

UK Gov't Turnover Pushes Trade Deal Further Out Of Reach

By Jennifer Doherty

Law360 (October 21, 2022, 9:46 PM EDT) -- The question of whether a U.S.-U.K. trade deal might regain traction was answered Thursday when Prime Minister Liz Truss, a former trade minister, resigned, dashing continued hopes for a new free trade agreement on Capitol Hill.

Lawmakers on both sides of the aisle have continued pushing to restart negotiations for a free trade agreement — potentially the United States' first new comprehensive deal in a decade — citing other countries' rush to enter new arrangements and the diminishing options under current conditions for expanding markets for certain U.S. industries, including agriculture.

While Truss' past focus on trade deals as an engine of growth may have led to a deal under other circumstances, the context of her brief and chaotic term as prime minister stymied the chances.

"Any time you're trying to negotiate with a country that's going through this type of transition, it's going to slow things down and make things more difficult," King & Spalding LLC partner Stephen Vaughn, former general counsel for the Office of the U.S. Trade Representative, told Law360 following Truss' resignation Thursday.

Truss was the third consecutive Conservative Party leader to assume the role of prime minister without the momentum of a general election behind her, as well as the third to resign after less than three years in the post, although her 45-day tenure was by far the shortest.

In May 2020, when she was secretary of state for international trade under then-Prime Minister Boris Johnson, Truss characterized the "ambitious" trade deal her team hoped to reach with the U.S. as an important part of the U.K.'s economic recovery from the COVID-19 pandemic in a joint statement with her Trump administration counterparts following the first round of talks.

Three months later, she framed the talks as part of a broader campaign to create jobs and growth through engagement with British companies and trade partners that also included Japan, Australia and New Zealand, saying that negotiations were "entering their crucial latter stages."

But on her way to New York for the U.N. General Assembly last month as the U.K.'s newly appointed head of government, Truss told reporters that she did not expect those talks to restart in the "short to medium term." As it turned out, there would be no long term.

In just over six weeks, Truss' tax policies aggravated an already troubled economic landscape marked by

unresolved Brexit issues and pandemic downturns, further compounded by an energy crisis.

And while turnover and crises have stymied Downing Street's interest in a deal, the Biden administration has also pivoted away from free trade agreements, displaying no interest in obtaining Trade Promotion Authority — a mandate for trade negotiations that Congress issues to the president — in favor of forging alliances that feature trade arrangements, rather than focusing on trade in isolation.

"Prime Minister Truss' resignation may slow things down even further, but the relaunch of comprehensive trade negotiations wasn't imminent to begin with," Kelly Ann Shaw, a Hogan Lovells partner and former deputy assistant to the president for international economic affairs, told Law360, emphasizing the White House's shift in focus.

Shaw's colleague Robert Gardener, Hogan Lovells' director of government affairs in London, offered one possible caveat that could restore momentum to trade talks: a hard reset by Truss' successor.

"The exception to this could be a deliberate move by the new prime minister to reset the political and trade bilateral by moving boldly in this direction. If so, we will know from their initial public statements," Gardener said in a statement.

A decisive break with Truss' agenda seems likely. The Tory government began walking back Truss' tax policies even before she announced her departure. The U.K. could even conceivably swing back to Labour Party control for the first time since 2010 if enough pressure builds behind calls to hold a new general election.

Variables in the U.S.-U.K. trade equation are not limited to the U.K. side, however.

Crowell & Moring LLP partner Robert Holleyman, a former deputy U.S. Trade Representative, said the eventual success or failure of any relaunched trade talks will likely come down to political will in Congress and cited the need for Trade Promotion Authority to finalize a deal. Next month's midterm elections could strengthen or weaken calls to return to the negotiating table.

At least two new measures aimed at relaunching free trade agreement negotiations cropped up in the U.S. Senate this year: a resolution introduced by Sen. Mike Lee, R-Utah, and legislation authored by Sens. Chris Coons, D-Del., and Rob Portman, R-Ohio, the founders and co-chairs of the Senate U.K. Trade Caucus. Portman's seat is one of the 470 congressional posts up for grabs in November.

At the same time, Shaw pointed out, many U.S. lawmakers have voiced concerns over U.K. legislation introduced by Truss that would undo certain guarantees the country made during Brexit concerning Northern Ireland, which is part of the U.K., and the Republic of Ireland, which is part of the European Union. The contentious bill has reduced enthusiasm for a trade deal among some U.S. politicians.

"I think this is largely whether there is a bipartisan political interest and will within the U.S. government about negotiating a binding trade agreement with the U.K.," Holleyman told Law360.

"If there is a view that that is something the U.S. is prepared to do in a bipartisan fashion, or if the U.S. feels we need to do it to bolster or help our friends in the U.K., then I think the U.S. can work with either the current government with a new prime minister or the Labour Party to reach an agreement,"

Holleyman continued, concluding that the decision was ultimately "more an issue of U.S. domestic politics and policy than it actually is on the U.K. side."

--Additional reporting by Alex Lawson. Editing by Alanna Weissman and Jay Jackson Jr.

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