

BREXIT – WHERE ARE WE NOW AND WHAT HAPPENS NEXT?



GETTING BREXIT DONE...?

On 31 January 2020 at 11pm local time, the UK formally left the EU under the terms of the EU-UK Withdrawal Agreement.

So, what has changed?

On a political and historical level, the change is profound – one of the most significant events in the UK's modern history. On a practical level, however, very little has changed. For now....

The UK is now in an 11-month transition period during which time arguably the most challenging of Brexit tasks begins in earnest – negotiating the future relationship between the UK and the EU and attempting to strike a trade deal before that transition period ends.

THE TRANSITION PERIOD

The Withdrawal Agreement provides for a transition period (or “implementation period”) designed to provide time for the new EU-UK relationship to be agreed.

During that time, the legal position will remain almost exactly the same as when the UK was a member of the EU. Although the UK is no longer a Member State of the EU, it will nevertheless be treated for the most part as such under EU law, remaining subject to EU rules and the jurisdiction of the European Court of Justice. The UK will continue to be a member of the customs union and single market. Freedom of movement continues to apply and the rights of UK citizens in the EU and of EU citizens in the UK remain unchanged.

However, there will be no British members of the European Parliament and the UK will not be permitted to participate in the political institutions. It will therefore be subject to any new EU laws adopted during the transition period, even though the UK has had no say in their adoption.

When will the transition period end?

The transition period is due to end on **31 December 2020** at 11pm UK time.

Technically, under the Withdrawal Agreement, the transition period can be extended for a single period of an additional 12 or 24 months, provided that a request to that effect is made before 1 July 2020. In practice, however, the UK government has ruled out any such extension. The European Union (Withdrawal Agreement) Act 2020, which the UK Parliament passed on 23 January 2020, prohibits (as a matter of UK domestic law) the extension of the transition period beyond 31 December 2020, irrespective of whether or not a free trade agreement is in place by that time with the EU.

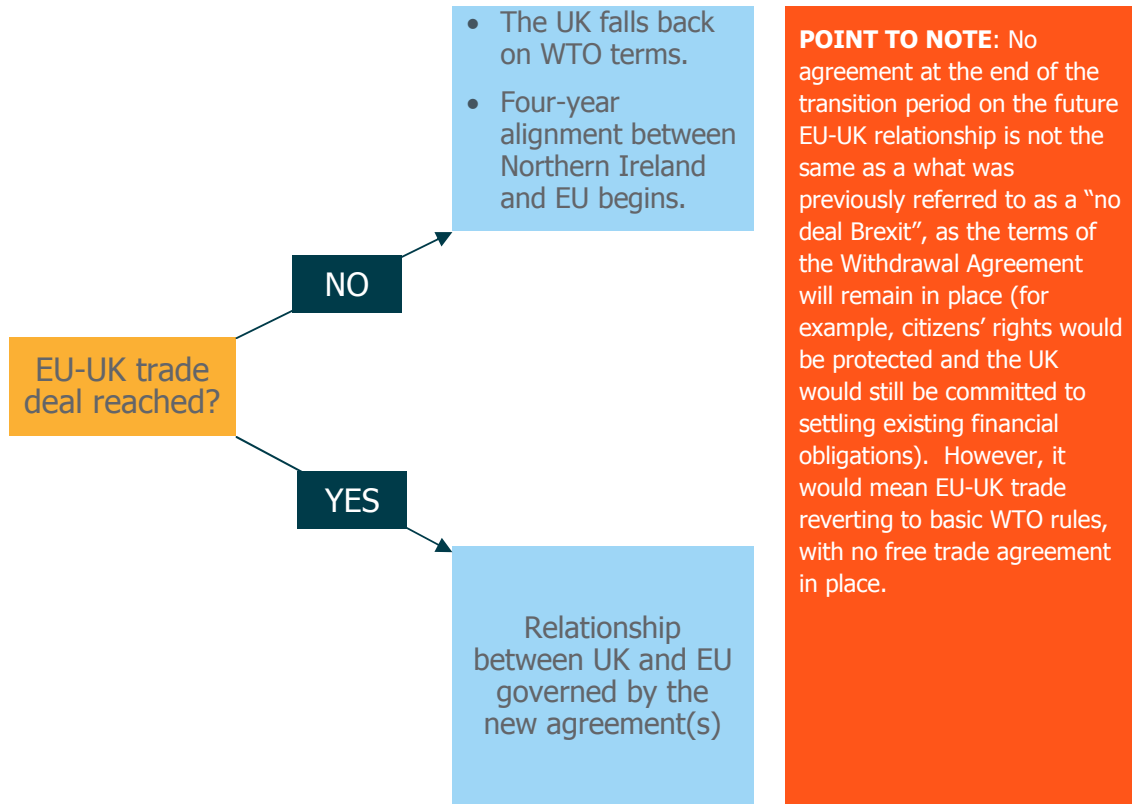
If a request to extend the transition period is not made before 1 July 2020, an extension could only then take place if:

- The Withdrawal Agreement itself were amended to allow for a different extension mechanism. This would require the approval of the European Council and the European Parliament; and
- The UK Parliament were to amend the relevant provisions in the European Union (Withdrawal Agreement) Act 2020.

It seems unlikely, therefore, that the transition period will be extended, although one lesson we have all learned in respect of Brexit is never rule anything out!

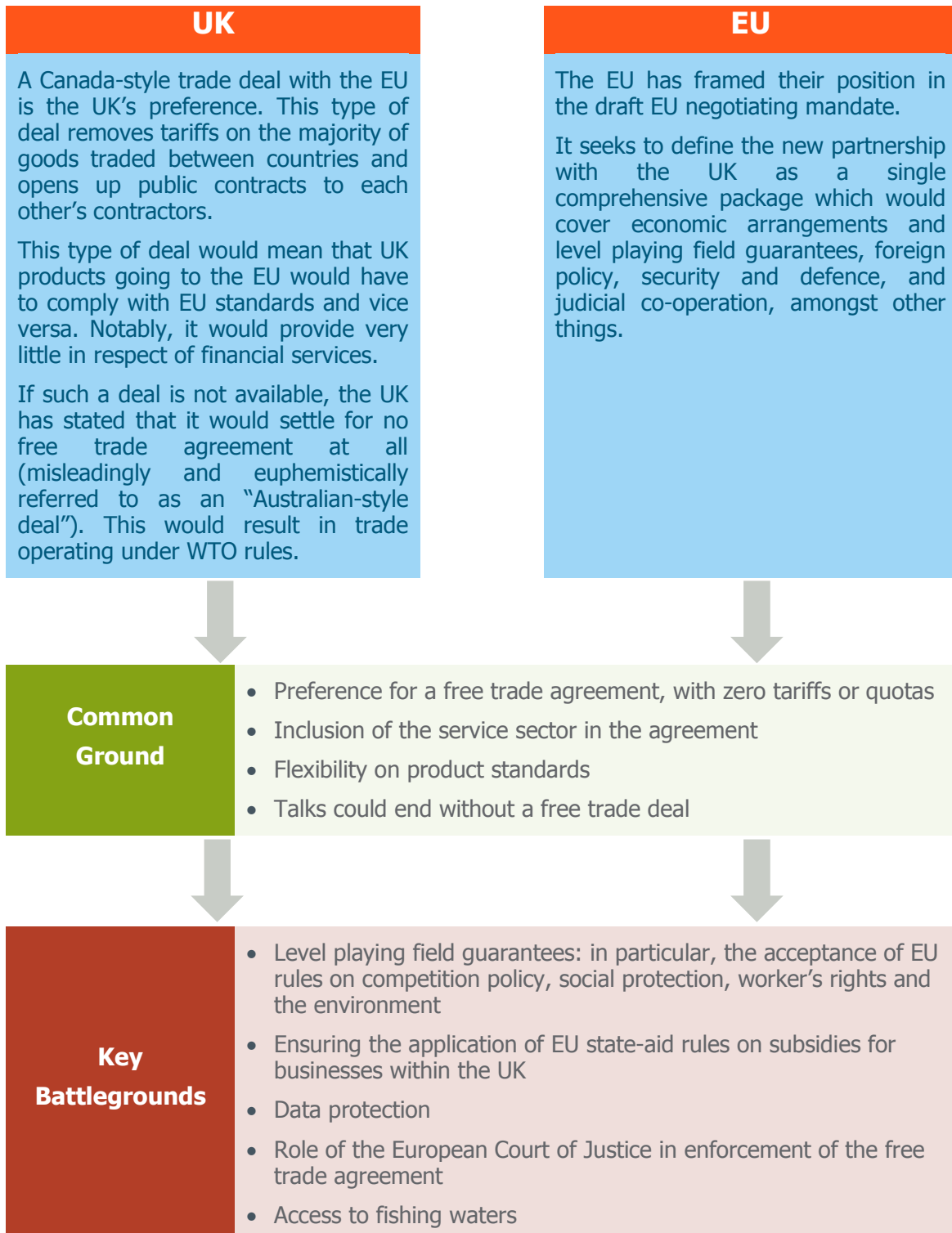
WHAT MIGHT JANUARY 2021 LOOK LIKE?

At the end of the transition period, what happens next depends on whether or not a deal is reached between the EU and UK.



WHAT MIGHT THE UK/EU DEAL LOOK LIKE?

On 3 February 2020, the EU and UK set out their opening positions on a post-Brexit trade deal.



WHAT SHOULD BUSINESSES PREPARE FOR?

It is too early to say whether the UK government will be able to agree a free trade agreement with the EU during the course of a short transition period or what that agreement would look like.

Whilst the Political Declaration, appended to the Withdrawal Agreement, sets out the framework for the future relationship with the EU, it is not legally binding, meaning that either side can choose to depart from parts or all of the text. If no agreement is reached, the UK-EU trade will be governed by WTO rules.

Goods and services

In respect of **goods**, the Political Declaration envisages an ambitious trading relationship based on a Free Trade Agreement, which would ensure no tariffs, fees, charges or quotas across all sectors. Modern rules of origin and customs cooperation would apply, and the UK and EU would explore cooperation between agencies.

As for **services**, the Political Declaration aims for liberalisation "*well beyond WTO*" standards and building on recent EU free trade agreements, with voluntary regulatory cooperation and good regulatory practice with appropriate arrangements for mutual recognition of professional qualifications. In the context of **financial services**, the future relationship is intended to be based on equivalence decisions (the framework allowing each to declare a third country's regulatory regime equivalent for relevant purposes), which it is hoped will be in place by June 2020.

Intellectual Property and Data Protection

The aim of the Political Declaration is to ensure protection and enforcement of **intellectual property** rights, going beyond the WTO standards and World Intellectual Property Organization conventions, with protections for geographical indications. As for **data protection**, the EU is prepared to offer only a standard adequacy agreement, provided the UK continues to align with and to enforce rules similar to the EU's General Data Protection Regulation.

HOW CAN BUSINESSES PREPARE?

Businesses should ensure they remain responsive to developments and prepare for a range of outcomes to manage the risks as effectively as possible. For example, businesses may wish to:

- consider the impact on cost base if an agreement is not reached to remove all tariffs;
- know the unique international identifier codes of products and relevant tariffs/taxes;
- review supply chains and contracts for resilience to border delays, likely additional costs and Brexit resilience;
- check their supply chains to ensure that they know the origin of products that they buy or sell;
- consider the regulatory agencies they work with and consider what steps might need to be taken to ensure compliance with separate UK and EU regulations;
- review IP ownership rights.

Getting in touch

When you need a practical legal solution for your next business opportunity or challenge, please get in touch.

London

Adelaide House, London Bridge
London EC4R 9HA England

Chris Bryant

Tel: +44 (0)20 3400 2423

chris.bryant@bclplaw.com