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POLICY BRIEF

Can a US-UK Trade Agreement Become a Reality in 2021?

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On December 12, 2019, Prime Minister Boris Johnson and the Conservative Party secured a sizable parliamentary majority in the United Kingdom's general election.[1] The Conservative victory makes it all but certain that the United Kingdom will be exiting the European Union on January 31, 2020, opening the door for a potential UK trade agreement with the United States.

With a comfortable majority of 80 seats, the ruling Conservatives are expected to ratify the newly revised Brexit Withdrawal Agreement with the European Union, which establishes the terms for exit. Upon ratifying the agreement, the United Kingdom will enter into an implementation period of 11 months to negotiate a free-trade agreement (FTA) with the European Union. Prime Minister Johnson has been steadfast in his commitment not to extend the implementation period beyond the end of 2020.[2] The signing of an FTA with the European Union will allow the United Kingdom to withdraw from the EU Customs Union, establish its own tariff schedule, and enter into separate FTAs with the United States and other trading partners.

A US-UK trade agreement would be a major economic policy initiative for both nations. From January through November of 2019, Americans exported $63.6 billion in goods to the United Kingdom, representing 4.2 percent of total US exports. During that same period, Americans imported $57.6 billion in goods from the United Kingdom, or 2.5 percent of total US imports. As a 2018 research paper from the Mercatus Center at George Mason University notes, the United Kingdom is America's seventh-largest partner in two-way goods trade, the fifth-largest market for US exports, and the leading partner in services trade and foreign direct investment, with more than 1 million Americans working for UK-owned affiliates in the United States. A US-UK agreement would offer both countries the opportunity to lower barriers to trade in important sectors such as motor vehicles, agricultural products, financial services, and digital trade.[3] Recent events in the United Kingdom have brought an agreement closer to reality.

BILATERAL ENTHUSIASM FOR AN AGREEMENT

Both the Johnson government and the Trump administration have signaled enthusiasm for an ambitious bilateral trade agreement. After the Conservative election victory, President Trump tweeted, "Congratulations to Boris Johnson on his great WIN! Britain and the United States will now be free to strike a massive new Trade Deal after BREXIT."[4] In an appearance on Fox Business a few days later, US Trade Representative Robert Lighthizer said a US-UK trade agreement would be one of the administration's priorities in 2020: "For sure, the UK is a priority. As soon as they get their objectives agreed to, we'll start talking. It will take a while before it all comes into effect because of their circumstance. It'll be a really big deal. We're looking forward to that negotiation."[5]

On the British side, Prime Minister Johnson stated in the "Queen's Speech" shortly after the election that, once Brexit is achieved on January 31, "my Ministers will seek a future relationship with the European Union based on a free trade agreement that benefits the whole of the United Kingdom. They will also begin trade negotiations with other leading global economies."[6] Earlier in 2019, during a speech at the Heritage Foundation in Washington, DC, the United Kingdom's newly appointed International Trade Secretary Liz Truss spoke of the new opportunities after Brexit and said that "the ability to strike a new FTA with the United States is very, very high up the list." Secretary Truss closed out her speech by uttering the words of President Ronald Reagan: "The time is now."[7]

This strong commitment from the British government to an ambitious FTA with the United States was again reaffirmed in the 2019 election manifesto of the Conservative Party. The manifesto states, "We aim to have 80 per cent of UK trade covered by free trade agreements within the next three years, starting with the USA, Australia, New Zealand and Japan."[8] The current British government is committed to kick off trade talks with US counterparts in 2020, alongside its EU FTA negotiations. In addition to the firm commitments of the British government for a US-UK FTA, there is also greater certainty of the UK exiting the EU Customs Union and, therefore, being able to negotiate bilateral free-trade agreements and set its own rates for the 12,500-plus goods tariff categories the European Union currently imposes.

AN AMBITIOUS AGENDA FOR NEGOTIATIONS

The path has now been cleared for the United States and the United Kingdom to begin serious negotiations toward a comprehensive FTA between the two nations. The most optimistic scenario would be to conclude and sign an agreement by the end of 2020 and for that agreement to go into effect on January 1, 2021, the earliest date that the United Kingdom could exit the EU Customs Union.

The Trump administration issued its formal negotiating objectives for the agreement on February 28, 2019. Most of the bullet-pointed objectives in the 18-page document are standard for US trade agreements as set out by the 2015 Bipartisan Congressional Trade Priorities and Accountability Act,[9] the legislation under which US administrations can negotiate trade agreements with foreign governments.

On industrial goods, the United States Trade Representative (USTR) document commits the United States to "secure comprehensive duty-free market access for U.S. industrial goods," including the reduction of nontariff barriers and presumably reciprocal access for UK industrial goods. It is encouraging that no exceptions are mentioned for motor vehicles, steel, or other sectors that have been the special focus of Trump administration trade policy so far.[10]

The USTR rightly identifies trade in services as a priority, since two-way trade in services between the two nations actually exceeds two-way trade in goods. The USTR will seek to "secure commitments for the UK to provide fair and open conditions for services trade,"[11] including rules that would prohibit (1) discrimination against foreign suppliers, (2) restrictions on the number of service providers in the market, and (3) requirements that cross-border service suppliers must establish a local presence. The United States will also seek to liberalize the market for delivery service.

In general, the United States will advocate for a "negative list" approach to services liberalization, where sectors are considered to be open to cross-border competition unless otherwise excluded, and then they are included only with "the narrowest possible exceptions with the least possible impact on US firms." Disappointingly, the USTR wants to retain "flexibility" to preserve US protections against foreign competition for such "non-conforming measures" as the Jones Act, which excludes foreign providers from intercoastal shipping.[12] This will represent a lost opportunity to lower costs and improve service for shipping customers in the United States.

Financial services and digital trade are two areas the USTR agenda identifies as opportunities to "develop new approaches."[13] It calls for negotiators to seek to expand opportunities for US financial service suppliers "to obtain fairer and more open conditions of financials services trade." It also seeks to ensure that the United Kingdom's financial regulatory rules are administered in a way that is transparent and equitable to US suppliers.[14] Given that New York City and London are arguably the world's two most important financial centers, more robust competition in this sector would yield benefits for both nations through lower costs and more product innovation.

On digital goods and data flows, the USTR seeks to negotiate a prohibition of customs duties on digital products. Any final agreement should also prohibit any restrictions on cross-border data flows or requirements to use or install local computing facilities. The USTR will also seek to preclude any mandates to disclose computing algorithms or source code.[15] All these measures are important and have become standard in 21st-century US trade agreements. They would also protect the competitive US digital trade and cloud computing sector from EU-type rules aimed at US technology companies.

NAVIGATING POLITICALLY SENSITIVE TRADE AREAS

Among areas that may be especially sensitive in the negotiations is agriculture, with regard to both direct tariffs and nontariff barriers such as sanitary and phytosanitary (SPS) measures. Here the USTR has signaled a slightly more hedged objective to "secure comprehensive market access for U.S. agricultural goods in the UK by reducing or eliminating tariffs."[16] Presumably the United States will be ready to offer the same access for UK goods in the United States, not primarily as a favor to UK farmers but as a benefit to US consumers. An encouraging sign is that the USTR negotiating objectives make no mention of exceptions for sugar, dairy, or other politically sensitive US farm sectors.

One of the most difficult areas of the negotiations will likely be over SPS regulations, where UK consumers tend to be wary of certain accepted US practices. The USTR negotiating objectives include the reasonable expectation that SPS regulations will "build upon World Trade Organization rights and obligations . . . making clear that each Party can set for itself the level of protection it believes to be appropriate to protect food safety and plant and animal health in a manner consistent with its international obligations."[17]

One area of potential progress in agricultural trade is genetically modified organisms (GMOs). The United States is one of the leading nations in the world in adopting the technology, which on balance seems to be beneficial for consumers and producers. Leading GMO crops include corn and soybeans. The European Union, however, remains hostile to GMOs, despite successful challenges to its policies by the United States and other members of the World Trade Organization (WTO).[18] By contrast, UK Prime Minister Johnson has invited his fellow UK citizens to embrace GMO technology as a source of innovation and economic progress for the United Kingdom. In his first day as prime minister, in July 2019, he said in a public speech, "Let's liberate the UK's extraordinary bioscience sector from anti-genetic modification rules. Let's develop the blight-resistant crops that will feed the world."[19] US negotiators should work with their UK counterparts to ensure market access for US-grown GMO products based on scientific risk assessments.

Among the areas where the USTR objectives are unambitious and self-damaging are government procurement and "trade remedy laws." On procurement, the USTR seeks greater market access for US exporters and reciprocity for US suppliers in the United Kingdom, but it also wants to carve out huge loopholes to protect US firms. It puts the United Kingdom on notice that it will seek to "exclude sub-federal coverage"—i.e., state and local government—while retaining "Buy America" requirements on federal assistance to state and local projects, as well as "key Department of Defense procurement."[20] This unnecessarily reduces competition in the United States to reduce government costs, while undercutting US leverage to seek greater access to the UK government procurement market. Ideally, government procurement at all levels should be open to bids from companies in either nation.

On trade remedies, the Trump administration's negotiating objective is to preserve the ability to "enforce rigorously its trade laws," including the much-abused US antidumping law as well as countervailing duties and safeguard laws.[21] This represents another forfeited opportunity to protect American consumers and import-using producers from imposition of steep and unpredictable duties on certain targeted US imports while leaving US exporters exposed to the imposition of such duties by the United Kingdom.

Two other potentially sensitive areas for the negotiations are the British National Health Service (NHS) and the status of Northern Ireland. On the British side, the main concern has surrounded fears that an FTA would put the NHS at risk of privatization, with Labour Party leader Jeremy Corbyn claiming that the prime minister is "going to sell out our NHS to the United States and big pharma."[22] In reality, under any proposed FTA, the British government would continue to fund the NHS and provide care free of charge at the point of service, while procurement provisions would simply mean that US companies could compete for services contracted out by the NHS, just as EU companies do already. In fact, as one independent health think tank noted, US companies already have the right to bid for private contracts in the NHS in England and several US healthcare companies currently provide services in the United Kingdom.[23] In previous trade negotiations with other countries that have public health services, such as New Zealand and Australia, the United States backed away from drug pricing demands to get an agreement over the line. What's more, both Prime Minister Johnson and President Trump have reasserted that the NHS would not be involved in any FTA deal between the two countries.[24]

A second concern on both sides of the Atlantic has been the implications of a future UK-US FTA on the Northern Ireland border. The earlier withdrawal agreement negotiated by former Prime Minster Theresa May contained an annex familiarly known as the "Irish Backstop," which proposed to keep Northern Ireland in the European Single Market and EU Customs Union to prevent any customs checks on its land border with the Republic of Ireland. The backstop provision caused political controversy on both sides of the Atlantic, with fears among Brexit supporters in the United Kingdom that it could indefinitely delay the Brexit date and among US officials concerned that a "hard border" within Ireland would undermine the 1998 Good Friday Agreement and reignite old sectarian conflicts.

The status of Northern Ireland remains a political issue that reverberates among US political leaders with an interest in Irish-American affairs. Speaker of the US House of Representatives Nancy Pelosi expressed those concerns when she declared, "Whatever form it takes, Brexit cannot be allowed to imperil the Good Friday agreement, including the seamless border between the Irish Republic and Northern Ireland, especially now, as the first generation born into the hope of Good Friday 21 years ago comes into adulthood."[25] The newly negotiated withdrawal agreement between the United Kingdom and the European Union deals with the Northern Ireland issue largely by removing the backstop protocol in favor of regulatory alignment with the Republic of Ireland. Under the new arrangement, Northern Ireland will be de jure in the UK customs territory and de facto in the EU Customs Union and European Single Market for at least four years after the transition period.[26]

After four years, the Northern Ireland Assembly will have the opportunity on a four-year rolling basis to decide whether to continue with the existing arrangements or to allow the arrangements to lapse. Customs checks at the Irish border will be conducted under a system similar to that of Norway-Sweden on a decentralized basis with paperwork conducted electronically. Compared to the Irish Backstop arrangement, the new withdrawal agreement lessens the risk of a hard border or an undermining of the Good Friday Agreement. The status of Northern Ireland as well as several other challenges and opportunities presented by an FTA are summarized in the following list.

Opportunities

- Duty-free market access for industrial goods
- Fair and open conditions for service trade
- Delivery service liberalization
- More open conditions and robust competition for financial services trade
- Prohibition of customs duties and restrictions on digital products and cross-border data flows
- Reduction or elimination of tariffs for agricultural goods
- Growing market for US GMO products

Likely Challenges

- Sanitary and phytosanitary regulations in agricultural trade
- "Buy America" requirements in the procurement market undercut leverage to grow market access
- Antidumping laws and countervailing duties
- Barriers to foreign competition from "nonconforming measures"; i.e., the Jones Act

Unlikely Challenges

- United Kingdom fears of healthcare privatization resulting from an FTA
- Special status of Northern Ireland and fears of undermining the Good Friday Agreement

A REALISTIC TIMELINE FOR A US-UK AGREEMENT

The political will and the opportunity exist to negotiate and implement a comprehensive FTA between the United States and the United Kingdom. The timing of such an agreement will depend on how soon the United Kingdom can reach an FTA with the European Union that would allow it to exit the EU Customs Union with the least level of disruption. The Johnson government is committed to leaving the EU Customs Union no later than the end of 2020, even if doing so risks a "hard Brexit" of exiting without a formal FTA with the European Union. Although complex, such an agreement could conceivably be negotiated in the next 11 months.

In a video addressing the nation, Prime Minister Johnson reiterated his intention to have an FTA with the European Union "on the model of a super Canada plus arrangement."[27] An FTA based on the Canada-EU FTA, otherwise known as the Comprehensive Economic and Trade Agreement (CETA), would result in the removal of 98 percent of all tariffs and an opening up of public procurement contracts at local, regional, and national levels.[28] An FTA based on the CETA model would also provide protection for intellectual property rights, cooperation on standards, and reciprocal recognition of professional qualifications. Such an arrangement does not require membership in the EU Customs Union or European Single Market, so the United Kingdom would be free to negotiate and sign new trade deals with other countries. Proponents of a super Canada plus FTA have argued that an arrangement of this nature would be easier to draft as the two sides are starting from a position of convergence.

While the United Kingdom and the European Union negotiate their agreement, the United States should be negotiating with the United Kingdom on their own post-Brexit agreement. A US-UK agreement cannot go into effect until the United Kingdom exits the EU Customs Union, but every effort should be made to have the agreement fully negotiated and signed by the end of 2020 so that it can go into effect the day the United Kingdom leaves the customs union. Without an agreement, US-UK trade would take place under the most-favored-nation tariff rates that each nation applies to imports from other WTO members. To conclude an FTA as soon as possible, the two nations should rely heavily on language that already exists in such agreements as the 2005 US-Australia FTA and a proposed ideal US-UK FTA, as recommended by a number of major research organizations in both nations.[29]

Negotiating a modern and comprehensive FTA with the United Kingdom should be among the top trade priorities of the Trump administration in 2020. Such an agreement would be economically important, politically feasible, and practically achievable under the current timeline for Brexit. Leaders in both nations should waste no time in turning a US-UK trade agreement into reality.

ABOUT THE AUTHORS

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