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EU-UK trade and transition: the 'plus' side

After 18 months, the EU-UK Brexit negotiations are on the verge of moving from phase 1 to phase 2 (trade and transition), following the recommendation today by the European Commission to the European Council that “sufficient progress” has been reached on the three separation issues.

The Commission confirmed its assessment was based on a [joint report](#). The key clauses for the Irish border (and future EU-UK customs arrangements) are 45 to 51.

The text says the relationship between Northern Ireland and the Republic of Ireland should be governed by the future UK and EU trading partnership, which is to be settled in phase 2 talks. In the event there is no agreement, *'the UK will propose specific solutions to address the unique circumstances of the island of Ireland.'* If there are no agreed solutions, *'the UK will maintain full alignment'* with single market and customs union rules which are relevant to north-south cooperation (energy, animal and plant health) in Ireland and the Good Friday Agreement.

Clause 45 reiterates the consistent Government position that the UK is leaving *'the European Union's Internal Market and Customs Union'*.

Clause 50 states: *'In all circumstances, the United Kingdom will continue to ensure the same unfettered access for Northern Ireland's businesses to the whole of the United Kingdom internal market,'* i.e. no border in the Irish Sea.

Agreement has been reached on an eight-year period where an independent commission of British judges can refer cases to the European Court of Justice.

Future trade

“Breaking up is hard. But breaking up and building a new relation is much harder,” Donald Tusk, president of the European Council

The timetable is compressed due to the backstop of reaching a phase 2 agreement by 30 September 2018. This may play to the UK's advantage as the EU will have to focus on the regulatory equivalence and no tariff barriers that will exist on 30 March 2019.

Alongside the recommendation that "sufficient progress" has been achieved, on 14-15 December the European Council will consider the [draft guidelines](#) for the Barnier negotiating team.

On the **implementation period**, the guidance supports a two year period where EU law will apply: '*...the European Council notes the proposal put forward by the United Kingdom for a transition period of around two years, and agrees to negotiate a transition period covering the whole of the EU acquis...*'

The EU recognises the UK is leaving the customs union and EU single market, and states that **a deal will seek to safeguard the internal market and trade relations with other countries**: '*The European Council will calibrate its approach as regards trade and economic cooperation in the light of this position so as to ensure a balance of rights and obligations, avoid upsetting existing relations with other third countries, and respect all other principles set out in its guidelines of 29 April 2017, in particular the need to preserve the integrity and proper functioning of the single market...*'

Canada+ free trade agreement – "plus" is the key

EU negotiations always come down to the eleventh hour, the agreements are invariably a fudge, with money playing a central role in their conclusion (see previous T&I summaries). It is highly likely that phase 2 will run a similar course (domestic and EU) to phase 1.

The key from phase 2 will be what the Government can negotiate around the margins of a "Canada+-style" free trade agreement. Mutual recognition of animal and plant standards will be key for customs interventions (currently, 80% with third countries) going forward, as will a deal that can be struck on manufacturing, as part of the *“over-arching strategy”*.

Therefore, the highly streamlined customs process, [as suggested](#) by the Government, seems the only plausible possibility, *if* a fudge is to be struck. Unlike phase 1, member states – particularly France and the Benelux countries – are key actors in the eventual outcome and are likely to act as such.

Key Brexit dates

- 30 September 2018 - date at which Michel Barnier wishes to conclude the terms of Brexit
- 30 March 2019 - Brexit begins
- June 2019 - European Parliament election.