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# The UK-EU Trade and Co-operation Agreement 2020



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## Introduction

On Christmas Eve 2020, the UK and the EU negotiators reached political agreement on the text of the UK-EU Trade and Co-operation Agreement (TCA).<sup>1</sup> This agreement, which provides for tariff and quota free trade in goods and for co-operation in a number of fields including internal security but does not cover effectively most trade in services nor co-operation in foreign policy and defence, entered into force on 1 January 2021.

In the UK, Parliament passed the *European Union (Future Relationship) Act 2020* in one day on 30 December 2020 but further legislation (much of it in the form of delegated legislation that Parliament cannot amend) will be needed to implement many of the details.<sup>2</sup> In the EU, the agreement has been given provisional application from 1 January 2021 while the ratification process, which requires the consent of the European Parliament, is completed.<sup>3</sup>

The TCA left many aspects of the UK-EU relationship unresolved and further negotiations will be needed in areas such as financial services regulation. The EU has yet to decide whether to accept that UK regulation on data protection and financial services meets its standards (known as “equivalence”).

This briefing details the main points of the TCA, including its governance structure and the procedures for dispute resolution. It also lists the areas that have been largely or wholly excluded from the scope of the agreement and those likely to be the subject of further negotiation. It concludes with a look at the economic and political impact within the UK.

## Summary and Overview

The main points of the agreement are:

- the UK left the Single Market and the Customs Union on 31 December 2020;<sup>4</sup>

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<sup>1</sup> Text available at HM Government, ‘Agreements reached between the United Kingdom of Great Britain and Northern Ireland and the European Union’, 24 December 2020

<sup>2</sup> *European Union (Future Relationship) Act 2020*, c. 29

<sup>3</sup> European Council, *Council Decision on the signing, on behalf of the Union, and on provisional application of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information*, 13904/20, 29 December 2020

<sup>4</sup> Northern Ireland stayed in the Single Market (see below).

- trade in goods is now on a no tariff, no quota basis provided rules of origin requirements are met and there may be other regulatory requirements (e.g. sanitary and phytosanitary rules and technical standards);<sup>5</sup>
- customs procedures (in practice often online) have returned for most trade between the UK and the EU but customs and trade facilitation procedures in the TCA will mean a trusted traders' scheme to assist exporters;
- trade in services is largely excluded from the agreement with exceptions for aspects of civil aviation and road haulage;
- both parties agreed to apply their current (*i.e.* EU Single Market) standards and to seek to avoid future divergence in technical standards but there will be more non-tariff barriers to trade for UK exporters (e.g. in the chemicals sector);
- UK fishers will benefit from a greater share of the catch in UK/EU waters over a transition period;
- co-operation in policing, the exchange of evidence and security data and a stream-lined extradition procedure will enable some aspects of existing security co-operation to be maintained in a reduced form; and
- an EU-UK Partnership Council, supported by over 20 working groups and committees, will oversee the working of the TCA with a dispute settlement procedure and retaliatory mechanisms where no agreement is achieved.

## Trade in Goods

### Basic Principles

The TCA provides for trade in goods between the parties on the basis of no tariffs and no quotas (*i.e.* quantitative limits on the amount of goods imported annually) but rules of origin do apply. The UK Government has described the TCA as “the first time the EU has agreed a zero tariff zero quota deal with any other trading partner”.<sup>6</sup> Whilst technically true, the EU-Canada FTA removed tariffs from 99 per cent of goods, and the EU’s agreements with Norway, Iceland, Switzerland and Ukraine cover a similar proportion of trade in goods.<sup>7</sup> As agreed in the Withdrawal Agreement, Northern Ireland stays in the Single Market for goods.

Rules of origin are important because they can be expensive for businesses to comply with and because they can limit their ability to source parts (or ingredients in the case of food and drink) from lower-cost suppliers in third countries. These rules are particularly relevant to manufacturers dependent on a global supply chain for their parts. In the case of the automotive sector, for example, which exports eight out of 10 of its UK-made vehicles and more than half of those go to the EU, to comply with the new rules of origin 65 per cent of their components will have to have originated either in the UK or the EU.<sup>8</sup>

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<sup>5</sup> TCA, Part Two, Heading One, Title I, Articles 5 (Prohibition of customs duties) and 6 (Export duties, taxes or other charges), p. 20

<sup>6</sup> Quoted in Daniel Ferguson *et al.*, *The UK-EU Trade and Co-operation Agreement: summary and implementation*, House of Commons Library Research Briefing 09106, 30 December 2020, pp. 17-18

<sup>7</sup> *Ibid.*, p. 17, n. 28

<sup>8</sup> European Automobile Manufacturers Association, *Brexit and the Auto Industry: Facts and Figures*, 1 March 2019, p. 1; see TCA, Annex ORIG-2: Product Specific Rules of Origin, Chapter 87, 87.01, p. 466

Overall, the fifty or so pages of specific percentages required for thousands of products to comply with rules of origin included in the TCA, represents a major challenge to UK manufacturers. In some cases – the Institute of Government has highlighted those importing Caribbean cane sugar and refining it in the UK and basmati rice imported in from India and milled in the UK – UK importers will no longer be able to export to the EU tariff free.<sup>9</sup>

More positively, the TCA includes open public procurement in most sectors, some mutual recognition of standards (for example, in medicines and aviation) but contrary to the Prime Minister's claim that the treaty removed non-tariff barriers (NTBs) to UK-EU trade, many sectors will face NTBs, some of them very significant. A good example of the latter is the UK chemicals industry which will no longer have access to the EU's REACH database of recognised chemicals, costing the sector an estimated £1 billion in new registration costs.<sup>10</sup> Failure to reach an agreement or a satisfactory equivalence determination by the EU on data transfers within the next six months would be a significant obstacle (see below).

### Animal and Plant Health Rules

Great Britain and the EU/NI will operate separate systems of sanitary and phytosanitary (SPS) rules. These are of great importance to those importing or exporting goods of animal origin. Separate from the TCA the UK has obtained listed status under EU rules; were we to change our policies (for example, to accommodate a trade deal with the US), this listing could be at risk. Listing means that the exports of meat, fish, dairy products and live animals can continue as the UK's standards of biosecurity and animal welfare are equivalent to those of the EU.<sup>11</sup> But being able to demonstrate that EU rules have been complied with will mean additional costs for producers and exporters, not least because the UK negotiators failed to secure a reduced level of checks and fees of the type that New Zealand has agreed with the EU.<sup>12</sup> Plant trade with the EU may also be restricted as a result of the TCA.

### Fisheries

There will be a five-and-a-half-year transition period during which the proportion of the catch that the UK can take of fish stocks shared with the EU will, by 2026, rise by an average of 25 per cent of the current EU catch in UK waters. This is a significant increase by value in the UK catch (about £140 million) but a small increase in percentage terms (around six per cent). Set against it, the loss of cod fishing rights in North Norwegian waters that the UK enjoyed as a member state amounts to some £40 million.<sup>13</sup> There is no provision in the Agreement (other than a general review clause) to increase the UK shares after 2026. The number of EU vessels fishing in UK waters (and *vice versa*) will be limited to the number reasonably commensurate with each party's share of the catch. The EU could reimpose tariffs on imports of UK fisheries products if access for their boats to UK waters is further reduced.<sup>14</sup>

The UK had originally sought to take 80 per cent of the EU catch in UK waters over three years and to end the practice of EU boats fishing within the six-to-12-mile limit of inshore

<sup>9</sup> See Institute for Government, 'UK-EU future relationship: the deal – Goods', 2 January 2021

<sup>10</sup> *Ibid.*

<sup>11</sup> See HM Government, 'UK secures 'listed status' to protect £5 billion animal export market', 24 December 2020

<sup>12</sup> It will be different for importers and exporters in Northern Ireland as it remains *de facto* in the Single Market. The requirement for checks accordingly takes place at the GB/NI border.

<sup>13</sup> SEE calculation based on a past quota of 10,000 tonnes at approximately £4.00 per kilo.

<sup>14</sup> TCA, Part Two, Heading Five, Article 9(1), p. 267

waters. Neither goal was achieved with the UK agreeing to “grandfather rights” for EU boats fishing inshore despite having unilaterally renounced its participation in the London Fisheries Convention since Brexit in order to end that practice.<sup>15</sup> On the other hand, the UK did secure tariff and quota free access for UK fishery exports to the EU which was important because the UK exports most of the fish it catches and the majority of that to the EU.

More work is needed now on the implementation of the agreement and the separate arrangements for fishing by Norway and the Faroes in UK waters (and *vice versa*) have yet to be agreed.

Overall, the UK fell a long way short of its ambitions in this part of the negotiations.<sup>16</sup>

### Energy

The TCA provides for continuing co-operation between the parties in energy, including tariff free trade between them, thus enabling the current interconnectors between the UK and the EU to operate as before. The UK, however, does not have access to the EU’s emissions trading scheme anymore.

### Level Playing Field

This long section of the TCA (38 pages) reflects the contentious arguments between the parties during the negotiations. The concept of the level playing field is based on the common understanding of the Parties that:

their economic relationship can only deliver benefits in a mutually satisfactory way if the commitments relating to a level playing field for open and fair competition stand the test of time, by preventing distortions of trade or investment, and by contributing to sustainable development.

The agreement goes on to state that a level playing field does not mean harmonising the standards of the parties.<sup>17</sup>

Particular concerns addressed in the Level Playing Field title are the control of subsidies and the levels of labour, social, environmental and climate protection afforded by the Parties.

The TCA defines a subsidy as being the transfer of funds (such as in a grant), and/or the forgoing of revenue otherwise due and/or the provision or purchase of goods and services, that confers an economic advantage on one or more economic actors and which has or could have an effect on trade or investment between the UK and the EU.<sup>18</sup>

Both parties must have an independent enforcement body to ensure subsidy control and domestic courts must be able to hear cases. In addition, either party can intervene in a case in each other’s courts if the court so permits and with the potential for a subsidy to be recovered.

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<sup>15</sup> TCA, Part Two, Heading Five, Article 9(1), p. 267 treaty Article 8(3)(c), p. 266

<sup>16</sup> See Dr Bryce Stewart, ‘What does the trade deal mean for fisheries?’, UK in a Changing Europe, 27 December 2020

<sup>17</sup> TCA, Part Two, Heading One, Title XI, Article 1.1(4), p. 179

<sup>18</sup> *Ibid.*, Article 3.1(1)(b), p. 182

The parties have the right to establish their own levels of protection in the fields of labour and social protection, the environment and climate, subject to a non-regression mechanism and a rebalancing mechanism.

"Non-regression" means that the level of protection must not fall below that existing in both parties at the end of the transition period (*i.e.* on 31 December 2020) in such manner as to affect trade or investment. The role of determining whether such an effect has been produced is entrusted to a panel of experts.<sup>19</sup>

The rebalancing mechanism will apply where future policies and priorities in respect of labour, social, environmental or climate protection result in significant divergences capable of having an impact on trade or investment.

For the purposes of subsidy control, and to ensure non-regression or enable rebalancing, special procedures are laid down by this title, allowing the Party that considers that its interests have been affected to take unilateral remedial action, with a right for the other Party to challenge such action under variants of the general dispute settlement mechanism of the TCA (see below).

It is further provided that if one party considers after four years that there have been too many breaches of the level playing field provisions (or if one measure that has a material impact has been in place for a year), then they can trigger a review of the entire trade part of the treaty.<sup>20</sup>

## VAT

From 1 January 2021 the UK Government made a series of changes to VAT which have important consequences for importers of goods from the EU (including private customers). First, imported goods from the EU (and for the rest of the world) are no longer exempt from VAT if valued at below £15. Secondly, VAT is now charged on goods up to a value of £135 (above that value customs duties may apply). Thirdly, online market places (such as Amazon and Ebay) must now collect the VAT on imported goods from the buyer and pass it to HMRC (rather than the overseas seller being responsible to HMRC). Finally, direct sellers to customers in the UK from the EU must now charge their customer VAT and pass that VAT to HMRC.<sup>21</sup>

These changes occurring at the same time and in addition to Brexit have caused considerable difficulty for EU exporters and some have stopped selling goods to the UK as a consequence, reducing choice for UK consumers and potentially increasing prices in the medium-term.

## **Trade in Services**

### Basic Principles

The TCA represents a very substantial reduction of market access in services between the UK and the EU, despite services being over 80 per cent of UK economy. For UK businesses to export services to the EU, they will usually have to operate a subsidiary in an EU country

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<sup>19</sup> The Institute for Public Policy Research has said that this sets "such a high bar for proof that key elements are likely to be enforced only rarely"; see Marley Morris, *The Brexit EU-UK trade deal: A first analysis*, IPPR, 27 December 2020

<sup>20</sup> TCA, Part Two, Heading One, Title XI, Article 9.4(4), p. 216

<sup>21</sup> See HM Government, 'Changes to VAT treatment of overseas goods sold to customers from 1 January 2021', 3 December 2020

and comply with that country's laws and regulations. Although the TCA recognises the right of UK businesses to operate in this way without undue discrimination, the requirement to follow national laws in practice means exclusions for many professions and occupations in individual countries. These are set out in two Annexes each running to over 100 pages. They mean that, for example, UK citizens will not be able to work as actuaries in Italy, as travel guides in France or as surveyors in Bulgaria.

There is no provision for the mutual recognition of qualifications in the TCA only one enabling future agreement using a model in the Canadian FTA (but no such mutual recognitions have been achieved through that so far).<sup>22</sup> In practice, the UK is likely to have to negotiate mutual recognition sector by sector with individual EU Member States on a bilateral basis, resulting in a complex patchwork of recognition agreements.

In the case of financial services, UK-incorporated providers lost their passporting rights on 1 January 2021. This is a major hole in the agreement from the UK point of view, given that while the UK had a deficit in trade in goods with the EU in 2019, it had a surplus in services of £18 billion, much of it derived from financial services.<sup>23</sup> The TCA does not settle the question of regulatory equivalence in financial services (*i.e.* the Commission will continue to examine 28 potential areas of equivalence). There is however a Joint Declaration on Financial Services Regulatory Cooperation, under which the UK and EU will establish by March 2021 a memorandum of understanding (MOU) framework covering the exchange of views on regulation and 'transparency and appropriate dialogue' on equivalence-related processes. Agreeing the MOU is therefore an immediate priority for the UK Government although it will not be, in itself, a guarantee of greater market access for financial services.

Finally, the restrictive nature of the visa and travel rights in the agreement mean that UK business travellers will be able to do very little in the way of business activity in the EU without seeking a work visa (for example, they will be able to attend conferences and carry out research but not be able to do any direct selling). This particularly impacts negatively those working for short periods in the EU; one example is musicians and actors. The travel and visa provisions are more restrictive than those offered by the EU-Japan free trade agreement and are less than the UK sought.

### Civil Aviation

The TCA provides for UK and EU airlines to continue to fly between points in their territories but UK airlines can no longer operate flights between EU destinations. To continue to do the latter, they will have to establish a subsidiary in an EU Member State which complies with EU ownership and control rules, and have aircraft and pilots and crew registered there. EasyJet has already done this, for example. The TCA also includes provisions on aviation safety which provide for cooperation on safety and some limited recognition of UK and EU regulatory approvals.

### Road Transport

There are provisions for both the transport of goods and passengers by road. Road hauliers will lose their right to carry out multiple transport and deliveries (cabotage) and are now

<sup>22</sup> See '10 key details in the UK-EU trade deal', Anna Isaac, *Politico*, 27 December 2020

<sup>23</sup> Office for National Statistics, 'Balance of payments, UK: July to September 2020', 22 December 2020, Tables B and C

limited to two such operations. This is important for British hauliers, who are often self-employed or operating as SMEs, who will no longer be able to carry multiple consignments back to the UK after delivering goods into the EU. This is likely to increase prices.

## Travel and Visa Rules

UK visitors will be able to make visa free short-term visits to the Schengen area for 90 days within a 180-day period. Visits to Bulgaria, Croatia, Cyprus and Romania will not count towards the 90-day total as they are not in the Schengen area. The European Health Insurance Card (EHIC) will remain valid for those UK citizens who have one until it expires in EU countries but not EEA countries (except Norway). A new Global Health Insurance Card has been established by the UK Government to replace the EHIC for UK travellers.<sup>24</sup>

The TCA enables social security co-operation between the parties covering the main classes of social security benefit and on the basis of equal treatment. This will protect the rights of those moving between the UK and the EU (and *vice versa*) and enable social security authorities to include contributions made in another country when calculating entitlement. They also protect the special position of state pensioners resident in more than one country.

## Crime and Justice

Part three of the TCA covers co-operation in the fields of crime and justice. It is designed to make provision in areas where extensive co-operation has developed between EU Member States over the last 25 years – something the UK strongly supported. Without these provisions there would have been a major loss of access to critical databases and to co-operation against cross-border crime (including terrorism).

The main provisions are:

- exchange of passenger name record (PNR) data – to enable UK and EU airlines (as well as Eurostar and shipping companies) to pass information about passengers to the authorities in the destination state;
- the sharing of fingerprint and DNA data through the Prüm Convention – this will no longer be a real-time exchange for the UK;
- policing and judicial co-operation – the UK will co-operate with Europol and Eurojust and work with them to the extent to which that is permitted for third countries
- data exchange – the UK will lose access to the Schengen Information System as it is only available to EU Member States and to other Schengen countries; instead other methods of alert and data transfer will be used, including Interpol alerts;
- extradition – the UK can no longer participate in the European Arrest Warrant scheme but will instead be able to use a surrender procedure similar to that adopted for Norway and Iceland; this means extradition is likely to be slower and will exclude the nationals of some EU countries where there is a constitutional prohibition on extradition outside the EU (e.g. Germany); and

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<sup>24</sup> See HM Government, 'UK launches Global Health Insurance Card', 11 January 2021

- mutual legal assistance – to enable the competent authorities of the parties to seek assistance during an investigation from another country; this procedure includes a time limit to ensure compliance in reasonable time.

Further provisions cover co-operation against money laundering and terrorism and include provisions to enable the freezing and confiscation of assets.

A key element of the crime and justice co-operation is that it is dependent on the UK remaining a party to the European Convention on Human Rights; should it renounce its membership of the ECHR, this whole part of the agreement would fall.

## **Other Provisions**

The TCA includes provisions for co-operation in health security (such as the exchange of information about threats to health), to support cyber security and for the UK to participate in certain EU programmes. This latter provision should enable the UK to continue to participate in EU science programmes; it will have to make a financial contribution to each programme it participates in in accordance with the formula included in the agreement.

## **Further Negotiations**

### State Aid

A political declaration on state aid was included in the TCA. It lists some permissible examples of state subsidies but the matter will need further negotiation and the UK has yet to establish its own post-Brexit state aid regime. This will include passing legislation to establish an independent oversight body, as required by the TCA.

### Financial Services

As already mentioned, the parties aim to agree a memorandum of understanding on financial services regulatory co-operation by 31 March 2021. But even if achieved, it will not lead to the level of preferential access to the Single Market that UK businesses had before Brexit. Equivalence determinations will remain important, although, as the Swiss example shows, the EU can unilaterally withdraw equivalence when it chooses.

### Data

Despite data being mentioned 1,066 times in treaty there was no agreement on exchanges of data by companies and organisations between the UK and the EU. This is a matter of critical importance to business and the public sector. One of the responsibilities of the Partnership Council (see governance below) is to “make recommendations to the Parties regarding the transfer of personal data in specific areas covered by this Agreement”.<sup>25</sup>

A temporary arrangement has been put in place for four months by the Commission whilst it continues its review of the UK’s data protection system. One difficulty is that for them to

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<sup>25</sup> See TCA, Part One, Title III, Article 1(4)(h)

be declared “equivalent” to EU standards, they must take into relevant account decisions of the European Court of Justice (which may mean amending UK law in future).<sup>26</sup>

### Gibraltar

Agreement was reached provisionally on New Year’s Eve for Gibraltar to join the Schengen area, enabling it to maintain open borders with Spain. It will also have to comply with EU rules relating to competition and the environment. The details will now have to be finalised in a treaty over the next six months.

### Geographical Indications

The mutual recognition of geographical indicators (such as Parma ham, Melton Mowbray pork pies and so on) was included in Withdrawal Agreement. There were reports during the negotiations that the UK wanted to water down these requirements in the TCA but this did not happen. The issue seems to have been pushed back for future discussion.

### **Exclusions**

The TCA was striking for the areas that it did not include. The loss of free movement of services has already been covered. The absence of any provision for co-operation in the fields of foreign policy and defence is a major omission. The UK will not be able to achieve much in the areas of foreign policy it cares most about (relations with Russia, peace and security in the Middle East, tackling migration from Africa, relations with China and safeguarding Hong Kong and stopping nuclear proliferation are just some of the most important) without working with the EU, yet there is no mechanism for doing so.

Leaving the Erasmus programme will diminish the ability of UK universities to recruit EU students as well as potentially limiting the opportunities for British undergraduates since the Turing scheme proposed by the UK Government to replace it, does not cover students coming to the UK.<sup>27</sup> Another consequence of leaving is that EU students will have to pay the full international rate in terms of fees, rather than being treated the same as UK students. This will reduce EU student numbers at UK universities with a consequent loss of income.

Although there are some significant arrangements for co-operation in terms of domestic security, they fall far short of what the UK was entitled to as an EU Member State. Civil law co-operation falls outside the TCA altogether (apart from some transitional provisions) and the TCA is silent on the UK’s application to re-join the Lugano Convention as a non-EU country.<sup>28</sup>

The failure to secure better terms of visiting in the visa and travel part of the TCA will restrict the ability of business to operate on the continent as well as creating unnecessary difficulties for British property owners there (and EU property owners in the UK).

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<sup>26</sup> *Supra* n. 6, p. 29

<sup>27</sup> 54,619 students benefited from UK-led Erasmus projects in 2019 at a cost of €145 million; the Turing scheme proposed as its replacement will be smaller: see European Commission, ‘Erasmus+ 2019 in numbers’, 29 December 2020

<sup>28</sup> The Lugano Convention 2007 was negotiated by the EU with Norway, Iceland and Switzerland: see UK in a Changing Europe, ‘What is the Lugano Convention?’, 24 September 2020

The absence of any provision for audio-visual and telecoms services from the TCA means that UK subscribers may not be able to access streaming services on the continent without additional payment and mobile roaming can be charged for again.

## Governance and Dispute Settlement

The TCA established a UK-EU Partnership Council jointly chaired by a British Government minister and a European Commissioner; it will meet at least once a year. The Council will make its decisions by mutual consent and they will be binding on both parties. The purpose of the Council is to provide political and strategic direction; much of the day-to-day work of the Council will be done in a network of 23 joint committees dealing with the various aspects of the agreement including trade and security.<sup>29</sup> Issues of interpretation or implementation can be referred by either party to the Partnership Council.

The TCA also makes provision for a Parliamentary Partnership Assembly made up of Members of the European Parliament and members of the UK Parliament to discuss issues of common interest and concern.

The general dispute settlement provision in the TCA relates to trade, transport and the EU programmes that the UK opts into.<sup>30</sup> As noted above, variants of the mechanism apply under the level playing field title of the TCA. There are separate arrangements for the security parts of the treaty. The general settlement provision begins when party feels there has been a breach of the agreement. There are then 30 days of consultations which both parties are bound to conduct in good faith. If they do not resolve the matter, they can extend their consultations or refer the matter to an independent arbitration panel, whose decisions are legally binding. If one party does not accept its ruling and implement it, then the other party can retaliate.

The most important element of this retaliatory action is that both parties can use cross-sector retaliation. So a dispute about rules of origin for cars, for example, could be responded to by imposing tariffs on fish imports.<sup>31</sup>

Unlike the Withdrawal Agreement, there is no role in the TCA dispute settlement procedure for the European Court of Justice (ECJ). The parties are bound by public international law, such as that embodied in the Vienna Convention on the Law of Treaties. But the decisions of the ECJ will in practice have indirect effect in the UK because if the UK does not comply with its rulings in relevant policy areas, businesses, organisations and individuals may find they cannot trade or co-operate within the EU. This is no different to other third countries, such as the United States or China, who if their businesses wish to trade with the EU or operate on its territory, must comply with EU law including the rulings of the ECJ. The more extensive co-operation implied by parts of the TCA (for example, on security) means that in these cases the UK will have to follow more closely changes in EU law and rulings of the Court.

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<sup>29</sup> See TCA, Part One, Title III, Article 2(1)

<sup>30</sup> The dispute settlement provisions are in Part Six of the TCA.

<sup>31</sup> But not financial services as they have been excluded from cross-retaliatory measures.

In addition, the ECJ retains its jurisdiction in Northern Ireland because it has stayed in the Single Market for goods. The ECJ also keeps its role in the dispute settlement provisions of the Withdrawal Agreement and in respect (for eight years) of the rights of EU citizens in the UK.

### **Assessment of the TCA**

This is a highly unusual agreement in that it raises barriers to trade between the parties; most trade agreements are designed to reduce or remove them. The TCA also prioritised goods over services even though services form 80 per cent of the UK economy – as one member of the House of Lords put it, it gives the 27 members of the EU free access to our goods market but with nothing in return on services.<sup>32</sup> Overall, it is a thin agreement in which both parties focused on preserving their autonomy and not on supporting their economies. It will also require constant negotiation, putting the UK in a similar situation to Switzerland.

The economic impact will vary over the short, medium and long-term. Media comment has tended to concentrate on the short-term impacts of the disruption as traders adjust to new procedures which are slower, more cumbersome and more expensive than those they have been used since the Single Market was established in its present form on 1 January 1993. But the true impact will take longer to emerge. A recent survey suggested a fall of 26-28 per cent in UK exports to the EU, a fall of about 30 per cent in imports from the EU and smaller reductions of both exports and imports to/from the rest of the world of about 10 per cent. This would imply a fall in GDP of 4.4 per cent compared to the pre-Brexit position.<sup>33</sup> Such estimates are complicated by the enormous uncertainties created by the Covid-19 pandemic and its economic effects.

Part of the difficulty for the UK lies in the fact that, so far, the trade deals with third countries will generate little additional trade (with a minor exception in the case of Japan). They mainly protect existing trade (*i.e.* they replicate the EU trade agreements that previously included the UK). Many are with countries with which the UK has a trade deficit anyway and which therefore stand to benefit more than the UK.

The impact on direct investment into UK will be of great importance. The UK's membership of the Single Market helped to make it the number one destination in the EU for inward investment prior to 2016. Our legal system, the English language and historic ties with other countries (such as the US) were also important but membership of the EU enabled investors to locate in the UK and use it as a springboard into mainland Europe. Now that no longer applies, investors not only in manufacturing (such as the Japanese car companies attracted in the 1980s to locate in Britain) but also many service sector providers are likely to choose to establish themselves inside the EU rather than the UK. In addition, those already in the UK may choose to close down (as with Honda) or relocate into the Single Market (as many broadcasters and financial service providers have already done).

One aspect where there is no clarity at all is the role of Parliament (and the public) in the oversight of the institutions set up by the TCA to manage the agreement.

<sup>32</sup> Lord Kerr of Kinlochard, a member of the Senior European Experts Group, speaking in the debate on the Agreement: see HL Deb 30 December 2020, vol 808, col 1835

<sup>33</sup> See Ilaria Fusacchia, Luca Salvatici & L. Alan Winters CB, *The Costs of Brexit*, UK Trade Policy Observatory, Briefing Paper 51, 24 December 2020, pp. 1, 7 and 10

The political impact of both Brexit as a whole and this agreement in particular is as yet unclear. The Government faces a difficult choice whether to treat the TCA as a floor or a ceiling.<sup>34</sup> Will it seek to fill in the gaps in the TCA or will the deal remain largely as it is until the review in five years' time provided for in the agreement? That impending review could become politically more significant as the date approaches, not least because it will fall early in the next parliament. In addition, the review of the Northern Ireland Protocol (to the Withdrawal Agreement) will be reviewed four years' from the end of the transition period; that could also be an important moment.<sup>35</sup> Much will depend on the attitude of ministers towards the EU and the extent to which they wish in practice to diverge from EU legislation. As the row over the Internal Market Bill demonstrated, there is not a lot of trust in Brussels that the UK Government will honour its promises.

Then there are the implications for the Union. Brexit is putting great strain on the terms of the devolution settlement and is likely to lead to disputes within the UK about the impact of Brexit on the different parts of the UK (for example, over fishing and other issues with Scotland and the impact of the protocol on Northern Ireland). These disputes will fuel demands for a second Scottish independence referendum and encourage calls for Irish unification.

The UK-EU agreement did prevent the potentially disastrous consequences of a no deal but it won't end the Brexit debate or divisions, it may just prolong them.

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<sup>34</sup> For a pessimistic view of how the debate might play out, see Sam Lowe, 'The EU-UK trade and co-operation agreement: A platform on which to build?', Centre for European Reform, 12 January 2021

<sup>35</sup> The timetable for that review begins two months before the end of the four-year period (i.e. in October 2024); see HM Government, *Explainer for the New Ireland/Northern Ireland Protocol and the Political Declaration on the future relationship*, 18 October 2019, p. 6, para 26

# ★ Senior European Experts

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