



Summary

- **Scrutiny:** MPs have had less than a week to consider this deal. For deals with far less important trading partners, they are given 21 sitting days. In contrast, the EU will provisionally apply this deal so that the European Parliament has more time to consider it ahead of a debate and vote.
- **Strategy:** negotiations on the deal appear to have taken place in a silo. The UK has no overarching strategy to ensure a joined up approach to policy in significant areas such as trade, Covid and climate change. This deal is a significant missed opportunity to craft a truly 21st-century deal between partners, at a time when international collaboration is urgently needed on major global challenges.
- **Standards:** whilst the deal contains elements of the 'level playing field', there is little to prevent a race to the bottom on standards and the UK has missed a significant opportunity to collaborate with the EU to lead the world in this area. With no penalties for rowing back unless changes to standards can be proven to impact trade or investment, the UK has considerable scope to lower standards and diverge in areas as diverse as workers rights, environmental and food standards. Trade activists are going to need to remain vigilant over the coming years.
- **Climate change:** at the EU's insistence, fighting climate change is referred to as an 'essential element' of the Agreement. This is a welcome first, however a high bar is set for taking action, and other environmental commitments come with no enforceability. For the most part, the deal is a missed opportunity for the EU and UK to maintain the best elements of their collaboration to date and take bold action together. For example, there are no commitments to joint action on fossil fuel subsidies.
- **Human rights and workers rights:** these are referenced in the deal but lowering of standards can only be penalised if it is done in a way that impacts on trade or investment. There is no binding action to ensure company supply chains are sustainable and uphold human rights commitments
- **Health and other public services:** these are clearly 'on the table'. There is no carve-out for the NHS, with worrying implications for the government's ability to regulate in the public interest. Although a number of public services are excluded, others are very much 'on the table'.
- **Digital trade:** the deal maintains existing data flows and reaffirms a ban on data localisation, however this seems to be a holding position and there will be a lot to play for in the coming months.
- **Border friction:** despite full duty free, quota free access, there will be lots of new 'red tape' at the border including rules of origin, health and plant safety checks. This will mean costs and delays affecting many industries including vital supplies such as food and medicines. Smaller businesses and goods coming from developing countries via the EU may suffer disproportionately.

Analysis

What the Agreement says	What it means
Climate change	
<p>The fight against climate change is referred to as an “essential element” of the Agreement along with democracy, rule of law and human rights and countering proliferation of weapons of mass destruction, “Article COMPROV.4(1) [Democracy, rule of law and human rights], Article COMPROV.5(1) [Fight against climate change] and Article COMPROV.6(1) [Countering proliferation of weapons of mass destruction] constitute essential elements of the partnership established by this Agreement and any supplementing agreement.” (Article COMPROV.12)</p> <p>Part 6 of the Agreement which covers Dispute Settlement and Horizontal Provisions states that if one party considers that there has been a “serious and substantial failure” by the other party to fulfil obligations that are described as essential elements, it may decide to “terminate or suspend the operation of this Agreement or any supplementing agreement in whole or in part.” It goes on “<i>For greater certainty, an act or omission which materially defeats the object and purpose of the Paris Agreement shall always be considered as a serious and substantial failure for the purposes of this Article.</i>” [Emphasis added]. (Article INST.35)</p>	<p>This is the first time that the fight against climate change has been referred to as an ‘essential element’ of a trade agreement in this way, with the corresponding sanction.</p> <p>However in practice it would be extremely difficult to prove that an act or omission “materially defeats the object and purpose of the Paris Agreement” so the victory is more symbolic than practical.</p>
Level playing field	
<p>The Agreement contains specific provisions to ensure a ‘level playing field’ between the Parties covering competition policy, subsidies, state owned enterprises, taxation, labour standards, environmental standards and other issues relating to sustainable development such as biological diversity and responsible supply chains.</p> <p>Any backtracking on standards or future divergence can only be disputed if it can be proven to have an impact on trade or investment. The non-regression commitments have a degree of enforceability. Either Party can raise an issue which, if not resolved between the Parties, is taken to a panel of experts who produce a report. If no action is taken following the report, then the complaining party may invoke ‘temporary remedies’. This means they can temporarily</p>	<p>There are essentially 3 categories within LPF issues:</p> <ul style="list-style-type: none"> - General commitments which are non-binding - Non-regression commitments, where it is possible to invoke temporary remedies including suspending obligations but only if the regression is shown to impact on trade or investment

<p>suspend obligations under the covered provisions e.g apply tariff/suspend duty free access in a particular area. Only the chapters on 'Labour and Social Standards' and 'Environment and climate' contain specific non-regression clauses (LPF 6.2 and 7.2 respectively). The chapter on 'Other instruments for trade and sustainable development' is not covered by non-regression commitments.</p> <p>On matters not covered by non-regression commitments there is no enforceability: the process ends at the point where the panel of experts produces a report with non-binding recommendations, no further action is possible. The Agreement states clearly "For greater certainty, the Parties share the understanding that if the Panel makes recommendations in its report, the responding Party does not need to follow these recommendations in ensuring conformity with the Agreement." (LPF Article 9.2 (9))</p> <p>The Agreement also contains provisions which cover potential future developments in areas such as labour, social, climate and environmental protections, and enable either party to take "rebalancing" measures if the other party diverges too far. These measures can be significant, but the divergence must be proven to affect trade or investment and the bar is set high for doing this. The Party bringing the dispute must provide "reliable evidence" of the "material impact on trade or investment" and the rebalancing measures they propose must be "restricted with respect to their scope and duration to what is strictly necessary and proportionate in order to remedy the situation." The process involves consultation, the possibility of an independent arbitration panel and is designed to be concluded rapidly. (LPF Article 9.4 Rebalancing)</p>	<ul style="list-style-type: none"> - Rebalancing provisions which cover future divergence and where again robust evidence of impact on trade or investment must be provided. <p>It is not immediately clear in broad non-sector specific areas such as labour rights and environmental protections what remedies or rebalancing provisions would be possible and considered appropriate.</p> <p>Together, this means that there is considerable potential for a race to the bottom on environment, social and labour standards with little to no possible sanction as long as it cannot be proven that it will impact trade or investment.</p>
<p>Approach to regulation and the precautionary principle</p>	
<p>As is standard in all FTAs, the Agreement includes reference to the right to regulate, for example in the preamble, "RECOGNISING the Parties' respective autonomy and rights to regulate within their territories in order to achieve legitimate public policy objectives such as the protection and promotion of public health, social services, public education, safety, the environment including climate change, public morals, social or consumer protection, animal welfare, privacy and data protection and the promotion and protection of cultural diversity, while striving to improve their respective high levels of protection" This type of language is repeated throughout the Agreement.</p>	<p>It is encouraging that the precautionary principle is referenced as context in the deal. However the deal maintains the same issues with implementation that are found elsewhere in trade law: there is nothing in the deal that gives the precautionary principle the same status as other aspects of the deal. The default is to rely on 'scientific proof' but there is</p>

<p>There is also a specific section (Title X) on ‘Good regulatory practices and regulatory cooperation’. Article 1.1 also gives each party the right to regulate according to its own fundamental principles, but the relevant footnote suggests that only ‘for the Union’ do these include the precautionary principle.</p> <p>Under the Level Playing Field provisions the parties again affirm a commitment to the right to regulate and the precautionary principle as follows: “Article 1.2: Right to regulate, precautionary approach and scientific and technical information 1. The Parties affirm the right of each Party to set its policies and priorities in the areas covered by this Title, to determine the levels of protection it deems appropriate and to adopt or modify its law and policies in a manner consistent with each Party’s international commitments, including its commitments under this Title. 2. The Parties acknowledge that, in accordance with the precautionary approach, where there are reasonable grounds for concern that there are potential threats of serious or irreversible damage to the environment or human health, the lack of full scientific certainty shall not be used as a reason for preventing a Party from adopting appropriate measures to prevent such damage. 3. When preparing or implementing measures aimed at protecting the environment or labour conditions that may affect trade or investment, each Party shall take into account relevant, available scientific and technical information, international standards, guidelines and recommendations.”</p>	<p>nothing to qualify this to ensure a range of scientific evidence is taken into account or that the evidence is robust and unbiased.</p>
<p>Environmental standards</p>	
<p>The Agreement has a caveated non-regression clause “A Party shall not weaken or reduce, <i>in a manner affecting trade or investment between the Parties</i>, its environmental levels of protection or its climate level of protection below the levels that are in place at the end of the transition period, including by failing to effectively enforce its environmental law or climate level of protection.” (emphasis added) (LPF Article 7.2).</p> <p>This non-regression clause also commits both parties to any targets that are already provided for in law at the end of the transition period including the UK’s share of the 40% economy wide 2030 target. Article 7.3 (3) makes it clear that the UK must have a Carbon Pricing Scheme in</p>	<p>The majority of provisions on environmental standards are either non-binding or subject to the weakest of sanctions. This gives considerable scope to the UK to weaken its environmental regulations as long as it cannot be proven that this materially impacts trade or investment. Evidence from other trade deals shows that such provisions are rarely used and that the link between regulatory action and trade impact is extremely difficult to prove.</p>

<p>place by the end of the transition period which has equivalent levels of protection. This is considered part of the non-regression commitments: “The effectiveness of the Parties’ respective carbon pricing systems shall uphold the level of protection provided for by Article 7.2 [Non-regression from levels of protection]” As explained earlier these LPF non regression commitments are subject to consultation and a panel of experts. If no solution is found one Party can invoke temporary remedies.</p> <p>There are further commitments on environmental regulations but these are effectively non-binding, including:</p> <ul style="list-style-type: none"> - both parties will continue to ‘strive’ to increase their levels of environmental and climate protections. (LPF 7.2) - “Each Party reaffirms its ambition of achieving economy-wide climate neutrality by 2050.” (LPF 1.1) - The parties “shall give serious consideration” to linking their carbon pricing schemes (LPF 7.3 (6)) - Commitments to respecting a number of agreements (Rio Declaration on Environment and Development, the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity) and principles (environmental protection should be integrated into policy making including through impact assessments; the principle of preventative action to avert environmental damage; the precautionary approach referred to in Article 1.2(2), the principle that environmental damage should be rectified at source and commitment to the ‘polluter pays’ principle). (LPF 7.4) <p>In terms of future regulations there is the possibility that new measures or changes could be challenged, but only if they can be proven to impact trade or investment.</p>	
<p>Biological diversity and forests</p>	
<p>As is fairly standard in EU trade deals, the Agreement includes non-binding commitments to</p> <ul style="list-style-type: none"> - the Convention on Biological Diversity and CITES and commits the Parties to work together on these matters and in these fora. - implement effective measures to combat illegal wildlife trade, including with respect to third countries 	<p>Commitments in these areas are effectively non-binding as they are not part of any non-regression commitments, so any dispute is only subject to a consultation and then non-binding recommendation from a panel of experts.</p>

<ul style="list-style-type: none"> - promote the use of CITES as an instrument for conservation and sustainable management of biodiversity <p>On forests the Agreement includes commitments to:</p> <ul style="list-style-type: none"> - continue to implement measures on illegal logging, including with third countries - promote the conservation and sustainable management of forests and trade and consumption of timber and timber products - exchange information on trade-related initiatives on sustainable forest management and forest governance - work together to strengthen their cooperation on trade-related aspects of sustainable forest management, the conservation of forest cover and illegal logging, including in multilateral fora, as appropriate.” LPF 8.7 	
Workers rights	
<p>As with all the “level playing field provisions” the Agreement firstly reaffirms the “right of each Party to set its policies and priorities in the areas covered by this Chapter, to determine the labour and social levels of protection it deems appropriate and to adopt or modify its law and policies in a manner consistent with each Party's international commitments” (LPF 6.2)</p> <p>There is a non-regression clause on labour rights, but this is caveated to measures affecting trade. “A Party shall not weaken or reduce, <i>in a manner affecting trade or investment</i> 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.” (LPF Article 6.2)</p> <p>As explained earlier these LPF non regression commitments are subject to consultation and a panel of experts. If no solution is found one Party can invoke temporary remedies, so there is a sanction of sorts.</p> <p>In terms of future divergence there is the possibility that new measures or changes could be challenged, but only if they can be proven to impact trade or investment.</p>	<p>The majority of provisions on labour rights are either non-binding or subject to the weakest of sanctions. The caveat that it must be demonstrated that changes to regulations have had an impact on trade or investment means that the provision is unlikely to be used. It is also very difficult to prove such a link. This leaves considerable potential for a race to the bottom.</p>

Food standards and animal welfare	
<p>Both sides agree to follow their own Sanitary and Phytosanitary Standards (SPS), to make sure these are proportionate, based on risk assessments, do not create unjustified barriers to trade and to keep each other informed. (SPS.5: General principles).</p> <p>The chapter on Technical Barriers to Trade covers technical regulations, conformity assessments and labelling and seeks to ensure transparency in these processes.</p> <p>The SPS chapter also includes an objective to 'enhance cooperation' on the 'promotion of sustainable food systems' (SPS.1: Objectives)</p> <p>Animal welfare is referenced in the preamble, and the SPS chapter includes cooperation on animal welfare as an overall objective, an explicit recognition of animal sentience (SPS.16) and of the threat of antimicrobial resistance (SPS.17). However, actions in these sections are not properly enforceable - focusing on requirements</p>	<p>There has been no equivalence agreed on SPS measures which will mean significant new red tape as UK exporters have to prove compliance with EU standards which are high and rigorously applied. This will also affect developing country exporters who may have to now comply with two distinct sets of measures.</p> <p>The UK appears to have accepted significantly more trade friction with the EU in return for the freedom to diverge on standards as it seeks FTAs with other countries.</p>
Health, the NHS and public services	
<p>There is no top level carve-out for health or public services, despite this being the approach taken in other agreements such as CETA (Article 8.2), plus other sectors such as audio-visual services are clearly exempted. Instead all sectors are effectively 'on the table' but there are an enormous number of specific and extensive exceptions. These are set out in Annex SERVIN 1 for existing measures and Annex SERVIN 2 for future measures and they do contain some significant exemptions including for public utilities (mentioning health), health-related professional services, cross-border supply of medical services, educational services and the collection, purification and distribution of water.</p> <p>In order to maintain early access to generic medicines for patients it is important that trade agreements resist extension of Intellectual Property Rights. This Agreement reaffirms the UK and EU already very generous approaches to protecting intellectual property. However it is an improvement on other deals to the extent that it does not seek to offer further protections.</p>	<p>The default is now clearly established that healthcare and public services are 'on the table' aThe Parties have made commitments to grant each other market access for their service providers (SERVIN.3.2) They have also committed to 'national treatment' (SERVIN.3.4.) which means service providers from the other Party must be treated the same as national service providers and also to provisions which mean that service providers do not have to have a legal presence in the territory to offer services. There is also an MFN provision which means that the Parties must afford each others' service providers the</p>

<p>The Agreement does not provide for mutual recognition of qualifications for healthcare professionals although it provides a framework through which this could be achieved. (Annex SERVIN-6 Guidelines for Arrangements in the Recognition of Professional Qualifications)</p> <p>The Agreement opens up public procurement beyond those covered under the WTO Government Procurement Agreement (GPA) to include hospitality, real estate and education services. Human health services, administrative healthcare services and the supply of nursing personnel are excluded.</p>	<p>same treatment as they do third countries with whom there is a similar agreement.</p> <p>and the onus is on governments to craft and justify effective exemptions. It will now become even harder to regulate in the public interest or to maintain public ownership. In the case of this Agreement the UK has included some significant exemptions.</p> <p>The lack of mutual recognition of qualifications for healthcare professionals could worsen staff shortages in the NHS.</p>
Sustainable development	
<p>The Chapter on 'Other Instruments for Trade and Sustainable Development' has various commitments, none of which are binding:</p> <ul style="list-style-type: none"> - The Agreement "recalls' a number of sustainable development conferences including the ILO Declaration on Social Justice for a Fair Globalization and the Sustainable Development Goals. - There is more detail regarding commitment to decent work, ILO conventions and environmental goods, but no explicit commitment to <i>implementing</i> the SDGs. (LPF 8.1) - There is a (non-binding) commitment to continue to promote "voluntary sustainability assurance schemes such as fair and ethical trade schemes and eco-labels" (LPF 8.9) - On responsible supply chain practices, there is a (non-binding) commitment to 'encouraging' CSR and responsible business conduct, including through "supportive policy frameworks that encourage the uptake of relevant practices" and the Parties shall support adherence to a number of frameworks including the UN Guiding Principles on Business and Human Rights. (LPF 8.10) - The Parties 'recognise the utility' of sector specific guidance on CSR and responsible business conduct 'shall encourage joint work in this regard'. (LPF 8.10) 	<p>The Agreement pays lip service to issues of sustainable development, but commitments are non-binding.</p> <p>The increase in border friction, issues of mutual recognition of standards, increased cost, delays and problems with rules of origin and cumulation will all cause cost and uncertainty for developing country exporters, particularly those who currently have triangular supply chains. No practical provision has yet been made to address these problems.</p>

<p>Other areas of the Agreement that have important implications for developing countries include:</p> <ul style="list-style-type: none"> - The mutual recognition of equivalence of each others' Organic Regulations will help to simplify trade for developing country exporters. (ANNEX TBT-4) - The agreement provides for full bilateral cumulation i.e. goods from either party can be used as inputs into the others'. This is welcome and will help facilitate EU-UK trade, however the UK had wanted goods made with inputs from third countries to be considered as originating as long as both the UK and EU had FTAs with that party with equivalent rules of origin. This so-called 'diagonal cumulation' has not been agreed and there will now be complications for a number of the UK's continuity agreements with developing countries. There are some product-specific flexibilities, including for the chocolate supply chain which is welcome. (ANNEX ORIG-2) - Despite the agreement that there will be no tariffs or quotas and the welcome commitments to try to simplify customs procedures as far as possible, the reality is there will be significant new border paperwork and possible delays for developing country exports that route to the UK via the EU. - The lack of agreement on equivalence on SPS standards may mean that as the two systems diverge, developing country producers will have two sets of rules to comply with. 	
<p>Digital trade</p>	
<p>The Agreement does not include a data adequacy decision (the EU's assessment of whether the UK's data protection regime is adequate). There is a joint Declaration published alongside the deal that makes clear the EU will undertake an adequacy assessment. https://ec.europa.eu/info/sites/info/files/draft_eu-uk_declarations.pdf Until this is concluded there is a temporary arrangement to allow data to continue to flow from the EU to the UK. This will last four months (extendable to six).</p> <p>The Agreement commits both Parties to facilitating cross-border data flows and includes a list of restrictions which are prohibited including requiring that data be stored or processed in their territory. These restrictions will be reviewed within three years. (Article DIGIT.6)</p>	<p>This is effectively a continuation of the status quo pending an adequacy decision. It does not appear to signal (yet) a move towards measures such as bans on requirements to disclose the algorithms expressed in source code and the Agreement is silent on issues such as the liability of internet platforms.</p>

<p>The Agreement also contains commitments to high standards of protection of personal data and privacy. (Article DIGIT.7)</p> <p>There is a ban on mandatory disclosure of source code, but unlike the UK's trade agreement with Japan, this does not extend to algorithms in that source code.(Article DIGIT.12)</p>	
<p>Investment</p>	
<p>The Services and Investment chapter (Title III) establishes the terms of market access for investors (SERVIN.2.2), ensures 'national treatment' i.e. investors from the other Party must be treated no less favourably than national investors (SERVIN.2.3) and also includes a MFN provision which ensures that investors are treated no less favourably than those from third countries where there is an agreement (SERVIN.2.4). Investor-State Dispute Settlement (ISDS) is not included and the MFN clause makes it clear that ISDS mechanisms cannot be imported from other agreements: "For greater certainty, the "treatment" referred to in paragraphs 1 and 2 does not include investor-to-state dispute settlement procedures provided for in other international agreements."(SERVIN.2.4 (4))</p> <p>A review of the legal framework relating to trade and services is foreseen, but no specific time frame is given:"With a view to introducing possible improvements to the provisions of this Title, and consistent with their commitments under international agreements, the Parties shall review their legal framework relating to trade in services and investment, including this Agreement, in accordance with Article FINPROV.3" (SERVIN 1.4).</p> <p>The Parties reaffirm the right to regulate within their territories to achieve legitimate policy objectives, such as: the protection of public health; social services; public education; safety; the environment, including climate change; public morals; social or consumer protection; privacy and data protection or the promotion and protection of cultural diversity. (SERVIN 1.1.2)</p>	<p>The treatment of investment is fairly standard in this Agreement and the specific exclusion of ISDS is welcome. It remains to be seen whether some version of an investor protection mechanism will be proposed as part of the planned review.</p>