THE TRADE AND COOPERATION AGREEMENT

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THE TIMETABLE

Negotiations on WA

Withdrawal agreement concluded

Nov 2019
Incl. NiP

Leave EU

31 Jan 2020

Transition starts (IP)

1 Feb 2020
30 June 2020 extension!

Transition ends

31 Dec 2020

Future trade deal starts

1 Jan 2021

EU(WA) Act 2020, mainly amending 2018 Act

31 Jan 2020

ECA 1972 turned off (s.1 EU(W)A 2018) but..

IMA 2020

- Ratification
- UK impl. legislation (EU(FR)A 2020)


EU(WA) Act 2018:

Common and institutional provisions (Part One)
incl. good faith, interpretation in accordance with VCLT, no direct effect

<table>
<thead>
<tr>
<th>FTA (Part Two)</th>
<th>Law enforcement and judicial cooperation in criminal matters (Part Three)</th>
<th>Other</th>
<th>Annexes and protocols</th>
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</thead>
<tbody>
<tr>
<td>• Trade (incl services, pp, transport, social security coord, visas, fisheries, ‘other provisions’)</td>
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<td>• Thematic cooperation (health, cyber security) (Part Four)</td>
<td>• NB possibility of further bilateral agreements (Art. COMPROV.2)</td>
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<td>• Participation in union programmes, sound financial management, financial provisions (Part Five)</td>
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Potential EU unilateral measures
• Adequacy decision on data protection
• UK third country SPS listing
• Equivalence in financial services

Dispute settlement and horizontal provisions (Part Six)

NB TCA’s implementation to be reviewed every five years (Art. FINPROV.3)
Agreement between EU-UK concerning security procedures for exchanging and protecting classified information

Agreement between UK-EU for cooperation on the safe and peaceful uses of nuclear energy

- Euratom legal basis
- Separate governance structure

Declarations on issues where further cooperation is foreseen

- Eg financial services regulatory cooperation, subsidies, road hauliers, declaration of adequacy
GOVERNANCE AND DISPUTE SETTLEMENT
OVERALL GOVERNANCE STRUCTURE

Political

Partnership council (Art. INST.1) – implementation, application and interpretation of TCA

Trade Partnership Committee (Art. INST.2.1)

Specialised Committees (Art. INST.2.1)

Working groups (Art. INST.3)

Decisions and Recommendations (Art. INST.4)
- Only decisions legally binding
- Mutual consent

Input from Parliamentary partnership Assembly

Participation of civil society (Art. INST. 6-8)
- Domestic advisory groups
- Civil society forum

technical
DISPUTE RESOLUTION
GENERAL PROCEDURE

**Does the matters fall within scope?**
(Art. INST.10)

- ‘covered provisions’ are all provisions of the Treaty but with some key exceptions (para. 2) e.g. criminal law

**Consultations in PC (Art.INST.13)**

- Held w/i 30 days
- Usually concluded w/i 30 days
- Good faith, mutually agreed solution

**Arbitration Procedure (Art. INST. 14-20)**

- 3 arbitrators with expertise in law and international trade; independent
- Terms of reference of AT
- Interim report w/i 100 days; comments w/i 14 days
- Final report 130 (160) days

**Compliance (Art.INST.21-25)**

- Comply w/i reasonable period or suitable agreed compensation
- If not, ‘temporary’ remedies, including proportionate cross-retaliation across all economic areas (e.g., tariffs on goods if there is a breach re fisheries or energy) i.e. suspend application of obligations

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**NB**

1. Law enforcement has its own enforcement mechanism (political)
2. Specific measures for breaches of LPF and fisheries
LEVEL PLAYING FIELD
SUMMARY

Employment law

Non-regression (ie not weaken or reduce) rules on existing employment law in manner affecting trade or investment

- Arts. 6.1, 6.2, 6.3 and 6.4 (Arts. 9.1-9.3 (INST 9.4)) LPF

Other instruments for trade and sustainable development

- Arts. 8.1 and 8.3 LPF

Rebalancing measures on future developments in labour law (if material impacts on trade or investment between the Parties are arising as a result of significant divergences between the Parties)

- Art. 9.4 LPF

Fund. rights at work; occupational H&S; fair working conditions and employment standards; I&C at company level; restructuring of undertakings
NON-REGRESSION PROCEDURE

Special consultation procedure

- Art. 9.1 LPF

Special panel of experts

- Art. 9.2 LPF
- Some of DRM provisions re arbitrators apply mutatis mutandi (Art. 9.2(19))

Temporary remedies

- Art. 9.3 cross referring to ART. INST.24 and INST.25

So retaliation possible where Panel report rules there is a breach of the non-regression clause
Material impacts on trade and investment arising as a result of sig. divergences

- Applies to future subsidies, labour/social, env/climate protection
- Symmetrical
- Art. 9.4
- Concerned party notifies other via FC
- 14 days (cf 30 under DRM rules)
- In absence of agreement, rebalancing can apply in 5 days
- No prior requirement that arbitrators find breach of TCA + now time to satisfy

Rebalancing measures (tariffs) adopted if reliable evidence

- Rebalancing measures applied BEFORE arbitration
- Subject to proportionality principle

Arbitration tribunal

- BUT other side can ask w/i 5 days if retaliation is w/I TCA's rules on rebalancing
- Arbitrators must rule w/i 30 days; if not, rebalancing measure applies
- If AT says OK, rebalancing applies
- If AT says not ok, concerned party has three days to rectify

If retaliation unjustified if must stop; failure to stop can lead to 'return retaliation'

'defensive version of dynamic alignment: defensive in that rather than ongoing cooperation and harmonisation, it provides another means for each side to coerce the other' (UKTPO)

REBALANCING MEASURES

NB
(1) Special fast track procedures (Art. INST.34B) eg 2(10) days to decide on composition of tribunal
(2) Proportionate retaliation only in covered areas (Art. INST.34D)
Employment rights review scrapped by business secretary

Kwarteng has denied reports that his department scrapped workers’ rights.

The Times said some protections brought in under EU law on the working week could be scrapped.

He said changes to how holiday pay is calculated from 2023 were being considered.

He said he wanted to “protect and enhance workers’ rights going forward, not row back on them”.

In a social media post, he said that the UK “has one of the best workers’ rights records in the world – going further than the EU in many areas.”