

# UK-EU FREE TRADE AGREEMENT: PLEASE, SIR, I WANT SOME MORE

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## KEY POINTS

- Both the UK and the EU have now published their draft texts for a Comprehensive Free Trade Agreement.
- The UK's draft Free Trade Agreement (FTA) with the EU is very different from the vision implied in the Political Declaration which the UK and EU agreed as the basis of their future negotiations. The various points of divergence would require long and complex negotiations to resolve.
- In some areas the UK is unwilling to agree such deep integration as the Political Declaration foresaw and which the EU is seeking; the most infamous of these is the so-called level playing field, but it also includes government procurement rules. The UK protests that these are not consistent with the 'ordinary' FTA that it seeks with the EU.
- In other areas, the UK is seeking deeper connections than the EU is offering or its previous FTAs have ever conceded. That is, things beyond an 'ordinary' FTA.
- In trade in goods, the key examples of these deeper connections include rules of origin and demanding the right for the UK to certify that its exports conform to EU standards with no further checks at the border.
- In trade in services, they include audio-visual services, financial services and the mutual recognition of professional qualifications.
- It is unclear why the Government has left it so late to introduce important issues like this into the negotiation or how, given its refusal to extend the Transition Period, it intends to create the time and space to negotiate them. Whether the UK will achieve its desired extensions is unclear.

## INTRODUCTION

Over the past four years, lots of time has been devoted to discussing the Withdrawal Agreement, but little spent on what should follow it. The Political Declaration that accompanied the Withdrawal Agreement in October 2019 laid out an agreed, but non-binding, framework for the future relationship between the UK and the EU<sup>1</sup>, and in February 2020 the UK Government published its

approach to the negotiations.<sup>2</sup> However, it was only with the UK's draft text for the Free Trade Agreement (FTA) published on 19th May 2020 that the fog started to lift.<sup>3</sup>

1 See: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/840656/Political\\_Declaration\\_setting\\_out\\_the\\_framework\\_for\\_the\\_future\\_relationship\\_between\\_the\\_European\\_Union\\_and\\_the\\_United\\_Kingdom.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840656/Political_Declaration_setting_out_the_framework_for_the_future_relationship_between_the_European_Union_and_the_United_Kingdom.pdf)

2 The Future Relationship with the EU. The UK's Approach to Negotiations: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/868874/The\\_Future\\_Relationship\\_with\\_the\\_EU.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/868874/The_Future_Relationship_with_the_EU.pdf)

3 See: Draft Working Text For A Comprehensive Free Trade Agreement Between The United Kingdom And The European Union: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/886010/DRAFT\\_UK-EU\\_Comprehensive\\_Free\\_Trade\\_Agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886010/DRAFT_UK-EU_Comprehensive_Free_Trade_Agreement.pdf)

The UK draft indicates a vision of where the Government wishes to take the UK which is very different from the one implied in the Political Declaration. There are a number of fairly well-rehearsed items in the Political Declaration that the UK Government now does not want, but more striking, are the places where the UK wants more integration than the EU ordinarily offers partners in simple FTAs.

The May Government aimed to minimise the barriers to trade in goods (although it long ago abandoned its aim of “frictionless trade”) and sought little on services. Indeed, this was embodied in both the May and Johnson versions of the Political Declaration. Since the December general election, however, Mr Johnson’s new Government has declared its aim to be a simple FTA based on earlier EU agreements, notably the Comprehensive Economic and Trade Agreement with Canada (CETA).

The draft text for the UK-EU FTA put forward by the UK departs from the Political Declaration by rejecting several things that appeared to be implicit there. However, it also departs from the Johnson Government’s role model - CETA - by asking for more integration in some areas. The key differences are that the UK draft:

- Largely rejects the agreement it made in October 2019 to commit to a “level playing field” in terms of goods.<sup>4</sup>
- Explicitly omits proposals to go beyond the UK’s commitments to the World Trade Organization (WTO) in subsidies/state aids and public procurement.
- Seeks commitments on services that go beyond CETA in financial services and the recognition of professional qualifications.
- Seeks favourable treatment on rules of origin.
- And, possibly most innovatively, proposes formal commitments on the mutual recognition of testing and certification procedures for goods without any commitment to align underlying product standards and regulations. This would allow the UK to import goods from the US which do not conform to EU regulations whilst still allowing UK goods (which could include those US goods as inputs) to be certified as being EU-compliant and hence to enter the EU without border checks.

<sup>4</sup> Level playing field provisions refer to a set of common rules and standards in areas such as workers’ rights, environmental protections and the granting of subsidies (state aids). These provisions can also support objectives on sustainable development and climate change commitments. Their aim is to ensure fair competition among businesses and to prevent businesses in one country from undercutting their competitors in other countries by avoiding the costs of more stringent regulations. The EU’s single market is the most advanced example of a level playing field agreed between different countries.

## TRADE IN GOODS - RULES OF ORIGIN

Central to the UK’s proposal on rules of origin (ROOs) is that the EU should allow the UK to count inputs from third countries with which both the UK and the EU have FTAs as if they were British made, so long as the relevant FTAs contain “equivalent” Rules of Origin. There are certain other conditions on the acquisition of origin but this is the main issue that will arise.

This is a very strong ask. FTAs grant zero-tariff entry to goods *made* in the partner country, not to everything dispatched from there. To put it crudely, the FTA defines what “Made in England” means. To qualify for a zero tariff, a UK export to the EU must be shown to have originated in the UK. Originating status frequently hinges around whether a large enough share of the inputs that went into the good came from the UK (the ROOs define what qualifies as ‘large enough’).<sup>5</sup> In its proposal, the UK has requested that goods using inputs imported from third countries should be treated as if they had been made in the UK so long as the UK and the EU both have free trade agreements with the third party, and the two FTAs have “equivalent” rules of origin. That is, the UK is seeking to enlarge the definition of ‘Made in the UK’. This might seem strange, but its purpose is to allow a larger share of goods emanating from the UK to get the zero-tariff treatment.

For a long time, the EU has insisted that for this so-called “diagonal cumulation” to be possible, all parties must sign up to the EU’s “Pan Euro-Med” rules of origin.<sup>6</sup> Michel Barnier recently reiterated that the EU will not allow the UK to become an assembly base for third country inputs for onward export into the EU,<sup>7</sup> and the EU’s draft Treaty completely rejects the approach put forward by the UK. In fact, it does not even offer the Pan Euro-Med system, but rather proposes that only goods made in the EU or the UK should be able to count for origin in the case of EU-UK supply chains. (This is ‘bilateral cumulation’ in trade-speak.)<sup>8</sup>

<sup>5</sup> For example, in CETA the ROO for cars (HS 87.03) states that to be considered originating the value of all foreign inputs used cannot exceed 50 per cent of the transaction value or ex-works price of the car.

<sup>6</sup> See the pan-Euro-Mediterranean cumulation and the PEM Convention: [https://ec.europa.eu/taxation\\_customs/business/calculation-customs-duties/rules-origin/general-aspects-preferential-origin/arrangements-list/paneuromediterranean-cumulation-pem-convention\\_en](https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/rules-origin/general-aspects-preferential-origin/arrangements-list/paneuromediterranean-cumulation-pem-convention_en)

<sup>7</sup> Speech by Michel Barnier at the European Economic and Social Committee Plenary Session: [https://facts4eu.org/static/media/Speech\\_by\\_Michel\\_Barnier\\_at\\_the\\_European\\_Economic\\_and\\_Social\\_Committee\\_Plenary\\_Session-1.pdf](https://facts4eu.org/static/media/Speech_by_Michel_Barnier_at_the_European_Economic_and_Social_Committee_Plenary_Session-1.pdf)

<sup>8</sup> Note also that while the UK Draft FTA lays down demands on RoOs to maximise access to the EU for UK goods made with, say, Japanese inputs, it cannot address the problems of UK content in EU exports to other FTA partners, e.g. of UK engines in BMWs going to Japan. That resides entirely between the EU and Japan.

It is well-known that most FTAs contain very long and detailed texts on rules of origin. We believe that the sort of diagonal cumulation that the UK seeks is desirable because it allows UK industry to continue using a wide range of inputs, which is in the interests of all non-EU trading partners, some of which are developing countries, and UK industry. However, given the need to complete negotiations by October, the UK has set itself a mountain to climb. It wishes to negotiate different ROOs from the EU and it then has both to get them recognised as equivalent to the EU's and persuade the EU to accept diagonal cumulation. This is very ambitious: at best, it will be expensive in terms of forgoing other objectives, at worst it could become a deal-breaker. Even if the UK adopted the EU ROOs regime in its totality it would still need to win the cumulation argument, and it would have to give up on achieving different ROOs from the EU, which at least some of industry has been asking for.

## TRADE IN GOODS - TECHNICAL STANDARDS (TBT)

The UK has abandoned the target of a “common rule book” and now insists on the right to have its own (divergent) mandatory standards. It seeks, however, to secure easy market access for UK goods into the EU through a comprehensive package on *Mutual Recognition of Conformity Assessment*. As aspired to in CETA as a long-run goal, but unlike the outline in the Political Declaration, the UK asks the EU to allow UK inspection organisations to certify that goods made for export to the EU meet EU standards, even where these standards are not mandatory for the UK market. Allowing local certification would reduce costs and inconvenience for UK exporters to the EU.

The EU has a number of Mutual Recognition Agreements (MRAs) that set out frameworks for reaching future agreements on mutual recognition in specific sectors, but they have all proven hard to complete.<sup>9</sup> For example, the MRAs on Conformity Assessment with the US (1996) or Canada (2017) were merely framework agreements that applied to only a selection of sectors. Like all such EU MRAs, they led to actual agreements that recognise local certification in only a limited range of sectors. In the case of Australia, only three testing bodies are listed as formally notified to, and approved by, the EU.<sup>10</sup>

In contrast, the UK text implies actual agreements (not merely a framework to discuss these agreements)

<sup>9</sup> [https://ec.europa.eu/growth/single-market/goods/international-aspects/mutual-recognition-agreements\\_en](https://ec.europa.eu/growth/single-market/goods/international-aspects/mutual-recognition-agreements_en)

<sup>10</sup> It is worth observing that Australia does have a Mutual Recognition Agreement on conformity assessment with the EU, but no FTA. This is the one sense in which the relationship with Australia differs from pure WTO terms. See [https://ec.europa.eu/growth/tools-databases/nando/index.cfm?fuseaction=country\\_notifiedbody&cou\\_id=36](https://ec.europa.eu/growth/tools-databases/nando/index.cfm?fuseaction=country_notifiedbody&cou_id=36)

covering a substantial list of products circulating in the Single Market. The demand is in Annex 5-A, *The Mutual Acceptance of the Results of Conformity Assessment* of the UK draft. Article 12 lays out procedures for recognising bodies conducting conformity assessments (i.e. allowing them to certify conformity) and this is followed by Article 15, *Transition from the EU Single Market*, which starts:

1. *The Union recognises:*

a. *the United Kingdom Accreditation Service (UKAS) in respect of accreditation services for which it was recognised by the Union immediately prior to the date of the entry into force of this Agreement, as if it had been recognised pursuant to Article 12 (...);*

b. *that UKAS is competent to assess conformity assessment bodies as themselves competent to assess conformity with the relevant European Union technical regulations;*

and:

c. *any conformity assessment body as competent to assess for the conformity assessment procedures for which it was, immediately prior to the date of entry into force of this Agreement; (...)*

That is, in the sectors covered by *The Mutual Acceptance of the Results of Conformity Assessment*, the UK's proposal would see goods trade between the UK and EU carrying on as if the UK were in the Single Market. Manufacturers would still potentially have to show documents proving certification to EU standards, but would be exempt from physical inspections. In addition, UK agencies would be able to conduct business throughout Europe. Mutual recognition is limited to sectors listed in an Appendix, but at eight pages long this is a very ambitious request.

In addition to sectors, the Appendix lists the EU Regulations and UK Laws that operate in those sectors and which are currently, by virtue of the Single Market, identical. Annex 5-A Article 2 is explicit that:

5. *This Annex does not require the recognition or acceptance by a Party that the other Party's technical regulations are equivalent to its own.*

6. *This Annex does not limit the ability of a Party to prepare, adopt, apply or amend conformity assessment procedures in accordance with Article 5 of the TBT Agreement.*

Each of these clauses is to be found in CETA, but the wide coverage and immediate operation of recognition with the UK gives them much greater significance to the EU than they had in CETA.

However, the UK position on equivalence is not as relaxed as sub-paragraph 5 just quoted seems to imply, because the text in Chapter 5 of the main UK draft on technical barriers states that:

*The requested Party shall accept those technical regulations as equivalent, even if they differ, provided that it is satisfied that the technical regulation of the requesting Party adequately fulfils the objectives of its own technical regulation. If the requested Party does not accept a technical regulation of the requesting Party as equivalent, the requested Party shall explain the reasons for its decision.*

Essentially the UK is suggesting that equivalence be negotiated, not a unilateral decision.

Finally, Appendix 5-A-2 of the UK's draft requires each party to recognise the other's Type Approval Certification (Conformity Assessment) system for cars so long as both jurisdictions continue to base their *regulations* on the international automobile industry *standards* set by the UNECE, a UN body in Geneva.<sup>11</sup> All European countries have done so since the 1950s, and in their recent FTAs with the EU, Korea and Japan have committed to doing so. In contrast, the US does not follow this system.

M. Barnier's response to the UK on June 10th rejects both the UK ROO request and, quite explicitly, its position on the mutual recognition of certification. To add emphasis, he not only stressed that the EU does not want to have its standards undermined by tolerating laxer UK checks, but also talked of curbing the UK's competitiveness in the certification field.<sup>12</sup> He goes as far as saying that whatever the results of the negotiations 'As a third country, the UK will no longer be able to grant marketing authorisations for pharmaceuticals or type-approvals for cars for the EU market.'

## TRADE IN GOODS - SANITARY AND PHYTO-SANITARY REGULATIONS (SPS)

The UK's request on equivalence for food and animal safety (SPS) is similar to that for technical barriers in manufacturing. Article 6.12 of the UK text states that:

*The importing Party shall accept an SPS measure of the exporting Party as equivalent to its own if the exporting Party objectively demonstrates to the importing Party that its measure achieves the importing Party's appropriate level of protection.*

<sup>11</sup> See <https://www.unece.org/fr/transport/areas-of-work/vehicle-regulations/reglementation-des-vehicules-accueil.html>

<sup>12</sup> Speech by Michel Barnier at the European Economic and Social Committee Plenary Session: [https://facts4eu.org/static/media/Speech\\_by\\_Michel\\_Barnier\\_at\\_the\\_European\\_Economic\\_and\\_Social\\_Committee\\_Plenary\\_Session-1.pdf](https://facts4eu.org/static/media/Speech_by_Michel_Barnier_at_the_European_Economic_and_Social_Committee_Plenary_Session-1.pdf)

Whilst the importing party may decide on whether to grant equivalence, the draft effectively limits its freedom to refuse, and it must explain its reasons if it does so:

*When determining the equivalence of phytosanitary measures, the Parties shall apply the principles laid down in the FAO ISPM No. 24 "Guidelines for the determination and recognition of equivalence of phytosanitary measures".*

However, there does not appear to be any suggestion of mutual recognition of testing and certification for food stuffs. If so, this means that UK food products would not only have to produce paperwork showing that they had been tested to EU standards, they would also be subject to physical checks at the border. The EU's regime for third country imports, especially animal and fish products, is severe, requiring prior approval of the supplier by the EU, a restricted number of ports of entry and the possibility of physical inspections. Since the UK apparently accepts this regime, the negotiations may be straight-forward; it is the outcome for UK exporters that raises concern.

## THE LEVEL PLAYING FIELD (LPF) AND GOVERNMENT PROCUREMENT

The level playing field (LPF) refers to general conditions in the economy and covers the areas of state aid, competition, social and employment standards, environment, climate change, and relevant tax matters. Article 77 of the Political Declaration committed both sides to negotiate what was then known as a common rule book:

*Given the Union and the United Kingdom's geographic proximity and economic interdependence, the future relationship must ensure open and fair competition, encompassing robust commitments to ensure a level playing field. The precise nature of commitments should be commensurate with the scope and depth of the future relationship and the economic connectedness of the Parties. These commitments should prevent distortions of trade and unfair competitive advantages. (...) and include appropriate mechanisms to ensure effective implementation domestically, enforcement and dispute settlement.*

The EU negotiating mandate and the EU's draft Treaty use the same language, but, as is well known, the UK draft (and rhetoric) rejects any such binding commitments to adhere to EU standards, let alone to allow the Court of Justice of the European Union play a role in their interpretation and enforcement. The UK appears to be asking for quite considerable market access rights on the basis of its declared intention to stick to "high" standards, but with no obligation to do so. The UKTPO has previously discussed State Aids -

probably the most sensitive issue<sup>13</sup> - and Environmental Standards,<sup>14</sup> and there is currently much speculation about where the two sides will settle.<sup>15</sup> We do not pursue them further here.

The insistence on prioritising sovereignty over trade goes beyond the LPF to public procurement. Historically, the UK has been the most open of EU Member States to third party engagement in procurement and has been eager to extend the liberalisation of public procurement in FTAs beyond the WTO's Government Procurement Agreement (GPA). However, the UK draft text simply affirms that the GPA texts should apply. The EU's Public Procurement proposal (Title X) also affirms the commitment to the WTO GPA, but then adds five further pages of commitments, for example on challenges to contract awards.

As we have argued previously, the UK needs strong procurement rules internally for the sake of good governance, and liberal access to foreign firms for the sake of value for money.<sup>16</sup> The UK position is therefore something of a paradox. Like the substance of UK resistance to EU state aid constraints, it possibly stems from the current government's desire to leave itself maximum discretion to divert resources towards lagging firms and regions – or perhaps favoured ones. It is a strange throw-back to the Labour Party's travails in devising a Brexit strategy.

## TRADE IN SERVICES AND INVESTMENT

On services and investment, the UK and EU draft Treaty texts are broadly similar. Both include the standard provisions for services liberalisation - market access and national treatment - which serve to prohibit discrimination and quantitative restrictions for services suppliers of the other party. Both texts also propose to include most favoured nation clauses, which broadly require that if one FTA party offers better terms to another partner these must automatically be extended to the other FTA party. On investment, both texts include provisions prohibiting performance requirements and also nationality requirements for senior managers. All of this is standard in the EU's modern trade agreements and therefore seems pretty uncontroversial.

<sup>13</sup> UKTPO Briefing Paper 42: State Aid: Not Only About Trade: <https://blogs.sussex.ac.uk/uktpo/publications/state-aid-not-only-about-trade/>

<sup>14</sup> Environment and climate change in the EU-UK negotiations: Arguing the toss over nothing: <https://blogs.sussex.ac.uk/uktpo/2020/05/26/environment-and-climate-change-in-the-eu-uk-negotiations-arguing-the-toss-over-nothing/>

<sup>15</sup> Brexit: Why hopes are rising that EU and UK could find compromise: <https://www.ft.com/content/42022bf3-2912-4bf2-900a-25dcfda776c3>

<sup>16</sup> UK Procurement Policy: Going it Alone in a Crisis: <https://blogs.sussex.ac.uk/uktpo/2020/04/28/uk-procurement-policy-going-it-alone-in-a-crisis/>

However, while agreeing on the broad structure of the services chapters appears relatively straight forward, particularly given that much of it has been copy-pasted from the EU's previous agreements, the devil really is in the detail. Both parties propose that the liberalisation of services should be done on the basis of a negative list – i.e. that imports of any service are fully liberalised unless the importing party records a reservation against it in an Annex. Thus, all the action is in the (as of yet unpublished) detailed Annexes spelling out all the non-conforming measures which the parties wish to maintain or have the right to introduce. In CETA, the EU and the Member States made around 550 such reservations on different services, in some cases more or less precluding any liberalisation of trade at all.<sup>17</sup>

Negotiations over the details of such services reservations are long and arduous, not least because, as Morita-Jaeger and Winters note, many of the relevant regulations 'belong' to national governments rather than EU bodies, and within national government to pseudo-independent regulatory bodies.<sup>18</sup> Until we know the contents of the Annexes, we cannot assess how far the agreement will go in terms of avoiding the re-imposition of barriers to UK-EU services trade. However, given the apparent lack of preparation on the UK side, and the pressing time constraint, one cannot be very optimistic.

## THREE AREAS OF DIFFICULTY

First, **audio-visual services**, which, following its standard FTA practice, the EU explicitly excludes from its draft text, but for which the UK text includes a dedicated (albeit short) chapter. The UK has commercial interests in this sector, but it also knows the EU's difficulties over it (a French veto) and so wants the EU to 'pay' for its exclusion.

A second area of contention is 'equivalence' in **financial services**. The Political Declaration recognises that parties maintain '*their ability to take equivalence decisions in their own interest*', but commits to '*transparency and appropriate consultation in the process of adoption, suspension and withdrawal of equivalence decisions*' (paragraph 37). Article 17.19 of the UK draft FTA reiterates the latter point, along with commitments to '*undertake the regulatory cooperation (...) for the purpose of establishing and maintaining: (a) close and structured cooperation on regulatory matters*' in financial services. The EU sees this as a request for joint decision making. The EU draft text is altogether silent on equivalence, but

<sup>17</sup> UKTPO Briefing Paper 18: Can CETA-Plus Solve the UK's Services Problem? <https://blogs.sussex.ac.uk/uktpo/publications/can-ceta-plus-solve-the-uks-services-problem/>

<sup>18</sup> UKTPO Briefing Paper 24: The UK's future services trade deals with non-EU countries: A reality check. <https://blogs.sussex.ac.uk/uktpo/publications/the-uks-future-services-trade-deals-with-non-eu-countries-a-reality-check/>

Tarrant et al (2019) have argued that the EU sees the UK as making a request for the recognition of “equivalence” in financial services to be a joint matter.<sup>19</sup> Barnier, again on June 10th, insisted that this is impossible.<sup>20</sup>

A third area in which the proposed services texts diverge is on the **mutual recognition of professional qualifications**, where the UK’s draft text is full and ambitious. It goes further than the EU’s proposed text (which is a variant of its position in CETA) and also goes further than the EU has ever previously agreed to go. The UK text states, inter alia, in Chapter 13:

*Each Party shall accord to service providers who obtained their professional qualifications in the jurisdiction of another Party treatment no less favourable to that it accords, in like situations, to its nationals who obtained their professional qualifications in its jurisdiction. (Article 13.3.1)*

*If access to or pursuit of a regulated profession in the host jurisdiction is contingent upon possession of specific professional qualifications, the relevant authority shall permit access to and pursuit of the profession to a service provider who applies for recognition and who has relevant professional qualifications. (Article 13.7.1)*

*Each Party shall adopt measures that require relevant authorities to operate a system for recognition which complies with Articles 13.7 to 13.10 of this Chapter. (Article 13.6)*

*The Sub-Committee on the Recognition of Professional Qualifications shall be responsible for the effective implementation and operation of this Chapter. (Article 13.13.1)*

The CETA chapter on the Mutual Recognition of Professional Qualifications also establishes a Joint Committee, but its first meeting is required to be only within one year of CETA coming into force and its most arduous duty is to ‘report to the CETA Joint Committee on the progress of the negotiation and implementation of MRAs’. The latter is governed by Annex 11-A, which sets out ‘non-binding guidelines with respect to the negotiation and conclusion of MRAs’, which in turn lay out a ‘four-step process’. So far, the CETA process has not generated a single case of actual recognition of a qualification. The EU-Japan Economic Partnership Agreement is no more committal on the mutual recognition of professional qualifications than is CETA. In other words, on the mutual recognition of professional

qualifications, the UK is seeking something way beyond what the EU has previously agreed with major developed country partners.

## THE TEMPORARY MOVEMENT OF NATURAL PERSONS

Closely linked with the preceding section is so-called ‘mode 4’ services trade, which deals with the ability of people to travel to the other party to provide services. In this respect, both the UK and EU drafts follow the common conventions of FTAs, by outlining the permissible length of stay for specific categories of workers, such as intra-corporate transferees, contractual service suppliers, short-term business visitors and independent professionals.<sup>21</sup> This is an area where the UK has historically tended to be more restrictive than most EU Member States, and it is therefore noteworthy that, in places, the UK’s draft goes further than both the UK’s typical commitments in this area and the EU’s draft offer on the UK-EU FTA.

For intra-corporate transferees, the UK is suggesting that the permissible length of stay should be up to 5 years. This is longer than the EU’s proposal of up to 3 years (which is also the EU’s standard offer in existing FTAs – which, of course, the UK accepted). The UK has also gone further than the offers it made in the EU’s existing FTAs with Canada and Japan, by including commitments for the categories of ‘investors’ and ‘short-term business visitors’, categories which it previously opted out of entirely.<sup>22</sup>

Nevertheless, similar to the discussion above, the true degree of liberalisation of mode 4 services trade can only be known once the detailed annexes of specific commitments and restrictions are complete. In the accompanying annexes to the EU’s agreement with Canada, the UK tabled restrictions in every single mode 4 category.<sup>23</sup>

Mode 4 commitments apply only to people travelling to the other party in a professional capacity to provide a service, usually contingent on a specific contract negotiated prior to arrival. This is usually where FTAs stop; however, chapter XI of the EU’s draft goes further by covering wider mobility arrangements. The chapter includes proposed commitments for reciprocal visa-free

<sup>21</sup> Overall, the UK and the EU uses similar definitions for these categories, although the precise wording sometimes differs. The UK’s draft often copies the definitions used in CETA word for word.

<sup>22</sup> Interestingly, the EU does not include the category of ‘investors’ in its draft proposal. However, the EU includes this category of workers in both CETA and EU-Japan, and so it seems unlikely that the EU would be unwilling to include it also in this agreement.

<sup>23</sup> UKTPO Briefing Paper 18: Can CETA-Plus Solve the UK’s Services Problem? <https://blogs.sussex.ac.uk/uktpo/publications/can-ceta-plus-solve-the-uks-services-problem/>

<sup>19</sup> UKTPO Briefing Paper 27: Equivalence, mutual recognition in financial services and the UK negotiating position. <https://blogs.sussex.ac.uk/uktpo/publications/equivalence-in-financial-services/>  
<sup>20</sup> [https://facts4eu.org/static/media/Speech\\_by\\_Michel\\_Barnier\\_at\\_the\\_European\\_Economic\\_and\\_Social\\_Committee\\_Plenary\\_Session-1.pdf](https://facts4eu.org/static/media/Speech_by_Michel_Barnier_at_the_European_Economic_and_Social_Committee_Plenary_Session-1.pdf)

travel for short stays ('short' to be defined as at least 90 days), and provisions aimed at facilitating the entry and stay, for periods exceeding 90 days, for the purposes of research, studies, training and youth exchanges. The inclusion of this chapter is not surprising, given that the

Political Declaration called for the parties to establish such a mobility agreement.<sup>24</sup> But the UK is entirely silent on these issues in its draft, presumably a deliberate omission.

### CONCLUSION

In late 2018, the UK's position on the future UK-EU trading relationship was to seek frictionless borders for goods trade with the minimum necessary regulatory alignment to allow this to occur, and to seek few concessions on trade in services. By October 2019, with the Political Declaration, there was still a willingness to accept necessary alignment in goods and a low ambition on services. Following the December 2019 election, however, the Government's position hardened on goods trade, with the acceptance that there would be costly trade frictions on goods – in fact, a less close relationship, overall. The Government also adopted a tougher rhetorical stance, declaring that the UK seeks an FTA along 'the lines of the FTAs already agreed by the EU in recent years with Canada and with other friendly countries', and hence that certain EU objectives that would be unique to the UK such as the 'level playing field' and links between trade in fish and territorial fishing rights were unacceptable.<sup>24</sup>

The rhetorical position asked a lot because it failed to recognise both the UK's unique degree of integration with the EU and that items in other EU FTAs were not options in a pick-and-mix selection but that each FTA represented a carefully brokered compromise between the EU and its partner, in which the latter 'purchased' the EU concessions by offering its own. But neither was the rhetoric aligned with reality. Although the Approach to Negotiations published in February 2020 left room for these extensions, it was only when the UK published concrete proposals in its draft text for the UK-EU FTA in May, that it emerged how much further it was seeking to stretch its access to EU markets beyond previous EU FTAs. This paper has discussed four of these extensions in detail, each of which goes beyond the EU's offer in its draft text and each of which would require long and complex negotiations to resolve:

- Generous cumulation in the rules of origin;
- The presumption that UK certification bodies can certify UK exports to the EU as meeting EU regulatory standards;
- That the determination of whether UK regulations in financial services are equivalent to EU regulations be the subject of mutual discussion rather than a purely EU matter; and
- Close to automatic mutual recognition of UK and EU professional qualifications.

None of these requests is without merit from a British perspective, and indeed, the UKTPO has consistently argued for such deep integration. Nor is ambition in a negotiation a bad thing. However, it is difficult to comprehend the tactics of springing these on the EU while simultaneously curtailing the time for negotiation by refusing to extend the current Transition Period. Is it hubris, is it that the requests are not serious, is it that they are mere negotiating plays to create leverage for fishing and freedom from the 'level playing field'? Or is the Government suddenly serious about these issues and that it will try to reach an agreement by October with an Implementation Period that leaves space for them to be negotiated over the next couple of years? One thing that they do not do is create certainty.

<sup>24</sup> See section IX: MOBILITY in the Political Declaration

<sup>25</sup> See: Draft Working Text For A Comprehensive Free Trade Agreement Between The United Kingdom And The European Union [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/886010/DRAFT\\_UK-EU\\_Comprehensive\\_Free\\_Trade\\_Agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886010/DRAFT_UK-EU_Comprehensive_Free_Trade_Agreement.pdf)

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## FURTHER INFORMATION

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The UK Trade Policy Observatory (UKTPO), a partnership between the University of Sussex and Chatham House, is an independent expert group that:

- 1) initiates, comments on and analyses trade policy proposals for the UK; and
- 2) trains British policy makers, negotiators and other interested parties through tailored training packages.

The UKTPO is committed to engaging with a wide variety of stakeholders to ensure that the UK's international trading environment is reconstructed in a manner that benefits all in Britain and is fair to Britain, the EU and the world. The Observatory offers a wide range of expertise and services to help support government departments, international organisations and businesses to strategise and develop new trade policies in the post-Brexit era.

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