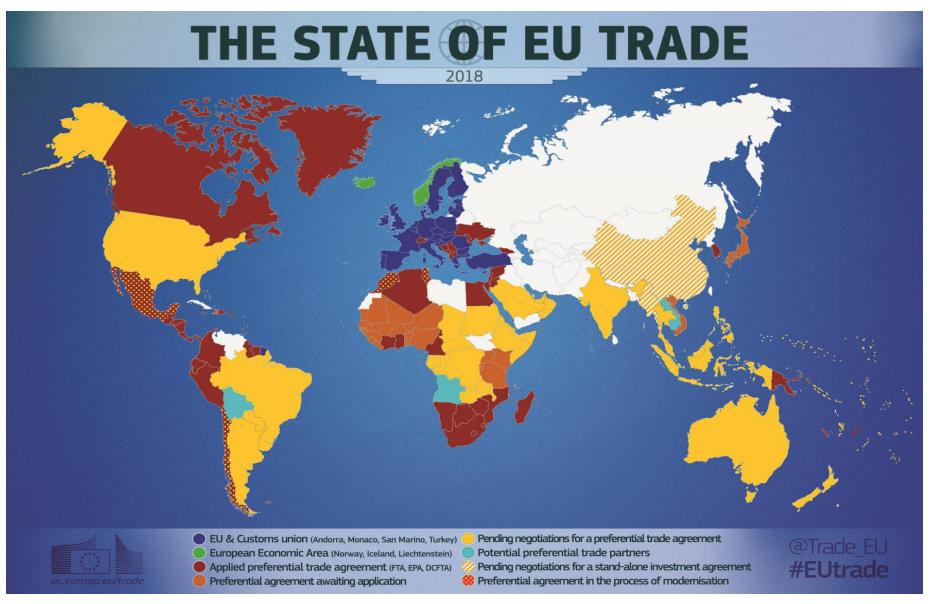
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Brexit, CETA, and US Trade barriers: Challenges and opportunities

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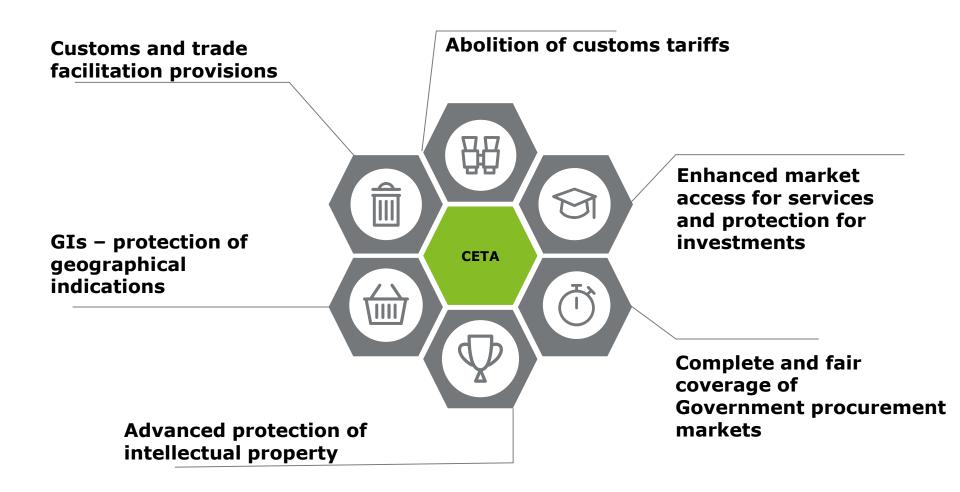
Source: European Commission (October 2018)

CETA Timeline

From mandates to ratification and (provisional) entry into force

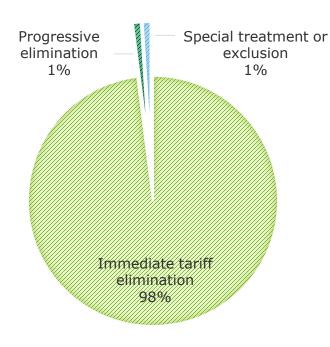
April 2009	Negotiating Mandates
September 20	Negotiations concluded between EU and Canada
October 20	16 Signing of CETA by EU and Canada
February 20	D17 EU Parliament approval for CETA
September 20	017 Provisional entry into force
Full entry into for Agreement.	ce when all EU Member States parliaments have ratified the

Comprehensive Economic and Trade Agreement (CETA) Scope and coverage of trade related matters



CETA market access

Lowering and/or elimination of customs duties



Full tariff elimination

Comprehensive tariff reduction package with tariff elimination on almost goods under CETA

Progressive elimination

For a small percentage of goods, the tariff elimination will be achieved progressively over a period of 3, 5 or 7 years :

- Automotive products
- Ships

Special treatment

For sensitive products, either no tariff elimination is foreseen or these products will benefit from special treatment, such as EU tariff rate quota requiring an import license:

- Fisheries (TRQ)
- Dairy (TRQ)
- Chicken / turkey
- Eggs / egg products
- Meats
- Entry price system products (ex: fruits, vegetables)

Trade in Goods – rules and conditions Preferential rules of Origin

The (preferential) rules of origin set the conditions under which a product qualifies as 'European' or 'Canadian' and hence for the CETA customs duty preferences.

- Preferential Rules of Origin:
 - General rules: 'sufficient production' in Canada or EU to be deemed originating
 - Product specific Rules of Origin (PSRO Annex)
 - Derogations and origin quota
- Possibility of cumulation: with 3rd countries (in future)
- **Advance rulings** related to origin
- Use of origin declarations
- Note: registration in EU Registered
 Exporter System (REX)

EU Basis

• For the most part, the rules of origin are the **standard EU rules**

Rules of Origin Derogations

- Since the EU rules were at times considered too strict, more liberal rules (derogations) in the following industries:
 - Cars;
 - Textiles;
 - Fish;
 - Agricultural/Processed agricultural products;
- Special rules can be used for limited quantities (incl. origin quota)
- Default EU rules must be used when quantity is exceeded

Reciprocal derogations

 More relaxed rules were adopted for trade of textiles (to both Canada and the EU)

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Brexit

Brexit timeline

Drafting / Negotiating legal text						Ratification process			
UK Government White Paper published	19-20/09	EU-Council meeting on Brexit	29/10	Possible special EU-Council meeting	13-14/12	No-deal legal cut-off date	21-22/03	UK leaves EU / start of transitional period?	
12/06	Informal EU- Summit in Salzburg	17- 18/10	Vote on the UK Budget	25/11 ?	Scheduled EU-Council meeting	21/01	Scheduled EU-Council meeting	29-30/03	

- (12/06) The UK publishes a White Paper regarding the future relationship with the EU ("Chequers Plan")...
- (19-20/09) After the summit, the **proposed economic framework** in the White Paper is (partially) **rejected**. In addition, the EU **requires a solution for Northern Ireland** to reach an agreement on the Withdrawal Agreement.
- (17-18/10) Ideally, this meeting would have resulted in solutions for the most important discussion points (i.a. Northern-Ireland). No such progress was made.
- (29/10) The Conservative Party needs the support of Northern Ireland's Democratic Unionist Party (DUP) to pass the budget. If the approach to Northern Ireland is not to its liking, the budget might be voted down and a general election might be triggered. In addition, the support of other factions (brexit hardliners) within the Conservative Party is needed.
- (25/11 ?) The EU had indicated to organize a special summit in November to finalize and formalize the agreement.
- (13-14/12) Taking into account the time needed for approval of the agreement by the House of Commons and the EU-Parliament, this is the **last practical date for an agreement** to be signed off.
- (21/01) –If by this date **no deal** has been reached, the **Prime Minister must make a statement**. After which the **house of Commons** is given the opportunity to **vote on the Government's plans**. This could have a variety of outcomes (a general election or even a new referendum).
- (21-22/03) Most likely, the last EU-Council meeting that Britain will attend before exiting the EU.
- (29-30/03) The transition period in the draft Withdrawal Agreement is currently planned to end in December 2020.

Indications towards a no-deal Brexit Demands of the EU

Remarks by **President Donald Tusk** after the <u>Salzburg informal summit</u> (20/09):

"<u>First</u>, we reconfirmed that there will be **no Withdrawal Agreement without** a solid, operational and legally binding **Irish backstop**. And we continue to fully support Michel Barnier in his efforts to find such a model.

<u>Second</u>, we agreed to have **a joint political declaration** that provides as much clarity as possible on the future relations. Everybody shared the view that while there are positive elements in the Chequers proposal, the suggested framework for **economic cooperation** will not work. Not least because it risks undermining the Single Market."



The **EU demands**

1. A joint declaration on the future economic partnership between the UK and the EU

AND

2. A **separate arrangement** regarding **Northern Ireland** (i.e. Irish backstop)



Indications towards a no-deal Brexit Demands of the EU: Northern Ireland (Irish backstop) (1/2)





Position of the UK

• Theresa May's post-Salzburg speech (21/09):

"The second option would be a basic free trade agreement for Great Britain that would introduce checks at the Great Britain/EU border. But even worse, **Northern Ireland would effectively remain in the Customs Union and parts of the Single Market**, permanently separated economically from the rest of the UK by a border down the Irish Sea. **Parliament has already — unanimously — rejected this idea.**"

• Secretary of State Dominic Raab's statement - update on EU Exit negotiations (9/10):

"On the Northern Ireland Protocol, we remain committed to the undertakings we made in the Joint Report back in December, to agree a backstop in case there is a delay between the end of the Implementation Period and the entry into force of the treaty on our future relationship. That was agreed to avoid any risk of a return to a hard border in the intervening period. But we will not accept anything that threatens the constitutional or economic integrity of the United Kingdom. Creating any form of customs border between Northern Ireland and the rest of the UK, which is what the EU had proposed, would put that at risk and that it is unacceptable."

Indications towards a no-deal Brexit Demands of the EU: Northern Ireland (Irish backstop) (2/2)



Conclusion

Both parties want to **avoid physical checks and infrastructure between** the border of **Ireland and Northern Ireland**. The backstop refers to a separate arrangement that would apply to the Irish border, if no broader agreement could offer these guarantees.

Following **the position of the EU**, to avoid physical checks between the two parts of the islands, **Northern Ireland** should adhere to EU customs rules, duties and other requirements and consequently **remain** part of the **Customs Union**.

The **UK's view** on a backstop means that the UK (incl. Northern Ireland) would only **remain aligned** with the **EU Customs Union** during the **transitional period**. A separate statute for Northern Ireland after that period is seen by the UK as unacceptable.

The negotiations regarding the Withdrawal Agreement were at a stand-still due to the Irish issue. However, some signs of advancements :

• <u>Interview with Michel Barnier</u> (18/09), signifying that not all goods crossing the border between Ireland and Northern Ireland should be subject to physical checks:

"We are clarifying which goods arriving in Northern Ireland from the rest of the U.K. would need to be checked, where, when and by whom these checks would be performed."

• Michel Barnier, reportedly, proposed to <u>extend the transitional period by a year</u> (i.e. until the end of 2021), in return for concessions of the UK regarding Northern Ireland.

However, concessions of the UK towards a separate statute for Northern Ireland, may cause the British conservative party to lose **support** from the **Democratic Unionist Party (DUP)**.

Indications towards a no-deal Brexit Demands of the EU: future economic partnership

Current position of the UK

Free trade Area (Point 12 of the Chequers Plan):

- the phased introduction of a new Facilitated Customs Arrangement that would **remove** the need for **customs checks and controls** between the UK and the EU **as if in a combined customs territory**, while enabling the UK to control tariffs for its own trade with the rest of the world and ensure businesses pay the right tariff;
- the elimination of tariffs, quotas and routine requirements for rules of origin for goods traded between the UK and the EU;
- a common rulebook for manufactured goods, alongside UK participation in EU agencies that facilitate goods being placed on the EU market;
- a common rulebook for agriculture, food and fisheries products, encompassing rules that must be checked at the border, alongside equivalence for certain other rules, such as wider food policy; and
- robust domestic market surveillance and cooperation between the UK and the EU to ensure the rules are upheld in both markets.

CONCLUSION

- The UK wants to be part of the Single Market but **ONLY** regarding the free movement of goods, **NOT** regarding people, services and capital.
- The UK wants to set its own tariffs towards trade with third countries and collect tariff-revenue on behalf of the EU.

Indications towards a no-deal Brexit Demands of the EU: future economic partnership



Main objections by the EU

Press-conference with Michel Barnier on (26/07):

"The EU cannot and the **EU will not delegate the application of its customs policy**, of its rules, VAT and excise duty collections to a non-member who would not be subject to the EU's governance structures"

Interview with Michel Barnier on (02/09):

"The British have a choice. They could stay in the single market, like Norway, which is also not a member of the EU, but they would then have to accept all the regulations and make contributions to European solidarity."

"But **if we let the British cherry-pick** which of our regulations to follow, that would have serious consequences: all sorts of other third countries could insist that we offer them the same deal."

"That **would be the end of the single market and the European project**. I am often accused of being dogmatic in the UK, but the truth is I'm only protecting our fundamental interests."

Indications towards a no-deal Brexit Calls for preparation

EU

<u>Communication from the Commission of 27/08/2018</u> on Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019:

"Stakeholders and national and EU administrations need to prepare for two possible main scenarios:

·If the **Withdrawal Agreement** is ratified before 30 March 2019, so that it can enter into force on that date, EU law will cease to apply to and in the United Kingdom on 1 January 2021, i.e. after a **transition period of 21 months**, the terms of which are set out in the Withdrawal Agreement. .

·In the **absence of an agreement** on a withdrawal agreement, or if the Withdrawal Agreement is not ratified in time by both parties, there will be no transition period and EU law will cease to apply to and in the United Kingdom as of 30 March 2019 (also referred to as the '**no deal' or 'cliff-edge' scenario**)."

President <u>Donald Tusk in a press-conference</u> before the start of the October summit and after informal talks about Norther Ireland came to a halt:

"We must prepare the EU for a no-deal scenario, which is more likely than ever before".

<u>UK</u>

The UK Government has published <u>77</u>, <u>sector-specific</u>, <u>technical notes</u> on how to prepare for a hard Brexit.

Secretary of State Dominic Raab's statement - <u>update on EU Exit negotiations</u> (9/10):

"Mr Speaker, while we intensify negotiations to secure the deal we want, the deal that we expect, we are also expediting preparations for no deal."

Indications towards a no-deal Brexit Trading between the UK and the EU

HMRC Technical Note: Trading with the EU if there's no Brexit deal (23/08):

"Businesses having to apply the **same customs and excise rules** to goods moving between the UK and the EU as currently apply in cases where **goods move between the UK and a country outside of the EU** (customs duty may also become due on imports from the EU – see the separate 'Classifying your goods in the UK Trade Tariff if there's a no Brexit deal' technical notice). This means customs declarations would be needed when goods enter the UK (an **import declaration**), or when they leave the UK (an **export declaration**). Separate safety and security declarations would also need to be made by the carrier of the goods (this is usually the haulier, airline or shipping line, depending on the mode of transport used to import or export goods). More detail is provided below."

"The **EU** applying customs and excise rules to goods it receives from the UK, in the same way it does for goods it receives from outside of the EU. This means that the EU would require customs declarations on goods coming from, or going to, the UK, as well as requiring safety and security declarations."

"For movements of excise goods, the Excise Movement Control System (EMCS) would no longer be used to control suspended movements between the EU and the UK. However, EMCS would continue to be used to control the movement of duty suspended excise goods within the UK, including movements to and from UK ports, airports and the Channel tunnel. This will mean that immediately on Importation to the UK, businesses moving excise goods within the EU, including in duty suspension, will have to place those goods into UK excise duty suspension, otherwise duty will become payable."

Indications towards a Brexit deal

The **negotiations** regarding the Withdrawal Agreement are currently **at a stand-still** due to the above demands of the EU, **however the parties agree on the bulk of the topics**.

Secretary of State Dominic Raab's statement - update on EU Exit negotiations (9/10):

"On the Withdrawal Agreement, while there remain some differences, we are closing in on workable solutions to all the key outstanding issues, building on the progress we made during the summer on issues such as data and information, the treatment of ongoing police and judicial co-operation in criminal matters, and ongoing Union judicial and administrative procedures after the date of exit."

Interview with Michel Barnier (19/10):

"Ninety percent of the accord on the table has been agreed with Britain"



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US Trade measures and consequences

US Trade Measures



China

- List 1 (nuclear components, machinery for agriculture + List 2 (lubricating oils, plastics): 25%
- List 3 (wooden parts and products): 10% and increases to 25% (effective 1 January 2019)
- Possible more tariffs on IT electronic components due to economical espionage (Fujian Jinhua Integrated Circuit Co)

Turkey

Steel: 50%

All countries

Steel: 25%(except Turkey)

Aluminum: 10%

Washers and certain washer parts: 16-50% (through 7 February 2021)

Solar Cells and certain CSPV products: 15-30% (through 6 February 2022)

Proposed

 Automotive (imports of automobiles, including cars, SUVs, vans and light trucks, and automotive parts)

EU Trade Measures



US

- The European Commission adopted the regulation putting in place the EU's rebalancing measures in response to the US tariffs on steel and aluminum
- Steel and aluminum products, agricultural goods and a combination of various other products: 10-50%
- The EU rebalancing measures will be effective for as long as the US measures are in place
- PENDING: 23 March 2021 (or earlier)
- All countries (except certain developing countries)
 - Steel: 25%
 - 19 July 2018 through 4 February 2019

Other Countries' Trade Measures (1/2)

Canada



- On May 31, 2018, the United States (U.S.) announced tariffs on imports of certain steel and aluminum products from Canada. On July 1, 2018 Canada took countermeasures
- Steel 10% or 25%

China's measures against US



- China's State Council Tariff Committee announced that additional tariffs on 128 US origin products would be implemented. These tariffs were proposed in response to the U.S. 232 Trade Action.
- fruit (fresh and dried), tree nuts (shelled and in-shell), wine, ginseng, denatured ethanol, and pork and pork products: 15-25%

Japan's measures against US

 Proposed measures such as talk increases and other import adjustment measures on the import of steel and aluminium

Other Countries' Trade Measures (2/2)

Russia's measures against US



Steel and aluminum: 25 - 40%

Countermeasures

Turkey's measures against US



Multiple products: 4 - 70%

Multiple products: 4 - 140%

 In response to US's doubling of additional tariffs on steel and aluminum originating from Turkey: tariff rate quota + 25%

India



• ..

"Re-negotiated" NAFTA – resulting in USMCA

- **USMCA**: "United States Mexico Canada Agreement"
- Negotiations have been concluded, but which has not been signed or ratified.
- It is also referred to as "NAFTA 2.0" in order to distinguish it from its intended current predecessor
- The result of the 2017–2018 renegotiation of NAFTA by its member states, which informally agreed to the terms on September 30, 2018, and formally on October 1.
- Compared to NAFTA, the agreement :
 - gives the U.S. more access to Canada's \$19 billion dairy market
 - incentivizes more domestic production of cars and trucks
 - increases environmental and labor regulations
 - introduces updated <u>intellectual property</u> protections
- **Signature** would be planned on November 30 during the G20 Summit then it need to be **ratified** by the 3 governments

Key takeaways

- Prepare for Brexit 'scenario of most pain' until further notice.
- Brexit will require revisiting contracts with Logistics Service Providers (Transport companies, customs brokers, etc.)
- · Logistics Service Providers can differentiate themselves by offering customs compliance services following Brexit
- More companies will require customs guidance by service providers after Brexit.
- Brexit could/should lead to to applying for **Authorized Economic Operator** (AEO) authorizations
- Recommended **Technology** check-up in terms of customs compliance (ERP packages offering customs e-filing, etc.) following Brexit.
- Huge importance of correct **Master data** (commodity codes, Bills of Material, etc.). Master data control is a real **differentiator** to benefit to a maximum extent from the benefits offered by Free Trade Agreements.
- Focus on **links between customs/trade departments and other departments** within importing/exporting organizations (Procurement, Sales, R&D, etc.) when determining **Trade Preference**.
- Recent FTA's (CETA, EU-Japan EPA, etc) require the use invoice **origin declarations** instead of certificates of origin; this requires the involvement of foreign suppliers and their registration through the EU **REX** system.
- Follow-up on the entry into force of upcoming FTA's such as:
 - EU-Japan EPA
 - USMCA
 - Others

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