

December 30, 2020

## “No Deal” Brexit Averted: EU/UK Reach Historic Bilateral Trade Deal

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On December 30, 2020, the European Union and the United Kingdom formally signed the EU-UK Trade and Cooperation Agreement (“Agreement”), the largest bilateral trade pact in history, covering a collective market worth over \$900 billion.

The full contours of the Agreement are detailed in a [1,256-page text](#) released by the European Commission on December 25, 2020, and cover a broad array of issues including trade in goods and services, digital trade, intellectual property, public procurement, aviation and road transport, energy, fisheries, social security coordination, law enforcement and judicial cooperation in criminal matters, thematic cooperation and participation in EU programs. See *also* [Questions & Answers: EU-UK Trade and Cooperation Agreement](#). Below is a snapshot of some of the Agreement’s core provisions:

- **Trade in Goods**

- On January 1, 2021, the UK will leave the EU Customs Union and Single Market, following the end of the transition period. Accordingly, all customs controls and formalities required under EU law (e.g., the Union Customs Code) will apply to goods entering the EU customs territory from the UK, and vice-versa.
- The Agreement provides for tariff-free and quota-free trade in goods between the EU and UK, provided that such goods adhere to country of origin standards comparable to those which the EU and the UK currently have with other trading partners.
- In an effort to ease regulatory burdens, exporters will be permitted to self-certify the origin of exported goods.
- The Agreement also provides specific arrangements for goods exchanged in the following sectors: automotive, pharmaceutical, chemical, wine and organic products.

- For example, special restrictions are placed on automotives. Gasoline or diesel vehicles must be made with at least 55% local content to escape tariffs (“local content” will include parts made in the EU or UK); electric and hybrid vehicles must be made with at least 40% local content (although that figure increases to 45% by 2026); and batteries must be made with at least 30% local content (although that figure increases to 50% by 2026).

- **Trade in Services**

- The Agreement goes beyond the baseline provisions of the WTO’s General Agreement on Trade in Services (GATS) — namely, through its inclusion of non-discrimination obligations to ensure EU service suppliers or investors are treated no less favorably than their UK counterparts, and vice-versa.
- Notwithstanding, because the UK will no longer be a part of the EU’s Single Market, all UK service suppliers and investors must comply with the rules and regulations applicable to the EU country in which they are operating.
  - Notably, the Agreement provides little clarity for the financial services sector. The European Commission says it needs more information from the UK before it can commit to certain market access measures. Accordingly, the Agreement, as it now stands, includes standard provisions for financial services that are generally covered in the EU’s FTAs with other trading partners. This area is subject to further discussions and a memorandum of understanding to be agreed over the coming months.

- **Level Playing Field**

- The maintenance of comparable regulatory standards (e.g., environmental, labor, social, and tax transparency) — also referred to as a “Level Playing Field” — was one of the most contentious issues during the Brexit negotiations. The parties ultimately agreed, in principle, that both sides will not lower current regulatory standards in a manner that meaningfully affects trade or investment between the EU and the UK.
- The Agreement does not include so-called “ratchet clauses” that require the UK to strengthen its regulatory standards in lockstep with the EU. As an alternative, the Agreement allows either side to retaliate with tariffs if the other side’s regulatory regime is meaningfully less stringent, thus creating an improper trade advantage. Regardless, any retaliatory measures are subject to arbitration by an independent panel.

- **Data Protection**

- The Agreement also includes commitments from both sides to uphold certain data protection standards; and, in the case of personal data transfers, the exporting party is required to respect international protocols.

- Since March, the European Commission has been working on a so-called “adequacy decision” for the UK — essentially a determination that UK data protection standards are equivalent to the EU standards set out in the EU's General Data Protection Regulation (GDPR) and Law Enforcement Directive. The Agreement creates a four-month “specified period” (which can be extended to six months), during which time transfers of personal data from the European Economic Area to the UK will not be considered as transfers to “third countries.” During this period, the UK may not make changes to its data protection regime, particularly in respect of international data transfers, without the agreement of the EU. This is welcome since such transfers would otherwise have required additional safeguards such as data transfer agreements between the EEA data exporters and the UK data importers. The specified period is intended to give some time for an adequacy decision, which is a relatively lengthy process, to be finalized. Other changes resulting from the end of the transition period are summarized in [our separate alert](#).

Although the Agreement must still be formally approved by the European Parliament (which is expected to vote on the Agreement retrospectively early next year), the Agreement will go into full effect on January 1, 2021.

Further developments related to the implementation of the EU-UK trade agreement are expected to move quickly in the weeks and months ahead. Faegre Drinker will continue to closely monitor these issues and will provide further updates and insights as warranted. If you have questions or would like additional information, please contact any of the Faegre Drinker professionals listed below.

## MEET THE AUTHORS



Kathleen M. Murphy

Partner

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+1 312 569 1155

Chicago

[kathleen.murphy@faegredrinker.com](mailto:kathleen.murphy@faegredrinker.com)



Huw Beverley-Smith

Partner

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+44 (0) 20 7450 4551

London

[huw.beverley-smith@faegredrinker.com](mailto:huw.beverley-smith@faegredrinker.com)



Gary N. Laitner

Partner

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+44 (0) 20 7450 4555

London

[gary.laitner@faegredrinker.com](mailto:gary.laitner@faegredrinker.com)



Matthew R. Kinsman

Associate

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+1 317 237 1142

Indianapolis

[matthew.kinsman@faegredrinker.com](mailto:matthew.kinsman@faegredrinker.com)

## Services and Industries

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