

The Main Elements of the EU-UK Trade and Cooperation Agreement

December 28, 2020

Public Policy

On December 24, 2020, exactly four and a half years after the result of the UK's EU Referendum, the UK and the EU reached an agreement on their future trade and cooperation arrangements: the EU-UK Trade and Cooperation Agreement ("EUTCA"). The transition period that has run since the UK left the EU in January 2020 will end at midnight Central European Time on December 31, 2020 and the UK will then be treated by the EU as any other third country.

The EUTCA should bring to an end the often rancorous, difficult and divisive political debates in the UK about the kind of relationship the UK should seek with the EU upon exiting the single market. Time will tell whether the UK Prime Minister's suggestion that the deal brings to a close this issue which has "be-devilled British politics") is justified—the UK's relationship with the EU has played a major role in the demise of the last four Conservative British Prime Ministers. The various [Declarations](#) relating to the agreement, and the provision in Article FINPROV.3 for a review of the agreement every five years, show that negotiations between the two sides will likely continue for decades to come.

The EUTCA runs to more than 1250 pages and is one of the fastest trade deals ever negotiated, although the close trading ties and common standards between the UK and EU economies meant that the two sides started from a very similar position. It is also the first FTA ever to reduce, rather than increase benefits to both sides.

Goods

The EUTCA provides that there will be no tariffs and no quotas on bilateral trade in goods (which stands at approximately £700 billion), providing rules of origin and other technical requirements are met. Traders can self-certify the origin of their goods and the EU and the UK have agreed a trusted trader scheme.

However, the absence of agreement on conformity assessment means that any trader wishing to provide goods to both the UK and the EU markets must meet both sets of standards and regulations. This may involve expensive duplicate procedures and delays.

Financial Services

Given the central importance of financial services to the UK's overall economy, the fact that the EUTCA does not cover such services is striking. However, it is no surprise, as the UK is not so much concerned with exporting its financial services: it is one of the two most important financial markets in the world, and the benefits of single market passports are not so important because the London market is a net importer of clients. The absence of a "passport" to the EU is most relevant in the provision of retail services. However, the experience of the UK has been that it can engage with institutional financial services from the EU and throughout the world. There will be some benefit to the UK if the EU decides it is equivalent, where relevant EU financial services legislation allows. Indeed, it would be surprising, given the UK's carry-over of existing EU legislation on financial services, if that were not the case. However, a financial market as large as London is not dependent on the limited equivalence provisions of various EU legislative measures. It is a global market of extraordinary size which will continue to be an important component of the global economy. That said, both the EU and the UK have declared their intention to reach a Memorandum of Understanding with a view to both sides recognizing each other's financial regulations as equivalent.

Fisheries

The EUTCA sees the EU agree to a cut in the value of the fish its fisherman may catch in UK waters by 25%. That cut will be phased in over a transition period of five and a half years. UK fisheries products will now have to pass sanitary and veterinary checks before being allowed into the EU.

Road Transport

The EUTCA grants unlimited point to point access for haulers and full transit rights. The two sides have agreed that they will not seek to undercut the other by deliberately lowering standards (the so-called "Level Playing Field") for working conditions, road safety and fair competition.

Data Transfer

On personal data transfer, the UK has agreed to recognize EU data standards as equivalent for the purposes of transfers from the UK, but the EU has not yet issued an adequacy decision in respect of transfers to the UK. However, to avoid any immediate disruption to flows of personal data, the EU and UK have agreed to a "data bridge" for up to four months (which can be extended by a further two months). In this period, EU originating personal data may be transferred to the UK unimpeded, subject to the UK agreeing to maintain its data protection regime as it stands on December 31, 2020 and not exercising certain "designated powers" enumerated in the text. Such powers include issuing new data transfer clauses, approving binding corporate rules, or making other decisions related to data transfers. It is hoped that this will provide sufficient time for the UK to receive a formal adequacy determination from the EU.

Aviation

The EUTCA ensures that there will continue to be close cooperation on aviation safety, and air traffic management as well as unlimited point-to-point traffic between the UK and the EU. However, UK air carriers can no longer participate in the EU's liberalized aviation market—this means they can no longer operate flights between EU destinations based on a UK license, nor can they operate onward flights to or from the EU.

Energy

There are mutual guarantees of security of supply and agreement that neither side shall go back on current climate change and carbon pricing commitments. However, there is no mechanism to link the UK and EU carbon pricing programs. Whilst there is an agreement on the safe transfer of nuclear material and technology, the UK is no longer a member of EURATOM. The UK will also leave the EU's internal energy market and the EU's Emissions Trading System ("ETS").

Mutual Recognition of Standards

On product standards there appears to be no agreement on mutual recognition of conformity assessment, nor of either side's regulations, standards, and certification procedures. This means that there will be a return of technical checks at the frontier and an increase in paperwork on goods going in both directions. There also appears to be no agreement on mutual recognition of sanitary and safety standards for export of food of animal origin, or of professional qualifications.

Security

The UK will cease to have access to some of the central EU police and crime databases but an agreement does appear to have been reached on the UK's continuing role in Europol as an observer (but with no rights to set or shape the rules) and on exchange of Passenger Name Record ("PNR") data. The EUTCA does not provide for cooperation on security, defense or foreign policy.

Enforcement Mechanisms

The EUTCA includes mutual commitments not to lower standards on the environment, workers right and climate change and includes provisions ensuring mutual enforcement.

There is a mutual right to "rebalance" the agreement in the event of significant divergences between the UK and the EU that may impact trade. This rebalancing clause is much stricter than measures found in other EU trade deals. The UK has also agreed to accept common principles on state aid and to the concept of an independent competition agency to assess those state aid regimes.

Tariffs could be imposed if either side moves too far away from the other and a binding arbitration system has been agreed as a means of policing the overall agreement.

The ECJ will continue to play a role in Northern Ireland, which will remain subject to EU single market and customs union rules.

Impact on Individuals

As a third country, UK nationals wishing to travel to the EU will face immediate restrictions from January 1, 2021, due to the impact of Coronavirus. When those restrictions lift, there will be limits on the amount of time that UK nationals can spend in the EU: whilst UK nationals will not need a visa for short trips to the EU, they will need a visa to remain in the EU for more than 90 days in any 180 day period. UK nationals will have to stand in a different queue than those holding passports from EU countries. Pet passports will no longer be valid and there is no agreement on mobile phone roaming charges. The European Health Insurance Card will no longer be valid (though cards issued in 2020 will remain valid until their expiry date). UK driving licenses will be accepted in the EU until the end of December 2021. It is unclear what the provisions will be thereafter.

The UK chose to opt out of Erasmus+—the scheme for mobility of non-EU university students within Europe—and EU students will have to pay much higher third country fees to attend UK universities. However, students from Northern Ireland will continue to participate in the principal Erasmus scheme, and the government of the Republic of Ireland has offered to cover the cost of this.

Ratification

The EUTCA has to be ratified by both the British and the European Parliaments. The EUTCA will be approved by the British Parliament, since the majority of Conservative MPs will vote for it and the leader of the official opposition Labour Party has called on his party to approve it, as preferable to “no deal.” However, he has voiced concerns about the weak protection for workers’ rights, calling the EUTCA “a thin Agreement.”

The European Parliament will examine, debate and ratify the EUTCA when it returns in the New Year. Meanwhile, the Council of the EU is set to approve the agreement, and its provisional application for two months to February 28, 2021, to give the European Parliament time for its own ratification procedures.

Political Response

The EUTCA was greeted enthusiastically by the British Prime Minister and with relief by businesses on both sides of the Channel, which had feared the inevitable disruption of tariff and quota barriers that a No Deal Brexit would have caused.

The EU’s response has been more measured, with the President of the Commission referring to the Deal as a “balanced agreement.” The EU’s mixed emotions of regret and relief are evident from the Commission President’s comments that the EU can “put Brexit behind us and focus on other pressing issues.” It is worth noting the impressive unity displayed by EU Member State countries throughout the negotiations.

Covington On-Demand Brexit Briefing

Covington will be distributing an on-demand briefing for clients on January 7, 2021, in which members of the firm’s Brexit Task Force will discuss the impact of the deal.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Brexit Task Force:

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