

UK-EU TRADE AND COOPERATION AGREEMENT SUMMARY ANALYSIS

Brexit Office



I. INTRODUCTION AND BACKGROUND

- 1.1 As a member state the United Kingdom (UK) was bound by the European treaties which underpin the European Union (EU) and although the UK left the EU in January 2020 we remained subject to EU law until the transition period ended at 11pm on 31st December 2020.
- 1.2 The withdrawal agreement signed by both parties in October 2019 released the UK from its obligations, to 'ever closer political union', and to the four fundamental freedoms of the EU and put in place provisions to protect and preserve the status of UK and EU citizens already resident within each other's territory, agreements about the UK's ongoing financial liabilities, the so called 'divorce payment' and the 'backstop' for Northern Ireland.
- 1.3 Alongside the withdrawal agreement the two parties agreed a political framework for their future relationship. The central commitment within this document was to ensure that trade remained as frictionless as possible. After 11 months of tense and often fractious negotiations the Prime Minister announced that a trade deal had been reached on Christmas Eve, just 6 days before the end of the transition period.
- 1.4 The Trade and Cooperation Agreement (TCA) between the UK and the EU provides for 100% tariff liberalisation, meaning there will be no tariffs or quotas on the movement of goods between the UK and the EU.
- 1.5 The United Kingdom is now a 'third country' outside the Single Market and Customs Union. This means that in future the movement of goods between the UK and the EU will be subject to the full range of EU nontariff entry requirements.
- 1.6 The TCA is arranged in 7 parts but we have focussed our analysis on part 2, covering Trade, Transport, Fisheries and other arrangements which is by far the most relevant

TRADE, TRANSPORT, FISHERIES AND OTHER ARRANGEMENTS

2.0 Trade in goods

- 2.1 The TCA establishes zero tariffs or quotas on trade between the UK and the EU, where goods meet the relevant rules of origin. This means that as the UK leaves the Single Market and Customs Union, UK businesses and consumers will not have to face the economically damaging consequences of tariffs on 1 January 2021 that would have resulted from no-deal.
- 2.2 The rules of origin are designed to ensure that only 'originating' goods are able to benefit from the liberalised market access arrangements agreed in the TCA. They allow for bilateral cumulation, where EU inputs and processing can be counted as UK input in UK products exported to the EU and vice versa. They make no provision for diagonal cumulation, whereby component parts from countries with which the EU already has a trade deal would also have been defined as originating in the UK/EU which places UK based businesses at a disadvantage.
- 2.3 The government says these rules are also supported by predictable and low cost administrative arrangements for proving origin. Compliance is nevertheless likely to have a disproportionate impact on SME businesses where economies of scale will be harder to achieve. Anecdotal evidence is already emerging that some continental suppliers are refusing to supply to the UK because the volumes do not justify the cost of meeting the regulatory requirements.
- 2.4 The TCA addresses regulatory barriers to trade between the UK and EU, while allowing both parties the freedom to regulate goods in the way most appropriate for their own market. It includes provisions on technical regulation, conformity assessment, standardisation,

accreditation, market surveillance and marking and labelling. Mutual recognition of conformity assessment will broadly fall away.

- 2.5 It also envisages arrangements to share information on dangerous and non-compliant products on the UK and EU markets. These fall short however of allowing the UK full access to the EU reach system which provides alerts to advise national consumer protection agencies when such products are discovered in circulation.
- 2.6 It includes sector-specific arrangements which seek to promote cooperation and tackle barriers to trade in the automotive, chemical, pharmaceutical, organic products and wine sectors. The NFU report that mutual recognition arrangements are now in place covering organic products and this will be welcome news to the many organic farmers and food producers across the SW peninsula.
- 2.7 The TCA allows that the UK and the EU can maintain fully independent rules to protect human, animal and plant life and health, preserving each Party's right to independently regulate, while not creating unjustified barriers to trade this includes commitments on regionalisation, which enables UK and EU trade to continue from disease or pest-free areas. It commits the UK and the EU to hold regular, joint reviews of their respective SPS border controls.
- 2.8 The UK government has decided to prioritise the flow of goods and the UK Border Operating Model foresees a phasing in of controls. However movement across a border is not something that can be managed unilaterally, as we saw in the form of the pre-Christmas pandemic-induced tailbacks of lorries from UK ports.
- 2.9 For something to move across the border it has to exit one country and enter another. It is surprising then that few friction reducing measures are included in the TCA aside from the mutual recognition of 'trusted trader' (AEO) schemes. There are no substantive derogations, no recognised equivalence in food standards and no adaption period. From 1 January 2021, nothing will be able to enter the EU from Britain unless the relevant information has been submitted to the appropriate border authorities in advance.
- 2.10 This lack of mitigations does not mean that the rules will be generously interpreted or loosely applied. Rather, it means that too many attempting to move goods from GB into the EU will not be ready to meet them. The NFU report that whilst paperwork is often wrong, French and Irish customs officials have been taking a reasonable and understanding approach. They understand that this will change by the end of the week and have expressed concern about the lack of Vets and charging for veterinary services.
- 2.11 Given that the Millbay Ferry terminal will recommence ROPAX sailings in March, it will be important that we pick up on the operational experience of other ports over the next three months to ensure we are ready to meet whatever demands are likely to arise including any potential requirement for HGV transit facilities.

3.0 Trade in Services and Investment

- 3.1 The UK is a services economy. The sector makes up around 80% of the economy and the EU is its largest export market. The TCA will make trade in services between the UK and the EU more difficult.
- 3.2 The agreement establishes the treatment and level of access the UK and EU have agreed to grant each other's service suppliers and investors. It does exceed the Parties' commitments under WTO rules and provides market access across all sectors reflecting the UK and EU's respective Free Trade Agreements with Japan, except in relation to legal services. This falls well short of the current level of access provided by our membership of the EU single market.
- 3.2 From the 1 January, UK nationals planning to service clients in the EU, and EU citizens holding UK qualifications, will typically need to have these qualifications recognised on a state by state basis in the EU.

4.0 Digital Trade

4.1 Whilst the TCA does include some important agreements on data and digital trade, it fundamentally changes the way in which the UK's services sector will be able to export into the EU. The sector will need to adapt rapidly to a country by country, service by service patchwork of market access requirements.

5.0 Intellectual property

5.1 The agreement requires the parties to protect the intellectual property rights of each other's nationals no less favourably than their own. There are also mechanisms for cooperation and exchange of information on intellectual property issues of mutual interest.

6.0 Public procurement

6.1 The agreement extends the coverage of the WTO's Agreement on Government Procurement (GPA) to include sectors such as hospitality, telecoms, property and education. Whilst the GPA is seen as a measure to promote trade liberalisation it imposes an additional administrative burden on the public sector. The additional bureaucracy required serves as a disincentive to SMEs and the limits the use of public procurement as a tool to stimulate the local economy.

7.0 Small and medium-sized enterprises (SMEs)

7.1 The Agreement includes typical commitments to provide SMEs with clear and accessible online information about the Agreement, helping them to trade and do business in each Party's jurisdiction. This covers customs procedures, intellectual property rights, and public procurement. The Agreement commits each Party to provide for a searchable online database, on measures such as customs duties, taxes and rules of origin. The Agreement also establishes a framework that will allow the Parties to work together to increase opportunities for SMEs and to report on their activities.

8.0 Level playing field for open and fair competition and sustainable development

8.1 The Agreement states that trade and investment between the UK and EU "require conditions that ensure a level playing field for open and fair competition, while also recognising that the purpose is "not to harmonise the standards of the Parties". The Agreement sets out level playing field provisions for the following areas: competition; subsidy; state owned enterprises; taxation; labour and social standards; environment and climate; and trade and sustainable development.

8.2 In relation to subsidies, each Party must have in place a domestic subsidy regime that ensures that the grant of subsidies respects the principles set out in the Agreement. In terms of domestic enforcement, UK courts will decide whether a subsidy decision complies with the domestic law that implements the principles. The EU can be an intervening party in a UK case on subsidies (and vice versa).

8.3 The TCA allows that the UK does not have to follow the EU's rules in level playing field areas and is not subject to the jurisdiction of the Court of Justice of the European Union. For provisions on labour and social protection, and the environment and climate, it is recognised that either Party may establish their own levels of protection. At the same time, a form of non-regression approach is used which requires that the Parties do not lower the level of protection afforded below the level in place at the end of the transition period if to do so would impact trade or investment between the UK and EU.

8.4 If material impacts on trade or investment arise as a result of significant divergences between the Parties in the areas of labour and social, environmental or climate protection, or with respect to subsidy control, there is a rebalancing mechanism that allows the concerned Party to take unilateral measures such as imposing tariffs to restore fair competition. An arbitration

panel can be established to decide if the rebalancing measures are consistent with the requirements of the Agreement.

- 8.5 This may have implications for the Government's approach to free port zones which include a significant subsidy and regulatory freedoms covering environmental and labour protections with the express aim of delivering a competitive advantage.

9.0 Road Transport

- 9.1 The Agreement ensures continued market access rights for UK and EU road haulage operators. Operators will continue to be able to move goods to, from and through each other's territories with no permit requirements, and make additional movements within each other's territories, with limits on the number of permitted movements. UK and EU passenger transport operators will be able to continue running occasional services to, from and through each other's territories.
- 9.2 It is unclear at this point whether this will have implications for the Kent Access Permit, which the government introduced as a mechanism to prevent excessive queues of HGVs building up at the Dover port.

10.0 Social Security coordination.

- 10.1 UK workers who are sent by their employer to work temporarily in an EU Member State which has agreed to apply the "detached worker" rules will remain liable to only pay social security contributions in the UK for the period of work in that EU Member State.
- 10.2 On healthcare, where the UK or an EU Member State is responsible for the healthcare of an individual, they will be entitled to reciprocal healthcare cover. This includes certain categories of cross-border workers and state pensioners who retire to the UK or to the EU.
- 10.3 The Agreement confirms that the UK will treat the EU as a bloc for short-term visit visas. This provision will not apply to future Member States unless the UK agrees to do so.
- 10.4 This provisions around healthcare cover for state pensioners and certain categories of cross border workers may mitigate the impact of UK nationals who have been long term EU residents returning to the UK.

11.0 Fisheries

- 11.1 On fishing, the Trade and Cooperation Agreement affirms the UK's status as an independent coastal state, outside the EU's Common Fisheries Policy. Over the next five and a half years, the UK's share of fishing quotas will increase by 25% of the value of the EU catch in UK waters. After that, access will be decided by annual negotiation.
- 11.2 UK fishing boats will be able to sell their catch into the EU's Internal Market without tariffs or quotas. Provision is made for remedies if a party does not grant access to its waters and these will apply even after the end of the five-and-a-half-year adjustment period.
- 11.3 The Agreement is not a good deal for UK fisheries, especially for the English demersal fishing industry. It falls well short of what Ministers led the industry to expect. Except for relatively small groups of vessel owners in the pelagic sector, the benefits are marginal and in some cases illusory.
- 11.4 A separate report covering the implications of the TCA for our fishing industry has been prepared.

OTHER PARTS OF THE TCA

12.0 Common and institutional provisions

- 12.1 A Partnership Council will supervise the operation of the Agreement at a political level and any decisions will be by mutual consent. The Partnership Council will be supported by a

network of other committees, including on trade. These will provide necessary opportunities for technical discussion.

13.0 Law enforcement and Judicial Cooperation in Criminal Matters

- 13.1 The agreement provides for the automated exchange of DNA, fingerprints and vehicle registration, akin to the Prüm Decisions. There is also access to the EU passenger name records (PNR) for the purposes of preventing, detecting, investigating, or prosecuting terrorism or serious crime, subject to safeguards on the use and storage of the information.
- 13.2 The UK, in return, is required to share analysis of PNR data with Europol, Eurojust and member state LEAs. The agreement provides for the automated exchange of DNA, fingerprints and vehicle registration, akin to the Prüm Decisions.
- 13.3 The UK failed to maintain access to the Second Schengen Information System (SIS II). This is the most widely used and largest information-sharing system for security and border management in Europe and operates based on 'real time' alerts. UK officials used the system over 600 million times a year.
- 13.4 The agreement could never replicate the level of cooperation within the EU, however the UK and the EU have secured cooperation that is as close as conceivable, without crossing any of the UK's red lines or undermining the EU's internal legal order.

14.0 Thematic Cooperation

- 14.1 The agreement provides for future cooperation between the UK and EU on emerging challenges, including health and cyber security. The UK and EU have also agreed a joint declaration noting the importance of effectively managing migratory flows, and the UK's intention to engage in bilateral discussion with key EU Member States to discuss suitable practical arrangements on asylum, returns, family reunion for unaccompanied minors and illegal migration.

15.0 Participation in Union Programmes

- 15.1 The TCA sets out the arrangements for the UK's participation in Union programmes and access to programme services. These terms provide for a fair and appropriate financial contribution towards the programmes, fair treatment of UK participants, balanced provisions to ensure the sound financial management of programme funds, and appropriate governance arrangements.
- 15.2 The additional detail on the individual programmes the UK is intending to participate in - Horizon Europe, Euratom Research and Training, and Copernicus - will be included in a protocol to the main Agreement, once the regulations establishing the programmes are settled.

16.0 Dispute Settlement and Horizontal provisions

- 16.1 This section covers arrangements for dispute settlement, and the fulfilment of obligations and safeguard measures. It also sets out the basis for cooperation, restating existing commitments to human rights, the rule of law, the fight against climate change and countering the proliferation of weapons of mass destruction.
- 16.2 The UK and EU have also restated commitments in other areas – including small arms and light weapons, serious crimes of concern to the international community, counter-terrorism, and issues of shared economic, environmental and social interest.
- 16.3 Finally the UK and EU have restated their commitment to high personal data protection standards, which contribute to trust in the digital economy and to the development of trade, and are key enablers for effective law enforcement cooperation.

17.0 Final provisions

17.1 These provide for a review of the agreement between the EU and the UK every five years. It also provides for the procedure to be followed if a new country accedes to the EU.

OTHER AGREEMENTS**18.0 The Draft EU-UK Security of Information Agreement**

18.1 Governs the voluntary exchange of classified information.

19.0 The Draft EU-UK Civil Nuclear Agreement

19.1 The UK and the European Atomic Energy Community (Euratom) have agreed a separate Nuclear Cooperation Agreement (NCA). An NCA is a commonly used international treaty which gives a legal underpinning to civil nuclear cooperation, and both Euratom and the UK already have similar agreements with several other countries. It provides and facilitates close cooperation on the supply and availability of medical radioisotopes.

19.2 While this NCA provides the legal framework for long-term cooperation, the basis for the UK's participation in the Euratom Research and Training Programme for the period 2021-2025 and "Fusion for Energy" is set out in the Trade and Cooperation Agreement.

COMMENTARY**20.0 Assessing the deal**

20.1 An objective assessment of the deal requires a baseline against which to assess it. There are a number of possible alternative approaches.

- Comparison with the arrangements available to an EU member state
- Comparison with a 'no deal' outcome
- Assessment against the negotiating aims set out by the government
- Anticipated economic impact

	EU member state	Norway type agreement	Chequers proposal	EU/UK deal	No Deal
Single Market	✓	✓	x	x	x
Customs Union	✓	✓	x	x	x
European Court Supremacy	✓	✓	✓	x	x
Free movement of people	✓	✓	x	x	x
Frictionless Trade	✓	✓	✓	x	x
Regulatory Alignment	✓	✓	✓	x	x
EU budget	✓	✓	x	x	x
Common Fisheries Policy/ Common Agricultural Policy	✓	x	x	x	x
Political Representation	✓	x	x	x	x
Independent Trade Policy	x	x	✓	✓	✓

- 20.2 Each of these models introduce elements of subjectivity, not least the question of whether to consider any given element as a benefit or a restriction. The table above compares different models and the elements they include without making any value judgement about whether they are desirable or not.
- 20.3 The referendum result in favour of leaving the European Union was given effect on January 31 2021. Neither the referendum ballot nor the legislation passed by parliament to implement it said anything about the nature of our future relationship with the European Union.
- 20.4 A range of options were debated during the referendum which were characterised as either 'soft' or 'hard'. From the table it can be seen that the deal we have agreed combining the elements contained in the withdrawal agreement and the trade and cooperation agreement are at the hard end of the spectrum.
- 20.5 Comparing the deal with the 'chequers' proposal set out by the last government which formed the basis for the negotiation of the withdrawal agreement it is clear that the final deal has become much closer to a no deal arrangement.

21.0 Negotiating aims

- 21.1 The Chequers proposals prompted the current Prime Minister to resign from the role he then held as Foreign Secretary because, he argued, they left the UK as a 'vassal state' of the EU. The negotiating red lines subsequently set by the government at the outset of trade negotiations aimed to secure: -
- no extension to the transition period;
 - no obligations for our laws to be aligned with the EU's, or for the EU's institutions, including the Court of Justice, to have any jurisdiction in the UK;
 - an end to the 'relative stability' mechanism for sharing fishing quotas in favour of zonal attachment.
- 21.2 It might be argued that in fact the deal has not yet been completed as a number of matters are still outstanding and the deal only specifies how these will be addressed, leaving a significant degree of uncertainty about the outcome in some crucial regards, e.g. there is as yet no data adequacy agreement only a temporary arrangement and an in principal commitment.
- 21.3 The deal was only agreed in the final days and hours of the transition period and this left almost no opportunity for parliamentary scrutiny and whilst it does provide some certainty for business no lead in time is left for them to adapt to what is a very significant change.
- 21.4 The deal does provide for regulatory independence for the UK but the frictionless trade provisions anticipated by the withdrawal agreement are sacrificed. UK businesses will need to evidence compliance with rules of origin and the EU regulatory framework. These non-tariff mechanisms will act as a barrier to UK trade and an administrative burden for UK business.
- 21.5 Relative stability rather than zonal attachment continues to underpin the allocation of fishing quota between UK and EU fishing fleets.

22.0 Sovereignty

- 22.1 The UK has reclaimed some aspects of its sovereignty that it has shared with the European Union for the last 40 years but in doing so we have weakened our trading links with our closest trading partners and this will have a significant negative impact on our future economic growth, economists' estimates range around the 5% mark over the next 10 years.
- 22.2 The UK is now free to implement an independent trade policy and the Department for International Trade has negotiated trade agreements with 31 countries which will come into force on 1 January 2021. As yet these do not encompass the full range of countries with whom we had favourable trading terms as an EU member state and we have yet to reach a trade

agreement with countries such as Australia and New Zealand with whom we had close trading relationships before we joined the European Common Market.

- 22.3 We will now be in competition with our former EU partners to conclude trade deals with the world's emerging economies. Our domestic market of 60m people will not be as attractive as the EU single market of more than 500m. The TCA will enable the EU to apply trade sanctions should we try to compete by offering a lighter touch regulatory regime.