reduction than the other EFTA countries because of the interim agreement, which came into force three months before the general free trade agreement. It received an initial tariff reduction of 30% instead of the 20% agreed upon in the general FTAs with the other EFTA countries.³⁰

In addition to the general FTA with the EEC, another agreement was concluded with the European Coal and Steel Community (ECSC), another one of the three pillars of the European Communities.³¹

FTAs are compatible with World Trade Organization (WTO) rules as long as certain conditions are observed to ensure the complementarity of the FTA with the WTO system. This includes, among others, the conditions specified in article XXIV of the GATT (trade in goods)³² and in article V of the GATS (trade in services).³³ The general FTA with Austria envisaged the progressive implementation of a free trade area for industrial goods and certain processed agricultural products, but did not set up a customs union, which would involve a joint external tariff.³⁴

²⁷ Interimsabkommen zwischen der Europäischen Wirtschaftsgemeinschaft und der Republik Österreich [Interim Agreement between the European Economic Community and the Republic of Austria], 1972 O.J. (L 223) 3, [http://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:21972A0929\(01\)&from=DE](http://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:21972A0929(01)&from=DE), archived at <http://perma.cc/FVW5-LLOZ>.

²⁸ Mitteilung bezüglich des Zeitpunkts, zu dem das Interimsabkommen zwischen der Europäischen Wirtschaftsgemeinschaft und der Republik Österreich in Kraft tritt [Notification Concerning the Entry Into Force of the Interim Agreement between the European Economic Community and the Republic of Austria], 1972 O.J. (L 223) 84, http://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=OJ:JOL_1972_223_R_0084_01&from=DE, archived at <http://perma.cc/SLQ9-VAPJ>.

²⁹ Abkommen zwischen der Republik Österreich und der Europäischen Wirtschaftsgemeinschaft samt Anhang und Protokolle Nr. 1 bis 5 samt Anhängen sowie Erklärung und Notenwechsel samt Anhang [Free Trade Agreement between the Republic of Austria and the European Economic Community including Annex and Protocols No. 1 to 5 including Annexes as well as a Declaration and Exchange of Notes including Annex] (General FTA Austria–EEC), BGBl. No. 466/1972, https://www.ris.bka.gv.at/Dokumente/BgblPdf/1972_466_0/1972_466_0.pdf, archived at <http://perma.cc/JF2N-K647>.

³⁰ Interim Agreement between the European Economic Community and the Republic of Austria art. 2; General FTA Austria–EEC art. 2, para. 2.

³¹ Abkommen zwischen der Republik Österreich einerseits und den Mitgliedstaaten der Europäischen Gemeinschaft für Kohle und Stahl und der Europäischen Gemeinschaft für Kohle und Stahl andererseits samt Anhang und Protokollen Nr. 1 und 2 sowie Erklärung [Agreement between the Republic of Austria on the one hand and the Member States of the European Coal and Steel Community and the European Coal and Steel Community on the other hand including the Annex and Protocols No. 1 and 2 as well as a Declaration] BGBl. No. 467/1972, https://www.ris.bka.gv.at/Dokumente/BgblPdf/1972_467_0/1972_467_0.pdf, archived at <http://perma.cc/7WK7-3RW9>.

³² General Agreement on Tariffs and Trade 1994 (GATT 1994), 1867 U.N.T.S. 187, https://www.wto.org/english/docs_e/legal_e/06-gatt.pdf, archived at <http://perma.cc/39UN-2MUF>.

³³ General Agreement on Trade in Services (GATS), 1869 U.N.T.S. 183, https://www.wto.org/english/docs_e/legal_e/26-gats.pdf, archived at <http://perma.cc/6Q8Q-9RAD>.

³⁴ General FTA Austria–EEC, *supra* note 29, art. 3.

Other bilateral agreements were concluded between Austria and the EEC in the area of transit of goods. Because of Austria's geographical location, a high volume of EEC goods were transported through Austria. In addition, Austria wanted to take precautions to avoid environmental threats to the Alpine passes caused by heavy goods vehicles. In 1972, a first EEC-Austria transit agreement was concluded.³⁵ The aim of the agreement was to simplify customs procedures affecting the transit of EU goods.³⁶ Another transit agreement was concluded in 1975.³⁷ It dealt with the conditions of passage through and warehousing in Austria of goods traded between the EEC and Greece and Turkey. Its goal was to simplify customs formalities and facilitate trade between the northern EEC Member States and southern states with which the EEC had association agreements.³⁸ In 1992, parallel to the EEA negotiations, another transit agreement was concluded which created an "eco points system" of transit licenses to reduce the emissions and noise generated by heavy goods vehicles transiting Austrian territory.³⁹

V. Accession of Austria to the EEC

A. Reasons for Membership

In the mid-1980s, Austria's industry struggled and economic growth stagnated. The EEC was working on completing the internal market and Austria feared it would lose market share.⁴⁰ The EEC market was important for Austria, because it traded most of its goods with EU Member States and had the highest percentage of EFTA exports to the EU. In the late 1980s, more than 60% of Austria's exports went to EU countries.⁴¹ Austria approached the EEC with a proposal to participate in the internal market and the decision-making process without becoming a full member, but this idea was rejected by the EU.⁴² Austria's business associations and the Federal

³⁵ Abkommen zwischen der Europäischen Wirtschaftsgemeinschaft und der Republik Österreich zur Anwendung der Bestimmungen über das Gemeinschaftliche Versandverfahren [Agreement between the European Economic Community and the Republic of Austria on the Application of the Community Customs Transit Rules], 1972 O.J. (L 294) 87, [http://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:21972A1130\(01\)&from=DE](http://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:21972A1130(01)&from=DE), archived at <http://perma.cc/GX5G-4QE8>.

³⁶ *Id.* art. 1.

³⁷ Agreement between the European Economic Community and the Republic of Austria on the simplification of formalities in respect of goods traded between the European Economic Community on the one hand and Greece and Turkey on the other hand when the said goods are forwarded from Austria, 1975 O.J. (L 188) 2, [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:21975A0611\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:21975A0611(01)&from=EN), archived at <http://perma.cc/8N87-JWS2>.

³⁸ *Id.* pmbl.

³⁹ Agreement between the European Economic Community and the Republic of Austria on the Transit of Goods by Road and Rail art. 15, 1992 O.J. (L 373) 6, [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:21992A1221\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:21992A1221(01)&from=EN), archived at <http://perma.cc/KL7M-PDK2>.

⁴⁰ PAUL LUIF, ON THE ROAD TO BRUSSELS: THE POLITICAL DIMENSION OF AUSTRIA'S, FINLAND'S, AND SWEDEN'S ACCESSION TO THE EUROPEAN UNION 189 (1995).

⁴¹ *Id.* at 182.

⁴² *Id.* at 191.

Chamber of Commerce pushed for full membership.⁴³ In 1988, the Austrian Trade Union Confederation also showed support because of predicted improved economic development and the reduction of prices and increase in employment.⁴⁴ On July 17, 1989, the Austrian government therefore sent a letter to the EU Council asking to join the EEC.⁴⁵ The Austrian government identified a commitment to neutrality, keeping social welfare standards, and upholding strict environmental protection laws as conditions for membership. The letter to the EU Council therefore included a neutrality clause.⁴⁶

The EU Commission presented its preliminary opinion on Austria's accession on August 1, 1991.⁴⁷ The Commission decided that no formal accession negotiations should be started before the EU internal market was completed and the discussions to establish an economic and monetary union and a political union were finished.⁴⁸

B. Negotiations

Formal negotiations were opened on February 1, 1993. Negotiations took place over the course of nine separate meetings at the ministerial level, 130 meetings to decide how to implement the EU acquis, and 72 meetings of departments in specific fields.⁴⁹ Negotiations on an important number of chapters of the acquis were facilitated by the existence of the FTA between the EU and Austria and the EEA Agreement between the EFTA countries and the EU, whereby Austria was already committed to take over in its national legislation most of the EU acquis. The negotiations were concluded on April 12, 1994.

With regard to neutrality, Austria and the other countries applying for membership confirmed in a joint declaration, which was added to the accession treaty, that they would accept the EU acquis, that they would be ready and able to fully participate in the Common Foreign and Defense Policy, and that they would amend their legal rules on neutrality to make them compatible with the EU acquis.⁵⁰

⁴³ *Id.* at 191, 192.

⁴⁴ *Id.* at 193, 194.

⁴⁵ Brief nach Brüssel [Letter to Brussels], from Alois Mock, Austrian Foreign Minister, to Roland Dumas, President of the EC Council of Ministers (July 17, 1989), https://www.parlament.gv.at/ZUSD/PDF/Brief_Bruessel.pdf, archived at <http://perma.cc/9R8Z-8LY8>.

⁴⁶ LUIF, *supra* note 40, at 196.

⁴⁷ *Commission Opinion on Austria's Application for Membership*, SEC (1991) 1590 final (Aug. 1, 1991), BULLETIN OF THE EUROPEAN COMMUNITIES 4/1992.

⁴⁸ *Id.*

⁴⁹ Republik Österreich Parlament [Republic of Austria Parliament], Chronologie der Beziehungen Österreich-EWG/EU. Vom Antrag auf Aufnahme zum formellen Abschluss der Beitrittsverhandlungen [Chronology of the Relationship Austria - EEC/EU. From the Application to Join to the Formal Conclusion of Accession Negotiations], <https://www.parlament.gv.at/PERK/PE/EU/EUerweiterung/ChronologieBeziehungenAT-EU/index.shtml>, archived at <http://perma.cc/3UMM-RH3U>.

⁵⁰ Treaty between the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Portuguese Republic, the United Kingdom of Great Britain and

Austria was allowed to maintain its stricter environmental rules for a transitional period of four years. The EU agreed to review the relevant directives on the environment during that time and eventually adjust them. Furthermore, the EU promised to conclude free trade agreements with the Baltic states so that the Nordic countries that applied at the same time as Austria could maintain free trade with them.⁵¹

At the ministerial meeting that took place from February 26 to March 1, 1994, the remaining topics, in particular agriculture, were discussed. Austria preferred longer transitional periods, whereas the EU insisted on an immediate acceptance of the rules of the Common Agricultural Policy. As a compromise, Austria and the other new members would be allowed to grant transitional and degressive national aid to producers of basic agricultural products over the course of the next five years.⁵²

Transit of heavy goods by road through Austria was another important topic for Austria during the negotiations. The final agreement built on the 1992 bilateral agreement between the EEC and Austria.⁵³ The parties agreed that the eco points system would be used for another nine years and that pollution from heavy goods vehicles would be reduced by 60%.⁵⁴ Austria's bargaining position to limit the normally unrestricted right of passage through member states was strengthened by the fact that Switzerland had voted in a referendum in 1994 to adopt legislation to prohibit any transit of heavy goods vehicles by road within the next ten years.⁵⁵

C. Approval of the Application and Accession Treaty

On April 19, 1994, the EU Commission delivered a favorable opinion on the question of Austria's accession to the EEC.⁵⁶ The EU Parliament consented to the accession request on May 4, 1994.⁵⁷ The EU Council decided on May 16, 1994 to accept the application.⁵⁸

Northern Ireland (Member States of the European Union) and the Kingdom of Norway, the Republic of Austria, the Republic of Finland, the Kingdom of Sweden, concerning the accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union (Accession Treaty), 1994 O.J. (C 241) 9, 381, Joint Declaration on Common Foreign and Security Policy, http://eur-lex.europa.eu/resource.html?uri=cellar:6a09c1b5-b835-42e7-9901-0c33354bf77b.0008.03/DOC_1&format=PDF, archived at <http://perma.cc/EM5D-GTNN>.

⁵¹ LUIF, *supra* note 40, at 311.

⁵² Accession Treaty, *supra* note 50, art. 138.

⁵³ See *supra* note 39. The 1992 agreement covered the eco points system of transit licenses.

⁵⁴ Accession Treaty, *supra* note 50, art. 11.

⁵⁵ LUIF, *supra* note 40, at 313; Bundesratsbeschluss über das Ergebnis der Volksabstimmung vom 20. Februar 1994 [Federal Council Decision on the Result of the Referendum of Feb. 20, 1994], 1994 BBL. II at 696, <https://www.amtsdruckschriften.bar.admin.ch/viewOrigDoc.do?id=10053008>, archived at <http://perma.cc/74U4-F54S>; Schweizerische Bundeskanzlei [Swiss Federal Chancellery], Eidgenössische Volksinitiative 'zum Schutze des Alpengebietes vor dem Transitverkehr [Referendum to Protect the Alpine Passes from Transit Transport], <https://www.admin.ch/ch/d/pore/vi/vis204t.html>, archived at <http://perma.cc/ZJF6-2N89>.

⁵⁶ *Commission Opinion of 19 April 1994 on the Applications for Accession to the European Union by the Republic of Austria, the Kingdom of Sweden, the Republic of Finland and the Kingdom of Norway*, 1994 O.J. (C 241) 3, http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOC_1994_241_R_0003_01&from=EN, archived at <http://perma.cc/TN2A-8C83>.

Subsequently, the Austrian parliament, which consists of the National Council (Nationalrat) and the Federal Council (Bundesrat), approved the Austrian Federal Constitutional Act on the Accession of Austria to the European Union.⁵⁹ The Act authorized the government to sign the accession treaty. On June 12, 1994, the Austrian people approved the accession to the EEC in a referendum with 66.6% voting in favor.⁶⁰ The accession treaty between the EU Member States and Austria was signed on June 24, 1994.⁶¹ The Austrian parliament ratified the accession treaty in November 1994. It entered into force on January 1, 1995 after ratification by all EU Member States as provided in article 2, paragraph 2 of the treaty.

⁵⁷ European Parliament Legislative Resolution of 4 May 1994 on the Application by the Republic of Austria to Become a Member of the European Union, 1994 O.J. (C 241) 5, http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOC_1994_241_R_0005_01&from=EN, archived at <http://perma.cc/3QFW-GX6X>.

⁵⁸ Decision of the Council of the European Union of 16 May 1994 on the admission of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union, 1994 O.J. (C 241) 8, http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOC_1994_241_R_0008_01&from=EN, archived at <http://perma.cc/FT9P-BMPW>.

⁵⁹ Bundesverfassungsgesetz über den Beitritt Österreichs zur Europäischen Union [Federal Constitutional Act on the Accession of Austria to the European Union], BGBl. No. 744/1994, https://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/10001317/Beitritt_Österreichs_zur_Europäischen_Union_Fassung_vom_17.04.2017.pdf, archived at <http://perma.cc/ZEB6-ZUFJ>, English translation available at https://www.ris.bka.gv.at/Dokumente/ErV/ERV_1994_744/ERV_1994_744.pdf, archived at <http://perma.cc/K39E-82RS>.

⁶⁰ Kundmachung der Bundesregierung über das Ergebnis der Volksabstimmung vom 12. Juni 1994 [Announcement from the Federal Government of the Result of the Referendum of June 12, 1994], BGBl. No. 735/1994, https://www.ris.bka.gv.at/Dokumente/BgblPdf/1994_735_0/1994_735_0.pdf, archived at <http://perma.cc/JK3E-9EKW>.

⁶¹ Accession Treaty, *supra* note 50.

Greenland

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SUMMARY In 1972, when Greenland had the status equal to that of a Danish county, Denmark voted in favor of acceding to the European Economic Community (EEC) in a 1972 national referendum. When Greenland attained home-rule status and greater authority over its sovereignty in 1979, it held a national referendum in which it voted to leave the EEC. Greenland then became an Overseas Country and Territory in 1985 when it left the EEC. Post-departure, Greenland needed to renegotiate its fisheries agreement with the EEC, ultimately providing EEC Member States with the same access to Greenland waters as they had while Greenland was part of the EEC, but also giving Greenland the ability to renegotiate the agreement's terms every five years, with tariffs and quotas renegotiated on an annual basis. Today Greenland and the EU have a sustainable development agreement providing Greenland with some €233.6 million in aid over a four-year period. Greenland and the EU still have a fisheries agreement valid for six years at a time, with quotas renegotiated annually.

I. Background

Located east of the North American continent, Greenland is the world's largest island.¹ Native Inuit, who are Danish citizens, account for 88%² of the island's total population of 55,847 (as of 2016).³

Greenland has been associated with Denmark since Icelanders colonized Greenland circa 1000 AD.⁴ However, prior to 1721 when Greenland was recolonized under Pastor Hans Egede, Greenlanders retained a great deal of autonomy and were largely governed separately from the Danish-Norwegian Kingdom.⁵ Denmark established a trade monopoly with Greenland in 1776.⁶

¹ *Greenland*, EUROPEAN COMMISSION, http://ec.europa.eu/europeaid/countries/greenland_en (last visited Apr. 21, 2016), archived at <https://perma.cc/29E2-UMVF>.

² *Id.*

³ STATISTICS GREENLAND, GREENLAND IN FIGURES 2016, Figure from January 2016, at 9 (2016), [http://naalakkersuisut.gl/~media/Nanoq/Files/Attached Files/Engelske-tekster/Publications/Greenland in Figures 2016.pdf](http://naalakkersuisut.gl/~media/Nanoq/Files/Attached%20Files/Engelske-tekster/Publications/Greenland%20in%20Figures%202016.pdf), archived at <https://perma.cc/374T-DB8H>.

⁴ The first person to colonize Greenland was an Icelandic outcast. *Grønland*, AARHUS UNIVERSITET, <http://danmarkshistorien.dk/leksikon-og-kilder/vis/materiale/groenland/> (last updated Feb. 13, 2017), archived at <https://perma.cc/D8MY-ZNR8>.

⁵ NATALIA LOUKACHEVA, THE ARCTIC PROMISE: LEGAL AND POLITICAL AUTONOMY OF GREENLAND AND NUNAVUT 17–18 (2007).

⁶ Axel Kjær Sørensen, *Den Kongelige Grønlandske Handel i Den Store Danske*, GYLDENDAL, <http://denstoredanske.dk/index.php?sideId=109053> (last visited Apr. 18, 2017), archived at <https://perma.cc/3RZF-EC7A>.

In more recent years, Greenland enjoyed a status equal to that of a Danish county beginning in 1953,⁷ achieved home rule in 1979,⁸ and since 2009 has had self-governance.⁹

II. Greenland's Relationship with the EEC

In October of 1972, Denmark held a national referendum on whether to join the European Economic Community (EEC).¹⁰ The national vote was 63.3% in favor of joining, whereas 70% of Greenlanders voted against joining.¹¹ The main reason for the Greenlandic opposition is said to have been fear of losing sovereignty and control over fishing rights.¹² The fact that Greenland became part of the EEC despite a majority of its voters opposing it has been credited with sparking the independence movement that led to the Home Rule Act of 1979.¹³ The Home Rule Act shifted Greenland from an entity with the legal status of a Danish county¹⁴ to a territory with local control over many domestic matters. As a result of changes created by home rule, Denmark issued special rules on fisheries in Greenland,¹⁵ giving Greenland rights different from

⁷ DANMARKS RIGES GRUNDLOV (GRUNDLOVEN) [DANISH CONSTITUTION], LOV nr 169 af 05/06/1953, <https://www.retsinformation.dk/forms/r0710.aspx?id=45902>, archived at <https://perma.cc/5CBR-5SCE>. This Constitution made Greenland into a Danish county, not a colony.

⁸ LOV OM GRØNLANDS HJEMMESTYRE [ACT ON GREENLANDS HOME RULE], LOV nr 577 af 29/11/1978 (no longer in force), <https://www.retsinformation.dk/Forms/R0710.aspx?id=168699>, archived at <https://perma.cc/U7EB-FDNM>.

⁹ LOV OM GRØNLANDS SELVSTYRE [ACT ON GREENLAND'S SELF-GOVERNANCE], LOV nr 473 af 12/06/2009, <https://www.retsinformation.dk/forms/r0710.aspx?id=125052>, archived at <https://perma.cc/E6YV-KKXW>, unofficial English translation available on the Greenlandic Parliament website, at [http://naalakkersuisut.gl/~media/Nanoq/Files/Attached Files/Engelske-tekster/Act on Greenland.pdf](http://naalakkersuisut.gl/~media/Nanoq/Files/Attached%20Files/Engelske-tekster/Act%20on%20Greenland.pdf), archived at <https://perma.cc/GNJ8-E72R>.

¹⁰ *Folkeafstemninger*, DANMARKS STATISTIK, <http://www.dst.dk/da/Statistik/emner/befolkning-og-valg/valg/folkeafstemninger> (last visited Apr. 18, 2017), archived at <https://perma.cc/LH49-WLHQ>.

¹¹ *Grønland*, AARHUS UNIVERSITET, *supra* note 4; *Danmarks medlemskab af EF og EU*, AARHUS UNIVERSITET, <http://danmarkshistorien.dk/leksikon-og-kilder/vis/materiale/danmarks-medlemskab-af-ef-og-eu/> (last visited Apr. 18, 2017), archived at <https://perma.cc/G24E-R79A>.

¹² *United in Diversity—A View from Greenland*, BLOG ACTIVE.EU: HISTORY AND POLICY (May 3, 2016), <http://historyandpolicy.blogactiv.eu/2016/05/03/united-in-diversity-a-view-from-greenland/>, archived at <https://perma.cc/EHD9-T8E8>.

¹³ Kurt Kristensen, *40-årsdagen for Grønlands nej til EF*, SERMITSIAQ, <http://sermitsiaq.ag/node/136959>, archived at <https://perma.cc/manage/create>; see also LOUKACHEVA, *supra* note 5, at 30. Greenland's experience stands in contrast to that of the Faroe Islands, which at the time of Denmark's accession to the EEC had already acquired home rule and could decide to stay outside of the EEC. LOV OM DANMARKS TILTRÆDELSE AF DE EUROPÆISKE FÆLLESSKABER (TILTRÆDELSESLOVEN) [ACT ON DENMARK'S ACCESSION TO THE EUROPEAN ECONOMIC COMMUNITY] (* 1) (* 2), art. 8, LOV nr 447 af 11/10/1972, <https://www.retsinformation.dk/forms/r0710.aspx?id=72060>, archived at <https://perma.cc/AJ4N-DJGS>.

¹⁴ Kevin Mason, *European Communities Commission—Greenland—EC Commission Draft Approves Withdrawal of Greenland from the European Community and Proposes Terms for Economic Reassociation*, 13 GA. J. INT'L & COMP. L. 865, 868 n.24, <http://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1898&context=gjicl>, archived at <https://perma.cc/U74R-UXKP> (stating that “Rather than being, as it appears on its face, a case of a Member States’ former colony now independent and seeking to leave the Community, it is legally and theoretically as though a ‘county’ of Denmark were attempting to secede from the EC, with Copenhagen’s blessing.”).

¹⁵ BEKENDTGØRELSE OM FISKERITERRITORIET VED GRØNLAND [ORDINANCE ON THE FISHING TERRITORY OUTSIDE GREENLAND], BEK NR 176 AF 14/05/1980 (no longer in force), <https://www.retsinformation.dk/Forms/R0710.aspx?id=83764>, archived at <https://perma.cc/CM5Z-MHKR>.

those contained in the Danish Fisheries Act.¹⁶ In addition to the special rules on fisheries, the Home Rule Act also provided Greenland with autonomy over issues such as taxes,¹⁷ hunting,¹⁸ and social affairs.¹⁹ In total, the law allowed for seventeen different areas to be handled by the Home Rule Government, provided that the Home Rule Body (parliament equivalent) first voted to gain control over these areas.²⁰

Following the adoption of greater independence through the Home Rule Act, Greenlanders held a national referendum on EEC membership.²¹ On February 23, 1983, with 53% in favor, Greenland voted to leave the EEC.²² After negotiations, it formally withdrew from the EEC in 1985.²³ The withdrawal was completed through the adoption of the 1985 Treaty between Greenland, Denmark and the European Communities.²⁴

III. Greenlandic Withdrawal Negotiations

Negotiations of the Treaty between Greenland, Denmark, and the EEC took place during the years 1982 to 1984.²⁵ The negotiations had several phases, starting with the official request for withdrawal by Denmark on behalf of Greenland on May 19, 1982.²⁶ The Greenlandic Home Rule Minister for Social Affairs Moses Olsen argued that

our full membership of the European Community as a European Region is inadequate and unworkable along with our self-determination established through our Home Rule. Our climate norms, culture, ethnicity, social structure, economic and industrial pattern, infrastructure and basis for existence are so different from Europe that we can never equate with the European countries or regions.²⁷

¹⁶ *Id.*; compare LOV OM DANMARKS RIGES FISKERITERRITORIUM LOV [ACT ON DANISH REALM'S FISHING TERRITORY] nr 597 af 17/12/1976, <https://www.retsinformation.dk/Forms/R0710.aspx?id=83767>, archived at <https://perma.cc/W26W-GXGP>.

¹⁷ Bilag 1 to Hjemmestyreløven [Addendum 1 to the Home Rule Act], item 3, <https://www.retsinformation.dk/Forms/R0710.aspx?id=168699>, archived at <https://perma.cc/UZB9-J5BX>.

¹⁸ *Id.* item 5.

¹⁹ *Id.* item 9.

²⁰ HOME RULE ACT § 4.

²¹ Exercising their right to self-governance as specified in Addendum 1, item 1 to the Home Rule Act, *supra* note 17.

²² Danish Government Memorandum of 19 May 1982, in Commission of the European Communities, Status of Greenland [hereinafter Commission Report] (Feb. 22, 1983), at 5, BULLETIN OF THE EUROPEAN COMMUNITIES SUPP. 1/833, <http://aei.pitt.edu/5173/1/5173.pdf>, archived at <https://perma.cc/8LPA-5CNB>.

²³ Treaty Amending, with Regard to Greenland, the Treaties Establishing the European Communities, 1985 O.J. (L 29) 1, [http://naalakkersuisut.gl/~media/Nanoq/Files/Attached Files/Bruxelles/EU and Greenland/The European Union and Greenland/Greenland Treaty eng.pdf](http://naalakkersuisut.gl/~media/Nanoq/Files/Attached%20Files/Bruxelles/EU%20and%20Greenland/The%20European%20Union%20and%20Greenland/Greenland%20Treaty%20eng.pdf), archived at <https://perma.cc/Z6P7-6WBX>.

²⁴ *Id.*

²⁵ *The Greenland Treaty of 1985*, NAALAKKERSUISUT [GREENLANDIC PARLIAMENT], <http://naalakkersuisut.gl/en/Naalakkersuisut/Greenland-Representation-to-the-EU/European-Union-and-Greenland/The-Greenland-Treaty-of-1985> (last visited Apr. 21, 2017), archived at <https://perma.cc/M8J7-J7YQ>.

²⁶ Danish Government Memorandum of 19 May 1982, *supra* note 22, at 5.

²⁷ As cited in LOUKACHEVA, *supra* note 5, at 115.

The Danish government initially only proposed that Greenland be withdrawn from the geographical scope of the EEC, European Coal and Steel Community (ECSC), and European Atomic Energy Community (EAEC) treaties.²⁸ The European Communities responded on May of 1982 and issued a draft opinion on the withdrawal and its terms.²⁹ The Commission considered several aspects that were unique to Greenland, including its geographic location, its small population, its small economy, and its native population.³⁰

At the time of withdrawal, Greenland was receiving substantial aid in the form of infrastructure aid and social projects from the EEC,³¹ as it was “considered a priority target for various types of assistance.”³² It actually received nine times the average amount of aid received by other EEC Members and its aid was not capped.³³ Greenland had also received some European Currency Unit (ECU) 52.2 million (about US\$56 million at current rates)³⁴ in loans from the European Investment Bank.³⁵

During Greenland’s EEC membership years the EEC countries had received a considerable increase in access to the Greenlandic fishing industry, at the expense of access by non-EEC members.³⁶ The exports to the EEC amounted to 80% of Greenland’s total exports.³⁷

Issues for discussion during withdrawal negotiations thus centered on Greenland’s benefits, access to Greenland’s fishing industry, and vested rights of Community workers in Greenland.³⁸ In addition, relationships between the EEC and nonmembers were affected as treaties had been negotiated between Canada, Norway, and the Faroe Islands that included Norwegian and Faroese access to Greenlandic waters.³⁹ Thus, the final proposal from the Commission was that Greenland be awarded Overseas Country and Territory (OCT) status for all areas except its fishing industry.⁴⁰ This was considered a flexible arrangement at the time.⁴¹

²⁸ Danish Government Memorandum of 19 May 1982, *supra* note 22, at 6–7.

²⁹ *Id.* For background, *see* Mason, *supra* note 14.

³⁰ Danish Government Memorandum of 19 May 1982, *supra* note 22, at 10.

³¹ LOUKACHEVA, *supra* note 5, at 116, 195 n.56.

³² Danish Government Memorandum of 19 May 1982, *supra* note 22, at 10. The aid was received from the European Social Fund (ESF) and European Regional Development Fund (ERDF). Commission Report, *supra* note 22, at 16.

³³ Commission Report, *supra* note 22, at 16.

³⁴ The euro did not come into existence until 1999.

³⁵ Commission Report, *supra* note 22, at 17.

³⁶ *Id.* at 18.

³⁷ *Id.*

³⁸ *Id.* at 16–21.

³⁹ *Id.* at 23.

⁴⁰ *Id.* at 38, 42.

⁴¹ Mason, *supra* note 14, at 874.

Through the negotiation process, Greenland was able to negotiate and set its own rules regarding fisheries, specifically quotas, through a fisheries agreement with Denmark and the European Communities, in which EEC Member States would also pay to keep their access to Greenlandic waters.⁴² In the final text, the Greenlandic fishing industry was recognized as an essential economic activity.⁴³ As such, the agreement did not prevent Greenland from claiming the exclusion paragraph of GATT 1947, a paragraph which would allow Greenland to set up temporary prohibitions and restrictions to protect these interests.⁴⁴

Greenland's withdrawal was resolved by the creation of a Treaty between Greenland and the EEC.⁴⁵ The Commission granted formal withdrawal approval on February 22, 1983.⁴⁶ Withdrawal was finalized as of January 1, 1985, when Greenland became an OCT.⁴⁷ As an OCT, Greenland had to ensure that EEC Member States were afforded at least as favorable treatment as that afforded to nonmember countries.⁴⁸ Because Greenland is an OCT member, it is also represented in Brussels.⁴⁹

Once finalized, the protocol to the EEC-Denmark-Greenland Fisheries Agreement provided for payment in return for EEC fishing rights outside of Greenland.⁵⁰ These rights were not substantially different from the rights that EEC Members enjoyed prior to Greenland's withdrawal from the EEC.⁵¹ As an OCT, Greenland would have been outside the free trade

⁴² Agreement on Fisheries between the European Economic Community, on the One Hand, and the Government of Denmark and the Local Government of Greenland, on the Other (1985 Agreement on Fisheries) arts. 2(1), 6 & 8, 1985 O.J. (L 29) 9, [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:21985A0201\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:21985A0201(01)&from=EN), archived at <https://perma.cc/A8LC-RE8C>. Article 2(1) of the Agreement provides the right to fish, article 6 establishes Greenland's right to be paid, and article 8 addresses the right of EEC Members to have special priority and get additional quotas (supplementary catch possibilities).

⁴³ *Id.*

⁴⁴ General Agreement on Tariffs and Trade (GATT 1947), Oct. 30, 1947, 55 U.N.T.S. 194, art. XI(2)(a), https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm, archived at <https://perma.cc/283T-BA7Z>. At the time, Greenland was part of Denmark and therefore subject to the General Agreement on Tariffs and Trade.

⁴⁵ *The Greenland Treaty of 1985*, NAALAKKERSUISUT, *supra* note 25.

⁴⁶ Commission Report, *supra* note 22, at 12.

⁴⁷ Protocol on Special Arrangements for Greenland to the Treaty Amending, with regard to Greenland, the Treaties Establishing the European Communities art. 3, 1985 O.J. (L 29) 1; *see also Overseas Countries and Territories (OCTs)*, EUROPEAN COMMISSION, http://ec.europa.eu/europeaid/regions/octs_en (last visited Apr. 17, 2017), archived at <https://perma.cc/G7ED-C2LM>.

⁴⁸ Danish Government Memorandum of 19 May 1982, *supra* note 22, at 20.

⁴⁹ *Greenland Representation to the EU, Brussels*, NAALAKKERSUISUT, http://naalakkersuisut.gl/en/Naalakker_suisut/Greenland-Representation-to-the-EU (last visited Apr. 21, 2017), archived at <https://perma.cc/3FCB-C786>.

⁵⁰ Agreement on Fisheries, *supra* note 42, art. 6. Payment amounted to ECU 26.5 million, about US\$28.4 million. Protocol on the Conditions Relating to Fishing Between the European Economic Community, on the One Hand, and the Government of Denmark and the Local Government of Greenland, on the Other [Protocol to Agreement on Fisheries] art. 3(1), 1985 O.J. (L 29) 14, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.1985.029.01.0014.01.ENG&toc=OJ:L:1985:029:TOC, archived at <https://perma.cc/W6GH-WUHK>.

⁵¹ *Compare* Danish Government Memorandum of 19 May 1982, *supra* note 22, with Agreement on Fisheries, *supra* note 42.

zone, had it not been for the special conditions on Greenlandic OCT status in relation to fisheries.⁵²

IV. Greenland's Current Self-Governance and Relationship with the EU

The Greenlandic Home Rule Act was replaced with the Self-Governance Act in 2009,⁵³ following a national referendum on self-governance held on November 25, 2008.⁵⁴ More than 75% of Greenlanders voted in favor of it.⁵⁵ Under the Self-Governance Act, Greenland assumed greater independence and now has additional fields of legislative and executive power, including over mineral resource activities.⁵⁶ A guide on interpreting the Self-Governance Act has been issued.⁵⁷

The fisheries agreement between Greenland, Denmark, and what is now the EU has changed over the years since the EU's formal creation in 1993.⁵⁸ Greenland still maintains both fishing and cooperation agreements with the EU.⁵⁹ These agreements are renegotiated by Greenland, Denmark, and the EU every six years.⁶⁰ The quotas on fisheries are renegotiated every year.⁶¹ The current protocol is in place from January 1, 2016, to December 31, 2020.⁶² The first

⁵² Mason, *supra* note 14, at 873.

⁵³ ACT ON GREENLAND'S SELF-GOVERNANCE, *supra* note 9, <http://naalakkersuisut.gl/~media/Nanoq/Files/Attached%20Files/Engelske-tekster/Act%20on%20Greenland.pdf>, archived at <https://perma.cc/GNJ8-E72R>.

⁵⁴ *Selvstyrets indførelse*, NAALAKKERSUISUT, <http://Naalakkersuisut.gl/da/Naalakkersuisut/Selvstyre> (last visited Apr. 18, 2017), archived at <https://perma.cc/TB34-RUDT>; *Den grønlandske selvstyreordning*, STATSMINISTERIET, http://www.stm.dk/_a_2566.html (last visited Apr. 17, 2018), archived at <https://perma.cc/V6PM-UNE4>.

⁵⁵ *Selvstyrets indførelse*, NAALAKKERSUISUT, *supra* note 54.

⁵⁶ ACT ON GREENLAND'S SELF-GOVERNANCE § 7, *supra* note 9.

⁵⁷ Vejledning om ministeriers behandling af sager vedrørende Grønland, VEJ nr 58 af 02/07/2012, <https://www.retsinformation.dk/Forms/R0710.aspx?id=142582>, archived at <https://perma.cc/J2GS-7RED>.

⁵⁸ See Joint Declaration by the European Union, on the One Hand, and the Government of Greenland and the Government of Denmark, on the Other, on Relations between the European Union and Greenland, Mar. 19, 2015, https://ec.europa.eu/europeaid/sites/devco/files/signed-joint-declaration-eu-greenland-denmark_en.pdf, archived at <https://perma.cc/NUL5-5KDN>.

⁵⁹ E.g., Fisheries Partnership Agreement between the European Community, on the One Hand, and the Government of Denmark and the Home Rule Government of Greenland, on the Other Hand, 2007 O.J. (L 172) 4, <http://naalakkersuisut.gl/~media/Nanoq/Files/Attached%20Files/Bruxelles/EU%20and%20Greenland/Fisheries/4%20Fisheries%20Agreement.pdf>, archived at <https://perma.cc/8C9V-24JS>; Protocol Setting Out the Fishing Opportunities and Financial Contribution Provided for in the Fisheries Partnership Agreement between the European Community on the One Hand, and the Government of Denmark and the Home Rule Government of Greenland, on the Other Hand, 2012 O.J. (L 293) 5, <http://naalakkersuisut.gl/~media/Nanoq/Files/Attached%20Files/Bruxelles/EU%20and%20Greenland/Fisheries/4%20Protocol%2020132015%20ENG.pdf>, archived at <https://perma.cc/6KZU-99EL>; Joint Declaration, *supra* note 58.

⁶⁰ Fisheries Partnership Agreement, *supra* note 59, art. 12.

⁶¹ Protocol Setting Out the Fishing Opportunities, *supra* note 59, art. 1.2.

⁶² *Grønland: Fiskeripartnerskabsaftale*, EUROPA-KOMMISSIONEN, FISKERI, https://ec.europa.eu/fisheries/cfp/international/agreements/greenland_da (in Danish; last visited Apr. 17, 2017), archived at <https://perma.cc/TQ6D-CL4C>; Rådets Afgørelse (EU) 2015/2103 af 16. november 2015 om undertegnelse på Den Europæiske Unions vegne og midlertidig anvendelse af protokollen om fastsættelse af de fiskerimuligheder og den finansielle

agreement was in force for ten years from 1985 to 1995.⁶³ Greenland negotiates its fisheries quotas by itself, but may request support from Denmark, as seen in the Danish role in mackerel negotiations.⁶⁴

The EU has budgeted some €17.8 million (about US\$233.6 million) in aid to Greenland for the period 2014 to 2020.⁶⁵

modydelse, der er omhandlet i fiskeripartnerskabsaftalen mellem Det Europæiske Fællesskab på den ene side og den danske regering og det grønlandske landsstyre på den anden side, 2015 O.J. (L 305) 1, <http://eur-lex.europa.eu/legal-content/da/ALL/?uri=CELEX:32015D2103&qid=1462893502419> (in Danish), archived at <https://perma.cc/D4DV-6SAV>; Council Decision (EU) 2015/2103 of 16 November 2015, on the Signing on Behalf of the European Union and Provisional Application of the Protocol Setting Out the Fishing Opportunities and Financial Contribution Provided For in the Fisheries Partnership Agreement between the European Community, on the One Hand, and the Danish Government and Greenlandic Government, on the Other, 2015 O.J. (L 305) 1, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D2103&from=da>, archived at <https://perma.cc/2BZQ-WH24>; Protocol Setting Out the Fishing Opportunities and the Financial Contribution Provided For by the Fisheries Partnership Agreement between the European Community on the One Hand, and the Government of Denmark and the Home Rule Government of Greenland, on the Other Hand, 2015 O.J. (L 305) 3, [http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22015A1121\(01\)&from=DA](http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22015A1121(01)&from=DA), archived at <https://perma.cc/9VPE-QBFB>.

⁶³ 1985 Agreement on Fisheries, *supra* note 42, art. 15.

⁶⁴ *Grønland kan selv forhandle makrelkvote*, FISKERITIDENDE.DK (Apr. 18, 2014), <http://fiskeritidende.dk/groenland-kan-selv-forhandle-makrelkvote/>, archived at <https://perma.cc/VH7C-MZU8>; Rosa Thorsen, *Grønland kan selv forhandle makrel*, SERMITSIAQ (Apr. 16, 2014), <http://sermitsiaq.ag/groenland-kan-forhandle-makrel>, archived at <https://perma.cc/V4MK-Z4YC>.

⁶⁵ Programming Document for Sustainable Development of Greenland 2014–2020, https://ec.europa.eu/europeaid/sites/devco/files/signed_programming_document_for_sustainable_development_of_greenland_2014-2020_colour.pdf (copy on file with author).