

The final countdown

What the final six months of the Brexit transition period (and the prospect of a no-deal Brexit) could mean for UK trade and immigration

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Agenda

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- Current state of negotiations
- What can be achieved between now and the end of the year?
- The likely shape of a trade deal
 - Status of the negotiations
- A refresher on what a 'no deal' looks like now
 - Implications for business and how businesses should be prepared
- Immigration considerations
- UK-US trade negotiations – state of play

Presenters



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Brexit update

Where are we now?



- Withdrawal Agreement (“WA”) and non-binding Political Declaration agreed
- January 31, 2020: UK legally (but not practically) left EU
- February 1 – December 31, 2020: transition period
- January 1, 2021: Future relationship starts
 - Negotiations currently in 5th round and need to be concluded by October 2020

What can be achieved between now and the end of the year?

- Free Trade Agreement ("FTA"): 27 Member States need to agree NB if agreement limited to goods EU could agree it
- 447 page document put forward by EU across all sectors
- UK 292 page document – less detailed – look to negotiate sector by sector
- 3 months left!
- UK government clear no extension to transition period

Future EU/UK Relationship

What do we know?

— Determinants of the scope of the trade deal

- Political Declaration
 - Non-binding agreement to negotiate ambitious, broad, deep and flexible partnership across trade and economic cooperation with a comprehensive and balanced FTA at its core
 - FTA underpinned by level playing field for open and fair competition
- UK general election (December 2019)
 - *"A new relationship with the EU based on free trade and friendly cooperation, not on the EU's treaties or EU law. We will keep the UK out of the single market, out of any form of customs union, and end the role of the European Court of Justice"*

Future EU/UK Relationship

Goods

- Free trade area with deep regulatory and customs cooperation underpinned by level playing field provisions for open and fair competition
- No tariffs or quantitative restrictions
- No single UK/EU customs territory, meaning rules of origin will be applied and UK/EU hard border
- But aim to agree “ambitious customs arrangements”

Future EU/UK Relationship

Level playing field for open and fair competition

- UK/EU agreed to level playing field **non-binding** commitment
- UK's close geographical proximity is a big issue for EU
- Precise nature of commitments *"commensurate with the scope and depth of the future relationship"*
- Parties to uphold common high standards applicable in EU and UK at end of transition period, covering state aid, competition, social and employment, environment, climate change and relevant tax matters

Future EU/UK Relationship

Governance

- Political Declaration provides for a Joint UK/EU Committee to manage the operation of the relationship and to resolve disputes
- Appropriate arrangements for dispute settlement and enforcement, including a flexible mediation mechanism
- CJEU sole arbiter of the interpretation of EU law but *“no reference to CJEU where a dispute does not raise...a question of [EU law]”*

Future EU/UK Relationship

Services and investment

- Ambitious, comprehensive and balanced services and investment relationship going “*well beyond*” parties’ WTO commitments
- Broad sectoral coverage on market access and national treatment, non-discrimination
- Transparent regulatory approaches
- Appropriate arrangements to recognize professional qualifications

Outcome of the 4th round of negotiations

June 5, 2020

- **UK:** *"Progress remains limited but our talks have been positive in tone. Negotiations will continue and we remain committed to a successful outcome"*
- **EU:** *"We can only take note that there has been no substantial progress since the beginning of these negotiations, and that we cannot continue like this forever"*

Status of the negotiations

4 Key points in dispute

— Fisheries

- UK wants limited access to UK fishing grounds at a price to be negotiated annually
 - EU wants continued access and a long term agreement

— Level playing field (social and environmental standards, taxation, labor, antitrust, subsidies)

- UK does not want to be subject to EU regulation – wants independence
- EU wants regulatory alignment with CJEU as ultimate arbitrator

— Governance

- UK wants separate governance frameworks for different areas of cooperation
- EU wants single governance framework establishing legal linkages between our different areas of cooperation

— Police and judicial cooperation in criminal matters

What will happen to the movement of goods?

- If no FTA agreed, UK/EU will trade on WTO terms
- This will mean:
 - Full customs processes resulting in potential delay at the UK/EU border
 - WTO tariffs
- No regulatory alignment in future; special provisions for Northern Ireland

Will your contracts protect you from supply chain disruption?

Consider:

- Ability of parties to perform the contract
- Force majeure clauses
- Pricing mechanisms e.g. do they rely on the UK being in the Customs Union and/or the free movement of goods, services and workers?
- Whether the contract assumes conformity with a current pan-European regime of standards or regulations



What will happen to data flows?

- UK seeking adequacy decision from EU – will this happen by December 31, 2020?
- Identify data flows between EU and UK
- Consider including model data protection clauses in contracts
- Consider whether you can rely on derogations to transfer data
- UK plans to establish own international data transfer regime

Immigration

Immigration

What should you be thinking about to be ready for the end of free movement?

- Bucket 1
 - EU nationals working in the UK already
 - British nationals working in Europe already
- Bucket 2
 - EU nationals arriving in the UK to work after December 31, 2020
 - British national arriving in Europe to work after December 31, 2020
- Visitors
- Frontier workers
- Practical matters (non immigration)

Bucket 1

The law

- The UK government has three separate agreements with the 31 European countries that accept freedom of movement
- Each agreement provides a strong level of protection for British citizens living or moving to Europe and vice versa until the end of the transition period
- The Withdrawal Agreement guarantees British citizens (who are lawfully resident in EU member states) and EU citizens (who are lawfully residence in the UK) broadly the same rights as they have now
- They can continue to live, work and travel (although these rights would cease after a leave of absence of more than five years)
- The same would apply to British citizens/EU citizens moving to the EU/UK during the transition period (December 31, 2020). This is because freedom of movement continues to apply during this time.
- There are separate agreements with Norway, Iceland, Liechtenstein and Switzerland

Bucket 1

The practicalities

- British citizens who are currently living in the EU, or who move there during the transition period, will need to apply for residence status in the country they are residing in. They will have until at least **June 30, 2021** to apply though the exact terms and procedures vary between EU countries.
- EU citizens in the UK need to do the same. The UK process is called the EU Settlement Scheme (EUSS).
- EUSS
 - Totally “e” end to end: no form, paper and the visa is virtual
 - The EU Settlement Scheme (EUSS) launched on March 30, 2019 and provides the route by which EU nationals in the UK can secure their status in the UK at the end of the post-Brexit transition period.
 - The total number of applications received up to May 31, 2020 was more than **3.6 million**. Of these, **3.1 million** have been concluded with **53%** being granted settled status (settled status is granted where the applicant is able to demonstrate over 5 years’ residence in the UK) and **41%** granted pre-settled status. Those with pre settled status can apply to “upgrade” to settled status on their 5 year anniversary.

Bucket 1

Examples

Mark

Italian national. He arrived in the UK in 2005 and has been working since then. He has until June 2021 to apply via EUSS.

Ros

UK national resident in the Netherlands since 2010. The Immigration and Naturalisation will write to Ros and invite her to make an application for residence documentation.

Audrey

French national who arrive in the UK on 12/31/2020. Audrey, like Mark, is eligible for EUSS and has until June 2021 to apply.

Bucket 2

The law

- The automatic right to live and work in the EU and UK ceases after the transition period. British citizens looking to move and work in an EU country/EU citizens in the UK will need to apply in accordance with that country's existing immigration rules.
- Those looking to work in the EU after December 31, 2020 will need to make sure that their professional qualifications are recognised in the EU.

Employing EU nationals in the UK from 1/1/2021

- Anyone who was in the UK before the end of 2020 is covered by the Withdrawal agreement (tricky period from 1/1/21 to 6/30/2021)
- Arriving need to use (probably) Tier 2 of the Points Based System, the current process for non EU nationals
- The system is based on the premise that 70 points would be required to qualify for permission to work and that some characteristics are mandatory and some tradeable
- “Tradeable” points are intended to allow those who do not earn the salary of £25,600 to still qualify for sponsorship as long as the salary is above the absolute minimum (£20,480) and they have one of the other qualifying attributes; a PhD or a job in a shortage occupation

The new Tier 2 points table

Characteristics	Tradeable	Points
Offer of job by approved sponsor	No	20
Job at appropriate skill level	No	20
Speaks English at required level	No	10
Salary of £20,480 (minimum) – £23,039	Yes	0
Salary of £23,040 – £25,599	Yes	10
Salary of £25,600 or above	Yes	20
Job in a shortage occupation (as designated by the MAC)	Yes	20
Education qualification: PhD in subject relevant to the job	Yes	10
Education qualification: PhD in a STEM subject relevant to the job	Yes	20

Visas in Europe

- Local options: do you need an entity, a licence, a registration?
- EU Blue Card are issued by EU member states to third-country nationals. The holder of an EU Blue Card is entitled to take up residence in the EU for the purpose of taking up gainful employment. The EU Blue Card is designed particularly to attract nationals to jobs in occupations where there is a shortage of qualified personnel or where it is perceived a shortage is likely to arise in future.
- Irish passports

Frontier workers

A frontier worker is an EU, EEA or Swiss citizen who regularly commutes to the UK because they are employed or self-employed in the UK but they live in another EU or EEA country or in Switzerland and vice versa.

UK

European nationals will be able to continue working in the UK as frontier workers *after* December 31, 2020 if their employment or self-employment in the UK as a frontier worker began *by* December 31, 2020. However, they will need to apply for a **frontier worker permit** to prove their right to enter the UK for work after December 31, 2020.

Netherlands

"It is currently uncertain whether you will be able to work in the Netherlands as a cross-border commuter/frontier worker. This depends on the agreements between the EU and the UK about their future relationship. If no agreements are made, your Dutch employer may need to apply for a work permit"

When work is not work

Visitor arrangements

- The EU has agreed to add the UK to the EU's list of visa-exempt countries (of which there are currently 61). This gives British citizens the right to travel to the EU after the transition period for up to 90 days without a visa within any 180-day period.
- This is conditional on the UK granting visa-free travel to EU citizens to the UK.
- After the transition, EU/UK border guards may ask people traveling from the UK/EU for additional information including the duration and purpose of their stay. Passports must be valid for at least six months after the end of the trip. They will also need a valid travel insurance.
- As with non EU nationals visiting the UK from Europe for business will not always need a work visa.
- Business visit rules will continue but will require thought and attention with a greater volume cases.

Some practicalities

- The UK government has published some advice for British citizens living in Europe, which covers
 - Making sure their passports remain valid
 - Registering with local authorities
 - Exchanging their driving licenses (in most member states, foreign licenses are only recognized for six months)
 - Applying for a car insurance green card
 - Checking travel insurance as the EHIC agreements will cease

Getting ready...

- Bucket 1: help and support, beware data privacy or discrimination risks
- Bucket 2: Can they be bucket 1? What plans do you need to put in place to sponsor (UK, Tier 2 licence)? Will the same volumes be coming to the UK/EU? What will the impact be in terms of cost, resourcing the process and managing the compliance obligations?
- Frontier workers: Who are they?
- Visitors: assessment tool, communications and awareness
- Practicalities: what is your role in that?

UK-US Trade Agreement: A big hill to climb and time is short

Why make a deal?

— What the UK wants

- Tariff-free access to US market
- Support for SMEs
- Chapter on digital trade
- Protect the NHS
- Preserve food safety

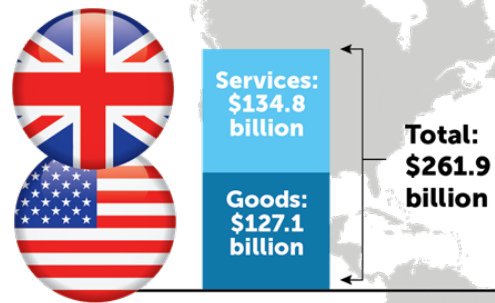


— What the US wants

- Duty-free treatment of industrial goods
- Increased access for US agricultural products
- Expanded opportunities for US financial services firms
- Level playing field for US pharmaceutical companies

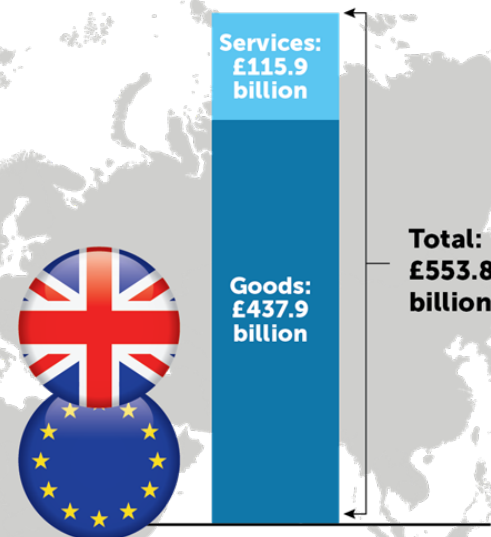


Comparison of UK trade flows



UK and US trade (2018)

Source: Office of the US Trade Representative - retrieved June 24, 2020



UK and EU trade (2018)

Source: Office for National Statistics - January 31, 2020

Areas of opportunity

- Facilitating trade for small and medium-size enterprises (SMEs)
- Digital trade chapter
- Regulatory cooperation
- Eliminating red tape (Customs procedures, etc.)

Topics on which negotiations will be difficult

- Agriculture and food safety
- Environmental and other international standards
- Life sciences and pharmaceuticals
- Financial services
- Rules of origin

The negotiating atmosphere is not ideal

- Section 232 Relief (aluminum, steel, autos?)
- Section 301 investigation of UK digital services tax
- Tariff retaliation in the aircraft subsidies dispute
- Divergent views on Huawei
- US Presidential election

Where do the negotiations stand today?

- Comprehensive deal involving 28 chapters under discussion
- Parties both claim they want a broad deal
- Two rounds of negotiations completed
- Areas of common agreement the focus of Rounds 1 and 2
- Skepticism about ability to negotiate and finalize a broad deal by the end of the year

Time pressures and potential outcomes

- Limited time to reach an agreement before end of Brexit transition period on December 31, 2020
- Time constraints on Congressional ratification because Trade Promotion Authority due to expire in July 2021
- Japan-US FTA precedent suggests a limited deal is one possibility
- Areas such as digital trade and SMEs likely included in a limited deal
- Probably no deal this year unless politics drives outcome

Key takeaways

- Comprehensive FTA between the UK and US will be a negotiating challenge
- Parties likely to borrow from USMCA
- Particularly difficult to reach agreement in key sectors such as agriculture and life sciences/pharmaceuticals
- Limited deal could provide a quick political win for both sides
- Even a successful outcome of limited economic value for the UK compared to a trade deal with the EU



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