



The EU-UK trade and co-operation agreement: A platform on which to build?

by Sam Lowe, 12 January 2021

The new trade deal between the EU and the UK could be improved upon over time, but that is not a given. It could also crumble away.

The EU-UK trade and co-operation agreement (TCA) was negotiated in record time, concluding dramatically on Christmas Eve. But in truth, the negotiations could have been wrapped up by the end of the summer, had it not been politically necessary for the EU to fight the good fight over access to UK fishing waters, and for the UK to leave as little time possible for domestic parliamentary scrutiny. The eventual compromises on the contentious issues of level playing field, governance and fish were both predictable and [predicted](#). The TCA's late arrival left resource-constrained businesses with only days to adjust to new arrangements, but it should be broadly welcomed as a significant improvement over the January 1st default of no trade agreement. The question that now needs answering is not if the agreement can evolve – it can – but rather if it can endure.

The TCA removes tariffs and quotas (conditional on the exported products meeting the agreement's [rules of origin](#) criteria) but does little to facilitate trade in services, or negate the need for new bureaucracy and checks at the border. But this was [expected](#) – once the UK government prioritised regulatory autonomy, ending freedom of movement, and gaining a free hand on trade policy, its economic ambition was limited to a trade agreement with the EU similar to what the bloc has with Canada and Japan (at least for Great Britain; Northern Ireland has a deeper trade relationship with the bloc under the terms of the Withdrawal Agreement). Importantly, the TCA does include broader co-operation on issues such as law enforcement and social security, although not on foreign policy. One unexpected benefit is that temporary visitors to each other's territory can retain access to state-provided healthcare, as is current practice among EU countries.

Yet, even taking into account the UK's limited ambition, there are notable gaps and omissions in the agreement. The UK failed to convince the EU to include ambitious provisions on the mutual recognition of professional qualifications or match the UK's ambition on the temporary movement of services suppliers, particularly intra-corporate transferees. Nor did the EU accept broad-brush mutual recognition

of conformity assessment (whether UK-based testing labs could continue to certify that UK produced products meet EU requirements) or binding commitments to a reduced frequency of border inspections carried out on food products. The TCA also kicks the can on a number of important issues: it does not include provisions for a financial services regulatory dialogue (unlike the EU's trade deals with Canada and Japan), instead moving the discussion into a potential future memorandum of understanding. The agreement buys more time for the EU to unilaterally decide whether the data of its citizens can continue to be stored and processed on UK-based servers for up to six months. And it leaves open the possibility of the UK linking its own emissions trading scheme to the EU's.

Thankfully, the provisions written into the agreement are not the end of the story. Sitting beneath a ministerial level joint partnership council, the TCA includes [19 specialised committees](#) covering near every aspect of the agreement – from sanitary and phytosanitary measures to public procurement – which can suggest improvements. And while it is unlikely that the EU or UK will want to fiddle with the agreement in the immediate future, over time and as the political spotlight moves elsewhere, it is possible that the TCA will be incrementally upgraded. Additional provisions on the mutual recognition of professional qualifications or of conformity assessments are conceivable, for example. You could also imagine the UK seeking to revisit the question of border checks on products of animal origin, simply to reduce the burden placed on traders navigating the new internal trade border between Great Britain and Northern Ireland.

However, substantial improvements to the agreement will not be possible unless there is a notable shift in domestic opinion in the UK. Unlocking a relationship of similar depth to Switzerland's with the EU, for example, would require the UK to accept free movement of people, regulatory harmonisation, and most probably a role for the European Court of Justice. And while it is conceivable that British public and political sentiment on these issues could soften in the future, in the short to medium term that seems unlikely. This also poses a problem for the opposition Labour party, which will instinctively want to deepen the trade relationship, but fears turning off those potential voters with more eurosceptic inclinations. In the immediate aftermath of the treaty being signed, Keir Starmer, Labour's leader, has rejected free movement of people and [ruled out](#) extensive re-negotiating of the TCA were Labour to come into power. Positions will inevitably change in the coming years, but the built-in possibility for evolution of the TCA does not mean evolution will happen.

Moreover, the TCA also contains many reasons to think it could crumble away. Along with the ability for both parties to terminate the agreement following a 12-month notice period, the TCA is littered with review clauses and dispute settlement processes that could lead to parts of the agreement being suspended. Take the commitments on subsidies, for example. The UK succeeded in seeing off the initial EU attempt to bind it to EU subsidy rules both now and in the future. But the UK still signed up to binding high level principles on subsidies and accepted that benefits of the agreement could be suspended in the event either party breaches them, and those breaches impact trade and investment flows between the two. The same is true of commitments made on the environment and labour rights, where future regulatory divergence could see the re-imposition of tariffs.

The concept of preferences being suspended in the event of the signatories to a trade agreement breaching their commitment is pretty common in trade agreements (although the particular approach taken in the TCA is very much unique), but the political climate, particularly in the UK, makes the TCA uniquely unstable. Those MPs who have long harboured grievances towards the EU are unlikely to ever be satisfied by a treaty that keeps the UK, even loosely, in the EU's orbit. They will probably agitate for

symbolic divergence, no matter the consequences. Some may even want to tear up aspects of the treaty, as they are already doing with respect of the Withdrawal Agreement, to force further confrontation with the EU. While the current UK government is unlikely to pander to the more extreme voices in the short-run, this could change if it feels it is starting to lose voters to parties to its right. And so long as the UK remains geographically proximate to Europe, there will always be someone harbouring a desire to torpedo the relationship.

There are also a number of events scheduled for 2021 that could create political tension in the EU-UK relationship. The EU still needs to decide whether the UK's financial services rule book is equivalent to its own, and if so whether to allow certain financial products to continue being sold into the EU from the UK's territory. Technically speaking, as a recently departed EU member with all of the same rules, the UK should be able to easily meet the EU's criteria. But the EU's decision will inevitably be influenced by its political desire to onshore more financial activity and build an integrated European capital market on the continent; it is unlikely that it will grant UK-based firms across the board access, and instead will only grant equivalence in the areas deemed to be of 'systemic importance' to the EU's financial markets. On a separate note, many of the derogations and waivers, currently in place to facilitate trade between Great Britain and Northern Ireland, will expire through the first half of 2021, potentially creating further difficulties for the UK's new internal trade border. Either of these issues, and many others, could put extreme pressure on the relationship and the sustainability of the TCA.

Whether the TCA stands the test of time is yet to be seen. Much will depend on the nature of UK politics over the coming years, and whether Brexit has put the so-called EU question to bed, or not. Regardless, for better or worse, the EU's relationship with the UK will not remain static, and in ten years' time will inevitably look very different from what it does today.

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