CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE

INQUIRY ON THE NEGOTIATION OF THE FUTURE RELATIONSHIP BETWEEN THE EUROPEAN UNION AND THE UK GOVERNMENT

SUBMISSION FROM DAVID HENIG

As requested please see my views on the questions asked, as at the time of writing. Given that we are currently seeing daily developments some questions as to the likelihood of a deal are in flux. Nonetheless on the basis of my analysis of UK trade policy I have provided the best indications that I can. By way of background I established the UK Trade Policy Project within the European Centre for International Political Economy in April 2018, having previously worked in the Department for International Trade and predecessor departments in London.

David Henig, 20 May 2020

Extending the transition period

Views on whether the UK government should request an extension to the transition period.

I was an early advocate of extending the transition period, writing in the Telegraph on 13 March 2020 that “In this scenario it is simply irresponsible for government to fail to take their own advice and claim business as usual with regard to Brexit. It was already challenging, completing a trade deal in record time, restructuring huge amounts of the UK regulatory system, and creating a new trading relationship with both Northern Ireland and the EU. To be ready for January 1 2021, both internally within government and informing those businesses facing change, which will be many.

Trying to make the largest change to UK public administration in living memory at the time of the first pandemic to hit the UK in living memory simply makes no sense when you could simply shift the deadline of the first by a few months. What is so special about the date of December 31 2020 other than a Prime Ministerial promise made before pandemic struck?"

I have not changed my views subsequently. It seems to me that UK-EU talks have been affected by the lack of physical proximity, officials have been stretched by having to handle both coronavirus and Brexit, and as a result the progress on both has been hampered. However I do not believe the UK government will agree to an extension next month.

Your reasons why an extension to transition is or is not required.

In proposing an extension I have been principally concerned with the time required for government and business to be ready for the changed trade relations to come at the end of the transition period. I feel that these have been underestimated. Currently there are few checks and little paperwork on any trade between UK and EU, as from
the end of the transition period there will be a considerable amount of both, regardless of whether there is a trade deal or not. UK services providers in the EU will be restricted, as will EU service providers in the UK. We do not know what the work visa regime will look like. UK regulatory agencies will largely have to disengage from EU regulatory bodies, and will no longer have access to their systems and databases. Certification of products for EU sale will change.

For goods trade these changes will also apply in some form to trade between Great Britain and Northern Ireland. There will be checks, regulations will be different, and it is unclear how agencies will operate in both Great Britain, without access to EU systems, and in Northern Ireland, with access.

This is a significant workload before the pressure of the coronavirus crisis is taken into account. The latter has now dominated public administration for two months and this is likely to continue for months to come. In such circumstances an extension looks prudent, a refusal reckless.

If you believe an extension to transition is required, how long such an extension should be for (one or two years).

An extension can be of any length up to one or two years. Personally I do think that we shouldn’t be using the coronavirus crisis to extend by the maximum period, during which we are to an extent in trade and regulatory limbo. I have therefore suggested a period of six months, enough to make up for time lost, but still challenging to put in place all arrangements plus a trade deal.

**Leaving transition with a deal**

Whether you believe a deal will be agreed between the UK government and the EU by the end of 2020.

Given the delays in organising virtual negotiating rounds and the negative statements issued by both sides after completion optimism is currently low that a UK-EU deal will be reached before the of 2020. Certainly taken at face value to two sides positions appear to be far apart, and moving in the wrong direction.

It should be said that it is not unusual in trade negotiations for differences to be emphasised, particularly at the early stages. What is different in this case is that there is little time to change this, whereas normal trade negotiations can go on for many years, in part because of the depth of detail. There is also a clear lack of trust on both sides in the other, and emotions around the UK’s departure.

In this situation a deal seems the less likely outcome of this year. However it remains a possibility.

Given the EU negotiating mandate and the UK government’s negotiating priorities as set out in The UK’s Approach to Negotiations, what an agreement might look like.
There is agreement between the UK and EU on the core of a trade agreement, the complete absence of tariffs and quotas on the trade in goods. I would expect this to be accompanied by fairly standard provisions on regulations, services and customs, which would mean considerable barriers compared to the current trading position. Level playing field measures on state aid, labour, and environment would have to be a part of any deal, and I would expect that the EU will have to drop elements of this which require the UK to follow EU law in order to agree a deal.

Which sectors and policy areas you believe need to be covered by any deal.

Services and regulations will not be well covered by a likely deal, and both will mean substantial barriers to trade. The ability of UK service providers, particularly small companies, to work in the EU will be substantially restricted. On regulations UK products will no longer be automatically accepted for sale in the EU, meaning extra checks and various costs. This will be exacerbated by the UK’s intention to leave European regulatory agencies such as the decision to leave the aircraft safety agency (EASA). In both cases it would be good to see commitments going well beyond typical Free Trade Agreements, in the case of regulations there should be a structured cooperation process leading to mutual recognition agreements. It would also be positive for the UK to stay in the European standards community, this is partly a government decision and partly down to private sector bodies, however it does require the UK to commit to the EU’s single standard model, which may be threatened by a US trade deal.

Any areas that you believe won’t be or don’t need to be covered by a deal.

The UK draft FTA does not include public procurement, which is typically a part of all trade agreements. To an extent the UK’s membership of the WTO Government Procurement Agreement will ensure this is covered, but it may be that public sector opportunities in the EU are less open to UK companies if this is not included in an FTA.

**Leaving transition with no free trade agreement in place**

The likelihood of leaving transition without a trade agreement in place.

See above, at this stage it looks quite possible that there will be no agreement between the UK and EU at the end of the transition period. One possibility to add is that there is an agreement late in the year with a new transition period preventing a sudden change in trading relations. It is common to have adjustment periods for new trade relations.

What would be likely to happen in terms of the negotiations and to UK-EU relations after the end of the transition period if there is no free trade agreement in place

Global experience is that neighbours typically look to have strong trade relations underpinned by agreements. In the event that the UK leaves without a trade deal we
will be unusual in that respect, and it is likely we will face over time a considerable number of issues ranging from those of simple customs cooperation through to regulations that disadvantage UK exporters, and the possibility of outright discrimination. This will come on top of differing regulations and tariffs making trade difficult. Even if trade between us diminishes it is still likely to be substantial, as the EU is currently around 47% of UK trade, and is linked to more through their close relationships with Turkey, Norway, and Switzerland.

Given this a long term UK-EU relationship than is not underpinned by formal agreements seems unsustainable. It may take some time but it seems reasonable to expect that there will be new negotiations at some stage. The exact form and timing are difficult to ascertain, and they will be made more difficult by initial failure. But international talks are typically a long game, and the UK remains tied to the EU by geography.

The UK’s preparedness for leaving the transition period at the end of 2020 without a free trade agreement in place.

Leaving the transition period with or without a Free Trade Agreement means a big change in trading relations, particularly noticeable in terms of Northern Ireland. It means hugely increased border checks, UK regulatory agencies roles changing and losing access to EU databases, and businesses large and small facing significant extra burdens. It is thought that this work will have been disrupted as a result of the covid-19 crisis, certainly businesses reported a lull in preparation meetings and officials were diverted onto other work. However we simply don’t know the actual level of readiness, or the potential for disruption on January 1 2021 and beyond. We don’t know whether new UK systems and processes, for example at Dover, will be in place, and how effective they will be. It seems likely that not everything will be ready and there will be levels of disruption, but the level of this is hard to gauge.