THE UK'S NEGOTIATIONS WITH THE EU ON A NEW TRADING FUTURE

Aspirations, Benchmarks and Measures of Success

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EXECUTIVE SUMMARY

INTRODUCTION

As the deadline draws closer for the United Kingdom (UK) to strike a deal with the European Union (EU) before the end of the transition period, the condensed timeframe and the unforeseen social and economic circumstances of 2020 have placed the parties under unprecedented pressure to conclude a deal – and to do this quickly.

The challenges of 2020 aside, it is now well understood that this was never an ordinary bilateral negotiation. Not only did it extend significantly beyond a standard trade deal, it also moves in the opposite direction by separating systems rather than trying to merge systems together which is the norm in Free Trade Agreements (FTAs). Therefore, the political dynamics, potential impacts of the proposed changes and the negotiations themselves will be significantly different to any previous trade deal on record.

The potential impacts in particular are worth considering. In usual trade arrangements two or more parties come together to build upwards from their current trading base. Any gains from the deal generally add to each party's status quo, improving the competitiveness of a party's exports within the partner's markets.

In this trade deal, the status quo will be dismantled and re-arranged in many sectors and as a result there will be significant change and cost – borne by producers and consumers of goods and services on both sides. The objective of these negotiations therefore should be to agree on arrangements that minimise the change and costs as much as possible and maximise future opportunities.

In that context, this report aims to objectively highlight what the UK has committed to achieving through a future trade arrangement – looking especially at the most important areas of goods and services trade for the UK.

In the trade of goods, the report looks at what the UK has stated as its aims in each of tariffs, quotas, rules of origin, customs and trade facilitation measures as well the non-tariff issues of Sanitary and Phytosanitary (SPS) measures and Technical Barriers to Trade (TBT).

Similarly, on the services trade side the report assesses the UK's commitments to its key interests – cross border supply of services, financial services, digital services, road transport services, the movement of people for business purposes, mutual recognition of professional qualifications and audio-visual services.

Finally, we take a brief look at the UK's position on the issues which have proven to be sticking points in the negotiations to date – level playing field provisions, state aid and a fisheries arrangement. In setting out the UK's aims on all of these areas, the report looks at what the practical implications are of these positions and the dynamics in the negotiations, drawing on precedent in other FTAs.

TRADE IN GOODS

Trade in goods typically tends to dominate every trade negotiation - and within it **tariff arrangements** are the headline element. Given that changes to tariffs are easier to quantify and negotiate with, the process tends to be well worn and the most straightforward to progress.

What is different about these trade negotiations is that they are being undertaken in an environment where the parties are transitioning from a single market with no tariff restrictions to one where failure to conclude a deal would see the parties facing each other's MFN tariffs for the first time in decades. In the case of the UK, trade with the EU would mean UK exports facing average tariffs of 11.4 per cent for agricultural goods (with tariffs on some sensitive products being over 200 per cent) and average tariffs on non-agricultural goods of 4.2 per cent, including tariffs on passenger cars at 10 per cent and those for apparel and chemicals peaking at 12 and 13 per cent respectively. For UK producers, manufacturers and consumers the price implications of such tariff hikes are significant.

Knowing this, both the UK and EU have committed to seeking a **tariff free and quota free regime** for trade in goods. However, total elimination of tariffs has often proven elusive in FTAs as countries seek to protect or ease the impact on sensitive goods, especially in agriculture and industries such as automotive and textiles and apparel, by maintaining some tariffs, at least temporarily. That said, the EU has shown a capacity to approach and, in the case of its arrangements with Switzerland, achieve completely tariff free trade through trade negotiations. It's likely that achieving tariff and quota free access will be held up as a prize worth trading off with other aspects of the trade or broader set of negotiations.

Even if free trade between the two parties is achieved, it is important to note that it does not equate to the free movement of goods across EU borders that has been the case for the UK for decades. The administrative demands of accessing preferential tariffs and the customs formalities that accompany them will be real issues. UK manufacturers, traders and consumers will face considerable barriers and costs if their current trading access and freedom is diminished significantly as a result of the UK leaving the EU without a zero tariff, high quality trade agreement in place.

Tariff outcomes form just one of a number of elements that determine how free the trade in goods actually is in any free trade agreement. What can often be more significant barriers are those that happen behind the border in the form of **non-tariff barriers** and include rules of origin, sanitary and phytosanitary requirements and technical barriers to trade, as well as customs and trade facilitation arrangements. Each of these essentially administrative elements can reduce the capacity of FTA partners to trade under the free or preferential tariff rates and can add to the cost of trading. Poor supporting arrangements in any of these areas can undermine the concept of free trade in goods.

Rules of origin determine which goods qualify for preferential trade under an FTA and what exporters and importers are required to do to demonstrate compliance. Overly restrictive rules of origin can make it very difficult for goods to qualify as being of British origin. The UK Government has set an aim of predictable and low-cost administrative arrangements for proving origin. The rules need to be clear and unambiguous and recognise the high levels of integration that already exist between UK and EU manufacturing. The issues to be determined include whether the product specific rules which have been used in the EU's recent FTAs represent an appropriate model for the UK's manufacturing and trade. Adjusting to a new set of rules will not only be an administrative burden, but may also render some goods not qualified to meet the criteria to be classified as a sufficiently British product for the purposes of preferential tariff treatment by the EU.

In addition, **technical barriers** have been recognised as an increasingly significant impediment to trade, especially as tariffs have been reduced over time. Barriers can include:

- standards set for manufacture and handling of goods
- labelling requirements
- inspection and certification regimes.

The UK Government has set a goal of reaching an agreement that addresses regulatory barriers to trade, while preserving each party's right to regulate. The UK Government has stated that the arrangements should build upon World Trade Organisation (WTO) agreements, in line with recent EU free trade agreements with Canada and Japan.

It is unlikely that technical barriers will represent a major issue as long as the UK's regulatory and certification regimes remain closely aligned to that of the EU. However, concerns over EU regulations were a factor in the debate over leaving the EU and the UK Government has repeatedly expressed its right and intention to set regulations with British interests as the highest priority in the future. This leaves the likelihood of meeting in the middle less certain.

Similarly, for trade in agriculture and food products, **sanitary and phytosanitary (SPS) requirements** provide for the health and safety of animals and plants and importantly the people that work with and consume products derived from them. Within the EU, the UK has been part of a robust SPS regime that is recognised as among the world's best practice. The UK Government has committed to building a regime and level of cooperation with the EU that builds on the WTO agreements and borrows from recent EU agreements with Canada and the EU-New Zealand Veterinary Agreement. As its highest priority, the Government believes that the Agreement should protect human, animal and plant life and health, and the environment while facilitating trade access by not creating unjustified barriers to trade while at the same time preserving each party's autonomy over their own SPS regimes. To achieve this, again the UK Government's willingness to stay closely aligned to the EU will be the determining factor.

Finally, **customs and trade facilitation measures** are important in ensuring that goods are able to move smoothly across borders in a timely fashion, while at the same time protecting the integrity of that trade. Poor customs practices can undermine modern manufacturing principles like just-in-time sourcing, and can add considerably to the cost of doing business. The UK Government has committed to establishing streamlined customs arrangements covering all trade in goods with the EU, in order to smooth trade while ensuring that customs authorities remain able to protect their regulatory, security and financial interests. However even the most streamlined of customs arrangements, will not be comparable to the current free movement of goods between the UK and EU. The additional administrative burden and related costs will be substantial, particularly for those whose previous trade experience has been exclusively with the EU. Therefore, measures will need to be put in place to allow traders to adjust to the changes and to cushion these impacts over time.

TRADE IN SERVICES

Beyond the trade of goods, the UK currently enjoys one of the highest levels of liberalised services access in the world by being in the EU market. Within the EU, services can be traded freely across the borders of any member state based on the principle of mutual recognition of each other's systems of operation. After leaving the EU, any deviation from this will result in significant barriers to the UK's services export trade to Europe. Outside the single market the levels of access the EU offers to third countries is significantly lower. In fact, the levels of services liberalisation the world over is significantly lower, and far lower than in the trade of goods. The WTO benchmark sets minimum levels of openness that members are bound to provide. However, in practice, countries frequently apply higher levels of access and performance. FTA commitments are more progressive than the WTO but still often do not have an impact on actual levels of restrictions in services markets around the world.

While the UK has conceded that it will lose this highest level of services access, it has requested that any agreement on services be based on the EU's most liberal FTAs recently negotiated, with a view to ambitiously going beyond them. With a services sector contributing 80 per cent of the UK's economic output and sending 41 per cent of its services exports to the EU, the incentive to push for greater access is high. However, it will not be easy. In both multilateral and bilateral/regional trade negotiations, trade in services always takes second place to trade in goods, and now arguably even trailing behind the dismantling of non-tariff barriers. Unlike goods negotiations, services negotiations with the EU are further complicated by each member state being able to set their own standards and restrictions in each services sector.

The UK is **looking to cover a full range of services sectors in the negotiations** - professional and business services, telecommunications services, courier and postal services, distribution services, environmental services, financial services, transport services and other services of mutual interest. This will be so across all four categories of services

supply - cross-border supply, consumption abroad, through commercial presence and the movement of natural persons.

Of key concern for the UK is its access to the EU **financial services market** – with the financial services sector alone contributing approximately 7 per cent to UK economic output. Currently under the principle of mutual recognition within the EU, UK services providers can freely sell into any EU member state – known as "passporting" rights. Outside the EU no other country has access to these privileges. Without some form of arrangement recognising the **equivalence** of the two regulatory regimes, there will be trade barriers that UK financial services exporters will have to face compared to the current environment.

The UK has called for an equivalence regime to be put in place so its system can be deemed to be equivalent to that of the EU. Even if it is granted, the process is not currently comparable to mutual recognition. Equivalence is only granted to a specified set of services/products, rather than all of the financial services system, and the equivalence systems can be suspended or withdrawn by either party at relatively short notice. The UK position pushes back on these two issues given what's at stake, so financial services will be a difficult area to negotiate on and will most likely be traded off against other issues in the trade negotiations or beyond.

The opportunity for finding common ground is greater in the area of the **temporary entry and stay of people for business purposes**. The current arrangements allow for free movement of citizens between the UK and all EU member states for business (and other purposes). Once the UK leaves the current transition period, there will no longer be automatic free movement, which will result in an immediate change to the ability of people to travel and operate commercially between the two territories.

The UK wants to build on the precedents set in the EU's recent FTAs with third countries in creating a new regime for the movement of business people. Such arrangements will result in UK service providers having to comply with relevant visa and work permit obligations, and there will be an immediate impact on trade. However, given how integrated the two territories are currently, there is potential for the EU to be more liberal in this area in exchange for a concession elsewhere.

Similarly, the **mutual recognition of professional qualifications** is another area in which convergence may be possible, while in the area of **road transport**, the EU is standing by its position that the EU should have lower levels of access than it currently enjoys. On **digital services** there are also major differences between the two sides.

On the whole in the area of **cross border services trade** the UK is calling for the EU's recent FTAs such as those with Japan and Canada to be used as the benchmark – and then requesting greater access above and beyond them. Once again, the key issue is that the standard FTA makes only limited commitments to liberalise services trade compared to the levels of market openness that is typically achieved for goods trade, which has traditionally been the main focus of the agreements.

More recent FTAs have achieved varying levels of liberalisation in services trade beyond what's set out in the WTO system, with **the Comprehensive and Economic Trade Agreement (CETA) between the EU and Canada**, being the most open example, followed by the **EU-Japan Economic Partnership Agreement (EPA)**. The levels of services liberalisation committed to in these agreements tend to be relatively closer to the levels applied in practice, compared to the much higher bound commitment levels in the WTO. However, the UK Government will have to go even beyond the CETA agreement in order to maintain the high level of services access it currently has to the EU market.

OTHER CRITICAL NEGOTIATING ISSUES/STALEMATE ISSUES

The concept of committing to **a level playing field** has become a key issue threatening to derail the negotiations. The UK and EU currently have very different positions on level playing field commitments, despite both having agreed to negotiating them in the October 2019 Political Declaration. The UK insists it will not be governed by EU regulations and law in a range of areas. It is assuring the EU it will continue to uphold high standards on the full range of issues that fall within the level playing field commitments. The UK wants to commit to the type of provisions contained in standard free trade agreements, without dispute resolution measures applying. The EU however claims that on the basis of the high level of integration that currently exists between the EU and UK, legal commitments based on EU standards and subject to a dispute resolution system are necessary for this type of economic partnership. Neither side has shifted from its position.
Similarly, the issue of **state aid** is causing a stalemate. The EU is adamant that its state aid rules should apply and be enforced in the UK as well as being subject to dispute settlement. In contrast the UK has been equally resolute that it will not go further than standard FTAs, will not align with EU laws and will have its own system subsidy regime.

Beyond that, the other area threatening to hold up progress is in **fisheries arrangements** - as the parties seek to determine how the existing EU management of the sustainable use of fishing waters should be adapted to reflect the new independence of the UK and its management of its territorial waters and exclusive economic zone (EEZ). The EU has proposed specific treatment of fisheries based on its interpretation of the commitments in the Political Declaration – which would see joint management of fishing in the EEZs of the EU and UK. The UK has rejected this approach, believing that the UK should have exclusive right to manage access to its EEZ, as is the case with any other independent coastal nation. The parties remain wide apart on this issue also.

CONCLUSION

Despite these core issues holding up progress, there still remains potential for a trade deal to be reached. The question is, however, whether it be a truly comprehensive free trade agreement. History and other countries' experiences have shown us that there is a correlation between the time it takes to negotiate a truly comprehensive trade arrangement and the depth and level of liberalisation achieved in the outcomes. A shallow agreement will result in significant trading barriers between the UK and EU and the resulting shocks could be substantial. The UK cannot afford to end up in this situation and it will need to secure key outcomes fast or agree to keep negotiating to actually deliver a truly comprehensive deal.

Progress towards a high-quality agreement is difficult to measure in the midst of the process. As with many things in politics, there is a degree of theatre in trade negotiations and the public statements that accompany them. But the negotiations are carried out behind closed doors, rather than in an open theatre, and transparency is limited.

As a result, any announcements made about progress during negotiations have to be viewed in the context of this political theatre. Parties seek to work a fine line in an attempt to achieve the best possible outcome from the negotiations while protecting their "red lines" – the outcomes that each party has set as must-have elements in the agreement. This is the case with the UK negotiations on its future arrangements with the EU – progress and the extent and quality of outcomes could remain obscured until the last moment.

FTA negotiations are also undertaken on the basis of "nothing is agreed until everything is agreed". What this means in practice is that the entire agreement is treated as a single balanced package and any agreement between the parties on any single aspect of the agenda is treated as provisional until final agreement is reached. As such the parties are unlikely to announce anything specific about particular aspects of the negotiations until an agreement is achieved – or not achieved.

Despite these limitations on the flow of information throughout the negotiation of a free trade agreement, as a key stakeholder in the outcomes, industry must be consulted and involved throughout. Countries with long and successful records in negotiating trade agreements rely heavily on industry advice and support to reach high quality outcomes. The point of a trade deal is to benefit industry (and through it the wider economy). Without industry advice and support, negotiators cannot direct the negotiations in the country's interests and whether they're adequately involved will determine the level and quality of the results.

This report sets out what the UK has committed to achieving through the trade negotiations with the EU and highlights what it might look like in practice, drawing on its most advanced FTAs with third countries. It provides a foundation against which to keep assessing how the UK is tracking against its commitments as the negotiations progress.

In light of what's presented, it's easy to conclude that the UK needs to push hard for a deal that's sufficiently open and which goes beyond what's set out in existing FTAs. To not conclude such a deal risks introducing significant barriers and hefty costs for the goods and services exports that the UK heavily relies on. There will be resulting shocks to the system.

To manage these impacts the UK will need to achieve a good trade deal that, inter alia, finds a middle ground on major issues such as regulatory alignment. Every trade negotiation requires conceding some ground and meeting in the middle, despite political pressures from all sides. This deal will be no different. In order to leave the EU successfully, with minimal impact at home and providing a strong foundation for a positive new trade environment, the UK will have to put industry and the economy first and invest the time and long-term commitments needed to deliver a trade deal befitting of the world's sixth largest economy.

TRADE IN GOODS

WHAT HAS THE UK COMMITTED TO DELIVERING ON GOODS TRADE?

Importance of trade in goods

Trade in goods is always a headline issue in a trade negotiation. It is the most visible part of trade arrangements through its effect on tariffs.

Tariffs on imports directly impact the prices paid by domestic consumers and manufacturers, while tariffs levied by other countries on the UK's exports directly impact the competitiveness of those goods. It is also easy to quantify the impact of an FTA– tariff rates of 5, 10 or 20 per cent may be removed immediately, and the outcomes can be measured by the proportion of tariff lines or the value of trade facing tariff-free trade.

Historically, the success of an FTA was always measured by the increase in low or no tariff access that a country gained with its trading partner(s).

For the UK, goods trade represents the majority of trade with the rest of the world. In 2019, the UK exported £372 billion of goods, representing 54 per cent of the UK's total exports, and imported goods to the value of £501.7 billion – almost 70 per cent of the UK's total imports. Trade with the EU accounted for 46 per cent of the UK's goods exports and 53 per cent of its imports [1].

Given the volumes of trade between the EU and the UK, retaining zero level tariffs between the EU and UK will be a high priority for both sides. Without it, there will be significant cost increases for exporters and importers.

The role of industry consultation in trade in goods negotiations

Effective consultation with industry is essential to ensuring negotiating proposals and outcomes meet the needs of the industry. Industry needs to be part of setting goals, testing proposals and advising on the impacts of compromises and outcomes. It is industry that has understanding of supply chains and manufacturing processes and can be a vital source of intelligence on the real priorities and pressure points for their negotiating partners. Good trade negotiators will build up networks and levels of trust with key industry players and will work with them, bringing them into their confidence, throughout the negotiations.

Different approaches are taken in different countries to giving industry an effective voice in trade negotiations. The US has established 14 Industry Trade Advisory Committees (ITACs) made up of more than 300 trusted advisers. They examine and report on FTA proposals and are consulted throughout the process[2]. Australia, in common with a number of other countries, has taken the approach of holding industry roundtables before and after each negotiating round of major negotiations to seek input and advise industry of progress. Industry representatives are encouraged to travel to negotiating rounds to provide advice, meet with their counterparts in the partner country and assist in pressing the case for preferred outcomes with negotiators from the other party.

This level of industry involvement and trust is a valuable tool for trade negotiators and should be insisted upon by industry, which is so reliant on outcomes that meet their needs for industry health and growth.

The starting point: Goods trade with the EU vs the WTO

As a member of the EU, the UK enjoyed tariff-free trade with EU members. All EU members applied the same tariffs to goods from non-EU countries under WTO rules. These WTO commitments require

[1] Source – UK Office for National Statistics

[2] See https://www.trade.gov/industry-trade-advisory-center

countries to levy the same tariffs on all other members without distinction – the "most favoured nation" (MFN) principle. The only exception to this rule is if two members are parties to a comprehensive FTA, they can apply preferential tariff arrangements to each other.

Once the UK leaves the Union, the EU is obliged to levy tariffs on UK imports at WTO MFN rates – unless it negotiates a comprehensive FTA before the UK ultimately leaves. The UK, as a newly independent member of the WTO, would also be obliged to charge MFN level tariffs on imports from the EU. By default, the tariffs would be the same as the common EU tariffs which the UK applied while it was a member of the EU.

MFN tariff rates at the EU border are relatively low – they average around 5.1 per cent on simple average terms. The tariffs are generally higher on agricultural goods than on non-agricultural products – averaging 11.4 per cent compared to 4.2 per cent. There are zero tariffs on a high proportion of the EU's imports – around 30 per cent of tariff lines.

Despite this, it's important to note that there are some high tariffs within this schedule as demonstrated by the following table:

EU MFN Applied Tariffs – Indicative Rates	Average (%)	Maximum (%)
Agriculture	**11.4**	
Dairy	37.5	205
Sugar and confectionary	24.5	109
Animal products	16.3	112
Cereals and preparations	13.9	62
Fruit, vegetables and plants	10.9	261
Non-agricultural Products	**4.2**	
Passenger cars	10.0	10
Apparel	11.5	12
Chemical	4.5	13
Fish and fish products	11.6	26

Source: WTO, Tariff Database 2020

While this is the outlook facing UK exports should the UK not conclude an FTA with the EU, in May this year, the UK announced its new Global Tariff schedule, which will apply to MFN trade from the end of the transition period, and would also apply to trade with the EU should a deal not be agreed. The new schedule will see a reduction in many of the UK's MFN tariff rates and a large degree of simplification in the schedule[3].

The UK Global Tariff removes MFN tariffs on an additional 17 per cent of tariff lines and reduces or simplifies tariffs (e.g. by converting complex or specific tariff rates to simple percentage rates) on a further 40 per cent of lines. Tariffs are supposed to be removed on goods for which there is no domestic production, while "nuisance" tariffs – those set at levels of less than 2 per cent – are being abolished. In addition, manufacturers will be able to obtain tariff concessions on many of the materials used in manufacturing. At the same time, tariffs on goods competing with key UK manufacturing sectors will be

[3] See https://www.gov.uk/government/news/the-uk-has-announced-its-new-tariff-regime-the-uk-global-tariff-ukgt-on-19-may-2020

retained – car tariffs will remain at 10 per cent, and tariffs will be retained for ceramics, and many fishing and agricultural goods[4].

The EU's MFN tariffs and the UK's Global Tariff represent the effective starting point for the UK-EU tariff negotiations. A "no deal" outcome would leave both sides facing significantly higher tariff barriers than the full tariff free access to each other's markets that existed between the former partners prior to the UK choosing to take a more independent path.

What targets have the UK and EU set for tariff negotiations?

In their Political Declaration (October 2019), the UK and EU agreed to pursue a free trade agreement **providing no tariffs, fees, charges or quantitative restrictions across all sectors**. This objective was restated in the Prime Minister's statement to Parliament in February 2020.

The Declaration makes no mention of how this is to be achieved or over what period of time, and at this stage neither side has qualified the target. However, the history of trade agreements involving the EU and other major trading countries around the world have shown completely tariff-free trade to be an extremely difficult target to reach.

The scorecard on tariff elimination in free trade agreements

The FTA between the EU and Canada (CETA), signed in 2016 and provisionally applied since September 2017, eliminated most but not all tariffs at entry-into-force. For the EU, tariffs on 97.7 per cent of all goods and for Canada tariffs on 98.2 per cent of goods were set at zero from entry-into-force. The parties agreed to eliminate the remaining tariffs over the following 7 years. However, some agricultural goods are excluded from preferential treatment - chicken and turkey meat, eggs and egg products. Nevertheless, it represents one of the more comprehensive trade agreements concluded between developed countries and the most comprehensive deal signed by the EU to date.

In the FTA between the EU and Japan (2019), Japan set zero tariffs on 86 per cent of goods and the EU set tariffs to zero on around 90 per cent of goods at entry-into-force of the agreement. Tariffs will be reduced on remaining goods over 15 years in the case of the EU and 20 years for Japan. But not all tariffs will be eliminated – Japan will retain tariffs on around 3 per cent of goods, including rice, beef and footwear, while the EU will retain tariffs on around 1 per cent of goods.

By comparison, the EU and Switzerland have implemented full tariff free access for goods. This is part of a different approach to negotiating their trade arrangements, based not on a single comprehensive free trade agreement but rather a series of more than 120 bilateral agreements developed over two decades[5].

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)[6] entered into force for seven of its members in late-2018/early-2019 – and which the UK Government has expressed interest in joining. It will eventually remove tariffs on 98 per cent of trade between the parties, although staging of tariff removal ranges from immediately on entry-into-force of the agreement in the case of Singapore, to 3 years for Australia and 6 years in the case of New Zealand, and as much as 20 years in the case of Japan and Vietnam. However, there are some goods excluded from tariff elimination, mostly agricultural goods.

Even some second-generation trade agreements do not manage to eliminate tariffs entirely. The original North American Free Trade Agreement (NAFTA) between the US, Canada and Mexico excluded many

[4] For full details of the arrangements and the process involved in creating the tariff schedule, see Department for International Trade, 2020, *Public Consultation: MFN Tariff Policy – The UK Global Tariff, Government Response and Policy*

[5] See Institute for Government, *The Options for the UK's Trading Relationship with the EU*

[6] The CPTPP is an FTA covering 11 countries in the Asia-Pacific region – Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam

agricultural goods – especially in dairy, sugar and poultry sectors – from tariff elimination or quota-free access. The new US-Canada-Mexico Agreement that replaced NAFTA in July this year improves access for some products – particularly dairy and sugar – but it still does not provide for free trade in goods between the parties.

Given the sensitivities that continue to exist, especially in trade in agriculture and the EU's record in trade agreements, there is a real chance that a new UK-EU FTA will fail to provide completely tariff and quota free trade within an early timeframe, if at all. However, both the UK and EU have expressed strong commitments to achieving tariff free trade, and both sides have frequently reiterated the importance of tariff free access for industry in the UK and EU.

The UK Global Tariff – a double edged sword for FTA negotiations

As noted earlier, in May 2020 the UK released its Global Tariff schedule which will come into effect for MFN trade from January 2021. Under this schedule tariffs on many imported materials used for production within the UK will be reduced or removed while retaining existing tariff protection on goods in key UK manufacturing sectors.

The new schedule is positive news for consumers and manufacturers that make use of imported materials from a range of sources. However, it may create additional competition from imports for some UK manufacturers. At the same time, any positive effects would need to be balanced against any increase in prices for goods imported from the EU in the case of a "no deal" outcome or, if an FTA is agreed, as a result of any remaining tariffs on EU goods.

Also, the new schedule may reduce the capacity of the UK to negotiate effectively with the EU on a new FTA. By reducing MFN tariffs, the new schedule reduces the potential benefits that the EU could gain through an FTA with the UK by reducing the "margin of preference" between what is available through MFN trade and what could be achieved by EU exporters through new preferential tariff arrangements with the UK. In other words, by indicating its willingness to unilaterally drop its MFN tariffs, the UK has given away some of the valuable negotiating currency that could be used to encourage more concessions out of the EU negotiators. This negotiating currency is the most valuable tool that negotiators can bring to the table and countries will jealously guard any possible incentive it can offer to encourage a negotiating partner to improve its offers.

Tariff Rate Quotas

Tariff rate quotas (TRQs) are a means of regulating imports through the use of a two-tier tariff system. A TRQ will allow certain quantities of a product to be imported each year at a zero or low tariff, with any imports above the quota level being subject to a much higher tariff. For instance, a TRQ on fresh lamb meat may allow tariff free imports of, say, 200,000 tonne per year, with any additional "out of quota" imports being subject to a 20 per cent tariff. TRQs can be set either for global imports or amounts might be allocated to particular countries. While TRQs can be used across all categories of goods, they are mainly used to manage trade in agricultural goods. TRQs are not an absolute quantitative restriction in that they do not limit total imports of goods – however the out of quota tariffs are frequently set so high as to make imports beyond the TRQ amount completely uncompetitive. As such they provide a level of assistance to domestic industries by limiting competition from imports entering at zero or low tariffs.

In the October 2019 Political Declaration, both the UK and EU committed to a free trade agreement **without quantitative restrictions across all sectors.** The Prime Minister reiterated this aim in his statement to Parliament in February 2020. However, as with many countries, the EU has in place an extensive system of import quota provisions governing its MFN trade, and tariff rate quotas also generally form part of the EU's preferential arrangements in its FTAs. The EU's FTAs will also frequently include provisions allowing for less stringent rules of origin requirements for preferential import of quantities of

certain goods. It should be noted that neither the Political Declaration nor the Prime Minister's statement mentions a timeframe for delivery of the free trade objective, suggesting that while the aim is to remove all quantitative restrictions, this might not be achieved from the introduction of an FTA.

At this stage, while both the UK and EU have released draft FTA text which includes a commitment to remove all tariffs on trade, the commitment is qualified by the phrase **except as otherwise provided for in the agreement**. Neither side has publicly released detailed tariff elimination proposals at a product-by-product level – and this includes any details on quota arrangements.

UK trade under the EU's TRQ arrangements

The extent to which the EU's TRQ arrangements impacted on UK trade and industry – and hence the starting point for negotiations on what any TRQ arrangements should be in an FTA – is complicated. The EU's TRQs were set for imports to the single market as a whole and didn't differentiate according to the ultimate destination of the imported products. The EU's positions in determining TRQ levels was informed by historical production and demand levels of the relevant products in each member country, but specific proportions of each TRQ were not allocated to each EU member. Industries do not have a common position on whether the EU's TRQs adequately reflect the pressures on domestic production levels or provide an opportunity for those industries to develop and compete reasonably for a share of the market.

Industry needs to be fully involved in determining how TRQs might be used in future trade arrangements with the EU, and this should happen on an industry-by-industry basis. A full understanding of the effect of the EU's TRQ regime at an industry level is essential in the UK setting its negotiating strategy.

Tariff rate quotas (TRQs) and other quantitative restrictions in the EU's free trade agreements

TRQs are common in most of the EU's FTAs and are applied by both parties – predominantly for sensitive agricultural products where there are high levels of domestic production.

The EU's FTA with Canada includes TRQ arrangements for duty-free imports of Canadian beef, bison and pork products, dairy products and some cereals. Canada applies quotas on imports of industrial cheese from the EU. In addition, the rules of origin set less stringent requirements for preferential access for specified levels of a number of products – these are referred to as "origin quotas" and serve as an indirect quantitative restriction on trade.

The EU's FTA with the four original Mercosur countries (Brazil, Argentina, Paraguay and Uruguay), concluded in 2019, includes TRQs for trade in both directions. The EU has set TRQs for imports of beef, pig meat, poultry, cheese, milk powder and infant formula, honey, sugar, ethanol, rice and sweetcorn. Mercosur has established TRQs for imports from the EU on the same dairy products, as well as for autos.

The EU's FTA with Japan includes TRQs for a number of agricultural and food products –Japan set TRQs for imports of cheese, milk and other dairy products, some cereals, sugar and a range of food preparations from the EU[7]. The EU does not impose TRQs under the FTA, reflecting Japan's limited export interests in the EU.

The EU's FTA with South Korea also includes TRQs on a number of EU exports - Korea scheduled TRQs on some fish, several dairy products including milk powder and cheese, some grains and a number of other food products. The EU does not impose TRQs on Korean imports under the FTA, with Korea having no strong interest in exporting sensitive agricultural goods to the EU.

Despite the commitments of both parties to removing all tariffs and quantifiable restrictions, it is difficult to see this being achieved at entry into force of any agreement between the UK and EU. It is very likely that both the EU and UK will also continue to use TRQs in any future agreement. Moreover, it is likely that

[7] See EU-Japan Centre for Industrial Cooperation, *Factsheet – Tariff Rate Quotas (TRQs)*

a phase-in period for total elimination will be considered – in which case, TRQs at levels which reflect historical trade levels may be a way of approaching the commitment of free trade for the most sensitive goods.

Rules of Origin

Rules of origin determine which exported goods will be eligible for preferential tariff treatment – based on a set of criteria to establish where a product was made. Well-crafted rules of origin will allow all goods which have been wholly or substantially manufactured within the FTA parties to qualify for preferential access with little administrative cost. Poor or overly restrictive rules will lead to only a small proportion of trade taking place under preferential terms as manufacturers struggle to meet the requirements or decide that the cost of demonstrating compliance outweighs the benefit of preferential tariff treatment. Poor rules of origin have left the goods aspects of many trade agreements as virtual shells, with only a minority of trade between the partners taking place under preferential terms.

As a member of the EU, the UK was part of EU FTAs covering close to 80 countries. While the rules of origin covering these are often very similar, the compromises that form part of every FTA negotiation mean that there are at least minor and frequently significant differences in the details of each. In order to provide industry with greater certainty in trade and to provide a platform for encouraging the development of interrelated supply chains across its FTA partners, the EU has attempted to minimise major differences in its rules of origin regimes.

In recent times, the EU has placed a great amount of emphasis on developing a convention that creates a common approach to rules of origin – the Pan-Euro-Mediterranean Convention (PEM), covering 23 of its FTA partners to date. Signatories have agreed to adopt a common set of rules of origin in the FTAs between them and in exchange for this, would be able to use materials from any other signatory as qualifying content in their goods for export. The UK is considering joining the PEM Convention, but would need to determine if doing so would restrict its freedom to push for rules of origin that best suit UK industry and trade objectives.

What targets have the UK and EU set for the rules of origin?

The October 2019 Political Declaration referred to trade in goods being supported by **appropriate and modern rules of origin**. The Prime Minister expanded on this in his February 2020 statement to Parliament, calling for **provisions on rules of origin which ensure that only 'originating' goods are able to benefit from the liberalised market access arrangements …. similar to the provisions in recent EU FTAs such as the EU-Japan Economic Partnership Agreement (EPA) and CETA. These rules should be supported by predictable and low-cost administrative arrangements for proving origin. All this should be accompanied by detailed product-specific rules of origin. In line with general practice, these arrangements should reflect the requirements of UK and EU industry**.

The Prime Minister's statement also looked for a system which allowed for the existing level of integration of EU and UK industry, to be reflected in the rules of origin by adopting clear provisions on cumulation of content – allowing for **EU inputs and processing to be treated the same as UK input in UK products exported to the EU, and vice versa. It would also be appropriate to include measures that support trade and integrated supply chains with partners with which both the UK and the EU have free trade agreements or other preferential trade arrangements (diagonal cumulation).**

Both the UK and EU have released their draft texts for the rules of origin chapter, but are yet to publish proposals for product-specific rules (PSRs) – the detailed provisions that outline levels of local content and/or processes of manufacture each type of good has to meet in order for it to qualify for preferential access.

The draft texts share many common features and there are few issues likely to cause difficulty in reaching an overall agreed outcome. This is common in rules of origin negotiations – the basic principles and administrative arrangements are frequently agreed without significant conflict, especially between countries with well-integrated industrial structures and similar levels of development. Much of the

negotiating effort is focussed on the PSRs, especially where the parties have strong sensitivities in particular industries and seek to use the rules of origin to protect these sensitivities. The EU, like many individual countries, has a history of fighting hard for some restrictive measures in rules of origin.

The rules of origin in the EU's existing FTAs frequently reflect a desire to protect sensitive industries rather than to establish an objective test of origin.

Restrictive PSRs could significantly affect the competitiveness of UK exports in the EU. As a member of the EU, UK manufacturers were free to source inputs for their products on a purely commercial basis. They could source materials domestically, from the EU or from an EU FTA partner - mostly facing no duty on those materials. Alternatively, they could source materials from outside the UK, EU or FTA partners and pay whatever tariffs might be applicable for those materials. The resulting goods for export could then be traded freely within the EU without needing to be tested against rules of origin. Frequently, they could be exported to the EU's FTA partners and, providing they met the relevant rules of origin, they would also enjoy preferential access to those markets.

Under the proposed FTA with the EU, the same goods using the same material inputs will need to meet new agreed rules of origin in order to gain preferential access to EU markets. Assuming that standard bilateral cumulation provisions apply, those goods using only UK or EU materials would qualify for preferential treatment into the EU. However, depending on the product specific rules, goods using materials from outside the UK and EU may fail the test and could no longer be traded in the EU under tariff free conditions. Further, depending on whether the UK and EU agree to allow cumulation of content from common FTA partners, use of materials from those countries could disqualify UK exports from preferential treatment.

The impact of these new arrangements would be at least partially offset by the decision to remove tariffs from many imported materials used in manufacturing under the new UK Global Tariff arrangements. If the goods do not receive preferential access due to restrictive rules of origin and instead face high tariffs into the EU, it is conceivable that UK products will be less competitive in the EU.

It will be essential therefore that the PSRs recognise substantial transformation of non-originating materials in UK exports and don't set a bar that is significantly higher than this measure of domestic content and manufacturing. At the same time, the PSRs should be framed in such a way that they recognise and support the integration of the UK and EU manufacturing sectors and do not undermine the capacity of UK manufacturers to compete fairly with goods imported from the EU and elsewhere by setting the test of origin at too low a level.

Industry involvement throughout the process is particularly important to ensure that the rules of origin meet the needs of industry. The negotiating teams need to develop a strong knowledge of supply chains and manufacturing processes and to test proposals with industry to ensure effective outcomes.

Experience from FTA negotiations throughout the world have shown that the rules of origin are frequently some of the last elements to be agreed in what is a very labour-intensive process. Industry needs to be closely informed in developing the approach for the rules and testing proposals at the product-specific level to avoid unintended outcomes that can open domestic industry to unfair levels of competition and deny it reasonable access to FTA partners.

Technical Barriers to Trade (TBT)

The TBT chapter is one of a number of elements of an FTA where the measure of its effectiveness is not so much in the agreed language but rather the way the partners cooperate after implementation to put the agreed principles into effect.

Technical barriers to trade and other trade facilitation issues can have major costs for manufacturers and can be a significant impediment to trade. As tariffs on most manufactured goods have been reduced, it is

technical barriers and facilitation costs that can become the biggest challenge to free trade. A 2011 OECD study considered the impact of trade facilitation costs on its members in 2011 and concluded that these added around 10 per cent to trade costs[8].

TBT commitments in FTAs can range from firm undertakings, compelling the parties to act in a particular manner – generally based around clauses beginning with "the parties shall…" – to softer commitments where the parties agree only to make their **best endeavours** to achieve desired outcomes or are given the option to act in a particular manner – frequently using language along the lines of "the parties may…".

The 2019 Political Declaration outlined a TBT approach that would pursue common principles in the fields of standardisation, technical regulations, conformity assessment, accreditation, market surveillance, metrology and labelling. The Prime Minister's statement to Parliament in February stated the FTA should promote trade in goods by addressing regulatory barriers to trade between the UK and EU, while preserving each party's right to regulate. This was seen as the standard approach for an FTA and as being similar to what had been agreed by the EU in recent FTAs, including CETA and the EU-Japan EPA.

The EU has a reputation among trade negotiators as an active and cooperative pursuer of action on TBT issues. It has demonstrated a capacity to work closely with other countries to overcome technical barriers through bodies such as the WTO Committee on TBT. At the same time, it strongly defends its own technical measures and standards with limited room for compromise.

The draft proposals published by both the UK and EU for the TBT chapter favour firmer commitments. The principles outlined in the two approaches are very similar and both aim to build on the commitments made under the WTO TBT Agreement. The approaches outlined in the two drafts are largely consistent and it is likely that the parties should be able to reach an agreed outcome. The UK draft proposes the creation of a committee on technical barriers to trade which would address issues and report on implementation of the provisions of the TBT chapter every six months. The EU approach is less prescriptive here, and proposes that TBT issues be considered on a needs basis by the committee on goods.

However, the proposals only provide a framework for future cooperation, with the real test being the degree to which the UK and EU make use of the framework to avoid conflict which could create real barriers to trade and add significant costs to manufacturing and trade.

The approach to TBT in recent EU FTAs is very similar to its proposal for this agreement. Both the CETA with Canada and the EU-Japan FTA follow a similar format of setting out a basis for cooperation building on the work of the WTO TBT Agreement. The EU-Japan agreement establishes a specific TBT committee, whereas under CETA, TBT issues are dealt with on an ad hoc basis though the committee dealing with goods issues.

Sanitary and Phytosanitary (SPS) Measures

Chapters covering SPS provisions in FTAs between developed economies are generally based around commitments to implement and build upon the WTO SPS Agreement. The EU has been a strong supporter and driver of the SPS Agreement within the WTO and has made it clear that it does not intend to relax standards under the WTO Agreement or other relevant international agreements covering animal and plant health and safety.

In the 2019 Political Declaration, the UK and EU agreed to treat one another as single entities in SPS measures, including for certification purposes, and recognise regionalisation on the basis of appropriate epidemiological information provided by the exporting party. The UK and EU also undertook to explore the possibility of cooperation between the UK and EU agencies such as the European Medicines Agency (EMA), the European Chemicals Agency (ECHA), and the European Aviation Safety Agency (EASA).

[8] Moïsé, E., Orliac, T. and Minor, P., *Trade Facilitation Indicators: The Impact on Trade Costs*, OECD Trade Policy Papers, No. 118

In his February 2020 statement to Parliament, the Prime Minister reiterated that the SPS chapter should build on the WTO SPS Agreement, following the approach taken in recent EU agreements such as CETA and the EU-NZ Veterinary Agreement. In the Prime Minister's view, a fundamental principle should be the preservation of each party's autonomy over its SPS regime.

Towards these aims, the UK has tabled a draft text with provisions that are very similar to those agreed in the EU's CETA with Canada. The EU's proposed text is based on the same principles and should provide for a cooperative approach on the existing SPS regime in the UK and the EU, which is recognised as amongst the most robust in the world.

Customs and Trade Facilitation

As with the TBT chapter, the customs cooperation arrangements in most FTAs set out principles for cooperation between authorities to ensure smooth passage of goods across borders without adding delays and administrative costs. As with TBT measures, customs arrangements fall within the sphere of trade facilitation issues that have increasingly become the focus of those seeking to free up trade through broader international cooperation.

The 2019 Political Declaration called for ambitious customs arrangements, making use of all available facilitative arrangements and technologies. A key aim was ensuring the absence of a hard border on the island of Ireland.

The Prime Minister's Statement to Parliament in February stressed that the FTA should provide for streamlined customs arrangements covering all trade in goods, in order to smooth trade between the parties, while ensuring that customs authorities remain able to protect the parties' regulatory, security and financial interests.

Around the same time as the Prime Minister's Statement, the EU put forward its views on how customs arrangements should be expected to work. It proposed that within the framework of the EU's Customs Code, the envisaged partnership should aim at optimising customs procedures, supervision and controls and facilitating legitimate trade by making use of available facilitative arrangements and technologies, while ensuring that customs authorities can take effective measures at the border.

The EU's position is that customs authorities must be able to take effective measures at the border to enforce legitimate public policies, such as protection of the health and safety of consumers, and protecting businesses through such things as the enforcement of intellectual property rights. It should also protect financial interests. However, the EU also made clear that the customs cooperation regime that it envisaged would achieve only limited facilitation and, in any event, could not be described as going in the direction of frictionless trade. It had pursued this approach in its other recent FTAs. The EU reiterated that in its view only membership of the single market and the customs union could ensure such frictionless trade[9].

Benchmarking best practice in customs and trade facilitation – the outlook for the UK

It is inescapable that arrangements at the border will change once the UK's transition from EU membership is complete. The formerly free movement of goods across the UK's borders into the EU will be impacted by the need for countries outside a customs union to ensure the integrity of trade across those borders. This will mean new and most likely additional paperwork and some inspections of shipments.

What this will mean – or should mean – in practice is difficult to quantify at this stage. Despite calls for clearer benchmarking of good practice and average clearance times by the World Customs Organisation,

[9] European Commission, "Future EU-UK Partnership: Question and Answers on the negotiating directives", (Feb 2020)

there are no fully reliable measures of best practice across countries. Some work has been done on measuring average customs clearance times[10] but the work to date has been piecemeal.

What is clear is that the EU does tend to rank highly on any measures and expectations of customs efficiency. Nevertheless, the fact remains – part of the move to an independent trading environment for the UK will be closer scrutiny of outbound and inbound shipments. The Government has made some announcements on this to date; the full effect of changes will not be apparent until the end of the transition period. In any case, a high level of customs cooperation and full use of technologies available for electronic lodgement of documents and pre-clearance of goods will be essential to ensuring that goods are able to move smoothly across the UK's borders in the future.

[10] For instance, there are some measures of this in the annual World Economic Forum Global Competitiveness Reports, but these are heavily based on survey responses from business rather than objective measures.

TRADE IN SERVICES

WHAT HAS THE UK COMMITTED TO DELIVERING ON SERVICES TRADE?

Importance of services

The significant role of the UK services sectors in the economy is one that has been championed and embraced over recent decades, placing the UK as a leading international services-based economy. It has been well documented that around 80 per cent of UK economic output and 46 per cent of UK exports can be attributed to the services sector, and of particular note that the destination receiving the highest proportion of UK services exports is the EU – at around 41 per cent.[11]

With figures as remarkable as this and the strong interlinkages with the EU economies, the UK has a real vested interest in maintaining openness and access to these markets. That said, the discussion to date has focussed primarily on the UK's goods trade with far less emphasis on the services sectors. While this is not unusual in both multilateral and bilateral and regional trade negotiations around the world, the UK's leading position in services, leaves it particularly vulnerable to any restrictions placed on its most significant services trading partner.

The starting point: The WTO and FTAs

In looking for a trade deal with the EU, the basic premise **the UK is starting from is committing to maintaining a level of openness in services trade that is above and beyond the baseline level of trade liberalisation under WTO commitments**. The thing to note is that the WTO benchmark is fairly low. WTO members have committed to bind access to their domestic services for foreign providers at levels that do not provide much in the way of openness. In practice many countries actually allow much more open environments, but reserve the right to pull access conditions back to their committed level at any time.

It is also worth noting that a group of 23 WTO members including the EU have been separately negotiating a Trade in Services Agreement (TiSA) to expand services commitments. While the negotiations have been stalled since 2016, they do demonstrate a desire for major WTO members to open up services trade – and as one of the world's leading service-based economies, the UK is likely to want to join this grouping in its own right.

The EU already has in place a relatively high degree of openness in access to provision of services within the Union, and has drawn on features in its existing FTAs. **The UK has stated that it would use recent services commitments in EU FTAs as a starting point for trade negotiations with the EU, specifically those with Canada and Japan. The UK however is ideally looking to reach greater levels of liberalisation in services than has been achieved in these FTAs.** While this level of ambition would potentially provide the UK with much greater access to EU services markets than other WTO members and indeed more access than FTA partners like Canada and Japan, it is important to note these are markedly lower levels of openness compared with the current single market that UK services exports are delivered through. In fact, FTA services negotiations rarely achieve very liberal outcomes or deliver significant market openings to the FTA parties. What they do is to reduce the gap with WTO commitments, because whatever is agreed in FTAs become a country's legally bound commitment offered to all trading partners without discrimination. However, these levels rarely bite on the applied (actual) levels of market openings/restrictions that occur in practice.

[11] Jozepa, I, Ward, M, Harari, D, 2019, Briefing Paper: Trade in services and Brexit, Number 8586, UK Trade Policy Observatory, UK

Which sectors will be covered?

Trade in services negotiations tend to be more complex than negotiations on goods. This is mainly attributed to the fact that they aren't governed by straightforward reductions in quantifiable tariffs. Market openness in services isn't measured in such a uniform way; it covers a wide variety of sectors and a number of means by which services are delivered. In addition, services liberalisation levels are subject to constantly evolving factors such as regulatory changes, changes in technological methods of delivery, technical standards and licensing arrangements; competition constraints; and qualification requirements and procedures, amongst others.

For these negotiations, the UK has said it is aiming for substantial coverage of services sectors (with exceptions and limitations as appropriate). The arrangement aims to cover sectors including professional and business services, telecommunications services, courier and postal services, distribution services, environmental services, financial services, transport services and other services of mutual interest.

Both sides are likely to aim for services trade rules to be applied 'horizontally' – that is equally to all sectors and sub sectors. In some service subsectors, the UK has already entered into separate commitments with the EU – for instance, in a comprehensive aviation agreement and for the continued flow of goods and people by road and rail.

In practice, both sides will negotiate which sectors are to be finally covered, and often previous FTAs are used as a precedent. For example, the UK is keen to cover audio visual services, while the EU has not put this forward as a sector to cover. The final outcome on sectoral coverage will be subject to negotiation and trade-offs. Given the complexity of the complete suite of negotiations with the EU, these trade-offs may extend beyond the trade negotiation itself into other areas such as migration, security or defence arrangements, depending on how much importance one side places on liberalising a particular sector.

How are the modes of services supply considered?

In the WTO and FTAs, services are commonly classified under what's known as four modes of supply, which are set out in the following table:

THE WTO'S GENERAL AGREEMENT ON TRADE IN SERVICES DEFINES FOUR MODES OF SUPPLY:

Mode 1: Cross-Border Supply - From the territory of one Member into the territory of another Member.

Mode 2: Consumption Abroad – Provision of services in the territory of one Member by a service provider from any other Member

Mode 3: Commercial presence - By a service supplier of one Member, through commercial presence in the territory of another Member

Mode 4: Movement of natural persons - By a service supplier of one Member through the presence of natural persons in the territory of another Member

Source: HM Government, February 2020, *The Future Relationship with the EU - The UK's Approach to Negotiations*

Within each of these modes of supply, countries commonly apply a number of restrictions. The following list neatly sets out the types of restrictions on the supply of services that countries are looking to address through trade negotiations:

Mode 1: Cross- border supply

- Requirement for foreign service providers to establish a commercial presence, i.e. requiring them to switch to another mode of supply;
- Restrictions on business outsourcing;
- Regulations on consumer protection that unduly restrict trade.

Mode 2: Consumption abroad

- Travel restrictions to the country where the service supplier is based and the service is offered;
- Regulations on domestic recognition of documents proving the act of receiving certain services (e.g., domestic recognition of foreign degrees in educational services).

Mode 3: Commercial presence

- Restrictions on establishment:
  - Licenses;
  - Quotas on establishment;
  - Restrictions on certain forms of legal entity;
  - Minimum capital requirements;
  - Limitations on the share of foreign capital;
  - Prohibition of FDI in certain sectors;
  - Location conditions.
- Restrictions on operation:
  - Local content requirements;
  - Operational permits and licenses.

Mode 4: Movement of natural persons

- Visa requirements;
- Quotas on inflows of temporary workers;
- Limitation of the maximum period of stay.

Taken from: Shepherd, B, et al, 2019, *EU Exit and Impacts on Northern Ireland's Services Trade, Evidence from Services Trade Restrictiveness Indices*, New York.

What is the UK seeking across the services sectors?

The UK has committed to negotiating across the four modes of supply and aims to preserve as much openness and access as possible to the EU market in each of the modes of supply – particularly in conditions of establishment, the temporary movement of people and recognition of professional qualifications as key examples. In practice, given the UK currently has full and open access to the EU services market, any access negotiated particularly within mode 1 (cross-border supply of services) is likely to come with the types of restrictions faced by other countries outside the EU.

The cross-border trade of services is particularly important for the EU, with around 67 per cent of UK financial services, for example, being exported to the EU from the UK itself[12]

Under the mode 1 cross-border trade in services the UK has specifically requested:

- open access: ensuring service suppliers do not face limitations such as economic needs tests;
- non-discriminatory treatment between UK and EU service suppliers[13];
- that cross-border trade is not inhibited by establishment requirements; and
- that conditions in the agreement are made available to other trading partners[14]

Where does the EU stand?

The EU requests on services, are generally in line with those of EU FTAs with other partners in that any arrangement should extend further than commitments made in the WTO and should draw on precedent from its existing FTAs with third countries. There is also agreement that there should be substantial sectoral coverage across all modes of supply, however it does place a marker on the need for providing exceptions and limitations as appropriate. The EU sets out that sectors should include professional and business services, telecommunications services, courier and postal services, distribution services, environmental services, financial services, tourism related services and transport. Audio-visual services – a key interest for the UK – is to be excluded from coverage.

[12] Lowe, S, 2018, Brexit And Services: How Deep Can the UK-EU Relationship Go? CER Policy Brief
[13] National Treatment
[14] Most Favoured Nation status

The main difference between the two sides is that the UK is asking to go to levels beyond the EU's existing commitments in areas such as equivalence in financial services and professional services.

Any other issues to consider?

In trade agreements services **"schedules**" set out the various sectors that a country is opening to preferential access and details the type and extent of access it is granting to foreign providers in those sectors. In the WTO, the approach is known as a "positive list" where each country specifies every sector it is providing access to. Most FTAs however tend to use a "negative list" approach, under which all services sectors are designated by default to be open for trade, except those listed in the schedules of commitment – and it is therefore considered to be a more ambitious approach.

As part of the negotiations, both the UK and EU will provide a transparent schedule of their commitments against obligations as an initial offer and the UK has requested that the baseline for the negotiation on schedules should be both parties' best offer to date.

There is also a range of issues that cut across a number of negotiations including services, that will play a key role in determining the UK's successful access to the EU services market in this trade negotiation. They include:

- The level of **regulatory alignment** between the UK and the EU
  The closer the level of alignment the higher the chances of market access
- The open **flow of data** between the UK and EU
  Data protection and comparable data standards will be vital
- Recourse to an **effective enforcement system** for trade rules
  Provides greater business certainty for trade in services

The issue of close regulatory alignment is one in particular that the UK Government has made clear it does not want to abide by, and wants the right to diverge from an aligned position in the future. The cost of this approach is that high levels of access to the EU services market are not acceptable to the EU without regulatory alignment, particularly in the area of financial services.

FINANCIAL SERVICES

While the services sector is a key contributor to the UK economy, the financial services sector's contribution within it is the most significant – in 2018 the sector contributed approximately 7 per cent to total economic output and of note, 10 per cent of financial services revenues originated from the EU. Without some form of arrangement recognising the equivalence of the two regulatory regimes, there will be trade barriers that UK financial services exporters will have to face, compared to the current environment.

What is the current state of play?

Within the EU the principle of *mutual recognition* exists where any good or service – in this case financial services – that is produced in one member state can be sold across the border to any other member state without the need to comply with specific local rules of that member state. This is what's also known as "passporting" rights – and as a member of the EU, UK service providers have been able to set up operations in another member state and provide cross border services (while keeping both host and home regulators informed). This principle only applies to EU member states.

After leaving the EU, the UK's terms of financial services access are to be negotiated. The EU typically offers what's known as equivalence – which is a process by which the EU assesses whether another non-EU

country's financial services regime is deemed to meet EU standards. If found to do so, then that country can sell its financial services products into the EU market.

What has the UK called for and committed to?

Outside the bounds of the future FTA, the UK has agreed to put an equivalence framework in place so that both the EU and UK could deem each other's regulatory and supervisory systems to be equivalent. They were due to carry out the assessments by June 2020, however the deadline was missed. The EU had requested information from the UK in 28 different areas of equivalence. By the end of June, responses to only 4 areas had been covered by the UK, so the full equivalence assessment could not be completed. The UK has said it is ready to grant automatic equivalence as soon as the EU deems the UK system to be equivalent.

Within the framework of the FTA, the UK Government has stated it is committed to preserving financial stability, market integrity, investor and consumer protection and fair competition; it reserves the right to exercise regulatory and decision-making autonomy, and the ability to take equivalence decisions in its own interest.

The UK has proposed that any future arrangement is to be built on recent EU precedent, citing the EU-Japan EPA and asking for regulatory cooperation arrangements between the two separate UK and EU systems. In particular, the UK has also asked for close and structured cooperation on regulatory and supervisory matters between the two parties, including notice of changes to equivalence and structured processes for the withdrawal of equivalence findings.

How will the equivalence process work?

As mentioned above 'equivalence' is granted if both parties agree that their regulatory systems are of a comparable standard. However, achieving the process of equivalence is not easy. It is known to take years to conduct and complete the assessment process. In fact, it can also be held up by political issues -such as the case of the EU granting Switzerland equivalence, which was used as negotiating chip in a separate and unrelated negotiation.

As the UK regulatory system is so closely aligned to the EU system, granting equivalence implies no or limited divergence between the two systems going forward. This is something the UK does not want to do across the board and wants to retain the right to diverge from EU regulation. This has become a major sticking point in the negotiations to date - with the EU calling for close alignment and a commitment to no future divergence.

In addition, equivalence is currently granted to a specified set of services/products, rather than all of the financial services system.

Most problematic of all is that equivalence systems can be suspended or withdrawn by either party at relatively short notice. In fact, in 2019 the EU did so with a number of partner countries. For this reason, the UK has explicitly called for both strong regulatory cooperation and a structured withdrawal process for equivalence – both of which the EU does not want to agree to at this stage of the negotiations. The EU is only proposing standard third country treatment, and it has made no reference to regulatory cooperation on financial regulation. However, the reluctance to shift its position is not unusual at this phase of a negotiation.

What does this mean in practice?

In practice, a system of equivalence will be considerably different to the current passporting system within which the financial services sector operates – where UK financial services businesses are currently free to conduct business in any EU member state.

Without the financial passport there are likely to be immediate new barriers to trading in financial services. For the UK the most significant practical impacts are likely to be felt through the loss of wholesale banking revenues as well as for UK investment banks that would be unable to continue to provide services to their EU-based clients from the UK[15]. The threat of these trade restrictions has already resulted in hundreds of UK based firms relocating to the EU (Dublin, Luxembourg and Paris being the main destinations so far)[16]. There are also likely to be negative impacts for UK activity such as EU derivative contracts which are cleared in London.

There is also the consideration that under non-discrimination (MFN) rules, if the EU granted additional concessions to the UK, it may also have to offer these automatically to its other WTO trading partners. However, there are caveats in some of the EU's trade agreement where MFN rules do not apply in circumstances where the EU relationship with the country is particularly inter-twined, such as Switzerland.

The UK appears to be hopeful that through a dialogue the EU may be agreeable to a type of equivalence-plus system where additional services/products may be granted equivalence. However, there are no signs of agreeing at this stage.

DIGITAL SERVICES

Digital trade is an important area for both the UK and EU and underpins all other services trade, especially financial services. As such, both parties have a vested interest in securing a strong arrangement in this sector. In 2018, the UK exported $124.5 billion of services that were digitally aided and roughly 75 per cent of the UK's data flows are with EU countries[17].

Therefore, on digital services the UK is calling for the following as part of a trade deal with the EU:

- provisions to facilitate electronic commerce, address unjustified barriers to trade by electronic means, and ensure an open, secure and trustworthy online environment for businesses and consumers, such as:
    - for electronic trust and authentication services
    - not requiring prior authorisation solely on the grounds that the service is provided by electronic means.
- these should be in both new, technology-intensive businesses and traditional industries.
- they should facilitate cross-border data flows and address unjustified data localisation requirements (without affecting the parties' personal data protection rules).
- commitments on market access that minimise barriers to the supply of digital services provided from the UK into the EU and vice versa
    - this will provide a clear and predictable basis upon which business can invest, and
    - should lock in regulatory certainty, while preserving the UK's regulatory autonomy.
- sectoral provisions in telecommunication services,
- equal access to public telecommunication networks and services to each other's services suppliers (and addressing anticompetitive practices)
- drawing on international best practice and ongoing negotiations - for example negotiations on the WTO's Joint Statement Initiative on E-Commerce.
- in specific areas, to go beyond those precedents to reflect the direction of travel in current digital trade negotiations

15 Tarrant, A, Holmes, P and Kelemen, RD, 2019, *Briefing Paper 27 - Equivalence, Mutual Recognition in Financial Services and the UK Negotiating Position,* UK Trade Policy Observatory, UK.
16 Wright, W, Benson, C, & Hamre, E, 2019, *Brexit & the City – the impact so far*, UK
17 Propp, K, 2020, *Data flows across the Channel: The emerging UK-EU digital trade relationship*, Atlantic Council.

- for example, provisions on electronic authentication have continued to evolve as part of EU FTA negotiations with Australia and Mexico and at the WTO, and this should be reflected in this Agreement.

The EU is aligned with the UK position on many of the provisions set out above. Where the two parties have differences however is in the area of facilitating the cross-border transfer of electronic information, including whether transfers can be restricted for public policy reasons. The UK would like transfers to be allowed and only limited for a specified set of legitimate public policy reason. The EU on the other hand only wants to focus on freeing up data localisation rules and wants to maintain the right data privacy safeguards that are exempt from disciplines.

As a part of the broader negotiations the UK is attempting to obtain a data adequacy ruling from the EU to continue to allow the free flow of data between the two territories, before the end of the transition period. The EU has not yet granted it and is concerned that the UK might diverge from the EU's standard data protection regulation.

ROAD TRANSPORT

Given the highly interconnected nature of UK and EU road transport and the potential for increased trade barriers in this area to impose immediate costs on the import and export of UK goods, road transport is a highly sensitive area for the UK.

As a starting point, both sides are in favour of open bilateral road freight access between the two territories – in principle.

The UK is asking to secure continued connectivity for commercial road transport services, i.e. road haulage and passenger transport (buses and coaches) with the EU. This has been expressed by the UK in terms of:

- ensuring comparable market access for freight and passenger road transport operators
  - covering the relevant consumer protection requirements and social standards for international road transport, and
  - obligations from international road transport agreements that the UK and EU are signed up to
- appropriate arrangements to address travel by private motorists
- no quantitative restrictions on UK and EU road transport operators providing services to each other (in line with road transport bilateral agreements EU Member States have with countries outside the EU)
- respecting the UK's autonomy as a third country by not requiring the UK to follow EU standards
- allowing the UK to freely regulate domestic haulage and passenger transport, including in a way which reflects the circumstances of the island of Ireland
- cooperate on monitoring and enforcement
- the Agreement potentially taking the form of a protocol to the FTA

In practice these requests amount to having similar access levels to the current arrangements and similar levels to the EC/Switzerland land transport agreement, which has fully open access to each other's transport sectors, without quantitative restrictions (quotas) and allowing 'grand cabotage' (transport between member states)[18]

The major sticking points for the UK to address will be that:

- The EU stands by its position that after leaving the EU, the UK should have lesser levels of access than it currently enjoys: *As third country operators, United Kingdom road haulage operators should*

[18] Grolimund, N, and Vahl, M, 2006, *Integration Without Membership: Switzerland's Bilateral Agreements with the European Union*, Centre for European Policy Studies, Brussels

not be granted the same rights and benefits as those enjoyed by Union road haulage operators in respect of road freight transport operations from one Union Member State to another ("grand cabotage") and road freight transport operations within the territory of one Union Member State ("cabotage[19]")

- The EU is insistent on the UK sticking to level playing field provisions and keeping in regulatory alignment in this sector, whereas the UK has stated it does not want to follow EU standards
- The EU has made it clear it will not replicate the Swiss style bilateral agreements on separate issues, as the numerous bilateral arrangements proved to be onerous
- That unless an agreement can be struck in this area the limited quotas will be available for operators to conduct journeys to the UK and EU.

TEMPORARY ENTRY AND STAY FOR BUSINESS PURPOSES

The current arrangement allows for free movement for citizens between the UK and all EU member states for business (and other purposes). After the transition period expires and free movement ends, there will be an immediate change to the ability of people to travel and operate commercially between the two territories – and there will be an adverse impact on trade. In practice it is likely to require all UK service providers who want to operate in the EU, having to comply with relevant visa and work permit obligations.

The UK Government is asking for an arrangement that allows the temporary entry and stay of natural persons for business purposes, also known as 'mode 4' category of services trade.

In particular they have called for the use of mode 4 commitments that the EU has agreed to in CETA and the EU-Japan EPA, which covers:

- short-term business visitors, including for establishment purposes;
- intra-company transferees;
- contractual service suppliers; and
- independent (i.e. self-employed) professionals and investors.

Any provisions need to be in line with the UK's points-based immigration system, which was set out recently.

The Government's request for the above list of issues to be addressed is to provide legal and operational certainty to service suppliers and businesses who move employees between the UK and EU, as well as investors.

When considering how this issue is addressed in CETA, there are a range of conditions under which people can move between Canada and the EU for business, with a view to facilitating investment and services in both territories. The provisions include:

- visas and work permits for skilled professionals in legal, accounting, architectural or similar services (as listed) in the following categories;
    - short-term business visitors for meetings, marketing research, sales, attendance of trade fairs and related activities;
    - contractual service suppliers and independent professionals (employees or self-employed); and
    - key personnel: includes intra-company transferees such as qualified specialists, senior personnel and graduate trainees; investors, and business visitors for investment purposes

19 Cabotage is the transport of goods or passengers between two places in the same country by a transport operator from another country.

- no numerical quotas on immigration
- removal of the economic needs test prior to migration.

The EU-Japan EPA has similar conditions for temporary movement of business personnel and service providers, in line with CETA commitments. The EPA does however cover a greater range of sectors and is more generous with the length of stay for business visitors.

Both FTAs also include a commitment to allow spouses and families to accompany service professionals on their temporary postings.

MUTUAL RECOGNITION OF PROFESSIONAL QUALIFICATIONS

The UK is asking for an agreement that facilitates the mutual recognition of professional qualifications, underpinned by regulatory cooperation. Coverage is to be comprehensive in order to make sure qualification requirements are not an unnecessary barrier to trade between the UK and the EU. The UK wants both sides to set their own professional standards and look at ways in which competent authorities could recognise applicants who demonstrate that they meet the host state's standards.

In practice the EU does not have a blanket system of recognising professional qualifications from third countries across all member states in a uniform way. EU member states tend to recognise qualifications individually.

What the EU has offered third countries in other FTAs is predominantly supporting dialogue between member states' competent authorities and their counterparts in the third country. Both the Japan EPA and CETA facilitated a framework to work to mutual recognition of qualifications, which are ongoing. In contrast, within the CPTPP parties have committed to recognise qualifications of any one territory in the supply of a service in another.

BEST PRACTICE ON SERVICES IN OTHER FTAS:

The standard FTA makes limited commitments to liberalise services trade compared to the levels of market openness that's achieved for goods trade, which has traditionally been the main focus of the agreements. More recent FTAs have achieved varying levels of liberalisation in services trade beyond what's set out in the WTO system, with the EU-Canada (CETA) arrangement being the most open example, followed by the EU-Japan

Economic Partnership Agreement and the EU-Singapore FTA as well. The levels of services liberalisation committed to in these agreements tend to be relatively closer to the levels applied in practice, compared to the much higher bound commitment levels in the WTO. However, the UK Government will be looking to go even beyond the CETA agreement in order to maintain the high level of services access it currently has to the EU market.

How are typical FTAs structured for services?

Following are a number of different characteristics of services commitments in FTAs[20]:

- Firstly, the **sectoral coverage for services** within FTAs tend to be relatively limited in scope/set out differently. As mentioned earlier most FTAs adopt a 'negative list' approach where all sectors are

[20] Jozepa, I, Ward, M, Harari, D, 2019, Briefing Paper: Trade in services and Brexit, Number 8586, House of Commons Library, UK

assumed to be liberalised except those that are set out in the schedule of commitments. CETA and Japan EPA adopted the negative list approach.
    - The way these exceptions are set out can also vary between trade agreements. Commonly in agreements with the EU, specific conditions can be stipulated by each member state and they can be specific to one or more sectors.
    - Beyond this, FTAs also commonly exclude some sectors or relegate them to separate agreements – the EU-Canada Air Transport Agreement, being a specific example.

- There may also be **market access conditions** that place limits on the number of commercial operations, the level of output and set out legal requirements for foreign market entry.
- **National treatment measures** – which are there to prevent discrimination against foreign suppliers compared to local providers – restrictions can still exist in the form of language requirements, licencing rules and authorisation procedures.
    - One example is in banking where non-EU members operating in the EU need to comply with complex and costly capital requirements to legally establish a subsidiary in the EU services, for example, the EU requires third-country banks to set up each fully authorised subsidiary in the EU.
- FTAs generally have clauses that lock in any new market openings that are implemented and which do not allow any existing liberalisation measures to be undone (known as ratchet and standstill clauses). In some EU agreements however, there are some member state exceptions to this.
- More recent FTAs also set out rules and disciplines to govern the agreement covering such issues as:
    - the need for regulatory transparency
    - coherence and cooperation between regulators
    - rules on government regulations
- non-harmonised regulation between the parties
    - no mutual recognition of financial services sectors
    - only a general framework for recognising professional qualifications
- non-discrimination or Most Favoured Nation (MFN) clauses which mean that more liberal commitments achieved in future FTAs having to be automatically extended to the original FTA partners. The clause is there to make sure that any concessions granted to original FTA partners aren't eroded when the partner signs a new FTA with other third countries. This is likely to put pressure on the EU to offer the UK concessions in line with what's already been offered to previous FTA partner countries.
    - That said, in the CETA agreement there are some exceptions where MFN clauses do not apply for example to recognition of professional qualifications and in a few other cases[21]

To bring about a more comprehensive FTA than any current FTA arrangement can deliver the UK would have to look for:

- A high level of regulatory cooperation, including on some type of mutual recognition
- Open flow of data
- open business travel access and
- enhanced equivalence arrangements for financial services.

[21] Magntorn, 2018, *Briefing paper 25: Most favoured nation clauses in EU trade agreements: one more hurdle for UK negotiators*, UK Trade Policy Observatory, UK.

What else does CETA cover?

Regarded as the most progressive FTA in services, it is worth assessing the CETA agreement in more detail. Some of the key features of relevance to the UK within that agreement include[22]:

- All four modes of supply - Mode 1: cross-border supply, Mode 2: consumption abroad, Mode 3: commercial presence (investment) and Mode 4: measures for service providers crossing the border (temporary business travel and stay of people).
- Liberalisation in some services sectors and significant restrictions in sectors such as:
    - financial services, transport and audio-visual services
    - each member state also having individual restrictions on certain sectors
    - maintaining existing measures: e.g. the EU will only recognise Canadian owned firms established in the EU but not their subsidiaries outside the EU
    - some member states hold the right to bring in future restrictions such as in the supply of pharmaceutical products, based on economic needs testing
    - financial services cannot be supplied without a physical presence and without being bound by EU regulation; services in one member state cannot automatically be provided in other member states
    - no equivalence measures are in operation
    - a limited number of cross border services are allowed in line with WTO commitments
    - legal services have restrictions by way of residency requirements and permissions to practise.
    - audio visual services are not covered.
- Mutual recognition is not offered on any services sectors.
- There are systems in place for voluntary cooperation between the EU and Canadian regulation.
- There is no direct protection mechanism within the agreement for arbitration of disputes.

And what about Japan EPA?

The agreement does have provisions to facilitate bilateral investment such as those preventing non-discrimination against other trading partners (MFN) or foreign entities (National Treatment) and by removing a range of conditions for establishing local operations.

- It does not include the EU's Investment Court System (ICS) which was a successor to the Investor State Dispute Settlement (ISDS) systems. Instead bilateral investment protection negotiations continue on a separate track.
- On the issue of data – the EU Japan EPA did not assure the free flow of data, unlike the CPTPP which Japan is a member of also. Again, separately Japan and the EU signed a Mutual Recognition Agreement which deemed the other's personal data protection regimes to be equivalent, which gave real effect to the ability of services sectors to trade more freely with the recognition of comparable data transfer regimes.
- The EUJEPA allows for regulatory autonomy for basic public services (such as health and education).
- For cross-border services, the EUJEPA sets out a range of provisions, including[23]:
    - provisions on national treatment, MFN treatment and market access
    - In telecommunications - mobile roaming, number portability and confidentiality of users' traffic data

22 Morita-Jaeger, M and Winters, A, 2018, *Briefing Paper 24 - The UK's Future Services Trade Deals with Non-EU Countries: A Reality Check*, UK Trade Policy Observatory, UK.

23 Chowdry, S, et al, 2018, *The EU - Japan Economic Partnership Agreement*, Directorate General for External Policies of the Union, Brussels

- In financial services: deeper regulatory cooperation and establishes a Joint Financial Regulatory Forum for this purpose
- In e-commerce, the parties commit to keep electronic transmissions duty-free, recognise the legal validity of electronic contracts and signatures and may not require source codes to be transferred or accessed
- In postal and courier services, the EUJEPA will attempt to build a level-playing field for EU suppliers and their main competitors such as Japan Post.

STALEMATE ISSUES IN THE NEGOTIATIONS

FISHERIES NEGOTIATIONS

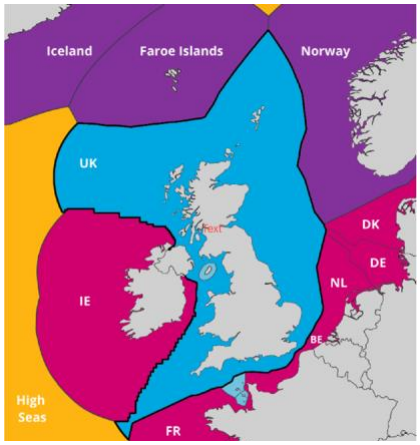
In the Political Declaration, the UK and EU committed to bilateral cooperation to ensure fishing at sustainable levels, promotion of resource conservation, and fostering a clean, healthy and productive marine environment, noting that the UK will be an independent coastal state. The Parties agreed to work towards a fisheries agreement to address among other things, access and quota issues, with an aim of concluding this by 1 July 2020.

The UK has stated it "is ready to consider an agreement on fisheries that reflects the fact that the UK will be an independent coastal state... It should provide a framework … in line with precedent for EU fisheries agreements with other independent coastal states… that respects the UK's status as an independent coastal state..."

The gap between the UK and EU positions is significant. The EU is seeking joint management of waters within the UK's exclusive economic zones and minimal disruption to existing fishing practices. It is maintaining the commitment to tariff-free/quota-free trade in all sectors. The EU included specific provisions in its draft FTA text which has as its first objective **upholding clear and stable rules and existing reciprocal conditions on access to waters and resources.** The UK's text has no specific provisions on fisheries issues.

Fisheries provisions are not usually part of an FTA, but there is no reason why such provisions can't be included in an agreement. The EU can argue that the extensive intersection of exclusive economic zones (EEZs) and the long period of integration of the UK and EU fishing industries through the Common Fisheries Policy (CFP) provide a strong justification for treating the future relationship differently to other free trade agreements. The UK, on the other hand, has pointed to the capacity of the EU to cooperate with Norway, Iceland and the Faroe Islands in managing fishing resources along and within their intersecting EEZs within a normal relationship between independent coastal states[24].

UK and Neighbouring Exclusive Economic Zones



Source: House of Lords European Union Committee

The UK reached a bilateral agreement with Norway on fishing in intersecting waters during the transition period. A future agreement after the transition period to avoid disruption in UK and neighbouring waters, will also be needed. The UK position is grounded in international law (UN Convention for the Law of the Sea) and precedent (Norway/EU agreement on EEZs). The EU can also claim its approach respects UNCLOS with precedents on intersecting EEZs that straddle a finite resource reaching an agreement to jointly manage exploitation of that resource. [25]

REGULATORY ALIGNMENT AND LEVEL PLAYING FIELD PROVISIONS

What is it about?

The concept of committing to a level playing field was set out most recently in the Political Declaration (PD) of October 2019 which the EU an UK committed jointly to a future economic relationship. The text bases the need for a level playing field on the EU and UK's

[24] For a detailed analysis on these issues, see University of the West of Scotland – The UK in a Changing Europe (Craig McAngus, Christopher Huggins, Arno van der Zwet and John Connolly), May 2018, *Governing UK Fisheries after Brexit – Lessons from Iceland, Norway and the Faroe Islands*

[25] See for instance the agreement between Australia and Timor Leste over the joint management of the undersea gas fields which exist below both their EEZs.

"geographic proximity and economic interdependence" and states that "the future relationship must ensure open and fair competition encompassing robust commitments to ensure a level playing field".

The idea behind the concept of the level playing field is to ensure that neither party undermines or disadvantages the other by having lower standards and costs of regulation in their territory – thereby ensuring "open and fair competition". By regulation, the level playing field refers to broad regulatory frameworks in different sectors being kept in line with each other in the two parties and one not deregulating out of step with the other (and not to be confused with food standards).

The PD goes on to specify that the commitments are to apply "common high standards" to the areas of state aid, competition, social and employment standards, environment, climate change, and relevant tax matters.

The exact details of what it will entail is to be outlined in the negotiations themselves and should be in line with the "Scope and depth of the future relationship" – that is depending on exactly what the two parties commit to in the new relationship.

The PD also sets out that the level playing field is to be underpinned by mechanisms to make sure they're enforced domestically and a system to resolve disputes.

What is the UK's position on it?

The Government has said that that while it is committed to maintaining high standards and fair competition in areas such as "competition policy, subsidies, environment and climate, labour and tax" it will not follow EU legislation in this regard.

The UK Government has stated that it already has higher standards than the EU in some of these areas and therefore did not need to abide by EU standards in these areas. It is of the view that going down this path would limit the UK's ability to develop "separate and independent" policies in these areas.

The UK is not willing to go further than measures that are typical of other free trade agreements. Instead the Government is committing to uphold its international standards in these areas and will not use measures that would be trade distorting.

The UK is also advocating now that the areas covered by the level playing field provisions should not be subject to the FTA's standard dispute settlement mechanism.

Is it common in other agreements?

As the level playing field concept is predominant in the EU single market, the EU's trade agreements also have relevant commitments within them. What differs is the degree to which they are specified and enforced. For EU trade agreements with Japan, Korea and Canada non-regression clauses and rules on subsidies and safeguards are the relevant provisions. These are the types of provisions that the UK Government is strongly leaning towards. For the EU's agreements with Turkey, Ukraine and Switzerland, there are specific measures on competition and state aid. The EU approach takes account of the level of integration with each partner and geographical proximity as to the specificity of the level playing field provisions set out, including the degree of enforcement.[26]

In terms of precedent on regulatory cooperation, the EU Japan EPA was the first to have a dedicated chapter on the issue and set up a joint committee to establish ongoing cooperation. While the work within it is on a voluntary basis, it uses EU regulations as the reference point, allowing EU members the right to regulate on public policy grounds.

[26] European Commission, Task Force for Relations with the United Kingdom, 2020, *Trade Agreements: Geography and Trade Intensity.*

Possible dynamics in the negotiations

The UK and EU currently have very different positions on level playing field commitments, despite both having agreed to negotiating them in the Political Declaration. The UK insists it will not be governed by EU regulations and law in a range of areas and is assuring the EU it will continue to uphold high standards on the full range of issues that fall within the level playing field commitments. It wants to commit to the type of provisions contained in standard free trade agreements, without dispute measures applying.

The EU however claims that on the basis of the high level of integration that currently exists between the EU and UK, legal commitments based on EU standards and subject to a dispute resolution system are necessary for this type of economic partnership.

While these are the parties' opening gambits, as negotiations intensify and the deadline draws closer it could be possible that in some areas such as competition policy, environment, labour standards and taxation – where there's commitment on both sides to maintain high standards - some common ground could be found, through non-regression clauses.

Where there may be more difficulty in meeting in the middle is on areas such as state aid – rules to limit the use of government subsidies. The EU is adamant that its state aid rules should apply and be enforced in the UK as well as being subject to dispute settlement. In contrast the UK has been equally resolute that it will not go further than standard FTAs, will not align with EU laws and will have its own system subsidy regime covered by the less stringent WTO system. As a result, it has already proven to be a major obstacle in the negotiations.

TABLES: TRADE IN GOODS

ISSUE	UK COMMITMENT	PRACTICAL IMPLICATIONS	BEST PRACTICE	NEGOTIATION DIRECTION
Tariffs and Quotas (a) Tariffs	Political Dec. – a Free Trade Agreement providing no tariffs, fees, charges or quantitative restrictions across all sectors PM's Statement - ensure there are no tariffs, fees, charges and quantitative restrictions on trade in manufactured and agricultural goods between the UK and the EU	This equates to tariff- and quota-free trade in all qualifying goods from the earliest possible time – preferably at entry-into-force of the FTA. This doesn't equate to free movement of goods. Traders will need to fulfil the FTA's rules of origin and its administrative requirements in order to qualify for tariff-free trade. Some goods traded between the UK and EU are likely to fail to meet the rules of origin, and will thus not qualify for preferential tariff treatment. Further, administrative requirements in order to access the zero tariffs are likely to have costs in terms of time and financial outlays associated with them.	Many FTAs achieve total elimination of tariffs, but few achieve this at entry-into-force of the FTA; the phasing-in period can continue for many years. EU-Canada eliminated almost all tariffs at entry-into-force – for the EU, tariffs on 97.7 per cent of all goods and for Canada tariffs on 98.2 per cent of goods were set at zero from entry-into-force; remaining tariffs are to be eliminated over the following seven years. However, some agricultural goods are excluded from preferential treatment - chicken and turkey meat, eggs and egg products. EU-Japan: Japan applied zero tariffs on 86 per cent of goods and the EU apply zero tariffs on around 90 per cent of goods at entry into force; most tariffs to be reduced on remaining goods over 15 years for the EU and 20 years for Japan. Japan is to retain tariffs on around 3 per cent of goods, including rice, beef and	Neither side has released its proposals for tariffs or quotas. There is scope in the text for some tariffs and quotas to remain after entry into force of the agreement. However, the UK's MFN tariff schedule suggests the UK will aim for a very high level of tariff elimination. As the EU could trade this request off for outcomes in other parts of the negotiation, the UK will need to press hard to deliver on its no tariff/quota commitment. **Evaluation Questions:** • Is there complete elimination of tariffs and quotas from day 1 of implementation? • Will there still be some tariffs after entry into force of the agreement • If so, will they be phased out over a time period? • Are there any other qualifications being applied to tariff elimination (e.g

ISSUE	UK COMMITMENT	PRACTICAL IMPLICATIONS	BEST PRACTICE	NEGOTIATION DIRECTION
			footwear, while the EU is to retain tariffs on around 1 per cent of goods.	temporary quota arrangements)? • Are both sides fully acting on their commitment to zero tariffs and quotas, or is it being used as a trade-off elsewhere in the negotiation? • What tariff arrangements has the UK made for MFN trade once transition is completed and how do these compare to the EU's MFN arrangements? • Has the UK announced any quota arrangements for MFN trade after the conclusion of the transition period?
Tariff Rate Quotas	Political Dec. – a Free Trade Agreement providing no tariffs, fees, charges or quantitative restrictions across all sectors PM's Statement - ensure there are no tariffs, fees, charges and quantitative restrictions on trade in manufactured and agricultural goods between the UK and the EU	This equates to quota-free trade in all qualifying goods from the earliest possible time – preferably at entry-into-force of the FTA. In practice no quotas will involve a far lower administrative burden, as applying for quota allocations involve considerable administration and costs.	Quotas are used by many countries, especially those with sensitive agricultural industries. They are also used for trade in non-agricultural products like autos and textiles, although their use in non-agricultural trade is less common. The EU frequently includes quota requirements in its FTAs. The EU-Canada includes quotas on beef, pork, canned sweetcorn, and, during a transitional period, some fish for imports into the EU, and for cheese on imports to Canada.	

ISSUE	UK COMMITMENT	PRACTICAL IMPLICATIONS	BEST PRACTICE	NEGOTIATION DIRECTION
Rules of Origin Rules of Origin	Political Dec – appropriate and modern accompanying rules of origin PM's Statement – "provisions… which ensure that only 'originating' goods are able to benefit from the liberalised market access arrangements …. similar to… the EU-Japan Economic Partnership Agreement (EPA) and CETA. Rules… supported by predictable and low-cost administrative arrangements for proving origin… accompanied by detailed product-specific rules of origin (PSRs). In line with general practice, these arrangements should reflect the requirements of UK and EU industry. The Agreement should provide for cumulation between the UK and the EU, allowing EU inputs and processing to be counted as UK input in UK products exported to the EU and vice versa. It would also be appropriate to include measures that support trade and integrated supply chains with partners with which both the UK and the EU have free trade agreements or other preferential trade arrangements (diagonal cumulation).	It will be important to call for clear product-specific rules which reflect industry structures and sensitivities; low cost, predictable arrangements for demonstrating origin including cumulation of content across the parties, with capacity for extension to common FTA partners. The rules of origin should be crafted to ensure high proportions of goods qualify for preferential access. However, it should be expected that not all goods will qualify for preferential access – the rules will not allow preference for transhipped goods or those whose imported materials have not been substantially transformed within the UK or EU. There will be increased administration and related costs in complying with a whole new set of rules of origin.	Many rules of origin texts provide clear frameworks for transparent rules with relatively simple testing of products for compliance, and provisions encouraging greater integration of the parties' economies through broad cumulation provisions. The best agreements set flexible certification requirements that do not add administrative burdens with robust verification provisions based on cooperation between the parties. However, even in the best rules of origin chapters, the PSRs include tests which focus on protecting sensitive industries from competition from FTA parties. CETA outlines a transparent and flexible rules of origin regime. Its administrative requirements are not too onerous, being based on self-certification of origin. It encourages greater integration through clear cumulation provisions and provides the basis for expanding this through diagonal cumulation of content from countries where the parties share separate FTAs with equivalent rules of origin in place. However, many of its PSRs are	Transparent rules with uncomplicated administrative arrangements are essential. It is unlikely that the EU will accept the UK's proposals on cumulation in their present form. The UK will have to take a stand on product specific rules as the EU will press for strict PSRs in a number of sectors – e.g. agriculture, textiles and apparel and autos, which could restrict UK producers' ability to source materials from outside the EU and qualify for preferential tariffs. **Evaluation Questions:** • Is the UK leaning to join the PEM? • Has the EU accepted the UK's proposals on cumulation in their present form? • Does the UK have a fall-back position to accommodate expanded cumulation provisions in some form? • Is industry being closely involved in the negotiations? • Are each side's product specific rules being shared and discussed with industry in time?

ISSUE	UK COMMITMENT	PRACTICAL IMPLICATIONS	BEST PRACTICE	NEGOTIATION DIRECTION
Rules of Origin			restrictive, although for automotive and many processed foods, the EU has set origin quotas which allow defined quantities of Canadian exports to qualify under more liberal rules (e.g higher levels of non-originating content). The EU's Revised Convention on Pan-Euro- Mediterranean (PEM) rules of origin does provide for cumulation of content across any of the parties, provided they have in place FTAs with identical rules of origin to their FTAs with the EU. However, these have mainly been determined by the EU and reflect its interests on industry sensitivities. Canada has introduced the concept of "focussed" value in determining qualifying content or regional value content in testing the origin of goods. This approach focusses on measuring only the value of specific non-originating materials in an imported good – materials that raise industry sensitivities in one or other of the parties to an FTA. This approach was included for certain goods in the CPTPP rules of origin.	• How do the EU's PSR proposals compare to those agreed in recent FTAs such as CETA, the EU-Japan FTA and the CPTPP? • What analysis has been done on which products are unlikely to meet EU rules of origin thresholds? • Which UK industries will be affected by the PSRs • Have the certification arrangements for trade between the UK and EU been announced? • What administrative costs do the certification arrangements place on exporters and importers?

ISSUE	UK COMMITMENT	PRACTICAL IMPLICATIONS	BEST PRACTICE	NEGOTIATION DIRECTION
Technical Barriers to Trade	Political Dec – TBT disciplines should set out common principles in the fields of standardisation, technical regulations, conformity assessment, accreditation, market surveillance, metrology and labelling. PM's Statement – The Agreement should promote trade in goods by addressing regulatory barriers to trade between the UK and EU, while preserving each party's right to regulate, as is standard in free trade agreements. The Agreement should build upon the WTO TBT Agreement, in line with recent EU Free Trade Agreements such as CETA and the EU-Japan EPA.	In practice the approach will incorporate and build on the WTO TBT Agreement and draw on international standards in setting new domestic standards and adopt flexible conformity assessment requirements based on risk management principles to facilitate certainty for manufacturers and exporters.	EU FTAs set a high standard for TBT provisions and the EU is very active in addressing TBT issues generally. The EU-Canada CETA TBT chapter is a model for best practice in FTAs promoting high levels of transparency and regulatory cooperation. However, the EU's mechanisms for conformity assessment have been found in practice to be slow to establish.	Agreement possible on TBT cooperation and transparency provisions. UK will need to address how conformity assessment mechanisms are put in place initially, with possible administrative delays for clearance of goods until fully operational. There is potential for levels of cooperation to be strained if regulatory approaches diverge over time. **Evaluation Questions:** • Is there consensus between both sides on the overarching principles? • Is the UK ready to use its own procedures for mechanism such as conformity assessment? • What measures are in place to meet EU product and labelling standards? • Can they be addressed as part trade facilitation?

ISSUE	UK COMMITMENT	PRACTICAL IMPLICATIONS	BEST PRACTICE	NEGOTIATION DIRECTION
Sanitary and Phytosanitary Measures (SPS)	Political Dec – The Parties should treat one another as single entities as regards SPS measures, including for certification purposes, and recognise regionalisation on the basis of appropriate epidemiological information provided by the exporting party. The Parties will also explore the possibility of cooperation of United Kingdom authorities with Union agencies such as the European Medicines Agency (EMA), the European Chemicals Agency (ECHA), and the European Aviation Safety Agency (EASA). PM's Statement – The SPS agreement should build on the WTO SPS Agreement in line with recent EU agreements such as CETA and the EU-NZ Veterinary Agreement. The Agreement should protect human, animal and plant life and health, and the environment while facilitating access to each party's market. It should ensure parties' SPS measures do not create unjustified barriers to trade in agri-food goods between the UK and EU. The Agreement should reflect SPS chapters in other EU preferential trade agreements, including preserving each party's autonomy over their own SPS regimes.	This will be a cooperative approach to protecting human, animal and plant life and health and the environment - one that builds on the principles of the WTO SPS Agreement and other international forums. Any SPS measures should not create an unnecessary barrier to trade by ensuring that domestic provisions are firmly based in science.	CETA provides a robust and cooperative approach to SPS, with the text recognising the high standards that currently exist in the parties' regimes. The UK text proposal is very similar to what has been agreed in CETA.	The EU has made it clear that it will not compromise its existing SPS regime and standards which are recognised as amongst the highest in the world. Proposals in the UK and EU draft texts are similar, however, any divergence from common standards is likely to be met with very close scrutiny by the EU in the future. **Evaluation Questions:** • Is there consensus between the parties that agreement on the overarching principles for SPS measures can be reached? • What measures are in place in the UK to accommodate changes relating to meeting EU SPS requirements? • Will UK producers be permitted to have their goods certified as meeting EU SPS requirements within the UK? • Does the UK have in place the necessary capacity to certify products according to EU requirements?

ISSUE	UK COMMITMENT	PRACTICAL IMPLICATIONS	BEST PRACTICE	NEGOTIATION DIRECTION
Customs Measures	Political Dec – ambitious customs arrangements… making use of all available facilitative arrangements and technologies…. Ensuring the absence of a hard border on the island of Ireland. PM's Statement – The Agreement should provide for streamlined customs arrangements covering all trade in goods, in order to smooth trade between the parties, while ensuring that customs authorities remain able to protect their regulatory, security and financial interests.	This will amount to the introduction of customs arrangements more typical of trade between independent customs territories. It will result in significant friction at the border compared to current conditions. It will inevitably result in longer time and cost to meet customs requirements. These could be alleviated to some extent through agreement to make use of enhanced and streamlined documentation submission requirements, as well as approved economic operator or other trusted trader programmes. However, compared to current trading conditions, the trade barriers in this area will be far higher and more costly to overcome. There will be the need for provisions to support the efficiency of documentary clearance, customs simplifications, transparency, advance rulings, and non-discrimination.	Several modern FTAs include provisions on customs arrangements that provide for high levels of cooperation in transparency, risk management, the use of modern technologies and a flexible approach to timely clearance. These include CETA, CPTPP and the EU-Japan FTA. While they are minimising trade barriers, it is in the context of starting from higher levels of customs restrictions than the UK is experiencing currently.	The draft texts tabled by the UK and EU are based on common principles of cooperation and transparency in customs procedures, despite major differences in how these are set out. While both sides are likely to defend the integrity of their trade, traders should expect that the outcome of the agreement will be streamlined processes for submission of documentation and pre-clearance of goods, and rapid and timely release of those goods. Both parties have proposed the continued recognition of Authorised Economic Operator (AEO) schemes to assist with streamlining clearance procedures. Despite this, there will be significant friction at the border (see column 2) as a result. **Evaluation Questions:** • Is there consensus between both sides that agreement on the key principles for customs arrangements can be reached? • What additional infrastructure will be required at UK/EU border points to implement the agreed arrangements? • What documentation changes will be required for UK goods to meet the arrangements for export to the EU?

TABLES: TRADE IN SERVICES

ISSUE	UK COMMITMENT	PRACTICAL IMPLICATIONS	BEST PRACTICE	NEGOTIATION DIRECTION
General provisions	A level of openness in services trade above and beyond baseline level under WTO commitments. EU FTAs to be a starting point, specifically those with Canada and Japan; with a view to reaching greater levels of liberalisation in services than has been achieved in these FTAs. Substantial coverage of services sectors (with exceptions and limitations as appropriate). Sectors to include professional and business services, telecommunications services, courier and postal services, distribution services, environmental services, financial services, transport services and other services of mutual interest. Negotiating across the four modes of supply. Aim to preserve as much openness and access as possible to the EU market. Provisions should respect both parties' right to regulate and be subject to limited, justified carve-outs, such as for services in the exercise of governmental authority.	In practice the level of access being requested will result in new barriers to market access in the EU across a range of services sectors, as the baseline being used (above WTO and also current EU FTA levels) are more restrictive than currently. For any flexibility to be more ambitious than the current levels of access other EU FTA partners receive, the EU will expect high degrees of regulatory alignment reflecting EU law.	The EU- Canada (CETA) agreement, followed by the Japan-EU EPA are examples of the two most liberalised services FTAs. While they are closer to levels of services openness in practice, they are still considerably more restrictive than the degree of services liberalisation that the UK currently enjoys.	The EU is limiting its offer to what has previously been offered to other third country markets in FTAs. This will result in significant barriers to UK services exports into the EU. Any increased access the UK tries to secure is likely to be traded off with the need for the UK to adhere to level playing field provisions. **Evaluation Questions:** • Is there agreement to go beyond precedent of previous EU FTAs? • Is the UK industry being consulting on their priorities? • Is the UK willing to find common ground on regulatory alignment in order to gain mores services access? • Are all designated sectors and modes of supply being covered?

ISSUE	UK COMMITMENT	PRACTICAL IMPLICATIONS	BEST PRACTICE	NEGOTIATION DIRECTION
General provisions	Both sides to provide a schedule of their commitments - the baseline for the negotiation on schedules being both parties' best offer to date. The arrangements should include provisions on market access and national treatment under host state rules for the Parties' service providers and investors, including with regard to establishment.			

ISSUE	UK COMMITMENT	PRACTICAL IMPLICATIONS	BEST PRACTICE	NEGOTIATION DIRECTION
Cross-border services	The Agreement should include measures to minimise barriers to the cross-border supply of services on the basis of existing FTAs, such as CETA and the EU-Japan EPA, and could draw on precedent from trade negotiations where the EU has made offers to other third-country partners. In areas of key interest, such as professional and business services, there may be scope to go beyond these commitments. The Agreement should enhance cooperation between the parties and competent authorities. On Cross-Border Trade in Services specifically, the Agreement should include provisions: to ensure service suppliers do not face limitations such as economic needs tests; on National Treatment, to provide for non-discriminatory treatment between UK and EU service suppliers; Local Presence, to ensure that cross-border trade is not inhibited by establishment requirements – as the EU has recently agreed with Mexico; and Most Favoured Nation treatment, to ensure the Agreement continues to provide for ongoing liberalisation.	There will be a number of new restrictions on accessing the EU market from the UK in each sector, including due to limitations on discriminating in favour of local suppliers (national treatment). There are likely to be regulatory licensing etc requirements in various EU countries, creating an incentive for companies to establish a physical presence in the EU, rather than to engage in cross border supply. Various member states will also have different restrictions on the supply of cross border services for each European market. For example, in the supply of legal services, some member states impose nationality criteria.	On the whole, most EU FTAs do not liberalise cross-border services trade much beyond levels committed to in the WTO (which are far more restrictive than current levels facing the UK).	The UK has limited scope to negotiate much access on cross border services within its limits of standard FTAs and without a significant trade off on the UK's part. **Evaluation Questions:** • What limitations are UK providers of cross border services likely to face? Economic needs tests for e.g.? • Are there local EU establishment requirements for UK service providers? • Are industry priorities being pushed for? • Are there significant variations between member states restrictions? • Are changes phased or immediate? • Can industry prepare in time for these changes?

ISSUE	UK COMMITMENT	PRACTICAL IMPLICATIONS	BEST PRACTICE	NEGOTIATION DIRECTION
Temporary entry and stay for business purposes Temporary entry and stay for business purposes	The Free Trade Agreement should include significant reciprocal commitments on the temporary entry and stay of individuals, so that both EU and UK nationals can undertake short-term business trips to supply services - in defined areas. This is without prejudice to the UK's future points-based immigration system. The Agreement could build on commitments in CETA and the EU-Japan EPA, and should cover: short-term business visitors, including for establishment purposes; intra-company transferees; contractual service suppliers; and independent (i.e. self-employed) professionals and investors. Both parties should clearly set out, on a reciprocal basis, the activities that can be undertaken by a short-term business visitor.	There will be immediate restrictions on the ability of people to travel and operate commercially between the two territories. In practice it is likely to require all UK service providers who want to operate in the EU, having to comply with relevant visa and work permit obligations. These obligations are likely to vary between each member state and be applicable only to specified services sectors.	CETA and EU-Japan EPA set out conditions such as: visas and work permits for designated skilled professionals in specified sectors for the purposes of short-term business, certain intra-company transferees, investors, and business visitors for investment purposes and allowing families on postings; no numerical quotas on immigration and economic needs test prior to migration	This is an area where the UK will need to push for agreement, without which significant restrictions will be imposed on those needing to travel to the EU to deliver services. **Evaluation Questions:** • What visas and work permits for skilled professionals (in categories listed on p 28 of report) have been negotiated? • Are numerical quotas on the table? • Is removing economic needs test agreed? • Are at least conditions of CETA and EU Japan EPA agreed here?

ISSUE	UK COMMITMENT	PRACTICAL IMPLICATIONS	BEST PRACTICE	NEGOTIATION DIRECTION
Financial services	Committed to preserving financial stability, market integrity, investor and consumer protection and fair competition, while respecting the Parties' regulatory and decision-making autonomy, and their ability to take equivalence decisions in their own interest. This is without prejudice to the Parties' ability to adopt or maintain any measure where necessary for prudential reasons. The Parties agree to engage in close cooperation on regulatory and supervisory matters in international bodies. Given the depth of the relationship in this area, there should also be enhanced provision for regulatory and supervisory cooperation arrangements with the EU, and for the structured withdrawal of equivalence findings. It should include transparency and appropriate consultation in the process of adoption, suspension and withdrawal of equivalence decisions, information exchange and consultation on regulatory initiatives and other issues of mutual interest, at both political and technical levels. Parties should start assessing equivalence with respect to each other under these frameworks, endeavouring	An FTA arrangement will significantly restrict market access for UK financial service providers. If an equivalence mechanism can be agreed some types of financial services products may be deemed equivalent and allowed to be traded between the territories. In practice, a system of equivalence will be considerably different to the current passporting system within which the financial services sector operates – where UK financial services businesses are currently free to operate in any EU member state. The EU has tended to grant equivalence for only limited products, which then also have to be authorised. Immediate new barriers are likely to include the loss of wholesale banking revenues and negative impacts on EU derivative contracts cleared in London. UK investment banks are unlikely to be able to provide services to their EU-based clients from the UK. It will also create an incentive for firms to relocate to the EU. Also, under non-discrimination (MFN) rules, if the EU granted additional concessions to the UK, it may also have to	Within EU FTAs provisions for financial services tend to be for services in support of the sector (advisory and data processing) rather than core financial services themselves. Restrictions limit operations to financial services companies that are established in the EU and/or have branches or subsidiaries through which they must operate. The provision of insurance services is substantially limited within FTA commitments.	The UK will have to push for an "equivalence plus" system so additional services/ products can be granted equivalence. However there appears to be no sign of agreement to this from the EU side. Without this, significant barriers will result for the provision of financial services. **Evaluation Questions:** • Is the UK prioritising this area given its contribution to the UK economy, and if so, how? • When will the equivalence assessment process be complete? • Has the UK secured an equivalence-plus arrangement, for a greater range of products? • Has the UK secured agreement to enhanced regulatory cooperation EU? • Are the range of likely restrictions facing UK financial service providers

ISSUE	UK COMMITMENT	PRACTICAL IMPLICATIONS	BEST PRACTICE	NEGOTIATION DIRECTION
Financial services	to conclude these assessments before the end of June 2020. The Parties will keep their respective equivalence frameworks under review. The Agreement should include legally binding obligations on market access and fair competition, in line with recent CETA and EU-Japan EPA precedent.	offer these automatically to its other WTO trading partners. (Although there are caveats in some of the EU's trade agreement where MFN rules do not apply in circumstances where the EU relationship with the country is particularly inter-twined, such as Switzerland.)		set out for them in advance? • Is the UK pushing for access for industries not covered by typical FTAs, such as for insurance services?
Digital services	There should be measures to support digital trade, building on the most	The EU is aligned with the UK position on many of the provisions set out. Where	CETA has a stand-alone e-commerce chapter that includes	While significant agreement could be reached on this

ISSUE	UK COMMITMENT	PRACTICAL IMPLICATIONS	BEST PRACTICE	NEGOTIATION DIRECTION
Digital services	recent precedents for example negotiations on the WTO's Joint Statement Initiative on E-Commerce. The provisions on digital trade in the Agreement could, in specific areas, go beyond those precedents to reflect the direction of travel in current digital trade negotiations. For example, provisions on electronic authentication have continued to evolve as part of EU Free Trade Agreement negotiations with Australia and Mexico and at the WTO, and this should be reflected. The Parties should establish provisions to facilitate electronic commerce, address unjustified barriers to trade by electronic means, and ensure an open, secure and trustworthy online environment for businesses and consumers, such as on electronic trust and authentication services or on not requiring prior authorisation solely on the grounds that the service is provided by electronic means. These provisions should also facilitate cross-border data flows and address unjustified data localisation requirements, without affecting personal data protection rules. The Parties should work together through multilateral fora, and establish a dialogue to exchange information, experience and best practice on emerging technologies.	the two parties have differences however is in the area of facilitating the cross-border transfer of electronic information, including whether transfers can be restricted for public policy reasons. The UK would like transfers to be allowed and only limited for a specified set of legitimate public policy reasons. The EU on the other hand only wants to focus on freeing up data localisation rules and wants to maintain the right to data privacy safeguards that are exempt from disciplines. A separate data adequacy agreement will be important in allowing the free flow of data across borders, and therefore facilitating the supply of cross-border services.	provisions to protect personal information. It also promotes cooperation on issues like treatment of spam and protection from fraudulent and deceptive commercial practices. No customs duties are applicable on the e-transmission of digital products. In the EU Japan EPA there was no assurance on the free flow of data, unlike the CPTPP which Japan is a member of also. (They separately signed a Mutual Recognition Agreement which deemed the other's personal data protection regimes to be equivalent). On e-commerce: they agreed no duties on electronic transmissions, recognised the legal validity of electronic contracts and signatures, and no source codes need to be transferred or accessed.	chapter, it will hinge on a data adequacy arrangement being agreed to allow the free flow of data which supports numerous UK services exports. **Evaluation Questions:** • Has the UK secured agreement to a digital chapter as per best practice? • Has agreement been reached on the transfer of electronic information, with limitations only being for specific public policy reasons? • Has the agreement been locked in on digital trade provisions beyond the EU's previous FTAs? • Have provisions been set up to facilitate e-commerce measures? • Are there restrictions likely on the provision of digital services from the UK into the EU? • Has a data adequacy agreement separately been reached?

ISSUE	UK COMMITMENT	PRACTICAL IMPLICATIONS	BEST PRACTICE	NEGOTIATION DIRECTION
	The Agreement should include commitments on market access and regulatory governance of digital trade. Commitments on market access should minimise barriers to the supply of digital services provided from the territory of a party into the territory of the other party and will provide a clear and predictable basis upon which business can invest. This should lock in regulatory certainty, while preserving the UK's regulatory autonomy. The UK is separately attempting to secure a data transfer adequacy agreement as part of the broader relationship negotiations, before the end of the transition period.			
Transport	Calling for reciprocal commitments allowing road transport operators to provide services between each other's	Given the highly interconnected nature of UK and EU road transport the potential for increased trade barriers and	The EC/Switzerland land transport agreement provides fully open access to each other's transport sectors, without	As a starting point, both sides favour open bilateral road freight access between the two territories – in principle.

ISSUE	UK COMMITMENT	PRACTICAL IMPLICATIONS	BEST PRACTICE	NEGOTIATION DIRECTION
Transport	territories, with no quantitative restrictions. Market access to be underpinned by appropriate and relevant consumer protection requirements and social standards for international road transport, and obligations (from international agreements), notably concerning conditions to pursue the occupation of a road transport operator, conditions of employment, rules of the road, passenger carriage by road and carriage of dangerous goods by road. Parties should consider complementary arrangements to address travel by private motorists. Should secure continued connectivity for commercial road transport services (buses and coaches). While there is no direct EU precedent for this (EU FTAs are with countries where cross-border road transport is impractical for geographical reasons) this is consistent with many commercial road transport bilateral agreements EU Member States have with countries outside the EU. UK hauliers and passenger transport operators expected to comply with international rules (such as ECMT and	immediate costs on the import and export of UK goods is high. In practice the UK requests amount to having similar access levels to the current arrangements and similar levels to the EC/Switzerland land transport agreement. However, the EU stands by its position that after leaving the EU, the UK should have lesser levels of access than it currently enjoys. The EU is insistent on the UK committing to level playing field provisions and keeping in regulatory alignment in this sector, whereas the UK does not want to be limited to following EU standards The EU has made it clear it will not replicate the Swiss style bilateral agreements on separate issues Also, the EU states that unless an agreement can be struck in this area the UK will have to access the limited quotas currently available for operators to conduct journeys to the UK and EU.	quantitative restrictions (quotas) and allowing 'grand cabotage' (transport between member states).	However, without concessions from the UK on wider regulatory alignment there's a real risk that the EU will resort to numerical quotas for operators and treat the UK as a third country. The UK dependence of freedom of road transport access for its exports could see this have a detrimental impact on administration and prices. **Evaluation Questions:** • Given the significant need to maintain open bilateral road freight access between the two territories has the UK prioritised this outcome and considered concessions in return? • Has the UK secured no numerical quotas for road operators? • Is the UK pushing for 'grand cabotage' as per the EU/Swiss arrangement? • How is the UK advising and preparing UK transport operators for the changes, ahead of time?

ISSUE	UK COMMITMENT	PRACTICAL IMPLICATIONS	BEST PRACTICE	NEGOTIATION DIRECTION
	AETR3) when operating outside of the UK. The Agreement should respect the UK's autonomy as a third country and not require the UK to follow EU standards. The parties should agree how to cooperate on monitoring and enforcement. The Agreement would leave the UK free to regulate domestic haulage and passenger transport, including in a way which reflects the circumstances of the island of Ireland.			
Recognition of Professional Qualifications	The Agreement should provide a pathway for the mutual recognition of UK and EU qualifications, underpinned by regulatory cooperation Comprehensive coverage would ensure that qualification requirements do not become an unnecessary barrier to trade in regulated services, across the modes of supply. Ensure the parties can set their own professional standards and protect public safety. The parties should explore how competent authorities could recognise applicants who demonstrate that they meet the host states' standards.	In practice the EU does not have a blanket system of recognising professional qualifications from third countries across all member states in a uniform way. EU member states tend to recognise qualifications individually.	In other FTAs the EU has predominantly offered supporting dialogue between member states' competent authorities and counterparts in the third country. The Japan EPA and CETA both facilitated a framework to work to mutual recognition of qualifications. In contrast, within the CPTPP, parties have committed to recognise qualifications of any one territory in the supply of a service in another.	There is potential for agreement in this area – subject to trade-offs. However, the UK will have to push for more than just a framework to start discussions- as per other FTAs **Evaluation Questions:** • Has agreement been secured for mutual recognition (vs. a framework to start discussions as in other FTAs, which could take significant time)? • What is the timeframe for achieving this? • Are there interim measures to put in place if delayed?

ISSUE	UK COMMITMENT	PRACTICAL IMPLICATIONS	BEST PRACTICE	NEGOTIATION DIRECTION
Audio visual	The Agreement could promote trade in audio-visual services as well as associated businesses in the audio-visual supply chain by ensuring fair access and treatment for audio-visual services, and provide protections for the UK's audio-visual services policy framework.	Given the important role of UK audio-visual industries in Europe, freedom of workforce movement, free trade in audio-visual services and access to the Digital Single Market are essential; there may be quotas on European works, access to EU funding streams may be limited and UK broadcasters may consider relocating considering to the EU to continue benefitting from the Digital Single Market.	Both CETA and the EU Japan EPA excludes audio-visual services from liberalisation commitments.	Given the EU wants to exclude audio-visual services from the agreement the UK will have to consider trade-offs and press hard for it to be included, given the importance of this sector to the UK, and its trade with the EU market in this area.
Level Playing Field	The Political Declaration: Given the EU and UK's geographic proximity and economic interdependence, the future relationship must ensure open and fair competition, encompassing robust commitments to ensure a level playing field. The nature of commitments should be commensurate with the scope and depth of the future relationship and the economic connectedness of the Parties. These commitments should prevent distortions of trade and unfair competitive advantages. The Parties should uphold the common high standards at the end of the transition period in state aid, competition, social and employment standards, environment, climate change, and relevant tax matters.	The concept of the level playing field is to ensure that neither party undermines or disadvantages the other by having lower standards and costs of regulation in their territory – thereby ensuring "open and fair competition". The UK and EU have very different level playing field positions, despite both agreeing to the concept in the Political Declaration. The exact details of what it will entail are to be outlined in the negotiations. The UK will not be governed by EU regulations and says it will uphold high standards against the commitments. It wants standard FTA provisions and no dispute rules- the EU says these are needed given how highly integrated the two are. Common ground could be found on competition, environment, labour	EU trade agreements have level playing field commitments within them, with differing degrees of specificity. For Japan, Korea and Canada there are non-regression clauses and rules on subsidies and safeguards (The types of provisions that the UK Government is strongly leaning towards.) For Turkey, Ukraine and Switzerland, there are measures on state aid and competition. The EU takes account of the level of integration and geographical proximity as to the specificity of the level playing field provisions set out.	This is already a major sticking point in the negotiations. The UK will have to find middle ground in order to secure other key issues such as low tariffs for good, low services barriers and expanded financial services equivalence to maintain the current open trading access for UK industries. **Evaluation Questions:** • If UK industry is unlikely to diverge significantly from the EU regulatory environment for commercial reasons, are there compromises the UK can make in order to maintain the levels of openness and access needed for UK producers and consumers?

ISSUE	UK COMMITMENT	PRACTICAL IMPLICATIONS	BEST PRACTICE	NEGOTIATION DIRECTION
	The Parties should in particular maintain a robust and comprehensive framework for competition and state aid control that prevents undue distortion of trade and competition; commit to the principles of good governance in the area of taxation and to the curbing of harmful tax practices; and maintain environmental, social and employment standards at the current high levels provided by the existing common standards. In so doing, they should rely on appropriate and relevant Union and international standards, and include appropriate mechanisms to ensure effective implementation domestically, enforcement and dispute settlement. The future relationship should also promote adherence to and effective implementation of relevant internationally agreed principles and rules in these domains, including the Paris Agreement.	standards and taxation, through non-regression clauses. A difficult area is EU insistence on state aid rules being enforced and disciplined in the UK. The UK will not go beyond standard FTAs, nor align with EU laws and will have its own system subsidy regime.		• How have the full range of industry views been taken into account?
Regulation	Should be measures that reduce unnecessary barriers to trade in services, streamlining practical processes and providing for appropriate regulatory cooperation. While preserving regulatory autonomy, the arrangements should include provisions to promote regulatory approaches that are transparent, efficient, compatible to the extent	Regulation in this context refers to broad regulatory frameworks in different sectors being kept in line with each other in the two territories and one not deregulating out of step with the other.	The EU Japan EPA was the first to have a chapter on the issue and a joint committee for ongoing cooperation. While the work is on a voluntary basis, EU regulations are a reference, allowing the right to regulate on public policy grounds. They have a joint forum, on sharing information, new rules,	While voluntary regulatory cooperation could be achieved, the broader issue of regulatory alignment is a major sticking point in the negotiation and the UK may have to find a compromise in order to get a deal.

ISSUE	UK COMMITMENT	PRACTICAL IMPLICATIONS	BEST PRACTICE	NEGOTIATION DIRECTION
	possible, and which promote avoidance of unnecessary regulatory requirements. In this context, the Parties should agree disciplines on domestic regulation. These should include horizontal provisions such as on licensing procedures, and specific regulatory provisions in sectors of mutual interest such as telecommunication services, financial services, delivery services, and international maritime transport services. Parties should establish a framework for voluntary regulatory cooperation in areas of mutual interest, including exchange of information and sharing of best practice.		resolving disagreements and ensuring domestic regulations do not discriminate against the non-EU providers. Parties also commit to work together in international regulatory forums.	**Evaluation Questions:** • How are industry views accounted for on need for regulatory cooperation? • Has the UK set out common areas to be reached on voluntary regulatory cooperation? • Have disciplines been agreed on licensing procedures? • Have specific mutual interest regulatory provisions been agreed in - telecommunication services, financial services, delivery services, and international maritime transport services?

ISSUE	GOVT COMMITMENT	PRACTICAL IMPLICATIONS	BEST PRACTICE	NEGOTIATION DIRECTION
Fisheries	Political Dec – commitment to bilateral cooperation to ensure fishing at sustainable levels, promote resource conservation, and foster a clean, healthy and productive marine environment, noting that the UK will be an independent coastal state.	A new fisheries arrangement needs to be in place to determine fishing opportunities from the end of the transition period. The new fisheries agreement by 1 July 2020 target was not met.	Few FTAs include provisions covering fisheries, other than commitments to support environmental or conservation principles such as trade in endangered species. The UK-EU relationship is very different to most in that it involves large	The parties are far apart and their aim to complete a new fisheries agreement by 1 July 2020, was not met. The UK will need to push for precedent based on the EU/Norway deal while the EU wants to continue current access.

ISSUE	GOVT COMMITMENT	PRACTICAL IMPLICATIONS	BEST PRACTICE	NEGOTIATION DIRECTION
	PM's Statement – "The UK is ready to consider an agreement on fisheries that reflects the fact that the UK will be an independent coastal state at the end of 2020. It should provide a framework for our future relationship on matters relating to fisheries with the EU… in line with precedent for EU fisheries agreements with other independent coastal states. … that respects the UK's status as an independent coastal state and the associated rights and obligations that come with this."	"Bilateral cooperation" could take different forms – from a formal structure with both jointly determining catches and management issues for both parties' waters, to one where each consults before independently determining arrangements for its own exclusive economic zone. The UK is seeking an outcome consistent with relations between independent states with access and quotas negotiated on an annual basis – such as Norway/EU arrangements. The EU is seeking to extend its access, to joint management of the waters and reciprocal rights for either party vessels to fish in the other's waters. The EU wants these provisions included in the FTA, vs. a separate agreement – this goes much further than provisions for management of fishing resources in other EU FTAs.	stretches of neighbouring and overlapping economic zones and the restructuring of an existing relationship which was based on shared management of and access to each party's resources. It is further complicated by the fact that the key resource – the fish – are mobile and do not respect territorial boundaries. The Political Declaration suggested that the FTA itself should focus on stating shared commitments to sustainable usage and cooperative management, with future access issues being covered in a separate agreement.	**Evaluation Questions:** • Has either released proposals for future management of fishing and fish stocks in the waters governed by the UK and EU? • Will the new arrangements allow for vessels from the UK to operate in EU waters, and vice versa? • If so, who will be responsible for policing of fishing activities by the fleets in each territory? • Will there be any changes in the ownership or crewing requirements of vessels engaged in fishing when the new arrangements start? • Will there be an impact on fishing in and operations of fleets from other non-EU countries with EEZs that adjoin those of the UK or EU?

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