

A Better Deal for the United Kingdom and European Union

Proposed text for a comprehensive UK – EU Free Trade Agreement

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- There are two approaches or ‘operating systems’ for facilitating trade between countries:
 - **The trade agreement approach: is focused on outcomes.** Under this approach, the reduction of trade and regulatory barriers are consistent with WTO rules and more recent Free Trade Agreements (FTAs) based on mutual recognition and deemed equivalence. The goal of this approach is to **progressively lower border and behind the border barriers** around the world. This approach began initially with basic tariff reductions and has developed into ever deeper and more comprehensive global liberalisation through the WTO and FTAs. The proposed UK - EU agreement builds on the advanced commitments in existing agreements.
 - **The identical regulation approach: is focused on process.** Under this approach, regulatory recognition is only granted (and trade permitted) if regulatory systems are identical. The EU single market has become an example of this approach. The effect of the regulation on trade and competition outside of the bloc is irrelevant in this approach as the goal is to reduce barriers within the bloc. GDPR is an example of regulation from within the EU Single Market which causes distortions outside the EU and makes the global economy less competitive.
- The **trade agreement approach** is not a second-best approach to the **identical regulation approach** of the Single Market and Customs Union. It is the approach relied on by most other WTO members and which is supported by WTO rules themselves. It can facilitate just-in-time supply chains and ensure continuity in trade between the UK and EU member states. It is focussed on barrier reduction, unlike the **identical regulation approach** which is agnostic about barriers.
- The **trade agreement approach** minimises disruption to trade with Europe while preserving the UK’s ability to strike trade deals around the world and make changes to domestic regulation, should it wish.
- Due to the unique starting point of the countries involved having identical regulations, the Free Trade Agreement (FTA) between the UK and EU promises to be the most advanced and liberalising ever developed.
- This FTA has been written with the goal of minimising disruption to businesses and consumers across Europe and the UK as the UK leaves the European Union, while building a solid foundation for future trade and prosperity.
- The proposed FTA is a sound basis for future agreement as it is based, wherever possible, on existing EU agreements with other nations including:
 - Comprehensive Economic and Trade Agreement (CETA), an FTA between Canada, the EU and its member states
 - Japan – EU Trade Agreement
 - EU – New Zealand Meat Products Agreement
 - US - EU Insurance Covered Agreement
 - EU commitments in the WTO, OECD and other international organisations
- Key elements are:
 - Deemed equivalence and regulatory recognition including of underlying product regulation to facilitate goods and services trade such as in CETA, EU-Japan Agreement, the New Zealand-EU Veterinary Agreement and the US-EU Insurance Covered Agreement
 - Customs and Trade facilitation measures to improve customs clearance for just-in-time supply chains

- Regulatory coherence and good regulatory practice on both sides to ensure competitive markets
- Competition, state aids and subsidy disciplines to ensure a level playing field between the UK and EU
- Under the terms of the FTA, the UK and EU commit to honour treaties they have signed on labour and environmental standards.
- The FTA approach also respects the integrity of the European Single Market and Customs Union and builds on the EU's original offer of a comprehensive FTA with the entirety of the United Kingdom.
- The UK – EU FTA has been written by international trade policy experts Shanker Singham, and Dr Robert MacLean with contributions from Hans Maessen and Victoria Hewson on customs and trade facilitation and financial services from Barney Reynolds.
- The full text of the comprehensive UK – EU FTA is available at <https://competere.co.uk/UK-EU-FTA>.

Chapter Summary:

Chapter 1: General Provisions and Objectives

Chapter 2: Market access for goods

This chapter delivers zero tariffs and no quantitative restrictions for goods and agri-food. Because of the unique starting point of zero tariffs and zero quantitative restrictions, agreeing a basic FTA in goods and agri-food should be straightforward.

Chapter 3: Customs and Trade Facilitation

This chapter provides a highly facilitated customs clearance arrangement between the UK and the EU. This includes state of the art customs facilitations such as enhanced AEO, and inland, in-facility clearance by licensed customs brokers. Facilitations include a) advanced trusted trader processes which include the border acting as a tax but not an inspection point; b) in facility and inland clearance; c) use of existing forms for VAT and tax purposes for small businesses.

Chapter 4: Rules of Origin and Origin Procedures

The aim of this chapter is to continue the EU's rules of origin which are relatively liberal. The chapter simplifies them where possible and ensures maximal use of cumulation so that products can benefit from Pan-EU-27/UK supply chains for external markets.

Chapter 5: Cross-border trade in services

The agreement will have maximal liberalisation in services including no restrictions across all modes of provision of services. It will cover specific services areas that have already been covered in other EU agreements such as Telecommunications, Financial Services, Maritime, and Postal. In financial services, deemed or enhanced equivalence has been used to ensure maximum services liberalisation.

Chapter 6: Capital movements, payments and transfers and temporary safeguard measures

This chapter will ensure free flow of capital between the EU and the UK and will replicate what was agreed in the EU-Japan FTA.

Chapter 7: Movement of labour

As in all FTAs, there will be provisions relating to movement of labour. In the case of mode 4 services, the UK and EU will make commitments to make temporary business visas easier to get and make it easier for investors to manage investments in both parties.

Chapter 8: Investment

This chapter will ensure that neither party can impose investment restrictions or expropriate private property or take actions tantamount to the expropriate of private property without paying prompt, adequate and effective compensation. The chapter contemplates no, or very limited non-conforming measures so would have greater investment protection than any FTA to date. We do not envisage investor state dispute resolutions.

Chapter 9: E-Commerce

Recognising that so much of trade in the 21st century is digital trade; this Agreement includes disciplines on government so that the benefits of e-commerce can be fully realised by populations, based on the EU-Japan FTA.

Chapter 10: Government Procurement

These provisions will ensure that both parties government procurements will be open, transparent and non-discriminatory. Critically, disciplines are not only applied at national and subnational levels but also at the municipal level.

Chapter 11: Intellectual Property

The agreement will ensure strong protection of Intellectual Property rights by both parties which is their common position.

Chapter 12: Sanitary and phytosanitary measures

The SPS measures in this agreement are based on what the EU has agreed with Canada, Japan and the deemed equivalence provisions of the EU-NZ meat products agreement. They provide that if the regulatory goals are the same, and are objectively achieved by the regulations, then technical differences in regulation should not defeat recognition. They also build on the notion that since regulatory systems are identical on day one, the parties should start from the position of deeming regulations equivalent (including underlying product regulation). The chapter sets out under what circumstances recognition can then be withheld by either party. Broadly speaking the disciplines provide that recognition cannot be unreasonably withheld. Provided parties have satisfied good regulatory practice, have adopted regulation that is the least trade and market restrictive and is consistent with a legitimate and clearly stated regulatory goal (shared by the parties), then recognition should not be unreasonably withheld.

Chapter 13: Technical barriers to trade (TBT)

The TBT chapter follows the methodology of the SPS chapter. It provides that the parties cannot erect technical barriers to trade to each other. Their standard setting bodies cannot use standards as a trade barrier. The TBT chapter follows the same pattern for deemed equivalence as the SPS chapter.

Chapter 14: Regulatory Coherence

The parties agree to good regulatory practice (GRP) where they will promulgate regulation having regard to its trade and market impact and where possible to regulate in ways that damage trade and market competition as little as possible consistent with a legitimate and publicly stated regulatory goal. The EU-Japan agreement is the first EU FTA which included regulatory cooperation at all. By contrast most other modern FTAs have had these provisions for over a decade.

Chapter 15: Competition policy

The parties commit to normative competition policy provisions both for their competition laws in respect of private activity, but also to discipline governmental restraints on trade that are anti-competitive. The chapter deals with State-Owned Enterprises, as well as State Aids and Market Distortions.

Chapter 16: Subsidies, State Aids and Anti-Competitive Market Distortions

The parties commit not to apply subsidies except those allowed by the WTO, or to distort markets by government actions (state aids). The EU will want disciplines on state aids both for itself and for the UK. This chapter deals with level playing field issues which we know the EU will be concerned about, but which are state of the art in trade agreements. This will help address competitiveness concerns on the part of the European Union.

Chapter 17: Trade Remedies

The parties agree to use trade remedies in WTO compatible ways, and to apply public interest tests so that the consumer harm of applying the trade remedy is considered in evaluating the application and quantum of the duty. Mechanisms are also suggested to deal with anti-competitive market distortions (a subject the EU, US, and Japan are tackling on a trilateral basis with third countries – hence this would be an important first test for them).

Chapter 18: Trade and Sustainable Development

Labour and environmental provisions of the agreement provide that the parties agree not to derogate from the labour and environmental international standards they have already agreed. This chapter is modelled on what the EU has already agreed in the context of Japan and CETA.

Chapter 20: Dispute Settlement

This chapter sets out ordinary dispute settlement provisions as found in ordinary FTAs. These have been improved to make them more streamlined, in keeping with best practice, as found in every EU FTA and in the WTO, without the jurisdiction of the ECJ.

Chapter 21: Institutional Provisions

There will be a Joint Committee with the EU with sub-committees that address specific chapters of the agreement.

Chapter 22: National Security, Public Morals, Animal, Plant or Human Health Exceptions

As is the case for all trade agreements, there will be defences in the case of national security or for the protection of public morals or plant, animal or human health.

Chapter 23: Final Provisions

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Full text of UK – EU FTA available at <https://competere.co.uk/UK-EU-FTA>.