

**AN ANALYSIS OF THE UK-
EU TRADE AGREEMENT,
DECEMBER 2020**

**NO
HOLDING
BACK**



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Foreword

Boris Johnson published the UK-EU Trade Deal on 26th December 2020 giving MPs almost no time to read the 1,246-page document before they are asked to vote on it just 4 days later. This document is intended as a rapid response to the trade agreement. Invariably, a longer more synthesised consideration might well alter some of the conclusions. This document, under the circumstances, was considered a worthwhile venture to help MPs perform their role of scrutiny on the Bill before the vote. The government has allocated just hours of debate on the legislation and it is highly likely that the majority of MPs will be denied a chance to even speak on the Bill. This denies other members of the House the benefit of their wisdom and considerations. Since the deal has been published there has been precious little analysis, understandably. The IPPR (Institute for Public Policy Research) did release a document that made a decent fist of summarising the agreement, but it did so from an angle that was *more* ideologically hostile to state aid, for example, than No Holding Back would argue is wise. Nevertheless, it deserves consideration. We hope this analysis goes some way to helping inform the debate ahead of a landmark vote in British history.

Jon Trickett MP (on behalf of the No Holding Back team)

Introduction

Relationships and good decision making are built on trust. This should be a given when negotiating international trade deals. Given this, would you buy an expensive second-hand car from neighbours who you don't totally trust without seeing under the bonnet or looking at the chassis? I don't think so, especially if you haven't yet decided the direction, or speed of travel, or the number of miles you intend to travel.

Yet this is what Boris Johnson has done with the UK-EU trade deal, which remains incomplete in many ways. And he now is proposing that the Commons and Lords should approve the 1,246-page deal in a space of perhaps six hours on the 30th December.

The Labour leadership has said that it will vote for the Bill which puts the deal into law. The logic that we should vote for a deal rather than a no-deal end to the transition period is understandable. But the danger is that when the arrangements begin to unravel, we will have left our fingerprints at the scene of the crime.

The key now, therefore, is to immediately develop a wide-ranging analysis of the deal and to put forward a critique of the direction which the government has indicated in the new post-Brexit world.

Without a framing narrative which explains a Labour vision, and which compares it to that of Boris Johnson's, we, as the alternative government, will surely appear to have been in cahoots with the Tories when the post-mortems get written.

This document critiques the agreement which Boris Johnson has committed us to and will no doubt become law. It offers suggestions for the way forward.

A neoliberal blueprint

This trade deal hardwires Thatcherite economics into Britain's permanent relationship with the EU. It isn't difficult to see that inscribed into the very DNA of the deal is a damaging neo-liberal version of our country's future political, social and economic arrangements. How could it be otherwise when the genealogy of the two parents of the deal - the EU and the Tory government - were built on this genetic inheritance?

And so we should not be surprised to see the following classic neo-liberal statement in the agreement: "The objective of this is to enable the free movement of capital and payments related to transactions liberalised under this Agreement."¹ In so many ways the whole agreement amounts to the market triumphalism. When it comes to labour and social protections, the document is sparse.

Before looking at some of the problematic aspects of the deal, let's briefly consider the immediate impact on the UK.

The Treasury estimated that our economy would decline by over 4% in the event of a negotiated bilateral deal. This would have a significant impact on households: it is estimated GDP per person would fall by up to £2,200 per person and more than £4,000 per household.²

Regional impact

But we all know that these income declines will not impact equally on the country as a whole. The truth is that we are already amongst the most unequal countries in the developed world.

¹ Agreements reached between the United Kingdom of Great Britain and Northern Ireland and the European Union, page 123

² NAO Report, HM Treasury's economic analysis in the lead-up to the referendum on European Union membership, page 8 <https://www.nao.org.uk/wp-content/uploads/2017/07/HM-Treasury%E2%80%99s-economic-analysis-in-the-lead-up-to-the-referendum-on-European-Union.pdf>

In November 2019, the *Financial Times* reported on an analysis by IPPR North as follows:

“Rates of mortality vary more within Britain than in the majority of developed nations. In Glasgow, average male life expectancy at birth is 73 but, in the Chilterns, outside London, it is 83.

The disposable income divide is larger than any comparable country and has increased over the past 10 years, the IPPR found. Official government data from 2017 found it to be £16,000 per head in the north-east and £28,000 in London.

The productivity divide is also larger than any comparable country. Parts of Northern Ireland, Wales and the north of England are less productive than regional cities in Poland and Romania. The output per worker in Fermanagh, Northern Ireland, was \$46,000; that in Constanta, Romania, \$60,000; and London’s \$107,000 based on a five-year average from 2012-16.”³

There can, therefore, be no doubt that without immediate, radical and indeed transformative action the damage to the economy will fall most heavily upon the economically weaker regions, on key workers and on parts of our already fragile manufacturing base.

It is arguable that having left the EU, we as a country might be able as a sovereign nation to tackle this inequality. To do so, we would need to throw all our resources into rebuilding social and economic cohesion. Let’s consider for a moment what this might require.

We would need a huge financial aid package to Britain's struggling regions; a campaign to drive up productivity across industry, including direct intervention to build new industries; the refinancing of our public services; and so on. There are tools which might be at our disposal if we choose to use them.

However, that is not what has been agreed in the EU-UK trade deal, and in many ways, the deal appears to prevent such radical action. In so many areas the same old jaded and ineffective measures are repeated.

³ *Financial Times*, 26th November 2019

A level playing field?

The trade agreement extols the virtues of creating a “level playing field for open and fair competition and sustainable development”.⁴ On the face of it who could argue against a level playing field? But the contents of the Agreement are swingeing.

First, ‘The Parties’ the document says on competition policy “recognise the importance of free and undistorted competition in their trade and investment relations. The Parties acknowledge that anticompetitive business practices may distort the proper functioning of markets and undermine the benefits of trade liberalisation.”⁵

This paragraph expresses the overarching theology of the whole new relationship between the UK and the EU. Of course, there was a time when the EU declared that it sought to counterbalance the activities of the free market with a commitment to social cohesion. But social cohesion always played a lesser role in the day to day life of the EU, and in the new Agreement it barely surfaces at all.

Put aside for the moment the doubts which any rational person may have about whether free and undistorted competition is a good thing. In the case of our country, the ‘free market’ has left so many regions, communities and households in great difficulty. In the event of an economic impact as severe as that which may face us, only massive state intervention into the market on the scale of a new Marshall Plan would suffice.

Public services

⁴ Agreements reached between the United Kingdom of Great Britain and Northern Ireland and the European Union, page 179

⁵ Agreements reached between the United Kingdom of Great Britain and Northern Ireland and the European Union, page 180

A part of any response to the post Brexit world, Britain ought to be able to be able to refinance and rebuild our public services which have been ravaged by a decade of Tory austerity.

However, the documents leave open the likelihood that many public services will be subject to free market competition rules. The definition of ‘an economic actor’ is “an entity or a group of entities constituting a single economic entity, regardless of its legal status, that is engaged in an economic activity by offering goods or services on a market.”⁶

But as we know, the Tory government has outsourced huge amounts of our public services including the NHS to the private sector - sometimes without even tendering. Even in the run up to the 2019 election, the prestigious Kings Fund published a document citing statistics which show that up to 25% of health spending has been outsourced in clinical services alone.⁷ Of course the numbers have skyrocketed during the period since we have suffered from the COVID pandemic. The question which arises, therefore, is whether in doing so the NHS as well as other services have now become subject to competition rules as if they were any other business.

The agreement reserves the right of a UK govt. to give direction as to the nationality of senior executives or future owners in the health and other sectors, it nonetheless explicitly envisages their possible privatisation:

“The UK, when selling or disposing of its equity interests in, or the assets of, an existing state enterprise or an existing governmental entity providing health, social or education services (CPC 93, 92), may prohibit or impose limitations on the ownership of such interests or assets, and on the ability of owners of such interests and assets to control any resulting enterprise, by investors of the Union or their enterprises. With respect to such a sale or other disposition, the UK may adopt or maintain any measure relating to the

⁶ Agreements reached between the United Kingdom of Great Britain and Northern Ireland and the European Union, page 180

⁷ The King’s Fund, 17th October 2019 (<https://www.kingsfund.org.uk/publications/articles/big-election-questions-nhs-privatised>)

nationality of senior management or members of the boards of directors, as well as any measure limiting the number of suppliers.”⁸

It is probable that the paragraph above was included upon the United Kingdom’s request as it lays the legal framework for the wholesale privatisation of the NHS.

As if to ensure that there is no doubt about their intentions about public services and state-owned enterprises, there is a clarification in the explanatory document published by the British government, with its foreword by the PM himself. The Agreement states that it “commits both parties to additional disciplines on their State-owned enterprises, designated monopolies and enterprises granted special rights or privileges”.

Public Procurement

One other tool, which might be at the disposal of the British government in seeking a more cohesive set of social and economic arrangements, is public procurement. This would mean that when purchasing goods and services, the various agencies of the state would seek to direct such purchases in order to buttress our social and economic interests. This should not be underestimated as a powerful transformative weapon in the hands of a radical government. The Institute for Government recently reported that “The Government spends £284 billion a year on buying goods and services from external suppliers. This amounts to around a third of all public expenditure.”⁹

A radical government committed to ‘taking back control’ would clearly utilise this massive spending power to lever major advantages for our country.

Boris Johnson’s deal, however, severely limits the capacity of any British government to

⁸ Agreements reached between the United Kingdom of Great Britain and Northern Ireland and the European Union, page 633

⁹ Institute for Government, Public Procurement, 12th December 2018
(<https://www.instituteforgovernment.org.uk/publications/government-procurement>)

use activist procurement policies. The word ‘procurement’ appears 89 times in the document. The purpose is almost exclusively to prevent state use of taxpayer funds to achieve national objectives. For example, if the British government were to seek to procure goods and services from an appropriate British company for reasons of policy, this appears to be prohibited.¹⁰ It would be interesting for example to know whether the UK government after January 1st could insist that the much vaunted blue British passport can be let to a British supplier. The answer appears to be ‘no’.

Rules of Origin

Turning to another matter, one very dangerous aspect of the agreement relates to “rules of origin” - a phrase which appears eighty-seven times. In effect, the UK has agreed to comply with declaring the rules of origin for goods which are sold into the Single Market from our country. The intention is clear - it is to agree tariffs on a whole range of UK assembled or manufactured goods which contain a substantial element of parts which have their origin outside the UK and the EU. This is clearly a potentially significant threat to UK manufacturing and should have been resisted.

For example, the Nissan plant in Sunderland, which is the largest car manufacturing plant in the UK, has 80% of its supply chain in Spain. At present, Nissan are pitting Spanish and British workers against each other in order to drive down conditions. The new rules of origin rules in the deal could therefore put the future of the British automotive industry at risk. British manufacturing have welcomed the deal overall but acknowledge that the rules of origin do pose a risk to manufacturing exports.

Workers’ Rights

One aspect of the Agreement deals with what is described as non-regression of workers’

¹⁰ Agreements reached between the United Kingdom of Great Britain and Northern Ireland and the European Union, page 151

rights. The document says: “A Party shall not weaken or reduce, *in a manner affecting trade or investment* between the Parties, its labour and social levels of protection below the levels in place at the end of the transition period, including by failing to effectively enforce its law and standards.”¹¹ It has been argued that this will help with social cohesion because it prevents the bosses in Britain gaining competitive advantage over European enterprises by means of a reduction of workers’ rights in the UK. However, the situation in this respect is not quite as clear as it seems. This is for two reasons.

First, because it only applies ‘in a manner affecting trade or investment’ (highlighted above) between the UK and the EU. This then leaves it open to a significant attack on working people across a huge amount of economic activity not directly impacting trade and investment. It might be objected that there is no reason to assume that there will be such an attack. But that is what the Tories always do, and we can anticipate that we will see this process again.

The second reason is because non regression is essentially a guarantee that British workers will not be employed on conditions which are worse than the common European standards. The point however is that in many areas UK workers’ rights are well in advance of common standards across the EU. British workers could under this ‘non-regression’ agreement suffer a serious deterioration in their rights without falling below the European safety net levels.

Let’s take the issue of statutory holiday entitlement to illustrate the point. UK law gives workers five weeks and three days of paid holiday a year (including public holidays). The UK had legislation on this 35 years before even joining the EU. In fact the Labour government built on the 4 weeks from the EU in 2009 when paid holiday was increased

¹¹ Agreements reached between the United Kingdom of Great Britain and Northern Ireland and the European Union, page 200

by a further eight days from April 2009.¹² The Working Time Regulations of 1998 guarantee only four weeks (20 working days) of paid leave as a European minimum.¹³

Turning away from some of these details, it will no doubt be argued that the document allows the British Government - now nominally sovereign - to pursue its own course by moving away from the agreement it has entered into. This is true. But the country would pay a significant price.

Arbitration and legal oversight

According to *The Independent* the text also contains no fewer than 244 references to “arbitration tribunals” and a further 170 mentions of a “partnership council”.¹⁴ These are the bodies that will decide the details and settle future disputes, hinting at further negotiations. These bodies will ultimately stand over the UK and determine whether the country has breached the terms of the agreement. If we are found to have done so, quite draconian steps may be taken.

Although the British government has now secured the goal of avoiding the rulings of the European Court, they have now agreed to have the Agreement supervised by new bodies which have judicial or legal members sitting on their boards.

The Prime Minister and his ministers have embarked on a reckless course. COVID has tested our resilience as a nation. But massive damage had already been inflicted on the country. More than ten years after the election of Cameron and Osborne, our economy is

¹² UK Minimum leave entitlement <https://www.gov.uk/holiday-entitlement-rights#:~:text=Statutory%20annual%20leave%20entitlement,of%205.6%20weeks%20of%20holiday>.

¹³ EU Minimum leave entitlement https://europa.eu/youreurope/business/human-resources/working-hours-holiday-leave/working-hours/index_en.htm

¹⁴ *The Independent*, 27th December 2020

in a poor state, our social fabric is deeply fractured, and the British public services have been hollowed out.

Now we are about to be outside the single European market on unfavourable terms. It didn't need to be like this. Over the last five years, Labour began to assemble a set of radical policies which had understood the gravity of the situation in which we find ourselves.

The central question which our leadership must now answer is whether we will seek to deepen our offer of transformative change or whether we will accommodate the prevailing consensus which has existed unchanged since Thatcher.

And our reaction to the trade deal is the first big test. We ought to set out an alternative course for the country, challenge the neo-liberal orthodoxy, and argue for a much more exciting post-Brexit vision. This will mean accepting the reality that there is no realistic alternative to the deal on offer in the Commons on Wednesday, but it will also require us to ensure that the country understands that our critique of the proposals runs deep.

Not to promise that we would radically redraw the agreement, having engaged in an excoriating critique, connected to a fresh vision, would lay us open to the argument that we were complicit in the further national decline which is implicit in the Tory proposals.

Conclusion

The debate about Brexit has moved on. We left the EU a year ago. The national discussion now must focus on our social, economic and political arrangements as an independent country.

In my judgement, the deal which has been recommended by the Government is a very

poor deal for working people, for public services and for our regions and nations. Whilst imposing some economically damaging barriers on trade between the UK and the EU, it enhances the power of big business, continues the process of market dominance over all aspects of our society, and does little to build a more cohesive society. Even the NHS may be under threat in the medium term.

The only other immediate option which is on the table is to end the transition period with no deal at all which would have devastating consequences for the UK economy. Labour therefore is voting for the deal, but our task is then immediately to lay out a different vision for the country in the context of us being outside the EU. I therefore recommend the following:

Recommendations



Fig 1. Page 402 of the trade deal

- As it happens, on page 402, there is an opportunity written into the Agreement which allows Labour to offer a way forward. This arises because built into the Agreement is the requirement that both the UK and the EU review its operation after each five-year period. This first review then will take place following the next general election when Labour may well be in office. We should therefore immediately announce that we will seek far reaching changes to the relationship but these would be consistent with respecting the results of the EU referendum, or

we risk the charge that we wish to fight the next election once again on the basis of rejecting the decision to leave the EU.

- As noted in the report, the Agreement elevates the free market and open competition as the key guiding principles which will dominate our economic arrangements and it is in principle against the use of state aid because such aid can cause imbalances in economic arrangements. However, there will be considerable economic and social damage to the UK as the transition period now comes to an end. The impact will be especially severe on several industrial sectors, geographically peripheral regions and on working people generally. We note that on Christmas Day the EU published details of an enormous new fund with 5.3 bn Euros. The EU says that this ‘Brexit Adjustment Reserve will provide support to Member States, regions and sectors, in particular those that are worst affected by the adverse consequences of the withdrawal of the UK from the Union, mitigating thus its impact on economic, social and territorial cohesion. It will contribute to specific measures set up by the Member States to help businesses and economic sectors, workers, regions and local communities suffering from the impact of the end of transition period.’ Labour should immediately demand a similar Reserve Fund to mitigate against the economic effects of ending the transition period.
- On the question of state aid more generally beyond the above Reserve Fund, Labour needs to ensure that the UK government should have the capacity to direct public investment in order to rebuild its productive capacity especially in new industries.
- Labour must insist that the agreement must allow the UK government to nominate all appropriate public services including health, social services and so on as exempt from the provisions of the competition clauses in the agreement.
- The UK government spends billions of pounds in procuring goods and services. Labour must ensure that the overly rigid controls over public procurement are

transformed in order that the UK can achieve a range of social and economic objectives.

- There are non-regression clauses in the agreement which are meant to protect EU businesses from UK competition since our government is now free to lessen working conditions, pay etc, thereby reducing costs. However, these clauses are weak in the extreme in part because many aspects of the Labour Market are already so liberalised both in the UK and the EU that working people have only limited protections. This can be seen for example in the actions of large companies in the UK using the horrific management tactics of fire and rehire on worse terms. Labour must make it clear that in the first review of the agreement, we will seek to renegotiate the clauses to drive up protections for our workforce. In any event, there is nothing in the agreement which prevents the UK government from driving up pay and conditions within our own labour market.

The situation in the UK facing so many millions of people and whole regions of our country is increasingly difficult. We are about to leave the EU transition period on terms negotiated by an extremist UK government. The future may look grave especially given the contents of the Trade Agreement outlined above.

But the future is yet unwritten. There is much in the Agreement which remains untested and as we have seen there are provisions for review, challenge and amendment. The task facing the whole Labour Movement is both to create a post-Brexit vision which can lead us out of the multiple crises which our country faces, and then to fight like never before for a different world.

Executive Summary

Ian Lavery, Laura Smith, Jon Trickett

Let us be perfectly clear. Although we are voting for and advocating a vote in favour of this UK-EU Trade and Cooperation Agreement, this is far from the deal we wanted or would have negotiated ourselves had we had the chance. It falls far short across many areas, from workers' rights and environmental safeguards to state aid and public ownership. It is the product of a hasty and ill-organised last-minute rush to the finish line, and Boris Johnson's premature victory lap will prove as hollow as this deal is inadequate.

Nevertheless, four and a half years after the British people voted democratically to leave the European Union it is high time we began the urgent work of shaping our future trade and economic arrangements. For years now we have been urging the left and the wider labour movement to accept the referendum result and begin the hard but necessary work of forging a new economic direction for the country outside of the European Union and its constraints. The 2019 election result and our subsequent No Holding Back listening tour confirmed our view that the British people wanted us to respect the result of the referendum, overturn a failing status quo, and bring power and control back to people and communities who have been held back for far too long by a failed and failing political and economic system.

With this deal we create a floor and not a ceiling for the future shape of the UK economy. The Leave vote was not one to "Take Back Control" from Brussels simply to concentrate it in the hands of Westminster. Instead, this must be the beginning of remaking and rebalancing of the British economy. It must herald changes that give people all across the country far greater ownership and control over their lives, their economic future, and that of their communities.

This deal, while far from perfect, is a starting point for the remaking of the UK economy and our trading and economic relationships with Europe and the rest of the world.

We must rebuild our industry, create the green industries of the future, in parts of the country that have fallen silent and into decay. We must leverage our government expenditure and procurement to create thriving local economies. We must put economic wealth and power back in the hands of workers, communities and regions that have been excluded or deprioritized in service of a privileged few at the very top and in the South East. We must rebuild in the aftermath of the economic devastation of Covid and in anticipation of the looming crisis of climate change. We must use state aid, industrial strategy, and public investment to build the economy of the future, both green manufacturing and the care and social services we all need and use.

Now it is more important than ever that the Labour Party are offering an alternative vision for the future when the Conservative Party is dressing itself up in the clothes of change in order to extend and reproduce all the economic problems that got us to this point in the first place.

With this vote, the fight continues for a fair future for the many not the few. No Holding Back will be making the case for that future and doing our part to ensure that the labour movement offers a very different post-Brexit economy for all the people of this country.