

EU-UK negotiations update: The deadlock continues

Friday saw the end of the third negotiating round between the UK and the EU on the future relationship, and it's very much a case of 'as you were'. As UK chief negotiator David Frost frankly put it, *'we made very little progress towards agreement on the most significant outstanding issues between us.'* In other words, nothing of substance has changed since we reported on the second negotiating round a fortnight ago.

The EU is continuing with its approach of making demands so unreasonable that no sovereign nation could be expected to agree to them. Reassuringly, the UK government's consistent guiding principle seems to be: *Is this a reasonable request to make of a sovereign nation? Has the EU made similar demands of other third countries?* This principled approach has allayed fears that, for example, UK fisheries would be sold out to the EU in exchange for favourable terms for the City of London – although of course we must continue to remain vigilant.

Fisheries

The EU continues to demand that the UK remain in the Common Fisheries Policy (CFP) in all but name, with automatic access rights to UK waters and the same quota shares as now. But the UK is insisting on being treated like any other third country, with EU access to UK waters negotiated on an annual basis. David Frost's statement yesterday provided continued reassurance on this matter:

'Although we have had useful discussions on fisheries on the basis of our draft legal text, the EU continues to insist on fisheries arrangements and access to UK fishing waters in a way that is incompatible with our future status

as an independent coastal state. We are fully committed to agreeing fishing provisions in line with the Political Declaration, but we cannot agree arrangements that are manifestly unbalanced and against the interests of the UK fishing industry.'

Sovereignty and the 'level playing field'

The 'level playing field' remains, according to Frost, 'the major obstacle' to progress on a free trade agreement. While the notion of a 'level playing field' sounds so reasonable, invoking British values of fair play, the reality is anything but. Here is how Frost describes it:

'The major obstacle to [agreement on an FTA] is the EU's insistence on including a set of novel and unbalanced proposals on the so-called "level playing field" which would bind this country to EU law or standards, or determine our domestic legal regimes, in a way that is unprecedented in Free Trade Agreements and not envisaged in the Political Declaration. As soon as the EU recognises that we will not conclude an agreement on that basis, we will be able to make progress.'

Michael Gove recently floated the suggestion that the UK could drop its ask for a zero tariff and zero quota trade deal, accepting tariffs and quotas in some areas if that is what it would take for the EU to drop its more arduous level playing field demands. Barnier went out of his way to rule out this idea in his statement, stating that it 'would entail a detailed – and highly sensitive – negotiation of each tariff line' which would 'take years', before confirming that the EU would not drop its insistence on level playing field provisions in any case. I suspect Gove knew all along that this idea was never going to fly in Brussels, but merely suggested it to demonstrate the UK's willingness to compromise – and the EU's respective unreasonableness. But in any case,

we now know for sure that this approach is out.

Other points of note

Barnier revived his old May-era complaint about UK cherry picking: *'They seek to have the same benefits of a member state of our single market without the same rights and obligations.'*

While this was a legitimate complaint to level at the May administration, it is bizarre that Barnier is resurrecting it as a charge against the current UK negotiating team, which ironically is asking to be treated as a third country like any other. Even former trade negotiator Dmitry Grozoubinski, who is far from a Brexiteer, considered it 'an absurd thing to say':

'Barnier would be the first to laugh in scorn at the idea that the benefits of Single Market membership are so limited you can replicate them by signing a tariff eliminating trade agreement with some minor regulatory recognition sprinkled on top.'

From a UK point of view, it is reassuring to see an accomplished player like Barnier reduced to such a disingenuous accusation, for it means they are struggling to justify what is in effect their own cherry picking – expecting the UK, a third country, to shoulder obligations normally only required of EU member states.

Frost, who up to now has refused to be goaded by Barnier's ill-tempered attacks on the British side, did allow himself one little swipe in his short written statement:

'It is hard to understand why the EU insists on an ideological approach which makes it more difficult to reach a mutually beneficial agreement.'

'We very much need a change in EU approach for the next Round beginning on 1 June.'

Understanding the EU's approach

In fact, the EU's approach is not so hard to understand. It is no secret that the EU sees Brexit as an existential threat. The key driver of the EU's negotiating position is that Brexit must not be a success, due to the risk of other member states following the UK out of the door. If that means the EU27 take an economic hit, so be it, so long as the UK takes a proportionally bigger hit.

The EU's preferred outcome is therefore to tie the UK in to its regulatory regime. This week's ECJ ruling against the UK on VAT on derivatives – a supposed infraction that the Commission did not bother to raise for over 40 years, but suddenly saw fit to do so during the Brexit negotiations under PM May – is a timely warning on the EU's willingness to use apparently benign technical regulations for political ends.

If, as is looking likely, the UK does not allow itself to be subjugated to the EU in this way, the EU's 'second-best option' looks to be to settle for a general strategy of long-term non-cooperation and spoiling tactics. The implementation of the Northern Ireland Protocol will become the site of an unpleasant struggle between the UK and EU in this regard (indeed, the battle lines are already being drawn on this).

What next?

The final scheduled negotiating round will take place on w/c 1 June. We can then expect an all-out push from Remainers in their efforts to force an extension to the transition period (which of course would require a change in the law) as the deadline of 30 June approaches.

The legal deadline for an agreement on fisheries (1 July) looks set to come and go with no agreement in place. The EU will then have little choice but to engage in a fisheries negotiation on the UK's terms (i.e. an annual bilateral agreement not linked to agreements in other areas), or under international law (UNCLOS) its Member States will lose all access to UK waters on 1 January 2021.