

"A week is a long time in politics." – Harold Wilson, British Prime Minister, 1964

The first week of parliamentary scrutiny for Boris Johnson's government has certainly lived up to Harold Wilson's famous aphorism. Members of Parliament (MPs) returned from their summer break to the news that the Prime Minister intended to close down (prorogue) Parliament after one week, until 14 October. This spurred those opposed to a no-deal Brexit into action, with the result that:

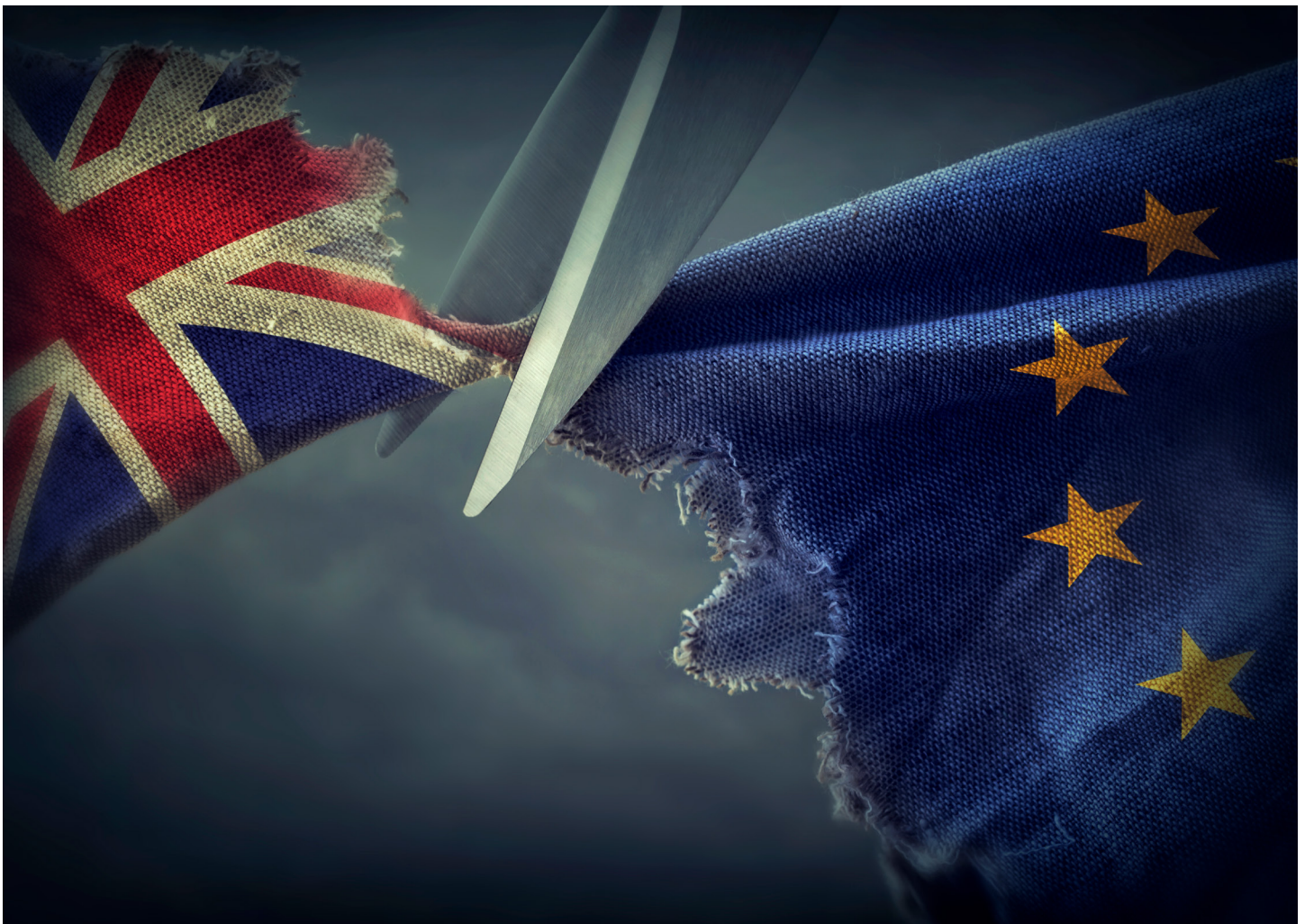
Government's working majority went from +1 to -45, caused by a few resignations of the party Whip and the expulsion of 21 senior MPs for voting against the government

Parliament passed a law forcing the Prime Minister to seek an extension to the Article 50 deadline of 31 October, unless he has secured a deal and had it approved by Parliament by 19 October

Government lost all six substantive votes during the week

Government twice failed to secure a decision for an early (mid-October) election

Parliament required the government to publish its analysis of the impact of a no-deal Brexit (the government is likely to resist this) and some other internal documents



What Happens Next?

The Prime Minister promised during the leadership election that he would ensure that the UK left the EU on 31 October, come what may. Unless the government can find a way to circumvent the law Parliament has now passed, his only way to fulfil this promise is to secure a deal and get Parliament to approve it. This is not impossible: the government is now starting to explore ways to dilute the impact of the backstop arrangements for the Irish border in the existing Withdrawal Agreement, and the EU has said that it is willing to look at new language for the accompanying Political Declaration on the future relationship. The practical deadline for any deal would be the European Council meeting on 17 – 18 October. Approval of any deal by Parliament would not be straightforward – the Northern Irish DUP would vote against anything resembling the backstop, and around 20 Conservative MPs would vote against more or less any deal, but a number of Labour MPs have indicated that they regret not voting for the Withdrawal Agreement before.

The chances of a no-deal exit on 31 October have reduced substantially, but not disappeared. It could happen if either the government found a way to circumvent the new law or the EU refused the UK's request. Neither looks likely at this stage. And, of course, we could find ourselves facing a similar situation at the end of any extension period agreed.

After a stormy series of meetings, Parliament was duly prorogued on 9 September until 14 October.

However, on 11 September, the Edinburgh Court of Sessions ruled that this suspension of Parliament was unlawful because it appeared intended to stymie Parliament's scrutiny of the government's Brexit approach. The case will go to the UK Supreme Court on 17 September – a ruling there against the government would be a serious setback and would cause Parliament to be recalled.

It looks very likely that there will be a UK General Election some time before the end of the year – the government cannot continue to function with no majority. It is possible that an election would produce a clear Conservative majority, which would allow the Prime Minister to pursue his Brexit policy – renegotiation backed by a real threat of a no-deal exit. But it is equally possible that an election would produce another hung Parliament (having four parties potentially polling between 20% – 30% would make the election particularly hard to call), in which case it is hard to see any way out of the deadlock other than another referendum. The Labour leader has announced that his party would go into the election promising to put a realistic leave option (likely to be based on the existing Withdrawal Agreement) and a remain option to the public in a further referendum.



What Should you Plan for?

The risk of a no-deal Brexit on 31 October has been greatly reduced, but not disappeared. The risk of no-deal at some point in the future remains.

At this stage, either leaving with a deal (which would include the implementation period), or a further extension to allow for a UK General Election, look to be the more likely outcomes for 31 October.

What Does This Mean for US-UK Trade Talks?

When President Trump and Prime Minister Boris Johnson met in August, there was much ambitious talk of a rapid US-UK FTA. Below, we look at the prospects and some of the issues arising.

Form and Process – Brexit Is Integral

In terms of process, there is a link to Brexit. The UK legally cannot negotiate any FTA until after leaving the EU. If the UK leaves the EU with a deal, it is likely to include a transition period with some kind of standstill in UK-EU trade, which would make concluding a US-UK FTA more difficult (though, formal negotiations might be possible).

There have been suggestions of a series of mini-deals, covering specific sectors, in order to secure some low-hanging fruit. Similar to the negotiations with Japan, a series of mini-deals have been suggested which would likely allow the President to avoid having to seek congressional approval through implementing legislation.

There is also a link to Brexit in terms of timing. In some areas (including agriculture), a UK-US FTA preceding a UK-EU FTA would be likely to further complicate the solution to the Irish border issue. Therefore, it is possible that EU-UK FTA negotiations will need either to precede or, at least, to run in parallel with UK-US negotiations.

Substantive Issues

Many aspects of the UK-US FTA will be essentially technical in nature – of great importance to companies involved in the relevant sectors and, therefore, not necessarily easy to resolve, but less likely to create a substantial political and public backlash. Much regulatory recognition, trade facilitation and tariff alignment is likely to fall into this category, and the fact that the US already enjoys a positive trade in goods balance with the UK – US\$5.5 billion in 2018 – should facilitate these negotiations.

However, there are a number of substantive areas which remain sensitive in broader public opinion in the UK, including:

- **Agriculture** – “Chlorine-washed chicken” has become short-hand in the British political lexicon for concerns about US animal welfare and food production standards, and any FTA covering agriculture will be subject to very close scrutiny, with any perceived relaxation of existing UK standards the object of strong public resistance. Further, US pressure on UK agricultural subsidies as it comes out of the EU Common Agriculture Policy would be strongly resisted by UK farmers.
- **Public procurement** – The Prime Minister says he agreed with the President that the National Health Service (NHS) would be excluded from the UK-US FTA. President Trump has confirmed this understanding as well. Any suggestion that the NHS would be opened to US competition would invoke very strong public resistance.

- **Environment** – Concern is mounting in the UK about climate change and global warming. Many businesses are, therefore, having to invest significantly to reduce their carbon footprint. The UK is likely to insist that US exporters meet UK environmental standards in order to ensure that US industry cannot undercut UK equivalents through spending less on environmental protection (the EU is likely to take a similar position in EU-US trade talks).

Finally, if the UK leaves the EU without a deal and the fallback position to protect the Irish border, as negotiated (but not ratified) between the UK and the EU, does not come into effect, or there is perceived to be damage to the Good Friday Agreement or to Irish interests, any FTA may face a challenge to be ratified, given US congressional views. Indeed, Speaker Nancy Pelosi stated on 13 August that a US-UK FTA has “no chance” of passing the US Congress if the UK exit from the EU negatively affects the Good Friday Agreement.

Save-the-date

Please join us on Wednesday 23 October 2019 in Washington DC for a panel discussion on Brexit and the UK's future in trade. An invitation to register interest is forthcoming.



Our dedicated and multidisciplinary team can provide a full range of timely advice and assistance based on decades of pragmatic experience, attuned to the relevant context and tailored to the specific needs of each client.

We are uniquely situated and qualified to assist clients in all manners of policy and legal matters stemming from Brexit. We can help clients adapt to (and, where appropriate, participate in) the process by which the new era of UK trade relationships with the EU and non-EU countries are created. We can assist in navigating the complex web of changing conditions for inbound investment into the UK and the new domestic and international frameworks that govern that activity.

For the latest Brexit information and analyses, visit and subscribe to our [Brexit Legal](#) blog.

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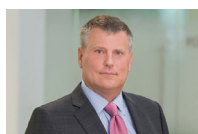
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