

QUESTIONS AND ANSWERS ON THE FINAL

STAGES OF THE BREXIT NEGOTIATIONS

1. **Where are we now?**

This Bulletin was drafted towards the end of November 2020. No deal between the UK and the EU had yet been agreed. Mixed messages are still constantly being received – sometimes indicating that a breakthrough is imminent, while at other times that the differences are still too wide to be bridgeable. It was always predicted that these negotiations would go to the wire, and this is what is happening. Deadlines keep passing and new ones, ever closer to 31st December 2020 when the transitional period reaches its end, keep appearing. Are we going to finish up with a deal? No-one knows at the moment. There is, however, quite a lot that we do know. We know what the outstanding issues are which are holding up a deal being reached. We know that the uncertainty over what the situation will be at the beginning of January 2021 is causing mounting problems, not least because it is hard to get everyone to prepare for circumstances which may not arise. We know that sometime between now and the end of this year decisions will have to be taken. We know that the main issues which have stopped a deal being reached so far remain as they have been for many months: fishing, the level playing field, the role of the European Court of Justice, and Northern Ireland.

2. **How big an issue is Fishing?**

Fishing contributes barely 0.5% to GDP either in the UK or in EU member states. But it is of totemic importance everywhere, and it is of critical significance in the coastal communities which depend on it. When the UK joined the EU in 1973, a

right of access for all EEC states to UK waters was included in the UK's Accession Agreement at the last minute. This was the result of a settlement on our terms of entry which were regarded as unfair at the time and which has fostered discontent ever since. One of the normally undisputed rights of all sovereign coastal nations is their control over fishing rights within their sovereign waters, which includes their Exclusive Economic Zone (EEZ). While we were in the European Union, UK waters were treated as a common EU resource and fishing quotas were drawn up on this basis, allowing the French and Spanish, in particular, to fish extensively in what are now going to be UK seas. Despite our leaving the EU, these continental countries want to continue to have rights to fish in UK waters with EU institutions governing the process. The UK is not against continental fishing boats catching some of the fish in UK areas, but wants to control how this happens on annually agreed terms – as happens between the EU and Norway and indeed has recently been agreed between the UK and Norway. Up to now the EU has refused to accept this sort of arrangement, even if introduced by degrees over a transition period.

3. What about the level playing field?

The level playing field issue concerns whether the EU should have continuing rights to monitor and curb industrial policy and subventions after we have left the EU. This is a particularly sore point because the scale of subsidies to industry in the EU, particularly in Germany, is much higher than it has been in the UK. The UK is aware of the danger of industrial subsidies allowing exports be dumped on foreign markets at less than cost, but believes that the World Trade Organisation (WTO) rules on subsidies should be sufficient to handle this problem. The UK holds that, within this international constraint, it should be the UK government which decides what its industrial strategy should be, and which industries (if any) should be subsidised and to what extent, without EU control.

4. What role should the European Court of Justice play?

The problems over the level playing field shade into what role the European Court of Justice (ECJ) should play in resolving disputes. All trade agreements entail some curtailment of sovereignty, not least because they have to have agreed and binding procedures to deal with the disputes will inevitably arise. The standard way in which this is done is through arbitration – in trade disputes normally through the WTO – with each side presenting its case for independent assessment. This is not, however, what the EU envisages for the UK post-Brexit. Their proposal is that the ECJ should be able to decide unilaterally whether the UK is sticking to the terms of the agreement or not. Both the level playing field and the ECJ jurisdiction stance taken by the EU are in sharp contrast to the provisions agreed in the EU-Canada CETA free trade agreement, for example, where no such obligations exist.

5. What about Northern Ireland?

The issue at stake here is how to avoid a hard border between Northern and Southern Ireland given that the North will be outside the EU and the South inside. When agreement was struck a year ago between Boris Johnson and Irish Taoiseach Leo Varadkar, it was to leave Northern Ireland effectively within the Single Market for goods, the result being the creation of a notional border between Great Britain and NI. This necessitated controls to ensure that goods passing from GB to NI were not then able to be shipped to the South through an uncontrolled border. The EU wants to have some effective way of monitoring such potential traffic while the UK believes that it should have unilateral control, subject to what was agreed in the Withdrawal Agreement over such movements to avoid the United Kingdom of Great Britain and Northern Ireland being split effectively into two separate areas.

6. What is the fundamental choice now to be made?

The range of choices available to the UK and EU negotiators is narrow and has not changed to any significant extent over as negotiations have proceeded. Some progress has been made in discussions on transitional arrangements which would come to an end after a set period of time as a way of bridging the current gaps, but large gaps still remain. Taking into account the current EU stance on the outstanding issues, the dilemma facing the UK is whether to compromise and to accept conditions which are likely to conflict with UK sovereignty – potentially indefinitely; or whether to walk away with no agreement – preserving sovereignty, but at the cost of tariffs and quotas being reimposed and potentially a fairly wide range of other agreements between the UK and EU being curtailed or abrogated. Of course, it does not help that both the UK and the EU are facing acute problems with Covid-19 which, apart from anything else, make negotiations physically more difficult. Nor have many months of uncertainty made it any easier to get preparation in place for the final outcome given that it is still unclear what this might be.

7. What will happen if there is no general agreement?

If there is no agreement on the major outstanding issues – fishing, the level playing field, the ECJ and Northern Ireland – this may not stop there being agreements kept in place on matters of clear mutual interest. These will probably include issues such as landing rights for aviation, regulations covering haulage procedures and continued mutual recognition of product standards. It cannot be in anyone's interest to see freight movements across the channel held up, supply chains being disrupted and possibly even food deliveries being delayed. It has to be in everyone's interest to keep the economy moving and to avoid a build-up of stationary trucks in Dover

and Calais. It seems likely, therefore, that the authorities will prioritise getting trucks through the borders rather than being over-meticulous with paperwork while the situation settles down. If this happens, disruption may be kept to a manageable minimum.

8. Where will this leave Brexit?

It is surely the case that the only realistic general negotiating strategy which the UK could have adopted to follow through faithfully the EU referendum result is broadly the one which our negotiators have pursued. The UK voted in the 2016 referendum to become a country outside the European Union, which in all logic entailed it leaving the EU's Customs Union and the Single Market. It would also no longer be subject to the jurisdiction of the ECJ, and therefore fully in a position to determine its own economic strategy, to control its own borders, and to make its own laws. Of course, there are some limitations of sovereignty involved in any trading agreement, but these are normally settled by well-established international procedures between countries enjoying the same independent status. It is the refusal of the EU to accept that this is the case over the level playing field which has largely precipitated the present stand-off. EU intransigence over fishing rights and the movement of goods between the British mainland and Northern Ireland have added to the difficulties. It is understandable that the EU should wish to maintain the integrity and stability of its Customs Union and Single Market, but this does not need to entail control over UK policy. Instead, it needs to involve acceptance by the EU that the UK wants to maintain close and friendly relations with the EU, but on an intergovernmental basis rather than as part of the same political entity. Trying to keep the UK in lockstep with the EU after Brexit by keeping the UK under ECJ jurisdiction is not therefore a realistic long-term strategy and should not be part of the EU's negotiating stance. If there is failure to reach agreement, the EU may blame the UK for having initiated negotiations to withdraw from the EU in the first place. But given the decision that was taken by the British people in 2016, and the chain of events which this inevitably put into train, it is hard to avoid blaming the EU for trying to drive too hard a bargain with the UK. Asking us to accept a subservient status in regard to our vital interests, a status which no fully independent country could in good faith be asked to accept, is not a reasonable stance for the EU to adopt.