

Strictly embargoed until 00.01 on Monday 19 March 2018

The role of immigration in a UK/EU Free Trade Agreement

Summary

1. The EU should not use the forthcoming negotiations on a Free Trade Agreement (FTA) with the UK to try to retain free movement of people from the EU. Any such link must be most firmly opposed, otherwise much of the purpose of our departure could be lost. There are no such provisions in other FTAs entered into by the EU.

Background

2. The EU's draft negotiating objectives, released on 7 March, call for "ambitious provisions for the movement of natural persons." In EU-speak this means people rather than business entities. Although stopping short of calling for free movement as part of any UK-EU trade agreement, this wording makes it very likely that the EU will seek to extract concessions on immigration as part of talks.

3. The Prime Minister herself told BBC One's The Andrew Marr Show that "We'll be setting out our immigration rules, we'll negotiate with the EU" (see the interview [here](#)). Immigration systems are not normally a matter for negotiation with foreign governments. In this particular case, where the UK is withdrawing from a free movement zone, there will be aspects such as the treatment of visitors, tourists and students to be discussed. However, the government appears to be willing to go beyond that and even to go so far as to negotiate future immigration policy. This should be an area for a sovereign state to decide upon unilaterally and should certainly not be part of any negotiation on trade.

4. An [article](#) in *The Spectator* by James Forsyth on 10 March reported that: "*The UK has at least held some things back for the negotiations. I understand that one paper circulated to senior cabinet ministers in recent weeks suggested that if the EU doesn't bite on May's proposals, Britain could offer concessions on immigration in an attempt to make them more palatable.*"

5. It is essential that any such concessions be firmly ruled out. They would run directly counter to the strong public desire to achieve a significant reduction in immigration to the UK. Not only is immigration one of the top three issues on which voters will make their choice at the next General Election, nearly two-

thirds of the public want immigration levels to be reduced by a significant margin (YouGov), while 64% told ICM that they would like to see a reduction in low-skilled migration from the EU.

6. It is highly relevant that no such linkage was made in in any of the other arrangements agreed in the recent past by the EU such as those with Canada, Ukraine, South Korea and Japan. Nor was immigration any part of the abortive TTIP package being negotiated with the United States. Further details are set out in Annex A.

Conclusion

7. It is normal in trade agreements to allow the movement of staff essential for the purpose of facilitating the flow of goods and services. However, those described in Annex A show that the EU has never previously insisted upon liberalised border regimes or freedom of movement as a condition of a trade agreement. If they were to do so in the negotiations that are pending with the UK it would clearly be driven by political, rather than economic, considerations. The UK government must maintain distinct separation between its trade negotiations and establishing a post-Brexit immigration policy.

19 March 2018

Annex A

Freedom of movement as EU policy

The EU does not seek to include free movement provisions in of its trade negotiations with third countries. The EU's own Market Access Strategy (first launched in 1996) lists ten 'Trade barriers in the modern global economy' and not one of them relates to labour or restrictions on the movement of labour in any context.

The most recent version of the EU's Market Access Strategy can be found [here](#).

Since 2011, the EU has published an annual Trade and Investment Barriers Report. This has never referred to labour or restrictions on the movement of labour as a barrier to trade.

An up-to-date list of barriers to trade that have been identified by the EU is accessible through the Market Access Database which can be found [here](#).

The only agreements that do provide for free movement of people were entered into many years ago when free movement was agreed among those countries which at the time saw themselves as in the 'waiting room' for EC membership.

In contrast, for some decades now, free movement has not preceded full membership of the EU in any Accession Agreements.

The Canada-EU agreement

The expressed aim of this Comprehensive and Economic Trade Agreement (CETA) is to generate growth and jobs by:

- boosting exports
- lowering the cost of the inputs businesses need to make their products
- offering greater choice for consumers, and
- upholding the EU's strict standards for products.

This will be achieved by scrapping tariff barriers, matching standards, and allowing for considerable (though not complete) freedom to provide services. As for the movement of people, the European Commission's guide says that *CETA will make it easier for company staff and other professionals to work on the other side of the Atlantic, and for firms to move staff temporarily between the EU and Canada. This will help European companies run their operations in Canada. It will also be easier for other EU professionals to temporarily supply legal, accounting, architectural or similar services.*

The actual text of the relevant chapter is absolutely clear that this is to allow only temporary stays and not entry for residence or permanent employment:

“This Chapter reflects the preferential trading relationship between the Parties as well as the mutual objective to facilitate trade in services and investment by allowing temporary entry and stay to natural persons for business purposes and by ensuring transparency in the process.

*This Chapter applies to measures adopted or maintained by a Party concerning the temporary entry and stay into its territory of key personnel, contractual services suppliers, independent professionals and short-term business visitors. **This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence, or employment on a permanent basis”.***

The complete texts are [here](#).

A European Commission explainer is [here](#):

The EU agreement with Ukraine

The Association Agreement between the EU and Ukraine includes, with effect from 1 January 2016, a ‘Deep and Comprehensive Free Trade Area’ (DCFTA). This provides for essentially free movement of capital, goods and services, subject to matching relevant elements of the *acquis* e.g. in regulatory standards, consumer safety etc.

For goods, the vast majority of customs duties on goods were removed as soon as the DCFTA entered into force covering 98%-99% of duties by trade value. There are limited exclusions/quotas in the automotive and agricultural sectors with a ten-year transitional period for the abolition of those remaining.

For services, the European Commission is clear that the aim is to *integrate Ukraine as much as possible into the EU market*. The agreement provides for a right of establishment (as opposed to mere commercial presence) in both services and non-services sectors. The DCFTA is complemented by a process of legislative approximation in financial services, telecommunications services, postal and courier services, and international maritime services such that Ukraine is committed to take over the existing and future EU *acquis* in those sectors and when it has done so Ukrainian firms will be granted *access to the EU internal market* for the sectors concerned in an *unprecedented level of integration*.

A notable feature is that disputes are not dealt with by the ECJ but by a Dispute Settlement mechanism based on the model of the WTO Dispute Settlement Understanding but with faster procedures. Consultation is followed, if unsuccessful, by referral to an arbitration panel composed of three experts chosen by the parties, or selected by lot from an agreed list.

Unlike the EEA Agreement or the bilateral EFTA agreements with Switzerland, the DCFTA does not provide for any freedom of movement of people for work or residence, only providing, for example, visa-free access to Schengen countries for visits of up to 90 days, and for personnel necessary for the delivery of services.

The complete texts are [here](#).

The European Commission has published an accessible Overview [here](#).

EU-South Korea agreement

Hailed at the time in 2011 as “the most comprehensive free trade agreement ever negotiated by the EU”, this provided for elimination of almost all import duties by July 2016 (with exceptions only for some agricultural products), liberalisation rather than freedom of trade in services, non-exhaustive provisions on investment, and commitments to eliminate and to prevent the emergence of non-tariff barriers in some sectors.

In the five years since implementation, EU exports of goods to South Korea increased by 55% from €30 billion to €47 billion. EU exports of fully liberalised goods increased by 57% and those partially liberalised by 70%. Imports of fully and partially liberalised goods from South Korea increased by 35% and 64% respectively. Trade in services is very considerably smaller, amounting to €6bn imports from South Korea and €11bn exports.

The agreement contains no provisions for movement of people for residence, or for work beyond those needed temporarily to enable the supply of services (essentially as per Canada above).

The texts are [here](#).

An overview by the European Commission is [here](#).

EU-Japan agreement

The terms of the Economic Partnership Agreement (EPA) were finalised in December 2017. Pending approval of all member states, it is due to come into force before the end of the current mandate of the European Commission in 2019. In its own words, this is the ‘biggest bilateral trade agreement ever negotiated by the European Union’.

The EPA removes most duties paid annually by EU companies exporting to Japan and significantly reduces regulatory barriers across many sectors. Chapter 8, Section D of the agreement stipulates reciprocal obligations ‘to facilitate entry and temporary stay to natural persons for business purposes’. Such persons are defined as business visitors, intra-corporate transferees, investors, contractual service suppliers and independent professionals’. Existing migratory regulations in both jurisdictions are otherwise unaffected.

The full text of agreement can be accessed from [here](#).

Chapter 8 of the Agreement can be accessed [here](#).

India

The EU started negotiations with India on a comprehensive Free Trade Agreement in 2007, at the same time as starting negotiations with South Korea. The proposed coverage was very similar, including access to each other's markets for goods and services, the ability to compete for public procurement contracts, and provisions for investment, intellectual property rights etc.

However, there have turned out to be numerous stumbling blocks. From the Indian side, these include wanting the EU to give it greater market access in the services and pharmaceuticals sectors and providing 'data secure nation' status (for India's off-shoring IT sector) as well as liberalising visas for Indian professionals. The EU for its part has a long list, wanting India to overhaul its financial sector, cut taxes on wines and spirits, reduce tariffs on the dairy sector, create a stronger intellectual property regime and reduce duties on cars. For the financial sector, the EU has requested various regulations on bank branches, numerical quotas, foreign ownership, equity ceilings, and voting rights etc etc. Further, India has been very reluctant to open up public procurement contracts to EU businesses.

The issue of movement of people has turned out to be a much more controversial issue than in the negotiations with Canada and South Korea, perhaps unsurprisingly in view of the large population of India, and the correspondingly large number of highly-qualified young people. The EU Member States have not been able to agree amongst themselves. A [joint declaration](#) in 2016 on a Common Agenda on Migration and Mobility is largely platitudinous and there are few signs of any real progress on this issue.