

## A UK-EU Trade Deal

### What is the current situation?

The prime minister is committed to securing a ‘deep and special’ partnership with the EU in negotiations over a future trade deal. This deal is not part of the Article 50 process, although the ‘divorce’ will take ‘account of the framework for [the UK’s] future relationship with the Union’. The future trade deal will need to be adopted under separate legal regimes (either Article 207 of the Treaty on the Functioning of the European Union (TFEU), which was the legal basis for the EU-Canada Comprehensive Economic and Trade Agreement (CETA), or Article 217 TFEU, the legal basis for the deal between the EU and Ukraine).

The procedure for negotiating the new trade deal - or possibly deals, for there may be more than one - is laid down in Article 218 TFEU. The more comprehensive the deal, the more likely it is that it will require unanimous approval in Council, probably after obtaining the consent of the European Parliament. If it is a ‘mixed agreement’, covering areas where both the EU and the member states have competence (power), it will have to be agreed by 27 national parliaments, as well as the regional parliaments in certain countries. Negotiating a trade deal will take time, despite UK law already being compliant with EU law. Navigating any future deal through the national and regional parliaments will also take time. The period may be protracted if there is a challenge to the legality of any future trade deal before the European Court of Justice (ECJ). For this reason, many think there will have to be a transitional deal which bridges the period between the divorce and the future trade deal.

### What are the possible outcomes?

There are a number of possibilities, varying in degrees of intensity:

- 1. Tariff free access for UK goods to the EU’s single market and vice versa.** This would be the simplest deal to negotiate and the easiest to adopt. From a Brexiter’s perspective, it would enable the UK to negotiate trade deals with other states. However, it would not address the many issues faced by the financial services industry. Nor would it consider how to manage free movement of persons going forward. A deeper version of this option would be for a comprehensive trade deal not just on tariff-free access, but also some non-tariff barriers. This would follow the model of other trade deals the EU has with countries such as Canada.
- 2. Staying in the customs union.** This would ensure tariff-free access to the EU market; enabling the UK to have access to the EU’s free trade deals, but not to negotiate its own. The UK would be subject to the Common Customs Tariff – the UK would have to apply the tariffs agreed by the EU on third country goods, such as those coming from the Philippines. Staying in the customs union would help to resolve some of the problems with the Northern Ireland border (albeit there would be some checking for, for example, sanitary and phytosanitary issues). The UK has talked about a customs arrangement which is similar to the customs union.
- 3. Participating in the single market.** All states can sell their goods or services in the single market (‘access’). However, they will not benefit from the advantageous terms enjoyed by its members. So, for example, they will not enjoy the principle of ‘passporting’ in respect of financial services. Only EU states can be members of the single market and have the right to vote on its terms. This option is therefore ruled out by the decision to leave the EU. However, the UK could continue to participate in the single market in a similar way to European Economic Area (EEA) states like Norway. The advantage of this model is that the UK would not suffer the estimated £66billion p.a hit of a hard Brexit. The disadvantage is that the UK would continue to pay for that access (Norway is the tenth largest contributor to the EU’s budget), but will have no say over adopting its rules (‘pay but no say’). It would also not resolve the Northern Ireland border issue - the EEA states are not in the customs union – nor would it address public concerns about free movement of persons (although there is greater scope for restricting free movement of persons than under the existing EU law).

4. **Staying in the customs union and the single market** and other programmes such as the research framework programmes, as well as cooperating in the fields of security and defence. This is the closest to the situation we have at present. This may prove unacceptable to Brexiters, and would come with a significant financial cost attached. So, a permutation of this would be that the UK stays in a 'customs arrangement', negotiates special access to the single market (through participating in, for example, the Open Skies Agreement) and adopts the relationship the Norwegians and Icelanders have in respect of, say, the European Arrest Warrant.

### **What is the potential timeline for this?**

Whichever agreement is reached there is not a lot of time for negotiating it. It is by no means clear that 'sufficient progress' will have been made on the terms of the divorce 'Article 50' deal by the October European Council to enable a move on phase two (transition) and phase three (future trade deal negotiations). Moreover, many issues will need to be discussed alongside the basic structure of the agreement; not least the machinery for governing the ongoing relationships between the UK and the EU, as well as the role that any court or other dispute settlement body might play. It may be that this proves just too difficult to negotiate, making a 'no deal' option increasingly likely (**see factsheet 'no deal'**).

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