

# Will the UK be at the “back of the queue” under Biden?

Blog post by Senior Associate Miranda Lutz, 28 August 2020

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Although round four of US-UK trade negotiations are slated for September, negotiators have yet to indicate any major signs of progress. Despite earlier signalling that a trade agreement could be concluded by the end of the year, politicians from both sides have publicly recognised that this is not a feasible timeframe. So, what does this mean for UK negotiators who could be facing a change in administration before the trade deal is completed?

While certainly not a foregone conclusion, the latest polling [data](#) shows that Joe Biden is up at least seven points over President Donald Trump, meaning there is a very real chance that UK trade negotiators will be dealing with a Democratic administration come 2021. If Biden wins, there are two key domestic functional dynamics that could significantly delay the completion of a comprehensive US-UK free trade agreement.

First, we should expect a hiatus in negotiations. The executive branch transition process, especially one involving a change in political party, can be lengthy. During this period, little would be achieved as changeover to a new administration would put trade negotiations on pause as Trump appointees and other career staff within the US Trade Representative’s Office work with Biden’s transition team to prepare for a hand-off of duties and responsibilities. Biden must also appoint a new USTR who will need to be vetted and confirmed by the US Senate.

Confirming a new USTR could be a tall order for a Biden administration if the Senate remains under Republican control. Senate Majority Leader Mitch McConnell could hold up appointees for key cabinet positions in order to extract other policy concessions from a Democratic White House. If Republicans keep the Senate, it could be spring before Biden has a new head trade official, costing negotiators precious time as they would not have a negotiating mandate without a USTR in place. However, it is worth noting that with just under 70 days before the election, control of the Senate is certainly in play. Almost unimaginable several months ago, the Cook Political Report now [favours](#) Democrats to take over the Senate.

Regardless of the confirmation process, once a new trade team is in place, it will take some time for them to formulate their trade policy goals. Biden’s campaign has studiously avoided proposing any tangible trade objectives and has instead favoured broad statements articulating how his trade policy will be rooted in what serves domestic policy priorities. Biden’s sole commitment has been to not negotiate any new trade deals before making major investments in US jobs and manufacturing.

However, hope for a US-UK deal is not lost. There is robust support from Democratic lawmakers to complete a deal with the UK as they do not feel beholden to Obama’s policy stance designating the UK to the “back of the queue.” Additionally, labour and environmental issues, which normally trip up Democratic support for a trade deal, are not a problem between the US and the UK. However, US positioning on other issues such as IP protections for pharmaceuticals is expected to shift and there will be heightened sensitivity to the UK-EU approach to Northern Ireland. There would also be the

expectation that the UK will have to follow through on removing its digital services taxes in order to get a deal across the finish line.

Secondly, and perhaps of even greater concern for UK negotiators, is the ticking clock on the United States' Trade Promotion Authority (TPA) which expires on July 1st, 2021. TPA, also known as "fast-track authority," provides expedited legislative consideration of trade agreements negotiated by the executive branch. Per TPA guidelines, the president must notify Congress 90 days before signing a trade agreement, meaning that the practical deadline for a US-UK deal under the current TPA is April 1st, 2021.

Negotiations for TPA are expected to be contentious as Democrats in Congress will be eager to claw back some authority over trade following four years of Trump's trade wars. A Biden administration would also need to determine its overall industrial and trade strategy as it could have a significant impact on what Democrats seek in TPA renewal.

Given that Congress will still be focused on rebuilding the US economy post-covid-19, a lapse in fast-track authority cannot be discounted. Congress has historically struggled with TPA renewals. In two out of the four times TPA has been reauthorised, there were multi-year lapses (between 1994 and 2002 and between 2007 and 2015). In light of these timeline restrictions, US-UK negotiations are likely to get caught up in debate over TPA reauthorisation. A similarly long gap in TPA renewal, could mean that Congress will not vote on a comprehensive final deal until the second year of a Biden administration.

In light of the lack of substantive progress during the first three negotiating rounds, it also appears that we can discount the possibility of a "mini-deal" prior to November which should assuage concerns from business leaders that their interests could be left out of a smaller agreement. Certain gains, such as improving US agriculture access to the UK market, will continue to be essential for Washington to sign off on any agreement large or small since both parties are strongly attuned to their farming constituencies. As controversies over animal welfare and sanitary standards rise, it will be too difficult for the UK to come to a landing zone with the US on these issues in the two months before the November elections.

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### Key Dates

November 3<sup>rd</sup>, 2020: US election

January 20<sup>th</sup>, 2021: Presidential inauguration

April 1<sup>st</sup> 2021: Deadline for notifying Congress of intent to sign trade deal

July 1<sup>st</sup>, 2021: Expiration of Trade Promotion Authority

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