



Trade – the future relationship between the UK and the EU

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The UK is no longer a Member State of the EU since 11 pm UK time, 31 January 2020. Under the terms of the Withdrawal Agreement, the currently applicable transition period (called the “implementation period” in UK legislation) will end on 31 December 2020. If the transition period is not extended by July of this year, the EU and the UK will have to agree their future relationship before 31 December 2020 and allow it to be applicable from the beginning of 2021 in order to avoid trading on WTO terms (subject to special rules which would, regardless of whether a future relationship is agreed, be applicable to Northern Ireland as a result of the provisions contained in the Withdrawal Agreement Protocol on Ireland and Northern Ireland). With the development of the coronavirus pandemic in recent weeks, the prospect of agreeing a trade deal by the end of the year has become even more challenging.

This chapter of the Legal Guide provides a brief overview of the UK-EU relationship during the transition period (with a particular focus on trade matters) and then looks to matters pertaining to a possible future relationship – including the prospects for an agreement on a future relationship in 2020, taking into account the current positions of the UK and the EU.

The UK-EU relationship during the transition period

Although the UK is officially no longer an EU Member State, in trade terms, the transition period essentially replicates the circumstances where the UK was an EU Member State, at least from the perspective of the day-to-day operations of private persons and businesses.

The section is part of our Brexit Legal Guide.

Transition period and afterwards

The UK is already in a transition period due to end on 31 December 2020. During this period, there will be little change for businesses and citizens from the position when the UK was an EU Member. The big changes come at the end of transition and those relating to trade are discussed in this section of our Legal Guide; see also accompanying section: [Leaving the EU: The process and preparations](#). The UK will adopt a new class of law, retained EU law, to accommodate EU directly effective law and EU derived domestic law that it will need to use after EU law ceases to be binding on or in the UK: see accompanying section: [The UK's new legal order post-Brexit: A new class of UK law](#).

“Internal market” and the “Single Market”

According to the European Commission, the term “Single Market” refers to the EU as one territory without any borders or other regulatory obstacles to the free movement of goods and services. This includes measures such as standardisation, the CE mark, public procurement and State aid rules and the removal of disguised restrictions on trade as well as the development of a digital Single Market. The term used in this sense is interchangeable with the term “internal

market” as used in the EU Treaties and the European Commission and politicians in the EU often assert that all four freedoms are essential to the operation of the Single Market.

The term “Single Market” is sometimes also used loosely to include Norway, Iceland and Liechtenstein, which, with the EU States, form part of the European Economic Area (EEA). While the EEA Agreement incorporates the four freedoms, the non-EU countries in the

EEA are not party to the EU Customs Union even though goods originating in these countries have tariff-free access to the EU Single Market and most Single Market measures relating to trade in goods and services extend to the EEA. In addition, the EEA Agreement does not cover trade in certain areas (eg fisheries and agriculture are excluded) and it does not extend to civil or criminal justice measures or to a common foreign policy.

Notably, for the application of substantive EU laws, the UK is treated as an EU Member State. In short, this means that the current UK/EU trade relationship involves a customs union eliminating tariffs on goods traded among the UK/EU Member States and a common external trade policy for goods entering the EU/UK from outside (including in respect of tariff and other preferences granted pursuant to free trade agreements concluded by the EU, which the UK is obliged to apply under the Withdrawal Agreement even though it is technically no longer a party to them and notwithstanding that a third country trade partner could choose not to apply the same benefit to UK goods as a matter of international law).

In addition to the basic trade rules, there is free movement of goods, persons, services and capital underpinned by mutual recognition and regulatory harmonisation – both in respect of legislation specifically related to the four freedoms, but also to other rules that address distortions to trade (eg state aid) and other matters (eg minimum requirements on workers’ rights). In other words, there is an internal market, also known as the “Single Market”, which still includes the UK. The framework means, *inter alia*, that there are no border checks when goods move between the EU and the UK (and trade in many services is liberalised – eg passporting of financial services is possible). Further, once goods have entered any EU Member State/UK from a third country, they can generally circulate freely within the EU/UK in the same manner as goods produced in the EU.

The broad agenda for a negotiated future relationship

The transition period was agreed, in part, to allow the UK and the EU to negotiate an agreement to govern their future trade and other relationships. During the Withdrawal Agreement negotiations, the basic position of the EU was that a future agreement could not be negotiated while the UK was an EU Member State.

The [Withdrawal Agreement](#) was concluded together with the [Political Declaration on a framework for future relationship](#). Broadly, the Declaration “establishes the parameters of an ambitious, broad, deep and flexible partnership across trade and economic cooperation with a comprehensive and balanced Free Trade Agreement at its core, law enforcement and criminal justice, foreign policy, security and defence and wider areas of cooperation”.

The Political Declaration is not binding and promptly following the UK’s exit from the EU, both the EU and the UK have issued more precise indications on their current ambitions for a future relationship.

On the EU’s part, following a [proposal for negotiating directives](#) from the Commission on 3 February 2020, the EU Council [decided](#) on 25 February 2020 to authorise the Commission to begin negotiations for a new partnership with the UK and issued specific [negotiating directives](#) for that purpose. The Council negotiating directives call for a partnership that is a single package in the form of an EU association agreement and which comprises the following:

- General arrangements (including provisions on basic values and principles, governance, data protection and participation in EU and Euratom programmes);
- Economic arrangements (including provisions on trade in goods, trade in services/investment, aviation and other transport, nuclear cooperation, fisheries and level playing field guarantees); and
- Security arrangements (including provisions on law enforcement and judicial cooperation in criminal matters as well as on foreign policy, security and defence).

To this end, the Commission has recently circulated a [draft future relationship text](#) to Member States and the European Parliament for consultation.

Trading on WTO terms – in brief

If the UK and the EU do not agree a new relationship before the end of the transition period, key aspects of the trading relationship between the EU and the UK will be underpinned by WTO rules. WTO rules would, importantly, require the EU and the UK to impose the same tariffs on goods from each other. A key obligation of the WTO is no discrimination vis-à-vis other WTO members. This obligation means that, even when the UK leaves the EU, the EU cannot in principle treat the UK worse than other WTO members (and vice-versa) unless justified by a relevant rule (eg because the EU has a free trade agreement in place with the other WTO member). In essence, therefore, trading on a WTO basis will mean that UK goods and services will be in a similar position to those of the USA. Many areas of potential future agreement will be largely outside the scope of WTO rules, including horizontal level playing field rules and most aviation and fisheries market access matters. To the extent that trade can be facilitated in a future agreement based on mutual recognition, this will also often be possible in the WTO framework, but it will likely be less streamlined and will take more time to achieve.

On the UK side, the UK issued on 3 February 2020 its [proposed approach to the negotiations with the EU](#) on the future relationship. This was followed-up on 27 February 2020 with a more detailed position paper [The future relationship with the EU: the UK's approach to negotiations](#). In short, the UK approach envisages a suite of agreements of which the main elements would be a comprehensive free trade agreement, an agreement on fisheries and an agreement to cooperate in the area of internal security, together with a number of more technical agreements covering areas such as aviation or civil nuclear cooperation.

The negotiations for a future relationship do not cover, as mentioned, matters governed by the Protocol on Ireland and Northern Ireland, to the extent that these are dealt with in the Withdrawal Agreement.

Structure of the future relationship: including governance and enforcement

The starting approaches of the UK and the EU show that there is broad alignment on areas where the UK and the EU could continue to have a relationship in the future (although, as discussed below, there are many differences in the specific positions). At the same time, however, they also show that the UK and the EU start with fundamentally different approaches to the structure of a future relationship which is closely linked to governance and enforcement matters.

The EU starting position is that the future relationship will be governed by one international agreement with a single institutional mechanism to cover all rules and obligations (with specialised sub-committees for specific areas) and a single dispute settlement mechanism. This is, in fact, in accordance with EU practice in relation to association agreements where its relationship with a country extends beyond trade matters. One benefit of this type of arrangement is an ostensibly more streamlined, and therefore efficient, framework for cooperation. It can also be beneficial from a dispute settlement perspective since it means that the so-called "cross-retaliation" is possible – meaning that where one party violates a rule, suspension of rights/obligations in respect of other rules is possible (and therefore there is more scope for a party to take action that encourages compliance by the other party). The EU seeks a dispute settlement model that allows cross-retaliation and also suggests that it should include the possibility for fines and for reference of EU law issues to the EU Court of Justice.

The UK has rejected this approach, rather calling for a number of legally distinct agreements (and different dispute settlement mechanisms tailored to the agreement/situation in question). The UK approach is aligned with the position that it seeks for a trade relationship – an agreement modelled on the [EU-Canada Comprehensive Economic and Trade Agreement \("CETA"\)](#) which is also in line with similar free trade agreements that the EU has concluded in recent years, including with Japan, South Korea, Mexico and other countries. The CETA (like similar agreements concluded by the EU with Japan and others) addresses trade in goods and trade in services issues covered by the WTO Agreements and includes certain "flanking" provisions designed to address behind the border measures that can distort trade. Fishing access rights are not covered by the CETA (or similar EU trade agreements) and aviation matters are largely excluded. Furthermore, dispute settlement does not include a possibility for reference to the EU Court of Justice (notably because issues would not involve assessment of EU rules), nor is the application of fines envisaged.

Trade aspects of a future relationship – a closer look

Both the EU and the UK appear to agree in principle that they should seek to cover trade matters in a future relationship – although, as mentioned, there is disagreement on whether the issues should be addressed in one agreement or a number of agreements and, in many instances, on how deep the commitments should be.

So what do the UK and the EU want to achieve in the economic aspect of a future relationship? Some key areas are discussed below. For avoidance of doubt, it is noted that the below only concerns the possible **economic** aspects of a future relationship. Security aspects are not discussed.

Free trade area, but no customs union

Broadly, both sides agree that a future relationship should encompass a free trade area, whereby duties and quotas on goods between the UK and EU are eliminated. At the same time, a customs union, which involves an aligned external commercial policy, including customs tariffs towards all third countries, is off the table. In practice, this would mean that the UK would be able to maintain an independent trade policy and conclude free trade agreements with third countries. For traders, this would mean that there would be a customs border between the UK and the EU. In other words, frictionless trade would no longer be possible. While customs facilitation is broadly an aim of both parties (and could reduce

Protocol on Ireland and Northern Ireland – in brief

The [Protocol on Ireland and Northern Ireland](#) deals with the position of the island of Ireland once the UK leaves the EU. Both the EU and the UK are committed to avoiding a hard border between Ireland and Northern Ireland and respecting the Good Friday Agreement. Under the Protocol, the whole of the UK, including Northern Ireland, will leave the EU Customs Union once the transition period ends. Northern Ireland will remain part of the UK customs territory and will be included in any future UK free trade agreements. But in practice, Northern Ireland will apply many EU customs rules and most of its regulatory regime for goods, both agricultural and manufactured, and will remain aligned with the EU internal market rules for goods. This will create a customs and regulatory border in the Irish Sea between Ireland and the rest of Great Britain. The revised Protocol allows the Northern Ireland Assembly to provide consent for certain EU regulations continuing in Northern Ireland. The effect of these arrangements is mitigated by measures enabling Northern Ireland businesses to benefit from the UK customs rates, where they are more favourable, but only by later adjustment of the fiscal effects arising from application of the EU regime. Contrary to the previous "backstop" arrangements, which were an insurance policy and would only have taken effect if the UK and the EU had not managed to address the issue under a new trade relationship, the new arrangements set out in the revised Protocol are intended to be permanent. As such, they will apply regardless of whether the EU and the UK agree new future relationships or default to trading on WTO terms. There already appear to be some differences of interpretation between the UK and the EU.

friction at the border), the EU has made clear that the borders can never be open in the same way as in the EU. On any analysis, because external trade regimes would not be aligned, it is clear that the movement of goods across borders would require new documentation and so, even in a tariff and quota free environment, traders will incur extra burdens.

Level playing field provisions

The EU negotiating directives also call for extensive so-called "level playing field provisions". These provisions would include the following:

- **State aid, competition and related:** The basic position is that the UK should adhere to EU rules (where there is an impact on the EU market) and there should be close cooperation with the EU. Further, any agreement should include rules on state-owned enterprises.
- **Taxation:** The EU position is that the UK should apply global and common standards in place at the end of the transition period and the UK should curb harmful tax measures by reaffirming its commitment to the Code of Conduct for Business Taxation. Global standards would include standards on transparency and exchange of information, fair taxation and the OECD standards against Base Erosion and Profit Shifting. Common standards would be related to at least the following areas: exchange of information on income, financial accounts, tax rulings, country-by-country reports, beneficial ownership and potential cross-border taxplanning arrangements.
- **Labour and social provisions:** The EU seeks to ensure that the UK does not regress from key common standards in place at the end of the transition period in relation to at least the following areas: fundamental rights at work; occupational health and safety; fair working conditions and employment standards; and information and consultation rights at company level and restructuring.
- **Environment:** The EU also seeks to ensure that the UK does not regress from key common standards in place at the end of the transition period in relation to at least the following areas: access to environmental information; public participation and access to justice in environmental matters; environmental impact assessment and strategic environmental assessment; industrial emissions; air emissions and air quality targets and ceilings; nature and biodiversity conservation; waste management; the protection and preservation of the aquatic environment; the protection and preservation of the marine environment; the prevention, reduction and

elimination of risks to human health or the environment arising from the production, use, release and disposal of chemical substances; and climate change. Among other things, the EU suggests that there should be a possibility for the UK to link with the EU emissions trading system.

- **Other instruments for sustainable development:** These would include commitments in relation to international instruments and an obligation not to lower higher domestic labour and environmental standards in order to encourage trade and development.

The EU negotiating directives also suggest the agreement should allow the EU (and presumably the UK) the possibility to apply autonomous interim measures to react quickly to disruptions of the equal conditions of competition in relevant areas. Further, a governing body would be empowered to modify the level playing field commitments in order to include additional areas or to lay down higher standards over time (presumably by mutual consent of both the UK and the EU).

In general, recent CETA-type agreements concluded by the EU to date include certain horizontal provisions to address level playing field considerations and so the proposed inclusion of such provisions is not unusual *per se*. Nevertheless, the EU's proposed level playing field provisions would generally go well beyond existing EU practice under CETA-type agreements. For example:

- CETA contains chapters on competition and horizontal subsidy matters, but they are not subject to dispute settlement (effectively making them soft law), nor do they bring in EU standards.
- CETA-type agreements concluded by the EU contain chapters addressing social development, environment and labour/social issues, but the provisions are only subject to light touch dispute settlement (notably, without any possibility for a binding decision without mutual agreement of all parties). The position of the EU appears to be that such provisions in a UK-EU future relationship should be more binding in character and more enforceable (in particular, after a decision of an independent arbitration body). Notably, to the extent that the UK would be required to adhere to standards in place at the end of the transition period, these would be EU standards. As a general matter, the EU's position is that all EU law questions should be interpreted by the EU Court of Justice, so this would mean that any dispute settlement on the issues would require a reference to the EU Court of Justice.

- CETA-type agreements do not impose standards in relation to tax matters, although they are indirectly caught in some instances by disciplines which allow parties to impose countervailing measures on subsidised goods.

The Political Declaration on the future relationship in the Withdrawal Agreement does address the issue of level playing field provisions. However, it also indicates that these should be calibrated to take account of the nature of the future relationship. The UK has communicated that level playing field provisions should be commensurate with those in a CETA-style arrangement, ie the rules should be of a general nature, without any possibility for interpretation by the EU Court of Justice and no possibility for binding state-to-state dispute settlement under the agreement. Further, in certain instances, the UK considers that matters covered by level playing field provisions should be covered by a separate agreement – for example, the UK approach to negotiations is to include climate change and carbon pricing matters in a separate agreement on energy (which would also cover electricity and gas trading).

The EU's position, in turn, is that the UK is not the same as Canada (or other countries with which it has concluded CETA-type agreements). Precisely because of the UK's geographic proximity and long-standing economic interdependence, the EU's view is that trade access must be underpinned by stronger rules to ensure that distortions do not negatively impact trade. However, the UK has asserted that such provisions are not necessary because it has always been a leader in upholding standards – for example, having one of the best State aid records as a Member State of the EU and one of the highest standards among EU Member States for wages and other working policies such as parental leave.

For further details, please see the relevant sections of our [Brexit Legal Guide](#).

Measures to address technical and related barriers to trade

Trade in products is not only hindered by tariffs and similar measures that are only applicable to third country goods. It is also impacted by divergent regulation. In the WTO, there are horizontal rules to address so-called technical barriers to trade (eg product standards) and sanitary and phytosanitary measures ("SPS"). Modern trade agreements also include rules on these matters. In general, they will replicate WTO rules, but also build on them, for example, by recognising "equivalence" of regulation within an

agreement (eg for certain motor vehicle standards) and providing means for parties to discuss such matters, often termed as "regulatory cooperation". Notably, these rules do not lead to harmonisation and do not demand a particular type of regulation. Both the UK and the EU broadly agree that these types of provisions should be in an agreement, but a key question will be how far these provisions extend. The UK has communicated that it would like an agreement to facilitate trade in a number of specific sectors, including organic products, motor vehicles, chemicals and medicinal products.

Trade in services, including movement of people and investment

Both the UK and the EU have indicated that a new relationship should include provisions on services/establishment (and related movement of persons) which are, at least at a first level, similar to those contained in CETA-type agreements concluded by the EU.

The rules in CETA-type agreements are similar to the WTO regime which is applicable to trade in services matters (including movements of people for trade purposes) in that, *inter alia*, providing market access to a service/service supplier is optional (although certain non-discrimination obligations are generally applicable). Furthermore, any market access is conditioned on compliance with host state rules, although mutual recognition is possible. In practice, CETA-type arrangements only marginally improve on the WTO regime in terms of market access concretely given. In general, the EU provides relatively liberal access to services in cases where there is an establishment or a branch and very often excludes any commitments in relation to cross-border services. In relation to movement of people, commitments are typically relatively light touch, allowing movement of persons for business-related reasons in selected sectors on a temporary basis. There is no general free movement of persons and entry of persons into a territory is subject to visa and other national requirements. Nevertheless, they are generally considered an improvement as compared to the WTO situation for a number of reasons. For example, in many cases, any practical improvement in market access is automatically incorporated into commitments, there are provisions allowing for increased dialogue and cooperation and certain horizontal rules are improved upon (eg in relation to domestic regulation).

As a general matter, it appears that the UK and the EU would largely replicate market access given by the EU in other CETA-type arrangements – with certain extensions, including for road transport (which is logical,

given the UK's proximity to the EU, although if that means that the UK limits EU road transport access to the UK, this could be costly for Ireland – presently a large portion of Irish imports from continental Europe cross the UK by road). Certain horizontal rules may also be improved, including to recognise or otherwise enable facilitated recognition of professional qualifications. Nevertheless, at this stage, unlike the case for CETA, there has been no mention of the possibility for investor-state dispute settlement which allows private parties to take action in certain instances where rules are adopted by governmental authorities that prejudice their investments.

Questions are likely to arise in relation to financial services. The CETA-type trade framework does not allow for any internal market in services or automatic right to provide services. In the Political Declaration to the Withdrawal Agreement, the UK and the EU recognised that market access would be granted in accordance with equivalence frameworks by each side and that they would endeavour to conclude equivalence assessments by June 2020. The EU negotiating directives underline that each party should be able to take equivalence decisions in their own interest. The UK emphasises the possibility for "appropriate consultation and structured processes for the withdrawal of equivalence findings" while at the same time making clear that timely equivalence determinations on the part of the EU are nevertheless key for broader negotiations. Please see accompanying section: [Banking and investment firms](#).

Public procurement

In general, when negotiating trade agreements, the EU seeks to obtain better public procurement access than it would have under WTO rules. This is a standard ask in EU trade agreements. While the EU has indicated that this is on the table, the UK has not to date commented on the issue. The UK has furthermore indicated that it will change its domestic regime. At present, it appears that the UK does not want to grant the EU any extra benefits. In general, this would mean a lowering of access for EU goods and services to the UK market, but not necessarily vice-versa in many instances. This is because the EU has a relatively open procurement market, although it is seeking to change those rules. Please see accompanying section: [Public procurement](#).

Aviation

Both sides agree in principle that a future relationship should extend to aviation services – but there is likely to be debate on the extent of UK aviation rights (in particular, so-called "fifth freedom" rights that would allow a UK

carrier to travel to more than one EU Member State before returning to the UK). In general, WTO rules require that agreements on trade in services be comprehensive and do not apply to a single service sector. However, most issues related to aviation services are outside the scope of the WTO rules. As a result, it is technically possible for the UK and the EU to conclude a separate agreement or agreements on the matter (as desired by the UK). Please see accompanying section: [Aviation](#).

Fisheries

Fisheries is an issue on the table which raises a good deal of emotion in both the UK and some Member States, such as France, which have fished extensively in UK waters for many years. To be precise, the topic of fisheries would not relate to fisheries in the sense of trade in those products, as such, but in relation to managing access to waters, fish stocks and landing rights. The UK has not excluded this as a point for agreement, but insists on a separate agreement for the matter.

In terms of substance, the EU seeks a framework that involves long-term stability and rules that allow the current system to be replicated. The UK position is that it should have autonomy and discretion for the stocks in its own waters – among other things, involving controlling quota allocation in its waters on an annual basis. The UK is essentially looking for similar freedom to that enjoyed by Norway (and Iceland) as a result of fisheries being excluded from the EEA Agreement.

Energy

The UK energy market is currently closely linked to the EU. At present, the UK-EU relationship is governed by extensive EU internal market regulation and gas/electricity crosses between the EU and the UK on a regular basis. In principle, it is in the interest of both the EU and the UK to continue the cooperation.

The UK has not excluded energy issues from a future relationship, but only as a separate agreement. Further, its opening position excludes the incorporation of EU internal market rules that aim at "competitive markets" (eg by requiring unbundling of network operations). Instead of market integration, the UK considers that any future agreement should focus on technical arrangements that would facilitate cross-border movement of gas and electricity and also arrangements that would support the intergration of renewable power and investment in decarbonisation projects in the North Sea.

Please see accompanying section: [Energy regulation](#).

Other

For avoidance of doubt, the above does not exhaustively address all issues that will be on the table in relation to the economic aspects of a future partnership. Additional matters to be discussed will include data protection and digital trade (see accompanying sections: [Telecoms and media](#) and [Intellectual property](#)) and civil nuclear (dealt with in further detail in accompanying section: [Energy regulation](#)).

Framework and timeline for negotiations

Following the issuance of the EU negotiating directives on 25 February 2020 and the UK approach to negotiations published on 27 February 2020, both the EU and the UK have agreed [terms of reference](#) for negotiations.

For the purposes of the negotiations, the following negotiating groups are established in the first instance:

1. Trade in Goods
2. Trade in Services and Investment and Other Issues
3. Level Playing Field for Open and Fair Competition

4. Transport
5. Energy and Civil Nuclear Cooperation
6. Fisheries
7. Mobility and Social Security Coordination
8. Law Enforcement and Judicial Cooperation in Criminal Matters
9. Thematic Cooperation
10. Participation in Union Programmes
11. Horizontal Arrangements and Governance

Initially, the first five rounds were scheduled to take place in Brussels and London, with the last round ending on Saturday, 16 May 2020 in Brussels. Round 1 of negotiations took place in Brussels, beginning on 2 March 2020 and ending on 5 March 2020. Due to coronavirus-related events, Round 2 (18-20 March 2020) was cancelled, but the status of further rounds is still to be determined (as of 25 March 2020). Rather than onsite negotiations, it is possible that the UK and the EU will conduct virtual negotiations. The most up to date information on the status of negotiation rounds can be found on the [Commission website on the future relationship negotiations](#).

Rounds of negotiations initially foreseen

ROUNDS 2020	START DATE AM/PM	FINISH DATE AM/PM	LOCATION
Round 1	Monday 2 March PM	Thursday 5 March AM	Brussels
Note: round 2 cancelled due to coronavirus events			
Round 2	Wednesday 18 March PM	Friday 20 March PM	London
Note: status and modalities of rounds 3-5 still to be determined as of 25 March 2020			
Round 3	Monday 6 April AM	Wednesday 8 April PM	Brussels
Round 4	Monday 27 April PM	Thursday 30 April PM	London
Round 5	Wednesday 13 May AM	Saturday 16 May AM	Brussels

Prospects for agreement on the future UK-EU relationship in 2020

Under the Withdrawal Agreement, any extension of the transition period must be sought by July 2020. The current UK position is that there will be no extension of the transition period, but this could change due to the impact of coronavirus-related events. It is of course also possible that the UK and/or EU negotiating position could be impacted over time by current events.

If no extension is sought, any future relationship will have to be concluded and be applicable by 1 January 2021, if there is not to

be a reversion to basic WTO terms of trade between the UK and the EU (subject to matters governed by the Withdrawal Agreement Protocol on Ireland and Northern Ireland, as mentioned).

The EU negotiating directives and UK's approach to negotiations make it clear that key issues will need to be resolved as soon as possible. These include questions of governance, fisheries, financial services and level playing field provisions. The issue of Gibraltar will also be a question, which the EU considers must be negotiated separately and in full agreement with Spain.

To some extent, most issues are intertwined, but the inbuilt desire to resolve fisheries and certain financial services issues (in particular unilateral equivalence decisions) before July 2020 adds another level of complexity.

Even for the most straightforward trade agreement, negotiations generally take years. While it might be stated that those negotiations are different because they involve parties already closely aligned, it is precisely the existing close relationship between the EU and the UK that is creating issues already at this stage. On the EU's side, the previous close relationship warrants a comprehensive association agreement, not only covering matters not strictly related to trade, but also going beyond trade matters addressed in CETA-type agreements – for example, extending to fisheries, aviation and binding level playing field provisions. In general, the UK seeks to extract itself from the previous EU relationship, but initial indications suggest it will be prepared to make accommodations when this is in its own interest – for example, on financial services or especially beneficial rules of origin which would allow its traders to use EU products to benefit from EU trade agreements as in the past.

The reality is that a comprehensive trade agreement is nearly impossible in 2020. If the choice is between agreement or no agreement to apply before 1 January 2021, the EU and the UK will have to consider whether they can conclude a narrow trade agreement – which is theoretically possible. In general, even if there is no extension of the transition period, the EU and the UK could substantially agree key trade-related provisions and leave other issues until later. For example, other issues could be grandfathered into an agreement based on current practice with a deadline for further negotiation. Equally, even tariff concessions could be subject to a deadline and further negotiations on level playing field provisions. Whether there would be political ambition to enter into such an agreement is an open question – but as a matter of international law, it would be perfectly possible.

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