



HOUSE OF LORDS

European Union Committee

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24th Report of Session 2019–21

# **Beyond Brexit: trade in goods**

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Evidence is published online at <https://committees.parliament.uk/work/956/future-ukeu-relations-trade-in-goods/> and available for inspection at the Parliamentary Archives (020 7219 3074).

Q in footnotes refers to a question in oral evidence.

## SUMMARY

The EU-UK Trade and Cooperation Agreement (TCA) was published on 24 December 2020, a week before the end of the transition period. The TCA establishes a framework for a future trading relationship between the two Parties and follows a long period of negotiation during which a ‘no deal’ outcome was a real possibility.

The Committee had two clear aims for this inquiry. Firstly, to understand what the TCA means for trade in goods; and secondly, to identify ways this trade could be made easier. We have taken the TCA as the foundation for a future trading relationship between the two Parties and have sought to look forward rather than back.

If certain rules and procedures are followed, the TCA allows UK and EU businesses to avoid tariffs and quotas. To benefit from zero tariffs, businesses must comply with—and be able to demonstrate compliance with—complex and extensive rules of origin, which establish the economic nationality of a product. Some traders, whose products do not meet those rules, may face a fundamental shift in their supply chains. Alongside this, extensive paperwork, multiple testing requirements, changes to VAT, and transport restrictions are having a significant impact on UK traders.

Witnesses acknowledged that trader readiness on 1 January 2021 was better than many, including the Committee, had expected, and alongside some exemptions and simplified processes in the TCA itself, the Government has implemented various internal facilitations. Where they are provided for, they offer important assistance. Substantial non-tariff barriers, inherent to the UK’s status as a third country, remain unaddressed, however, and much work still remains before smooth UK-EU trade will be possible.

The rebalancing mechanism in the TCA’s level playing field section could allow either Party to impose tariffs or other countervailing measures in the future. Our report reflects the calls we heard for stability and transparency on subsidies and labour and social protections.

We also examine rules of origin. Only goods originating—or mostly originating—in the UK or EU will qualify for zero tariffs. The requirements will hit smaller businesses hardest but clarifications and mitigations, particularly on the re-export of non-processed goods, are urgently needed for all.

The lack of a mutual recognition agreement on conformity assessment has been a significant blow. Multiple testing requirements add time and cost, and we have emphasised the importance of careful consultation and transparency before any future regulatory divergence.

On sanitary and phytosanitary measures, we find that, without action, physical checks may become a permanent barrier to trade in animal and plant products. We urge the Government to identify and pursue realistic priorities within the relevant Trade Specialised Committee.

On customs, we recommend a trusted trader scheme to enable more businesses—especially smaller businesses—to benefit from simplified customs procedures. This would sit alongside the UK’s Authorised Economic Operator scheme which, if made more accessible, would have a greater reach. Increased

investment in the stretched customs intermediary sector could rectify its most pressing problem: staff numbers are too low. While the transition period has ended, some import restrictions are yet to be phased in. Preparedness is critical, and much work is still needed on physical infrastructure and awareness.

The complicated and varied VAT rules in different EU jurisdictions have so far been among the most problematic non-tariff barriers to trade. The Government's postponed accounting scheme is welcome but helps only businesses which are VAT-registered. We call for the Government to support traders in accessing the postponed accounting scheme and to strengthen the guidance, advice and support to increase understanding among traders of new VAT implications.

Problems with the transportation of goods, particularly with increased costs and groupage, are affecting all businesses, hitting smaller firms hardest. We call for increased engagement with industry, and an extension of the Groupage Export Facilitation Scheme to a wider variety of goods. We also urge the Government to seek full fifth freedom of the air rights and, failing that, to conclude bilateral aviation agreements with as many countries as possible.

A common thread throughout our report is the need, given the substantial increase in administrative complexities, to translate guidance into tailored advice and support. In the final chapter of this report we examine the need for accurate, easily understood and specific advice to be provided to businesses.

There remain substantial barriers to trade with the EU. This report examines the new landscape of UK-EU relations and makes actionable recommendations to ease trade in the future.



# Beyond Brexit: trade in goods

## CHAPTER 1: INTRODUCTION

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### Background

1. The EU-UK Trade and Cooperation Agreement (TCA)<sup>1</sup> was published on 24 December 2020, four and a half years after the result of the Brexit referendum, during which a ‘no deal’ outcome was a very real possibility.<sup>2</sup> The TCA establishes the foundation for a trading relationship between the UK and the EU, now separate economic and regulatory jurisdictions. The necessary implementing legislation, the European Union (Future Relationship) Act 2020, was passed by both Houses on 30 December 2020, and the TCA is being provisionally applied pending ratification by both Parties.<sup>3</sup>
2. The TCA is divided into seven Parts. Each Part covers different elements of the future relationship: institutional provisions; trade and other economic aspects; cooperation on law enforcement and criminal justice; “thematic” issues; participation in EU Programmes; dispute settlement; and final provisions. A Nuclear Cooperation Agreement and an agreement on Security Procedures for exchanging classified information have been agreed in parallel.<sup>4</sup>

### Our inquiry

3. In January 2021, the House of Lords EU Select Committee launched a coordinated series of inquiries analysing the TCA and its implications for the future of UK-EU relations. This report is based on the inquiry undertaken by the EU Goods Sub-Committee and concerns trade in goods and connected issues.<sup>5</sup>
4. We launched our inquiry on 13 January 2021 and issued a call for evidence on 20 January (see Appendix 3). We received 25 pieces of written evidence and heard from 15 witnesses over the course of five oral evidence sessions. A full list of the evidence we received can be found in Appendix 2. We are grateful to all who contributed.
5. In late 2020, the House of Lords Liaison Committee completed its review of the House’s Committee structure, which began in January 2018 in the wake

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1 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 (24 December 2020): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/948119/EU-UK\\_Trade\\_and\\_Cooperation\\_Agreement\\_24.12.2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf) [accessed 4 March 2021]

2 A fuller account of the negotiations is available in the Select Committee’s report: European Union European Union Committee, *Beyond Brexit: the institutional framework* (21st Report, Session 2019–21, HL Paper 246)

3 At the time of writing, provisional application had been extended until 30 April 2021 to enable legal revisions and translations to take place before ratification by the European Parliament and the Council.

4 Prime Minister’s Office, ‘Summary of the UK-EU Trade and Cooperation Agreement’: <https://www.gov.uk/government/publications/agreements-reached-between-the-united-kingdom-of-great-britain-and-northern-ireland-and-the-european-union/summary-explainer> [accessed 4 March 2021]

5 EU Goods Sub-Committee, ‘Future UK-EU relations: trade in goods’: <https://committees.parliament.uk/work/956/future-ukeu-relations-trade-in-goods/> [accessed 2 March 2021]

of the referendum. The Liaison Committee’s report,<sup>6</sup> agreed by the House in January 2021, determined that the European Union Select Committee and its Sub-Committees would finish their work on 31 March 2021.<sup>7</sup> This report will therefore be the last report of the EU Goods Sub-Committee and its final contribution to public debate.

## 6. **We make this report for debate.**

### *A note on our recommendations*

7. The evidence on which this report is based was taken in January and February 2021. The TCA was implemented on 1 January 2021. Our evidence, and the conclusions we have come to, are therefore a preliminary view. This report cannot be exhaustive: some challenges are not yet visible, and the nature, causes and longevity of others are likely to become clearer over the coming months and years.<sup>8</sup>
8. The COVID-19 pandemic, of course, significantly complicates our conclusions. Financial implications for traders have been extensive, and travel restrictions and requirements for COVID testing have affected the flow of trade and people across and within territories. We were also told that the pandemic has meant that many businesses have “not had the headspace to get to grips with the agreement. They are consumed with Covid.”<sup>9</sup> One trader told us: “Instead of being able to prepare for all eventualities at the beginning of 2020 we were hit by a pandemic. Business fell off a cliff and we furloughed two thirds of our staff and could only focus on simply surviving, our mind was not on Brexit.”<sup>10</sup>
9. The Railway Industry Association accurately summarised the position: “Given the exceptional impact of the Coronavirus pandemic, and the fact these are early days since leaving the Transition Period ... the new rules have not yet been fully tested.”<sup>11</sup> Since the interpretation of the TCA is dependent partly upon an international and shifting political landscape, we must also warn that the situation may change dramatically over time.<sup>12</sup>

### **Trade in goods and the TCA**

10. In 2019 the UK exported £294 billion of goods and services to other EU Member States, equivalent to 43% of UK exports. Imports from the EU

6 Liaison Committee, *Review of investigative and scrutiny committees: strengthening the thematic structure through the appointment of new committees* (5th Report, Session 2019–21, HL Paper 193)

7 HL Deb, 13 January 2021, [vol 809](#)

8 Written evidence from the Institute for Government ([FUU0019](#))

9 [Q 25](#) (Jo Lappin)

10 Written evidence from Mantis World ([FUU0016](#))

11 Written evidence from the Railway Industry Association ([FUU0024](#))

12 As this report was written, there were two major developments. On 3 March 2021, the Vice-President of the European Commission described a unilateral UK move to extend certain grace periods for goods moving from GB to Northern Ireland as a “violation” of the Withdrawal Agreement. On 11 March, following a review of the timeline for the introduction of SPS checks on UK imports, the Government announced that some checks would be pushed back to October 2021 and January and March 2022. ‘Brussels says plan to extend Brexit grace period breaks international law’, *The Guardian* (3 March 2021) <https://www.theguardian.com/uk-news/2021/mar/03/supermarkets-may-get-more-time-to-adapt-to-northern-ireland-trading-rules-brexite> [accessed 9 March 2021] and letter from Lord Frost, Minister of State, Cabinet Office, to Sir Bill Cash, Chair of the European Scrutiny Committee, and Lord Kinnoull, Chair, European Union Committee, 11 March 2021: <https://committees.parliament.uk/publications/5107/documents/50447/default/>

were worth £373 billion, 52% of UK imports.<sup>13</sup> Of total trade, goods were responsible for 58.6% of exports and 72.3% of imports.<sup>14</sup> The tables below indicate the top exports and imports for UK-EU trade in goods.

**Table 1: Top 10 UK goods exports to the EU 2019**

Category of goods <sup>15</sup>	£ billions	% of total
Petroleum, petroleum products	20.0	11.8%
Road vehicles	17.3	10.2%
Other transport equipment	9.9	5.8%
Miscellaneous manufactured articles	9.4	5.5%
Medicinal & pharmaceutical products	9.2	5.4%
General industrial machinery & equipment	6.9	4.1%
Electrical machinery & appliances	6.8	4.0%
Power generating machinery	6.7	3.9%
Articles of apparel & clothing accessories	5.3	3.1%
Telecomms appliances & equipment	4.4	2.6%

**Table 2: Top 10 UK goods imports from the EU 2019**

Category of goods	£ billions	% of total
Road vehicles	48.5	18.2%
Medicinal & pharmaceutical products	17.7	6.7%
Electrical machinery & appliances	11.4	4.3%
Miscellaneous manufactured articles	10.5	4.1%
General industrial machinery & equipment	10.1	3.8%
Telecomms & sound recording equipment	9.9	3.7%
Office machines & automatic data processing machines	8.2	3.1%
Petroleum, petroleum products	8.0	3.0%
Power generating machinery & equipment	7.8	2.9%
Manufactures of metal not elsewhere specified	7.6	2.8%

Source: House of Commons Library, *Statistics on UK-EU trade*, Number 7851, 10 November 2020: <https://researchbriefings.files.parliament.uk/documents/CBP-7851/CBP-7851.pdf> [accessed 2 March 2021]

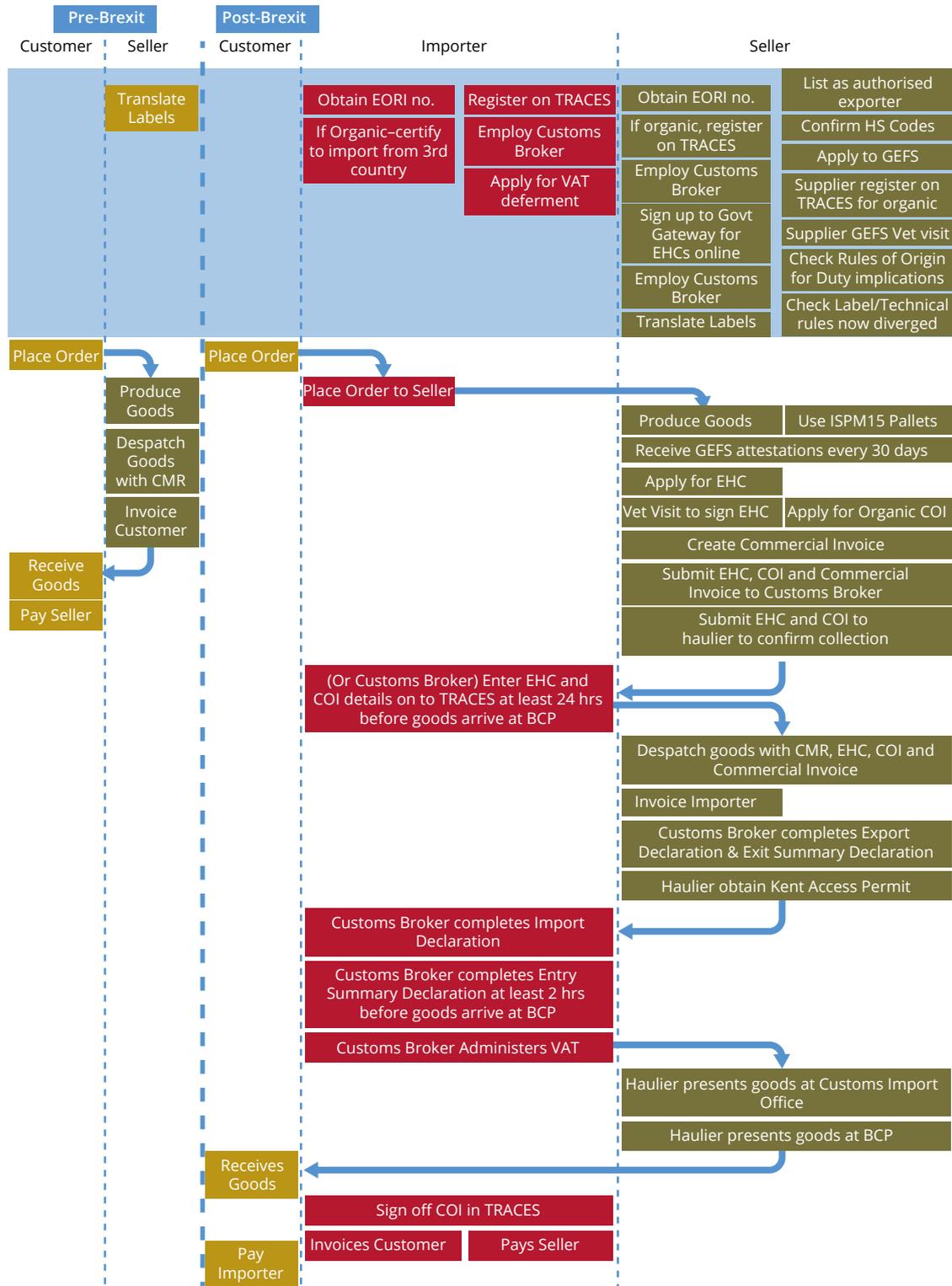
- 13 House of Commons Library, *Statistics on UK-EU trade*, Number 7851, 10 November 2020: <https://researchbriefings.files.parliament.uk/documents/CBP-7851/CBP-7851.pdf> [accessed 2 March 2021]
- 14 Office for National Statistics, ‘UK trade in services: all countries, non-seasonally adjusted’ (5 February 2021): <https://www.ons.gov.uk/businessindustryandtrade/internationaltrade/datasets/uktradeinservicesallcountriesnonseasonallyadjusted> [accessed 11 March 2021] and ‘UK trade: goods and services publication tables’ (12 February 2021): <https://www.ons.gov.uk/economy/nationalaccounts/balanceofpayments/datasets/uktradegoodsandservicespublicationtables> [accessed 11 March 2021]
- 15 The goods in Tables 1 and 2 are divided under the Standard International Trade Classification (SITC) into 99 SITC2 categories. Accordingly, “food and live animals” (a larger SITC1 category which in 2019 accounted for 6.5% of UK exports to the EU and 10.8% of UK imports) is divided into 10 separate categories, none of which are among the top 10 imports or exports. HM Revenue & Customs, UK Trade Info 2019: <https://www.uktradeinfo.com/trade-data/ots-custom-table/> [accessed 18 March 2021]

11. By virtue of the Withdrawal Agreement's Protocol on Ireland/Northern Ireland, most EU Single Market goods regulations and customs legislation continue to apply to Northern Ireland. This enables goods to be moved between Northern Ireland, Ireland and the other EU Member States without tariffs or new regulatory checks.<sup>16</sup> This report is focused on the implications of the TCA and does not examine the Protocol in detail. In some cases, where the TCA and the Protocol on Ireland/Northern Ireland substantially interact, we have explained this interaction.
12. As it relates to trade, the great success of the TCA is to remove quotas and tariffs on goods. There are important qualifications to this, which the following chapters examine. One of these is the sheer volume and complexity of the new requirements for businesses. These have led to increased costs and complexities and, for many businesses, have been overwhelming. Figure 1 was sent to us in evidence by Alvis Brothers Ltd—a farming and cheesemaking business based near the Somerset village of Cheddar—and outlines the requirements governing the export of just one specific type of product to the EU. Although the details will vary from product to product, it demonstrates the volume and complexity of requirements facing British businesses.
13. These requirements are only part of the overall picture. Given the lack of time between text and implementation, teething problems were inevitable. Some system issues arising from implementation will improve with time, while some will require focused Government intervention to develop solutions domestically. Other implementation issues could be addressed with cooperation between the two Parties. Corrections and mitigations to implementation issues will not, however, be enough to rectify many of the trade difficulties which have resulted from leaving the EU Single Market and customs union.
14. Time has not allowed us exhaustively to cover the TCA, which runs to 1,246 pages, so we have focused our report on the crucial issues affecting trade in goods between the UK and the EU. Our findings show that, while most trade is tariff-free, it is not simple.

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16 Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, presented to Parliament pursuant to Section 1 of the European Union (Withdrawal) Act (No. 2) 2019 and Section 13 of the European Union (Withdrawal) Act 2018 (19 October 2019): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/840655/Agreement\\_on\\_the\\_withdrawal\\_of\\_the\\_United\\_Kingdom\\_of\\_Great\\_Britain\\_and\\_Northern\\_Ireland\\_from\\_the\\_European\\_Union\\_and\\_the\\_European\\_Atomic\\_Energy\\_Community.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840655/Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf) [accessed 4 March 2021]

**Figure 1: Pre- and post- Brexit order process for organic products of animal origin with some products from a third party**



Source: Written evidence from Alvis Brothers Ltd (FUU0005)

### The TCA: a living document?

15. Almost all the evidence from businesses or industry representatives called for the TCA to be viewed as a living document, to which substantial changes could be made. While some witnesses called for a full-scale overhaul of the TCA, most advocated a series of smaller but meaningful changes. The Road Haulage Association’s view is typical:

“We recognise that wholesale change to the TCA is an unrealistic aspiration, but that should not prevent us all seeking improvements. An evolution of the TCA should be possible. The TCA, and indeed the Northern Ireland Protocol, should be viewed as living documents, adapting rules and regulations over time to deal with the practical problems we face for the benefit of all parties.”<sup>17</sup>

### *Routes for change*

16. The TCA establishes mechanisms by which it can be amended. The Partnership Council, a joint UK-EU oversight body, can “adopt, by decision, amendments to this Agreement”.<sup>18</sup> Several committees and working groups are also established, the powers of which vary. The Partnership Council may, by agreement, delegate decisions to them. Some committees have the power to make decisions in specific areas set out in the TCA itself; others are empowered just to coordinate and ensure smooth implementation of the TCA. The TCA states that Specialised Committees will comprise representatives of each Party and that each Party should ensure its representatives have the appropriate expertise.<sup>19</sup>
17. We asked a panel of external legal experts to explain how much room for manoeuvre the TCA provides for future changes to the trading relationship. They had differing views. Nadiya Nychay, Partner at Dentons LLP, stated:

“[The TCA] cements a permanent partnership and dialogue between the UK and the EU on matters that relate to the trade relationship and every other matter covered by the agreement ... It also provides for multiple options and scenarios for parties to review the trade deal, to address the economic effects of the trade deal, reconsider it, rebalance it and reshape it.”<sup>20</sup>

David Thorneloe, Legal Director at Pinsent Masons LLP, was more cautious, explaining that the powers to extend the TCA’s provisions varied, and that some changes would require political will he did not believe existed: “It is only in specific areas that there is room for hope ... [both sides] are not about to reopen the agreement or have massive new changes or developments that they could not agree on just a few weeks ago.”<sup>21</sup> While we hope that, with time and a fuller understanding of the TCA’s implications, the Government can achieve agreement on several objectives that have so far been unsuccessfully sought, the Government must be realistic about the likelihood of success and consider mitigations alongside ambitious negotiating priorities. Clearly, neither mitigations nor substantive amendment can occur without extensive cooperation.

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17 Written evidence from The Road Haulage Association ([FUU0014](#))

18 [Trade and Cooperation Agreement, 24 December 2020 \(Article INST.1: Partnership Council, 4 \(c\)\)](#)

19 [Trade and Cooperation Agreement, 24 December 2020 \(Article INST.2: Committees, 5\)](#)

20 [Q 1](#) (Nadiya Nychay)

21 [Q 2](#) (David Thorneloe)

18. In a letter to the Chair of the EU Select Committee on 23 February, the Chancellor of the Duchy of Lancaster, the Rt Hon Michael Gove MP, said, “we do not consider that the Partnership Council and other bodies established under Title III of the Agreement should begin their work formally during the period of provisional application.<sup>22</sup> On the same day, the Government accepted the EU’s request to extend provisional application of the TCA to 30 April, pending ratification by the European Parliament.<sup>23</sup>
19. Once established, the Specialised Committees and Trade Specialised Committees set up by the TCA will be able, to a greater or lesser degree, to put in place mitigating arrangements for their specific areas. We asked the Paymaster General, the Rt Hon Penny Mordaunt MP, whether the TCA was dynamic in this way, and her answer was circumspect:
- “We would, to a large degree, share that view. There are some areas that committees under the agreement could look at, and I think there is scope for improving operation. The partnership council can amend within the scope of the agreement itself, and where there can be developments and improvements we would certainly want to make those.”<sup>24</sup>
20. The Minister also spoke about the measures that the Government could take unilaterally:
- “Much of this does not require formal structures under the TCA to be set up and formed. It is really about us looking very pragmatically at how things can be improved. Of course, there is already a range of improvements and easements within the UK Government’s gift that can be made.”<sup>25</sup>
21. **An agreement with the EU is far better than a ‘no deal’ outcome, but the TCA does not rectify significant regulatory, logistical and administrative barriers to trade arising from the UK’s status as a third country. These barriers particularly affect smaller businesses and those unaccustomed to submitting trading paperwork. In practice, the current outcome falls far short of the ambition of frictionless trade.**
22. **We regret the Government’s decision to defer establishing the Partnership Council and other bodies and urge it to review this position. Given the many practical difficulties arising in the TCA’s implementation, we urge the Government to work with the European Commission to set up these governance bodies swiftly, and to ensure that they operate inclusively and with transparency.**
23. **The Government’s future approach to trade with the EU should be ambitious. It must implement the TCA with as little disruption as possible and utilise the bodies established by the agreement to their fullest extent to reach a smoother trading relationship with the EU. We urge both Parties to work in the spirit of cooperation and openness in service of this objective.**

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22 Letter from the Chancellor of the Duchy of Lancaster, Rt Hon Michael Gove MP, to Lord Kinnoull, Chair, European Union Committee, 23 February 2021: <https://committees.parliament.uk/publications/4775/documents/48216/default/>

23 Written Ministerial Statement, [HCWS791](#), Session 2019–21

24 [Q 55](#) (Penny Mordaunt MP)

25 [Q 56](#) (Penny Mordaunt MP)

## CHAPTER 2: LEVEL PLAYING FIELD

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### The TCA's provisions

24. The level playing field was among the most contentious issues in the TCA negotiations. As the EU Internal Market Sub-Committee noted, the term is “used variously to cover any provision, in bilateral or multilateral agreements, that serves to limit regulatory competition between trading partners in areas such as labour and environmental protection”.<sup>26</sup>
25. Title XI of Part Two of the TCA, the “Level Playing Field for Open and Fair Competition and Sustainable Development”, seeks to deliver mutual benefits by “preventing distortions of trade or investment”, while stating that its purpose “is not to harmonise the standards of the Parties”.<sup>27</sup> It includes provisions on subsidy control, labour and social standards, environment and climate, competition policy and taxation. Its environment and climate provisions are examined in the report by the EU Environment Sub-Committee;<sup>28</sup> this chapter focuses on subsidy control and labour and social standards.
26. In broad terms, the TCA's level playing field provisions appear to represent a success for the UK negotiating team, setting out general principles rather than adherence to specific EU laws. The Government's summary says: “The system that has been agreed upon does not compromise the UK's sovereignty in any area, does not involve the European Court of Justice in any way, and is reciprocal.”<sup>29</sup> The Local Enterprise Partnership (LEP) Network welcomed the TCA's level playing field provisions and said that, while businesses may find some of the controls “irksome and, in some cases, costly to adhere to”, they at least “know where they stand”.<sup>30</sup>

### Subsidy control

27. Subsidies are direct or indirect financial contributions from the state—such as grants, loans, loan guarantees or tax breaks—granted to certain companies, usually to promote a social good or address a market failure. To minimise the risk of subsidies wasting public money or giving recipients an unfair advantage over their competitors, particularly those in other jurisdictions, a subsidy control regime regulates the granting of subsidies. Before 1 January, the Government's freedom to grant subsidies was limited by the EU's ‘State aid’ rules.<sup>31</sup>
28. The principles agreed by the Parties are intended to ensure that “subsidies are not granted where they have or could have a material effect on trade or investment between the Parties” (though there are exemptions). The

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26 Letter from Baroness Donaghy, Chair of the EU Internal Market Sub-Committee, to Paul Scully MP, Minister for Small Business, Consumers and Labour Markets, 3 April 2020: <https://committees.parliament.uk/publications/574/documents/2319/default/>

27 [Trade and Cooperation Agreement, 24 December 2020 \(Article LPFS.1.1.4\)](#)

28 European Union Select Committee, *Beyond Brexit: food, environment, energy and health* (22nd Report, Session 2019–21, HL Paper 247)

29 Prime Minister's Office, Summary of the UK-EU Trade and Cooperation Agreement: <https://www.gov.uk/government/publications/agreements-reached-between-the-united-kingdom-of-great-britain-and-northern-ireland-and-the-european-union/summary-explainer> [accessed 4 March 2021]

30 Supplementary written evidence from the Local Enterprise Partnership Network (FUU0021)

31 The EU refers to subsidies as “State aid”, but there appears to be little practical difference between the two terms.

Parties each commit to “establish or maintain an operationally independent authority or body with an appropriate role in its subsidy control regime”.<sup>32</sup>

29. Christophe Bondy, Partner at Steptoe & Johnson LLP, described the TCA’s subsidy framework as “much more elaborate than one would typically find in the context of a free trade agreement”, which he said is “reflective of the EU’s concern about the potential direction of travel by the UK”.<sup>33</sup>
30. Nevertheless, Allie Renison, Head of EU and Trade Policy at the Institute of Directors, said the provisions gave the Government “a huge amount of flexibility” to pursue its objectives and no excuse to “hide behind State aid rules not to do something”.<sup>34</sup> These areas of greater flexibility, she said, include an end to the requirement to pre-notify the EU of subsidies, and an increase in the *de minimis* level, below which subsidies may be granted, to 325,000 Special Drawing Rights (approximately £338,000) over three years.<sup>35</sup> Paymaster General Penny Mordaunt agreed that the new framework “gives us more flexibility” to “focus on supporting those businesses with the innovation that we want to see and to focus on supporting our wider objectives”.<sup>36</sup>
31. However, witnesses also told us that the Government had yet to use this new freedom. Jo Lappin, representing the LEP Network, and Allie Renison both described the UK as in an “interregnum”<sup>37</sup> on subsidy controls—out of the EU regime but without its own yet in place. We were told that the Government appears to be “defaulting back to the EU’s regime just for purposes of ease” until the UK’s own subsidy regime is established.<sup>38</sup>
32. Allie Renison stressed the importance of “consulting on industry views, and having the mechanism to be transparent, before we have the regime set up”.<sup>39</sup> Two days later, on 3 February 2021, the Department for Business, Energy and Industrial Strategy (BEIS) published a consultation on a UK subsidy control regime to provide “more flexible and tailored financial support to businesses”.<sup>40</sup>

### *Possible subsidy priorities*

33. We were told that the UK’s new subsidy control regime should be “a long-term framework that is not subject to excessive tinkering. We should have simple subsidy rates that align with programme activity and geographies.”<sup>41</sup>
34. The Paymaster General told us the Government’s key aims in future subsidy programmes were “the economic regeneration of the whole of the UK, the four nations; the strategic interventions that will work there; and promoting

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32 [Trade and Cooperation Agreement, 24 December 2020 \(Articles LPFS.3.4.1 and LPFS.3.9.1\)](#)

33 [Q 9](#) (Christophe Bondy)

34 [Q 29](#) (Allie Renison)

35 [Q 27](#) (Allie Renison)

36 [Q 60](#) (Penny Mordaunt MP)

37 [Q 27](#) (Jo Lappin)

38 [Q 27](#) (Allie Renison)

39 [Q 29](#) (Allie Renison)

40 Department for Business, Energy & Industrial Strategy, ‘Business Secretary sets out new subsidies system that works for the UK’ (3 February 2021): <https://www.gov.uk/government/news/business-secretary-sets-out-new-subsidies-system-that-works-for-the-uk> [accessed 3 March 2021]

41 [Q 28](#) (Jo Lappin)

our competitive edge”, along with a focus on “job creation, promoting innovation and protection for workers and the environment”.<sup>42</sup>

35. Several witnesses suggested an additional priority for the Government: to “use State aid to support improvement in knowledge and understanding of how cross-border trade works”,<sup>43</sup> and to enhance companies’ understanding of the new requirements brought about by the end of the transition period. Chapter 6 outlines the importance of customs intermediaries in providing specialist advice, and the difficulties that many businesses face in accessing their services. Support for businesses in the form of “either a voucher-type system or tax relief”,<sup>44</sup> as Allie Renison suggested, would be extremely beneficial. In response to such calls, the Government on 11 February announced a £20 million SME Brexit Support Fund, which we consider in more detail in Chapter 9.
36. Allie Renison urged the Government to drop the “undertakings in difficulty” rule, inherited from the EU rulebook, under which some firms already in financial difficulty before the COVID-19 pandemic are denied access to pandemic support measures such as the Coronavirus Business Interruption Loan Scheme and the Coronavirus Large Business Interruption Loan Scheme.
37. Jo Lappin said that increasing the *de minimis* level, below which subsidies may be granted, to £500,000 would be “more reasonable” to help businesses recover from the pandemic.<sup>45</sup>
38. **Following the closure of its consultation on 31 March, the Government should move swiftly to introduce a transparent subsidy control regime. While the nature of this regime should be driven by the consultation responses, we recommend support to help smaller firms navigate the new requirements for cross-border trade as one initial area of focus for UK subsidy control policy. In this regard, the new £20 million SME Brexit Support Fund is a welcome step in the right direction, but we are concerned that the funding provided will be insufficient to meet its objectives.**

### Labour and social standards

39. The TCA contains a mutual non-regression commitment which states: “A Party shall not weaken or reduce, in a manner affecting trade or investment between the Parties, its labour and social levels of protection below the levels in place at the end of the transition period, including by failing to effectively enforce its law and standards.”<sup>46</sup> Each Party is to enforce this by monitoring working conditions and providing legal avenues for disputes. If one Party perceives the other as gaining an unfair competitive advantage through changes to its labour and social standards, it can instigate dispute resolution proceedings that may lead to the imposition of countermeasures or the suspension of some TCA obligations.
40. The Government’s summary of the TCA says the UK “has embedded into this Agreement our manifesto commitment to high labour ... standards

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42 [Q 59](#) (Penny Mordaunt MP)

43 [Q 29](#) (Liam Smyth)

44 [Q 25](#) (Allie Renison)

45 [Q 28](#) (Jo Lappin)

46 [Trade and Cooperation Agreement, 24 December 2020 \(Article LPFS.6.2.1\)](#)

without giving the EU any say over our rules”.<sup>47</sup> By contrast, legal expert David Thorneloe said that in the longer term the non-regression commitment “changes the rules of the game for UK Government policy-making ... We have regulatory independence, but it is independence with consequences attached. What that means for businesses is ultimately uncertainty.”<sup>48</sup>

41. This uncertainty was illustrated in late January when new Business Secretary Kwasi Kwarteng cancelled a planned BEIS consultation on changes to employment rights, just days after saying it would go ahead.<sup>49</sup> Allie Renison told us businesses are confused about “where that desire is coming from” and are looking for “a period of stability and calm”. Their biggest concern, she said, is that the Government would do “too much in a non-transparent manner”, potentially triggering the dispute procedures and attracting retaliatory tariffs. She made “a plea to the Government to make sure that there are transparent mechanisms for how they approach regulatory change going forward and that we get back to doing impact assessments and consultations”.<sup>50</sup>
42. **We welcome the Government’s stated commitment to high labour and social standards and urge it to approach any changes to these standards with caution. When it identifies a need to amend the current standards, it should proceed with transparency and only after consultation, taking into account the potential impact on UK-EU trade in goods.**

### Disputes

43. If one Party to the TCA suspects the other of breaching subsidy controls, the new Trade Specialised Committee on the Level Playing Field for Open and Fair Competition and Sustainable Development will seek a mutually satisfactory resolution. Unilateral “remedial measures” can be taken if the dispute is not solved, and if these are later found to be unnecessary or disproportionate, an arbitration panel can determine the suspension of some parts of the TCA.<sup>51</sup>
44. The TCA also contains a rebalancing mechanism whereby the Parties acknowledge that significant divergence, even if not breaking the rules set out in the TCA, “can be capable of impacting trade or investment between the Parties in a manner that changes the circumstances that have formed the basis for the conclusion of this Agreement”. If trade is affected, either Party may take “necessary and proportionate” rebalancing measures, such as temporary tariffs. Unless an expert arbitration panel finds that there has been a breach of the level playing field, the Party subject to tariffs can respond with countermeasures.<sup>52</sup>

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47 Prime Minister’s Office, Summary of the UK-EU Trade and Cooperation Agreement: <https://www.gov.uk/government/publications/agreements-reached-between-the-united-kingdom-of-great-britain-and-northern-ireland-and-the-european-union/summary-explainer> [accessed 4 March 2021]

48 Q 8 (David Thorneloe)

49 ‘Review of UK workers’ rights post-Brexit is axed in sudden U-turn’, *The Guardian* (27 January 2021) <https://www.theguardian.com/politics/2021/jan/27/review-of-uk-workers-rights-post-brexit-is-axed-in-sudden-u-turn> [accessed 3 March 2021]

50 Q 30 (Allie Renison)

51 *Trade and Cooperation Agreement, 24 December 2020 (Article LPFS.3.12)*

52 *Trade and Cooperation Agreement, 24 December 2020 (Article LPFS.9.4)*

45. If disputes are not resolved, from 2025 the Parties can request a review of the TCA's entire trade pillar. As a result of this review, the trade elements—or indeed any part—of the TCA can be terminated.<sup>53</sup>

*How much will dispute resolution measures be used?*

46. In the long term, therefore, either Party could seek to invoke the rebalancing mechanism, or threaten to do so, if it deemed the other Party's measures to be less effective than its own. This so-called 'ratchet effect' may incentivise either Party to follow suit if the other raised standards in any of the areas in question. A European Commission Q&A states that the rebalancing mechanism "might be relevant, for example in a situation where one Party would significantly increase its levels of protection related to labour or social standards, the environment or climate above the levels of the other Party", or has "a system of subsidy control that would systemically fail to prevent the adoption of trade distorting subsidies".<sup>54</sup>
47. Penny Mordaunt told us that the bar for retaliatory measures and the rebalancing mechanism was "extremely high", and that their use "would be a rare occurrence".<sup>55</sup> Professor Catherine Barnard, Professor of European Union and Labour Law at the University of Cambridge, told the EU Select Committee on 2 February that dispute resolution mechanisms in free trade agreements are generally "not often invoked" and rarely lead to "the excitement of retaliation and cross-retaliation".<sup>56</sup>
48. Ultimately, however, it is unclear to what extent and in which circumstances either Party will seek to use the TCA's dispute resolution levers. Allie Renison said the criteria for a dispute is the "biggest question mark".<sup>57</sup> The extent to which either Party invokes these safeguards "will depend on economic interest case by case" and we were told that "arguably the UK has more to lose on a high-level basis by not complying".<sup>58</sup>
49. **Notwithstanding its confidence that the TCA's complex dispute resolution measures will be used infrequently, we recommend that the Government work with the EU to clarify publicly the precise circumstances in which either Party is likely to invoke them.**

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53 [Trade and Cooperation Agreement, 24 December 2020 \(Article LPFS.9.4\)](#)

54 European Commission, 'Questions & Answers: EU-UK Trade and Cooperation Agreement' (24 December 2020): [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_20\\_2532](https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_2532) [accessed 3 March 2021]

55 [Q 59](#) (Penny Mordaunt MP)

56 Oral evidence taken on 2 February 2021 (Session 2019–21), [Q 8](#) (Prof Catherine Barnard)

57 [Q 27](#) (Allie Renison)

58 [Q 5](#) (David Thorneloe)

## CHAPTER 3: RULES OF ORIGIN

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### The TCA's provisions

50. Tariff-free trade from one bloc to another is conditional on a traded product meeting rules of origin, a set of criteria which establish its 'economic nationality'. The rules of origin in the TCA allow for 'full bilateral cumulation', allowing both the UK and the EU to count inputs from the other Party when assessing the origin of goods. In simple terms, if raw materials or parts from the EU are imported into the UK, and then used to manufacture another product that is then re-exported back into the EU, that product will be deemed to have originated in the UK, and thus benefits from a zero tariff.<sup>59</sup> The TCA includes both general provisions which apply to all products traded under preferential terms,<sup>60</sup> as well as product-specific rules of origin (PSRs).<sup>61</sup> These rules define and establish thresholds for 'local content'.
51. Products which do not meet the 'local content' thresholds—for instance, products assembled in the UK that are substantially made up of components originating in a third country, such as China—will face tariffs on a Most Favoured Nation basis.<sup>62</sup> As Alessandro Marongiu of the Society of Motor Manufacturers and Traders (SMMT) told us, "there is no such thing as a tariff-free deal; tariffs apply, unless you can comply, and demonstrate that you can comply, with the rules of origin requirements."<sup>63</sup> The Institute for Government described the TCA's provisions on rules of origin as "in line with those agreed in other EU free trade agreements", and suggested that the product-specific rules are "comparatively quite generous in many sectors".<sup>64</sup>
52. The TCA establishes a Trade Specialised Committee on Customs Cooperation and Rules of Origin, which will monitor and review the implementation of the rules of origin chapter, ensure its uniform administration and discuss technical issues.<sup>65</sup>

### *Proving compliance*

53. Small quantities of goods are exempt from requirements to prove origin.<sup>66</sup> For the rest, a claim by a trader for zero-tariff treatment can be based on one

59 [Trade and Cooperation Agreement, 24 December 2020 \(Article ORIG.4\)](#). A product can be considered as 'originating', and thus eligible for zero tariffs, if it has been exclusively obtained or produced in the territory of one country, or if it has been substantially transformed (for example, through processing) in line with the relevant product-specific rule.

60 [Trade and Cooperation Agreement, 24 December 2020 \(Articles ORIG.1-ORIG.17\)](#)

61 [Trade and Cooperation Agreement, 24 December 2020 \(Annex ORIG-2\)](#)

62 The World Trade Organization's General Agreement on Tariffs and Trade establishes the 'Most Favoured Nation' (MFN) principle, which states that countries should not discriminate between partners (for example, by applying tariffs at differing levels) unless the countries in question have a free trade agreement or are in a customs union together. In the context of the TCA, the MFN principle means that non-originating goods face tariffs at the same level as goods from countries with which the UK and EU do not have a free trade agreement.

63 [Q 13](#) (Alessandro Marongiu)

64 Written evidence from the Institute for Government ([FUU0019](#))

65 [Trade and Cooperation Agreement, 24 December 2020 \(Article INST.2\)](#)

66 [Trade and Cooperation Agreement, 24 December 2020 \(Article ORIG.23\)](#) For goods imported to the UK from the EU, this exemption applies to any goods valued under £1,000. For goods imported to the EU from the UK, this applies only to non-commercial imports, and they must be under €500 in the case of products sent in small packages, or €1,200 in the case of products forming part of a traveller's personal luggage.

of two permitted proofs of origin:

- The importer’s knowledge that the product is originating. This is self-certified, but the importing customs authority may require verification.<sup>67</sup>
- A statement that the product is originating made out by the exporter (Statement on Origin). This will require the supplier to submit a supplier’s declaration. Thanks to an agreed grace period, this proof is not required until 31 December 2021, but may be required retrospectively. Alex Veitch, Policy Manager at Logistics UK, called for an extension to this one-year phase-in period for supplier’s declarations.<sup>68</sup>

Traders do not necessarily need to prove compliance each time they import or export goods; rather, they need to ensure that they are able to prove compliance if required to do so by the importing customs authority, and to keep records of the relevant documentation for verification purposes.<sup>69</sup>

### **Box 1: Rules of origin and the Protocol on Ireland/Northern Ireland**

The interaction of the TCA and the Withdrawal Agreement’s Protocol on Ireland/Northern Ireland means that rules of origin apply differently with respect to Northern Ireland.

- There are no rules of origin requirements for trade between Northern Ireland (NI) and the EU. Direct trade between Great Britain (GB) and the Republic of Ireland is treated in the same way as other GB-EU trade.
- For goods entering NI from GB, only goods considered ‘at risk’ of entering the EU are subject to proof of origin.<sup>70</sup> The UK Trader Scheme enables qualifying businesses to certify that the goods they are moving into NI are not ‘at risk’.<sup>71</sup>
- GB-NI trade in ‘at risk’ products is subject to rules of origin requirements. The UK may reimburse traders for the costs of any tariffs.<sup>72</sup>

54. Fergus McReynolds, Director of EU Affairs at Make UK, distinguished between “system” and “structural” issues with respect to rules of origin:

“The system issues are about coming to understand rules of origin and the processes that are required. Those things are a learning curve, but in time they can be addressed ... The structural issues are more challenging. That is where the business model does not fit with the new relationship.”<sup>73</sup>

We agree with this distinction, and have structured our analysis accordingly.

67 [Trade and Cooperation Agreement, 24 December 2020 \(Article ORIG.24\)](#)

68 [Q 49](#) (Alex Veitch)

69 [Trade and Cooperation Agreement, 24 December 2020 \(Article ORIG.24\)](#)

70 [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#), Article 5 [accessed 4 March 2021]

71 Decision of the WA Joint Committee on the determination of goods not at risk, Articles 3, 5-7. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/949846/Decision\\_of\\_the\\_Withdrawal\\_Agreement\\_Joint\\_Committee\\_on\\_the\\_determination\\_of\\_goods\\_not\\_at\\_risk.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/949846/Decision_of_the_Withdrawal_Agreement_Joint_Committee_on_the_determination_of_goods_not_at_risk.pdf)

72 [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#), Article 5(6)(c) [accessed 5 March 2021]

73 [Q 14](#) (Fergus McReynolds)

### Short-term adjustment issues

55. Multiple witnesses told us that rules of origin were among the most significant issues traders faced in January and February 2021. Both Fergus McReynolds and Liam Smyth, Director of Trade Facilitation at the British Chambers of Commerce, said that rules of origin formed the bulk of the inquiries they had received in the first weeks of 2021.<sup>74</sup> Anna Jerzewska, Director of Trade and Borders, likewise saw “an incredible number of questions from companies struggling with rules of origin”.<sup>75</sup>
56. The LEP Network’s written evidence highlighted the administrative complexity of rules of origin, citing the example of an exporter in the defence sector: “Customers are asking for rules of origin [information] and to supply this they need full records of where items have come from down to component level.”<sup>76</sup> These requirements could have a “disproportionate impact on smaller businesses”, for which rules of origin “could be a significant disincentive to export to the EU”.<sup>77</sup>
57. It is unsurprising that some businesses are misunderstanding the rules. Liam Smyth said: “There is a grace period on providing the evidence that you are compliant with rules of origin, but there is no grace period on rules of origin. A misinterpretation that businesses are hearing is that there is a grace period and that you do not need to provide it for 12 months.”<sup>78</sup> The Institute for Government agreed: “Firms are importing goods in the belief that they comply with rules of origin requirements—and are therefore not subject to tariffs—when in practice the goods do not comply, and duties are payable.”<sup>79</sup>
58. Some evidence suggests that the TCA’s rules of origin have been applied inconsistently. Des Hiscock, Director General of ACITA and Regional CEO of Customs Support, said: “We have seen the same TCA being interpreted very differently in the UK and across Europe.”<sup>80</sup> Liam Smyth reported similar experience, and recommended that the Government work with the EU to iron out inconsistencies in the implementation of the rules.<sup>81</sup>
59. The short lead-time between the TCA’s agreement and implementation may have exacerbated matters. Luke Hindlaugh, Senior EU and International Food Trade Executive at the Food and Drink Federation, said: “Over time, there will be adaptation ... but that initial late application is causing the most issues.”<sup>82</sup> The Institute for Government said that “many firms with complex supply chains have not yet been able to assess whether their goods comply with rules of origin requirements in the TCA”, though it added that the phase-in for supplier’s declarations would “help some firms bridge this gap”.<sup>83</sup>
60. Some difficulties are likely to reflect short-term adjustment costs, which will subside in the medium term. The Road Haulage Association told us: “It may be the case that this will bed-down over time as people become familiar

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74 [Q 13](#) (Fergus McReynolds), [Q 25](#) (Liam Smyth)

75 [Q 39](#) (Dr Anna Jerzewska)

76 Supplementary written evidence from the Local Enterprise Partnership Network ([FUU0021](#))

77 *Ibid.*

78 [Q 26](#) (Liam Smyth)

79 Written evidence from the Institute for Government ([FUU0019](#))

80 [Q 39](#) (Des Hiscock)

81 [Q 25](#) (Liam Smyth)

82 [Q 13](#) (Luke Hindlaugh)

83 Written evidence from the Institute for Government ([FUU0019](#))

with the complexities and limitations imposed by the rules.”<sup>84</sup> Alessandro Marongiu said that the requirements established in the TCA itself are “not overburdensome”; instead, the issue is that “putting systems in place or upgrading existing systems to ensure compliance ... can be very burdensome, in particular for businesses that have no previous experience of dealing with origin requirements”.<sup>85</sup>

61. As well as calling for improved guidance (which we return to in Chapter 9), Luke Hindlaugh recommended that the Government provide digital search tools for businesses to “punch in the ingredients of their goods to understand whether they meet the rules of origin requirements”.<sup>86</sup>
62. **Rules of origin were among the biggest issues facing traders following the TCA’s implementation. The very short period between publication and implementation exacerbated administrative difficulties and costs. Businesses will adapt over time, but the Government must ensure full awareness of the need to follow the rules during the grace period.**
63. **We recommend that the Government embark on a programme of industry engagement to identify and pursue simplifications to adherence processes.**
64. **The Government should make full use of the Trade Specialised Committee on Customs Cooperation and Rules of Origin to ensure consistency in implementation across the UK and EU.**

### Preference utilisation

65. Preference utilisation describes the extent to which imports eligible to enter a country using zero or lower tariffs actually enter under these rates. Traders may elect to pay Most Favoured Nation tariffs rather than comply with the requirements to access preferential terms under the TCA, and as Government guidance states, it is for businesses to decide “whether it is in their interest to meet (and prove that they meet) the rules of origin”.<sup>87</sup> In the case of UK-EU trade, take-up of this option does not appear to have been widespread, though we heard that some businesses “are being told to swallow tariffs rather than even consider rules of origin, because it is potentially much cheaper”.<sup>88</sup>
66. The TCA requires the collection and sharing of preference utilisation data,<sup>89</sup> but as the Minister acknowledged: “There is a lag on it being helpful of about three months.”<sup>90</sup> While studies in the context of other trading relationships suggest that preference utilisation tends to be high,<sup>91</sup> industry-specific

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84 Written evidence from The Road Haulage Association ([FUU0014](#))

85 [Q 14](#) (Alessandro Marongiu)

86 [Q 24](#) (Luke Hindlaugh)

87 HM Revenue & Customs, ‘Introduction to rules of origin and claiming preferential tariffs (duties)’ (29 December 2020): <https://www.gov.uk/government/publications/rules-of-origin-for-goods-moving-between-the-uk-and-eu/introduction-to-rules-of-origin-and-claiming-preferential-tariffs-duties> [accessed 3 March 2021]

88 [Q 26](#) (Jo Lappin)

89 [Trade and Cooperation Agreement, 24 December 2020 \(Article GOODS.16\)](#)

90 [Q 57](#) (Penny Mordaunt MP)

91 See, for example, A. Keck and A. Lendle, ‘New evidence on preference utilization’, World Trade Organization Economic Research and Statistics Division (3 September 2012): [https://www.wto.org/english/res\\_e/reser\\_e/ersd201212\\_e.pdf](https://www.wto.org/english/res_e/reser_e/ersd201212_e.pdf) [accessed 3 March 2021]

data is necessary to inform future dialogue with both the EU and affected businesses.

67. **We recommend that the Government regularly publish detailed, sector-specific data on preference utilisation, and use it both to identify particularly affected sectors and to inform future dialogue with the EU on the implementation of the TCA.**

### Product-specific rules

68. Product-specific rules (PSRs)—standard practice in free trade agreements—are set out in Annex ORIG-2 of the TCA. Witnesses highlighted specific PSRs which are causing challenges to particular sectors and products. On food and drink, Luke Hindlaugh told us that the PSRs are “quite challenging” for sugar and confectionary, “particularly prohibitive” for processed meat, and “much harder to do” for chicken.<sup>92</sup>
69. For the automotive sector, the TCA’s PSRs are a “mixed bag”. Alessandro Marongiu welcomed the phase-in provisions which, until 2026, allow electric vehicles to qualify for tariff-free trade with relatively low originating content thresholds. Long-term rules on electric vehicles were, however, “some of the toughest ever negotiated by the European Union”.<sup>93</sup> He also emphasised that electrified trucks would not benefit from the flexible rules of origin permitted for other electric vehicles.<sup>94</sup> Other evidence suggested that bicycles and jewellery were also likely to be particularly affected by rules of origin.<sup>95</sup>
70. In most cases, major changes to problematic PSRs are unlikely to be politically realistic in the short term. Luke Hindlaugh told us that “the opportunity to renegotiate is limited ... I do not think we will see wholesale changes to ... product-specific rules”.<sup>96</sup> However, there are some PSRs with specific review provisions established in the TCA—most notably the rules on battery packs for electric vehicles, which the Partnership Council may review in 2027.<sup>97</sup>

### Re-export of non-processed goods

71. Under the EU’s Union Customs Code (UCC),<sup>98</sup> ‘Union goods’ lose that status when they leave the EU’s customs territory.<sup>99</sup> Goods exported from the EU to a UK distribution centre and re-exported to the EU without additional processing lose their status as EU goods, and are not, by way of processing, deemed to be UK goods under the TCA’s rules of origin. They therefore face tariffs on re-export to the EU.<sup>100</sup>

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92 [Q 17](#) (Luke Hindlaugh)

93 [Q 16](#) (Alessandro Marongiu)

94 [Q 15](#) (Alessandro Marongiu)

95 Written evidence from The Crafts Council ([FUU0009](#))

96 [Q 17](#) (Luke Hindlaugh)

97 [Trade and Cooperation Agreement, 24 December 2020 \(Annex ORIG-2B, Section 3\)](#)

98 The UCC is the EU’s legislative framework for customs. It no longer applies to or in the UK (except in Northern Ireland, under the Protocol). UCC rules governing the status of ‘Union goods’ can, however, have a knock-on effect for UK-EU trade. Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code ([OJ L 269/1](#) 10 October 2013)

99 Regulation ([OJ L 269/1](#)) Article 154

100 European Commission, *Guidance on distribution centres* (5 February 2021): [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/eu-uk\\_tca\\_2021\\_guidance\\_on\\_uk\\_distribution\\_centers.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/eu-uk_tca_2021_guidance_on_uk_distribution_centers.pdf) [accessed 3 March 2021]

72. This issue was highlighted by several of our witnesses. Fergus McReynolds gave the example of Spanish tomatoes:

“They are wholly obtained in the EU. They come to the UK. You do not process them, and then you export them to an EU country, perhaps the Republic of Ireland ... By the nature of not being processed, they lose their wholly obtained content. Reality dictates that they are still Spanish tomatoes, so surely they should be able to be traded without a tariff.”<sup>101</sup>

Luke Hindlaugh told us that this issue “predominantly impacts EU businesses that have set up hubs in the UK to supply both the UK and Ireland ... If they have to stop doing that, it means either that they stop supplying or that they have to start supplying from the EU to Ireland direct.”<sup>102</sup> As the Institute for Government told us, these tariffs “may mean that it is no longer viable for some firms to use Great Britain as a distribution hub for the EU”.<sup>103</sup>

73. While these goods may be eligible for duty relief (allowing the trader to apply for a reimbursement for the cost of the tariff),<sup>104</sup> or can be re-consigned under Transit (meaning that they are considered not to have left the EU’s customs territory),<sup>105</sup> we were told that these processes “are burdensome and may not be a viable option for many firms”.<sup>106</sup>
74. Paymaster General Penny Mordaunt told us:

“We are very aware of this issue and its disproportionate impact on particular business models. We are continuing to work very closely with industry to support it. We are also looking to see whether there are other things that we can do, whether through further negotiations ... or through applying particular procedures and reliefs.”<sup>107</sup>

We welcome the news that the Government is considering “further negotiations” to address this issue.

75. **Through continued engagement at the Partnership Council, we urge the Government to seek a negotiated exemption with the EU, allowing non-processed EU-originating goods to be re-exported to the EU without tariffs. In the meantime, the Government should encourage and support affected businesses to apply for duty relief, and to use transit procedures.**

### Diagonal cumulation

76. One of the notable absences from the TCA’s rules of origin is diagonal cumulation. Diagonal cumulation would have allowed firms to ‘cumulate’ content from third countries with which both the UK and EU have FTAs (such as South Korea and Japan), as well as developing countries to which

101 [Q 15](#) (Fergus McReynolds)

102 [Q 15](#) (Luke Hindlaugh)

103 Written evidence from the Institute for Government ([FUU0019](#))

104 Under the UCC, goods exported from the EU and re-imported within three years are eligible for duty relief, provided that it can be proved that they are the same goods. The information requirements are set out in the UCC Implementing Act. REG(2013) 952, Article 203; see also Commission Implementing Regulation (EU) 2015/2447, Article 253: [OJL 269/1](#), 10 October 2013

105 European Commission, *Guidance on distribution centres* (5 February 2021): [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/eu-uk\\_tca\\_2021\\_guidance\\_on\\_uk\\_distribution\\_centers.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/eu-uk_tca_2021_guidance_on_uk_distribution_centers.pdf) [accessed 3 March 2021]

106 Written evidence from the Institute for Government ([FUU0019](#))

107 [Q 57](#) (Penny Mordaunt MP)

both the UK and the EU grant tariff-free access (such as Tanzania and Bangladesh), allowing inputs from these countries to be treated as originating from the UK/EU.<sup>108</sup> Diagonal cumulation was a UK ask in the negotiations but was rejected by the EU.<sup>109</sup>

77. As Rt Hon Lord Goldsmith QC, the Chair of the House of Lords International Agreements Committee, stated in a letter to the Chair of the EU Select Committee, the loss of diagonal cumulation will lead to “instances where using a UK supplier will mean the EU company losing preferential access for its exports. In those cases, the UK company will likely become less attractive as a supplier and may lose its place in the supply chain.”<sup>110</sup> We have included a copy of this letter in Appendix 4.
78. The lack of diagonal cumulation will also mean that a product traded between the UK and the EU will not qualify for zero tariffs if it contains over a certain threshold of content from a third country, including a developing country. Luke Hindlaugh told us that this “will impact manufacturers using inputs from developing countries”.<sup>111</sup> Mantis World, a small UK company which trades in sustainable clothing, told us that products imported tariff-free from Bangladesh, Pakistan and Tanzania and re-exported to the EU attract “12% duty on any goods we ship across the channel”. Quite apart from the (considerable) cost of this duty to UK businesses, this is likely to deter some from trading with other nations, including developing nations, “who themselves have preferential zero duty entry to both the UK and the EU”.<sup>112</sup>
79. A number of witnesses called for the Government to seek diagonal cumulation,<sup>113</sup> but this does not appear to be feasible in the short term. Alessandro Marongiu said that “realistically a discussion on that point can happen only if there are fundamental changes in the interests of the parties”.<sup>114</sup> Similarly, Christophe Bondy told us that the UK “needs to sell any potential enhanced improvements to the rules of origin on the basis of mutual interest with the EU. Frankly, I do not think that simply saying, ‘We don’t like the impact of this on supply chains’, will be very successful.”<sup>115</sup>
80. **The EU’s rejection of diagonal cumulation in the TCA negotiations was disappointing, and its absence is likely to have a negative impact on supply chains and exporters in developing countries. Although re-negotiation of this issue appears unlikely in the short term, the Government should continue to make the case for full diagonal cumulation and push for related amendments when the TCA’s provisions are reviewed.**

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108 The EU allows imports of all goods (except arms and ammunition) from a number of developing countries to enter tariff-free under the Everything But Arms scheme. The UK has introduced its own similar scheme, the Least Developed Countries Framework, following the end of the transition period.

109 For discussion of why this was the case, see [Q 37](#) (Allie Renison)

110 Letter from Lord Goldsmith, Chair of the International Agreements Committee, to Lord Kinnoull, Chair of EU Select Committee (25 February 2021): <https://committees.parliament.uk/publications/5006/documents/49950/default/>

111 [Q 13](#) (Luke Hindlaugh)

112 Written evidence from Mantis World ([FUU0016](#))

113 [Q 25](#) (Liam Smyth); written evidence from the Railway Industry Association ([FUU0024](#))

114 [Q 15](#) (Alessandro Marongiu)

115 [Q 3](#) (Christophe Bondy)

*Supply chain adjustments*

81. Many traders will struggle to absorb the costs of meeting rules of origin requirements, and some may relocate parts of their supply chain to the EU as a result. Mantis World had found that its business model of importing sustainable clothing from developing countries for distribution to the UK and EU was no longer viable: “we cannot afford to absorb this [tariff] cost and would be uncompetitive if we passed it on.” Mantis World is now in the process of establishing a German company, adding: “As the deal stands ... we will become a Germany company and our UK market will be seen as a marginal market where our goods are expensive because of the duty.”<sup>116</sup>
82. In other cases, the likely outcome of supply chain adjustment may be onshoring of manufacturing in the UK and the EU. For example, Luke Hindlaugh told us that UK confectionary manufacturers would be “pushed to use UK and EU producers of sugar” rather than fair trade or non-EU sources.<sup>117</sup> Although some UK producers may benefit from such adjustments, we are deeply concerned by the prospect of exporters from some of the poorest countries in the world being unfairly cut out of UK and European supply chains as a result of the terms of the TCA.
83. Fundamental shifts in some sectors’ supply chains will require strategic planning and, in some cases, Government support. Alessandro Marongiu said that for the motor manufacturing sector, an “ambitious industrial strategy” of localising the manufacturing of electric car cells and battery packs within the UK will “be essential to maintain tariff-free market access” to the EU.<sup>118</sup> Such a strategy could enable some UK manufacturing businesses to benefit from supply chain shifts.
84. **Rules of origin present both short-term administrative issues and long-term structural challenges, chiefly where certain products do not qualify for zero tariffs under the TCA.**
85. **Rules of origin requirements are likely to trigger substantial supply chain shifts in certain sectors and adjusting to these changes will incur significant costs for many UK businesses, as well as exporters in developing countries. Targeted intervention could, however, enable some sectors of UK manufacturing to benefit from supply chain shifts. We recommend that the Government take an ambitious approach to the onshoring of some manufacturing processes. For example, the Government should seek to attract manufacturers of cells and battery packs for electric vehicles to shift production to the UK.**

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116 Written evidence from Mantis World ([FUU0016](#))

117 [Q 15](#) (Luke Hindlaugh)

118 [Q 16](#) (Alessandro Marongiu)

## CHAPTER 4: TECHNICAL BARRIERS TO TRADE

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### The TCA's provisions

86. The EU's harmonised approach to goods regulation meant that, until 31 December 2020, UK goods could be traded within the Single Market, of which the UK was a part, in both directions without inspection, as all were produced under the same set of regulations. By leaving the Single Market, the UK has now formed a separate regulatory territory and can apply its own, potentially divergent, regulatory standards.
87. Conformity assessment is the procedure for ensuring a product meets necessary regulatory requirements before it is placed on the market. In negotiations, the UK unsuccessfully sought mutual recognition of conformity assessments, which would have enabled UK and EU certifying bodies to certify that products produced in one territory met the regulations of the other.<sup>119</sup>
88. In the absence of mutual recognition of conformity assessment, goods exported from one territory will have to be confirmed by bodies of the importing territory as meeting their regulations.<sup>120</sup> Self-certification of conformity with regulatory requirements is allowed in some sectors, but these are for low-risk products and only where this arrangement had existed prior to the TCA.
89. Sectoral annexes provide specific measures designed to ease trade in the automotive, chemical, pharmaceutical, organic products and wine sectors. These provide mutual recognition of some practices or international regulations which in some cases remove the need for separate inspections, and in others simplify the required paperwork.<sup>121</sup>
90. There is also provision for cooperation and ongoing discussion, notably through the Trade Specialised Committee on Technical Barriers to Trade and those cooperation mechanisms established under the sector-specific annexes.<sup>122</sup>

### Verifying conformity

91. Neither Party is now able to rely on goods from the other Party meeting its own regulations. In many cases, testing for regulatory compliance will have to be duplicated. UK bodies which had previously been able to perform conformity assessment tasks for EU product legislation (Notified Bodies) cannot now perform those tasks; these Notified Bodies must now be based within the EU.<sup>123</sup>

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119 This recognition of testing bodies is distinct from mutual recognition of product standards themselves.

120 This does not apply to goods which were already on the market prior to the end of the transition period.

121 [Trade and Cooperation Agreement, 24 December 2020 \(Annexes TBT-1, TBT-2, TBT-3, TBT-4 and TBT-5\)](#)

122 [Trade and Cooperation Agreement, 24 December 2020 \(Articles TBT-11, TBT-13; Annexes TBT-1, TBT-3, TBT-4 and TBT-5\)](#)

123 Responsible persons, where relevant, will now also need to be based in the EU or European Economic Area (EEA). European Commission, *Withdrawal of the United Kingdom and EU rules in the field of industrial products* (13 March 2020) p 5: [https://ec.europa.eu/info/sites/info/files/notice\\_to\\_stakeholders\\_industrial\\_products.pdf](https://ec.europa.eu/info/sites/info/files/notice_to_stakeholders_industrial_products.pdf)

92. The SMMT told us that the requirement for testing for two sets of regulations would lead to “duplication, additional costs and productivity losses” in the automotive sector. It estimated that additional costs for vehicle type approval (which confirms that production samples of a type of vehicle, vehicle system, component or technical unit meet specified performance standards)<sup>124</sup> would be between £30,000 and £100,000 for a single type, and could extend to £250,000–£500,000 for a completely new model type, and into the millions for a high-performance type.<sup>125</sup> In some cases, it will be sufficient for a representative to witness testing, but this too will incur costs.

### Divergence

93. Aside from one suggestion from the RSPCA on the labelling of animal products,<sup>126</sup> most witnesses saw few opportunities in regulatory divergence. We were instead told that international trading partners “want to avoid a separate market in the UK that has a completely different set of requirements, and a completely separate set of rules to comply with, to service the EU market”.<sup>127</sup> Liam Smyth from the British Chambers of Commerce told us that “if we start to diverge, businesses will be faced potentially with producing the same thing in two or three different versions, each of which will have to meet the conformity assessment in two or three different jurisdictions ... you need a really good reason for wanting to do that.”<sup>128</sup>
94. UK businesses wishing to sell products into the EU will need to ensure that these products comply with EU regulations on a rolling basis. Christophe Bondy told us that this would “pose legal compliance challenges as UK-based manufacturers will need to remain mindful of the evolving regulatory environment in the EU”.<sup>129</sup>
95. The sense from our evidence was that, given that businesses are already overwhelmed with concerns relating to COVID-19 and Brexit, few will have the resources to horizon-scan for possible causes of divergence. Anna Jerzewska of Trade and Borders told us: “We are really in firefighting mode at the moment. It seems like companies are getting ready for the next thing to come as it comes.”<sup>130</sup>
96. Fergus McReynolds of Make UK indicated a “gap in understanding” as to how businesses would be able to feed into decision making on divergence.<sup>131</sup> We heard many calls for engagement, and for businesses and stakeholders from all sectors to be fully involved in discussions regarding regulation and receive early warning of any future divergence.
97. **The failure to agree mutual recognition of conformity assessment will cause duplication of testing of certain products, for which businesses will incur significant costs. The Government should develop comprehensive consultation mechanisms to enable businesses**

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124 Vehicle Certification Agency, ‘What is Vehicle Type Approval?’ (January 2021): <https://www.vehicle-certification-agency.gov.uk/vehicle-type-approval/what-is-vehicle-type-approval/> [accessed 4 March 2021]

125 Supplementary written evidence from the SMMT (FUU0020)

126 Written evidence from the RSPCA (FUU0008)

127 Q 24 (Fergus McReynolds)

128 Q 34 (Liam Smyth)

129 Supplementary written evidence from Christophe Bondy (FUU0018)

130 Q 42 (Dr Anna Jerzewska)

131 Q 24 (Fergus McReynolds)

**and trade bodies to regularly feed into, and remain informed of, regulatory policy.**

### Temporary working arrangements

98. The general retention of EU law means that most EU product regulation in the UK remains as it was at the end of the transition period. Some of our evidence suggested that this should facilitate an automatic assumption of compliance. The Chartered Institute of Logistics and Transport said:
- “If [the new paperwork] was not needed on December 31, it should not have been needed on January 1, when nothing regarding the products themselves had changed ... [aside from rules of origin] UK goods could be held to be equivalent to EU goods and thereby automatically compliant with the relevant import documentation.”<sup>132</sup>
99. Though neither Party can rely on regulations remaining the same, the TCA exempts those products which were on the market before the end of the transition period from the requirement to be assessed by EU bodies. Effectively calling for an extension of this provision, the ADS Group suggested temporary working arrangements to enable fulfilment of contractual obligations which had existed before the end of the transition period.<sup>133</sup>
100. **The Government must further consider temporary recognition arrangements to enable pre-transition contractual obligations to be fulfilled. It should raise this issue with the EU in the Trade Specialised Committee on Technical Barriers to Trade.**

### Future cooperation

#### *The TCA's sector-specific annexes*

101. The TCA contains annexes relating to the automotive, chemical, pharmaceutical, organic products and wine sectors. In some cases, these provide for mutual recognition of some standard-setting bodies. Will Hayter, Director of the Transition Task Force at the Cabinet Office, gave the example of the annex on medicinal products, which contains “measures on mutual recognition of good manufacturing practice for medicines, which avoids duplicating steps, making trade easier for the pharmaceutical sector”.<sup>134</sup>

#### *Cooperation between regulatory authorities*

102. We heard evidence that there was potential for mutual recognitions between specific national regulatory authorities. Two such authorities could be the UK Civil Aviation Authority (CAA) and the European Union Aviation Safety Agency (EASA). The CAA automatically recognises some maintenance-related certificates authenticated by EASA, but this recognition is not reciprocal. The ADS Group called for an agreement to be reached between the two for automatic acceptance, which would: “remove the asymmetry from the agreement”.<sup>135</sup> It is far from certain, however, that EASA is empowered to make the decision to reciprocate recognition.

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132 Written evidence from the Chartered Institute of Logistics and Transport ([FUU0003](#))

133 Written evidence from ADS Group ([FUU0015](#))

134 [Q 48](#) (Will Hayter)

135 Written evidence from ADS Group ([FUU0015](#))

103. David Thorneloe suggested that “there could be ways we can chip away [at barriers] by forming agreements to cooperate between different regulatory authorities.”<sup>136</sup> Christophe Bondy told us that this kind of issue management was “endemic” in free trade agreements.<sup>137</sup> Where there is potential to negotiate agreements between regulatory authorities for certain sectors, this should be fully explored.
104. **Continued cooperation on technical barriers to trade is critical. While continuing to seek mutual recognition of conformity assessment, the Government must engage with businesses and regulatory authorities to identify areas where regulatory cooperation can be improved, and seek agreement to empower specific regulatory authorities from both Parties to recognise standards set by, and products approved by, the other.**

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136 [Q 12](#) (David Thorneloe)

137 Supplementary written evidence from Christophe Bondy ([FUU0018](#))

## CHAPTER 5: SANITARY AND PHYTOSANITARY MEASURES

### The TCA's provisions

105. While we have focused on the provisions affecting trade in general, we heard specific concerns over sanitary and phytosanitary (SPS) measures, and their impact upon trade. The report of the EU Environment Sub-Committee addresses trade in plant and animal products in depth,<sup>138</sup> but in this chapter we make some brief comments.
106. The absence of an agreement on equivalence of SPS standards means that UK-EU trade in animal and plant products is now subject to health inspections. The TCA's SPS chapter places a duty on both sides to ensure that border controls are “proportionate to the risks identified” and do not create “unjustified barriers to trade”. Either Party may unilaterally reduce border checks to simplify the process of SPS imports.<sup>139</sup>
107. EU law prohibits the import of some goods from outside the bloc entirely—for example, chilled raw minced meat. Other products can be imported to the EU only if they meet standards that, we were told, make trade unfeasible, such as the purification required for live shellfish from most UK waters.<sup>140</sup>
108. The TCA creates a Trade Specialised Committee on Sanitary and Phytosanitary Measures to review and clarify both Parties' SPS measures and to consider ways “to facilitate trade between the Parties”.<sup>141</sup>

### Box 2: The WTO SPS agreement

The WTO agreement on the Application of Sanitary and Phytosanitary Measures (the SPS agreement) entered into force in 1995. The SPS agreement states that countries may set their own standards on food safety and animal and plant health, but that these regulations should be scientifically based and should not arbitrarily discriminate against countries where similar regulations prevail.<sup>142</sup> Article 4 of the SPS agreement calls on members to accept the sanitary and phytosanitary measures of other members as equivalent, but only if the exporting member “objectively demonstrates” to the importing member that it meets its levels of sanitary and phytosanitary protection.<sup>143</sup> Whether this criteria has been met is ultimately at the discretion of the importing member—the EU in the case of UK exports to the bloc.

The TCA reaffirms the rights and obligations of the UK and the EU under the WTO SPS agreement.<sup>144</sup>

138 European Union Select Committee, *Beyond Brexit: food, environment, energy and health* (22nd Report, Session 2019–21, HL Paper 247)

139 [Trade and Cooperation Agreement, 24 December 2020 \(Article SPS.5\)](#)

140 Written evidence from the Institute for Government (FUU0019)

141 [Trade and Cooperation Agreement, 24 December 2020 \(Article SPS.19\)](#)

142 World Trade Organization, ‘Understanding the WTO Agreement on Sanitary and Phytosanitary Measures’ (May 1998): [https://www.wto.org/english/tratop\\_e/sps\\_e/spsund\\_e.htm](https://www.wto.org/english/tratop_e/sps_e/spsund_e.htm) [accessed 4 March 2021]

143 World Trade Organization, ‘The WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement)’: [https://www.wto.org/english/tratop\\_e/sps\\_e/spsagr\\_e.htm](https://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm) [accessed 9 March 2021]

144 [Trade and Cooperation Agreement, 24 December 2020 \(Article SPS.4\)](#)

*Physical checks*

109. UK negotiators did not secure an agreement to reduce physical checks to a pre-determined low level, of the kind found in the EU-New Zealand veterinary agreement. The level of random physical checks for SPS products imported to the EU is set between 30% (for most meat, fish and dairy products) and 1% for a small number of products including hay and straw.<sup>145</sup>
110. The EU introduced full SPS controls on imports from the UK on 1 January 2021, whereas the UK is phasing in controls on imports from the EU. On 1 January, checks on imports from the EU of high-risk animal and plant products began. The Government initially planned that on 1 April it would introduce checks on all other SPS products and on 1 July would increase the rate of checks and require products needing SPS checks to transit through a designated border control post (BCP). However, on 11 March it announced a revised timetable, under which the requirement for new SPS paperwork is delayed until 1 October 2021 and additional SPS checks until 1 January 2022.<sup>146</sup>
111. Both the British Veterinary Association<sup>147</sup> and Luke Hindlaugh of the Food and Drink Federation told us the TCA's SPS provisions do "very little" to reduce trade friction, but the latter conceded that it "creates trust between both trading parties, which probably helps to manage some of those imports and exports and allows them to flow a bit better".<sup>148</sup> Nevertheless, the absence of equivalence is "really disappointing for the industry" and means the level of physical checks at the EU border, as noted above, is now up to 30% for products such as fresh meat.<sup>149</sup>

*Paperwork*

112. Additional paperwork has been introduced into the transit of SPS products. The key change, as the British Veterinary Association told us, is that to transport live animals or products of animal origin from Great Britain to the EU, exporters require an export health certificate (EHC) signed by an official veterinarian.<sup>150</sup> Cheesemakers Alvis Brothers Ltd identified a range of measures that could simplify this process, the most compelling of which was investment in an electronic certification system.<sup>151</sup>

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145 Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions, (OJ L 321, 12 December 2019)

146 Letter from Lord Frost, Minister of State, Cabinet Office, to Sir Bill Cash, Chair of the European Scrutiny Committee, and Lord Kinnoull, Chair of the EU Select Committee (11 March 2021): <https://committees.parliament.uk/publications/5107/documents/50447/default/>

147 Written evidence from the British Veterinary Association (FUU0010)

148 Q 22 (Luke Hindlaugh)

149 Q 20 (Luke Hindlaugh)

150 Written evidence from the British Veterinary Association (FUU0010)

151 Written evidence from Alvis Brothers Ltd (FUU0005) and the British Poultry Council (FUU0013)

### Box 3: SPS products and Northern Ireland

Under the Protocol on Ireland/Northern Ireland, Northern Ireland's SPS requirements remain aligned with the EU's. SPS products from Great Britain will therefore be subject to checks when moving into Northern Ireland.

Some grace periods for required paperwork have been agreed and additional technical arrangements will streamline and minimise checks on SPS products.<sup>152</sup>

Having failed to secure the EU's agreement to extend existing grace periods,<sup>153</sup> the Government announced in early March that it was unilaterally extending—from the end of March until October—a grace period on official certification of SPS products moving from Great Britain to Northern Ireland, prompting the EU to threaten infringement proceedings.<sup>154</sup>

#### Short-term impacts

113. Although new requirements for documentation such as export health certificates have led to disruption, it seems likely that these problems will ease as traders adapt to the new environment. Luke Hindlaugh described them as “teething issues with how the paperwork is presented”. For example: “Have the stamps by the vets been done in the right colour? Are they numbered correctly?” He added that while “everyone is struggling to come to grips with some of the new processes”,<sup>155</sup> in time “it will get better; businesses will understand some of the requirements”.<sup>156</sup>
114. For now, the British Veterinary Association told us, “There remain significant problems with the completion of EHCs, both in interpreting the requirements and with inconsistencies in interpretation and implementation at BCPs.”<sup>157</sup> The British Poultry Council noted administrative errors and inconsistent interpretation of EHCs, and called on the Government to work with the EU “to agree clear and consistent instructions on the interpretation of the export health certificates to eliminate administrative errors”.<sup>158</sup>
115. Resolving these problems will come at a cost. Alvis Brothers Ltd said that it “will have mitigated much of the oncost” of the new arrangements within three months.<sup>159</sup> Explaining that its members “have found themselves at the sharp end of the new trading arrangements as our fresh produce cannot be stockpiled and requires the most onerous EU paperwork”, the British Poultry Council said that while administrative problems “can and will be solved”, the solutions would require businesses to deploy “more people, more time, and more resources”.<sup>160</sup>

152 Cabinet Office, ‘The Northern Ireland Protocol’, CP 346, December 2020: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/950601/Northern\\_Ireland\\_Protocol\\_-\\_Command\\_Paper.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/950601/Northern_Ireland_Protocol_-_Command_Paper.pdf)

153 BBC, ‘Brexit: NI leaders at odds on Irish sea border meeting’ (24 February 2021): <https://www.bbc.co.uk/news/uk-northern-ireland-56175024> [accessed 9 March 2021]

154 BBC, ‘Brexit: EU legal action imminent over UK extension to grace periods’ (5 March 2021): <https://www.bbc.co.uk/news/uk-northern-ireland-56285874> [accessed 9 March 2021]

155 [Q 19](#) (Luke Hindlaugh)

156 [Q 22](#) (Luke Hindlaugh)

157 Written evidence from the British Veterinary Association ([FUU0010](#))

158 Written evidence from the British Poultry Council ([FUU0013](#))

159 Written evidence from Alvis Brothers Ltd ([FUU0005](#))

160 Written evidence from the British Poultry Council ([FUU0013](#))

### Long-term impacts

116. Of more serious concern is the requirement for physical checks of goods, which seems likely to have a long-term detrimental effect on UK-EU trade. David Thorneloe described SPS checks as “a major barrier to trade for the food industry”.<sup>161</sup> Anna Jerzewska of Trade and Borders noted that “for products that are so much more dependent on quick movements”,<sup>162</sup> SPS checks were particularly time-consuming. She told us that EU customers “are switching suppliers, which is an indirect lost-opportunity cost”.<sup>163</sup>
117. The Institute for Government pointed out that “a high proportion of businesses in the agri-food sector are small or microbusinesses”, for whom “new (ongoing) compliance costs are likely to have a larger effect on profitability”.<sup>164</sup> Alvis Brothers Ltd said “the new arrangements are making us slower, less flexible and add cost”. It added: “We expect the longer lead time and reduced flexibility to remain unless future negotiations on the TCA gain some easements.”<sup>165</sup>
118. Luke Hindlaugh offered a sobering summary of the “cumbersome” SPS barriers that are “here to stay”.<sup>166</sup> Citing the example of fish, he said:
- “There are customs, catch certificates and EHCs. All have to be uploaded to separate systems. Even when you get all of them right and the stars are aligned, it takes quite a long time to get through some ports ... You probably will not be able to get an order and ship it on the same day; it will take three or more days to get through. Inevitably, that will be a decision for customers in both the UK and EU to get to grips with. These things will take longer to get through. There is a chance that your lorry or truck will occasionally be pinged for a check, and that will delay it even more. The customer will face a choice. Do they want to take that risk or source from somewhere else?”<sup>167</sup>

### Mitigations

119. As well as general language on avoiding unnecessary barriers to trade and the creation of the Trade Specialised Committee on Sanitary and Phytosanitary Measures, the TCA contains specific measures seeking to minimise friction. Nadiya Nychay pointed to:
- “commitments in the space of transparency, information exchange between the parties, and on matters related to the development of SPS measures”;
  - a commitment to hold regular “technical consultations”;
  - a “zoning” recognition that “if a given region in a partner’s territory is affected by a pest or a disease, goods that originate from other parts of the jurisdiction can continue coming in”;

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161 [Q 7](#) (David Thorneloe)

162 [Q 42](#) (Dr Anna Jerzewska)

163 [Q 38](#) (Dr Anna Jerzewska)

164 Written evidence from the Institute for Government ([FUU0019](#))

165 Written evidence from Alvis Brothers Ltd ([FUU0005](#))

166 [Q 22](#) (Luke Hindlaugh)

167 [Q 19](#) (Luke Hindlaugh)

- a mechanism “to approve establishments that provide guarantees on the safety of goods being exported”; and
- an agreement that the Parties cannot introduce new authorisation requirements.<sup>168</sup>

David Thorneloe argued that these “limited” provisions “chip away” at the barrier of SPS checks, but warned that it is “not a barrier that will be knocked down any time soon”.<sup>169</sup>

### *Potential measures*

120. In its capacity as the London Port Health Authority, the City of London Corporation suggested several measures at ports, including “a phased introduction of the checks from the EU, starting at between 1 and 5% and increasing over time”. This, it said, would be reasonable given the likelihood of a “high level of compliance owing to the current alignment”.<sup>170</sup>
121. For GB-NI trade Alex Veitch of Logistics UK suggested a retail movement system, which is “essentially a trusted trader scheme for businesses in the food supply sector”, to simplify SPS requirements. He also recommended an extension of the current grace periods on EHCs for moving food products from Great Britain to Northern Ireland—a request partially met by the Government’s unilateral extension of the first grace period, as noted in Box 3.<sup>171</sup>
122. On 14 February, EU Commission Vice-President Maroš Šefčovič said a UK-EU agreement on common animal health and food safety standards, removing the need for some SPS checks, was “on the table”.<sup>172</sup> However, the Institute for Government told us that while some issues “could be addressed through separate bilateral UK-EU negotiations on health certification”, there is “likely to be considerable reluctance from the EU to consider such measures while the UK keeps open the option of regulatory divergence on food standards”.<sup>173</sup>
123. **Traders in animal and plant products have been hit harder by red tape than perhaps any others since 1 January. Many of their products cannot be stockpiled but face the most stringent checks. While some of the sector’s problems will improve as stakeholders gain familiarity with new requirements—at a cost—physical SPS checks could become a permanent barrier to trade in animal and plant products unless the UK and the EU can agree mitigations to the current regime.**

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168 [Q 7](#) (Nadiya Nychay)

169 [Q 7](#) (David Thorneloe)

170 Written evidence from the City of London Corporation ([FUU0007](#))

171 [Q 48](#) (Alex Veitch) & Written evidence from Logistics UK ([FUU0011](#))

172 Politico, ‘Deal for common EU-UK food safety standards ‘on the table’, Šefčovič says’ (14 February 2021): <https://www.politico.eu/article/deal-for-common-eu-uk-food-safety-standards-on-the-table-sefcovic-says/> [accessed 4 March 2021]

173 Written evidence from the Institute for Government ([FUU0019](#))

## CHAPTER 6: CUSTOMS

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### The TCA's provisions

124. The UK is no longer in the EU customs union. Since 1 January 2021, traders from both Parties must fulfil customs formalities and be able to demonstrate adherence to additional rules. The TCA provides specific facilitations on top of the baseline for EU trade with a third country, which somewhat smooths the flow of the movement of goods. These facilitations include the provision for mutual recognition of each Party's Authorised Economic Operator (AEO) scheme.

### Box 4: Customs and Northern Ireland

Under the Ireland/Northern Ireland Protocol, Northern Ireland remains subject to the EU's Union Customs Code. After a grace period to allow businesses to adjust, customs declarations will be required at the GB-NI border. As outlined in Chapter 3, there will also be origin requirements at the GB-NI border for products considered "at risk" of entering the EU.

### *The cost of customs*

125. The Minister recognised that customs controls increase fiscal risks for traders,<sup>174</sup> but the cost of these obligations will differ. Des Hiscock of ACITA and Customs Support stated that the cost of entry declarations varies significantly, "depending on the complexity of the declaration, how often a declaration is needed, and the quality and accessibility of the data presented for making the declaration".<sup>175</sup>
126. There has been evidence of EU companies cancelling shipments to the UK because of customs complexities, which clearly places a financial risk on UK businesses. Evidence from the LEP Network cited a German company refusing to ship products to the UK and requiring customers to arrange the collection of goods themselves.<sup>176</sup> Transport costs have also increased: Jellyworks Healthcare Ltd, which exports children's first aid products, told us that "shipping has become more expensive, with an added cost of £5 per box shipped".<sup>177</sup>
127. Customs requirements are not standalone. Adherence to other requirements is checked at customs control posts, most notably sanitary and phytosanitary (SPS) requirements (see Chapter 5) and rules of origin (see Chapter 3). Controls in their totality were described to us as "a dense network of legal compliance challenges".<sup>178</sup>
128. Traders importing goods must follow a complicated and extensive series of steps. A Government guide to exporting goods outlines eight steps, of which one is: "Get your goods through customs." This step takes the reader to another eight-step guide to making export declarations. Legal expert Nadiya Nychay told us: "Every exporter/producer needs to fill in an entry summary declaration. The amount of information in that declaration is staggering."<sup>179</sup>

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174 [Q 52](#) (Penny Mordaunt MP)

175 [Q 38](#) (Des Hiscock)

176 Supplementary written evidence from the Local Enterprise Partnership Network ([FUU0021](#))

177 Written evidence from Jellyworks Ltd ([FUU0002](#))

178 Supplementary written evidence from Christophe Bondy ([FUU0018](#))

179 [Q 12](#) (Nadiya Nychay)

### Room for cooperation?

129. The TCA is not the only document which determines customs arrangements between the two Parties. Indeed, the multiplicity of guidance documents is such that, as Anna Jerzewska told us, customs is “all about interpretation”:

“You have the FTA text, the TCA, the agreement, which is the basis of it all, but it is still very high level. Then you have the domestic guidance and the domestic interpretation of that. Not only does the EU have its interpretation of that, but every member state interprets the legislation perhaps slightly differently ... Then you have the interpretation by the actual customs officer who is accepting that form.”<sup>180</sup>

130. Witnesses were optimistic about the potential for the UK and the EU to cooperate in customs procedures through the Trade Specialised Committee on Customs Cooperation and Rules of Origin. Legal expert David Thorneloe said: “I would probably single out in particular the trade facilitation measures and customs facilitation, where there is room to cooperate and agree processes that could be quite helpful in years to come.”<sup>181</sup>

### Authorised Economic Operator schemes

131. The TCA provides for mutual recognition of Authorised Economic Operator (AEO) schemes, which can enable recognised operators to benefit from simplified customs and safety and security rules. The provisions in the TCA cover only simplified safety and security rules.

132. An AEO status is an “internationally recognised quality mark” which confirms that a business’s role in international supply chains is secure and that its customs control procedures meet certain standards and criteria.<sup>182</sup> For those UK or EU operators with AEO status, the mutual recognition provisions are welcome. They will, we were told, “simplify the new customs declarations and paperwork that companies are exposed to”.<sup>183</sup> Nadiya Nychay told us:

“Businesses that enjoy the status will enjoy equal treatment when going through the safety and security formalities in the partner’s jurisdiction when they bring in goods for import or export. It does not mean that there will be no controls; they will simply be lighter as compared with the partners that do not enjoy that status.”<sup>184</sup>

### Accessibility

133. In our 2020 inquiry on non-tariff barriers, we found that the application process to become recognised under the UK’s AEO scheme was lengthy, and the threshold for recognition high. In evidence to this inquiry, the ADS Group told us:

“To successfully apply for and be granted AEO status is a complex, costly and time-consuming process. It is not easily achievable for SMEs ... particularly given many smaller companies have no experience of

180 [Q 41](#) (Dr Anna Jerzewska)

181 [Q 2](#) (David Thorneloe)

182 HM Revenue & Customs, ‘Guidance: Check if Authorised Economic Operator status could benefit you’ (14 January 2021): <https://www.gov.uk/guidance/authorised-economic-operator-certification> [accessed 9 March 2021]

183 Written evidence from ADS Group ([FUU0015](#)), [Q 6](#) (Nadiya Nychay)

184 [Q 6](#) (Nadiya Nychay)

dealing with customs formalities and would therefore find it challenging to pass the initial auditing process. For example, it took a major UK aerospace OEM [original equipment manufacturer] six years to comply and successfully achieve AEO status.”<sup>185</sup>

134. There are no formal size requirements to qualify as an AEO in the UK, but a certain level of sophistication is needed.<sup>186</sup> In 2018, only around 600 UK businesses were registered, and fewer than half of the applications for recognition were approved between 2016 and March 2019.<sup>187</sup> A loosening of the criteria could increase the impact of the UK scheme and extend its reach to SMEs. This would certainly be within the spirit of the TCA, which states that criteria for national schemes “shall allow small and medium-sized enterprises to qualify as AEOs”.<sup>188</sup>
135. **The UK’s Authorised Economic Operator scheme is, for many businesses, inaccessible. The time-consuming application process and the high threshold for approval means that few businesses can take advantage of the simplifications it provides. We recommend that the Government take steps to simplify the application process and lower the threshold for entry, to enable easier access for small businesses.**

*A trusted trader scheme*

136. In July 2020 we argued for “a new UK-EU trusted trader scheme that is accessible to a significant number of businesses by offering different status tiers, including one that is easy to obtain for SMEs”.<sup>189</sup> This scheme is now even more important. The simplifications need not be identical to those offered to AEOs, but they should take account of the needs of small businesses that cannot access that scheme. It could be worked through by the Trade Specialised Committee on Customs Cooperation and Rules of Origin, and specific provisions agreed there.
137. Alex Veitch of Logistics UK argued for such a scheme for authorised parcel operators. This could, he said, “allow certified trusted companies to do one declaration per truck so that the companies are authorised as safe and secure. We do this all the time in air freight. We do it all the time in customs with AEO and authorised consigner/authorised consignee. It is nothing new.”<sup>190</sup>
138. **We recommend that the Government seek the EU’s agreement to a trusted trader scheme to enable those businesses that do not meet the Authorised Economic Operator criteria to benefit from some simplifications to customs or safety and security processes. This scheme could be tiered to enable even smaller businesses to access**

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185 Written evidence from ADS Group (FUU0015)

186 HM Revenue & Customs, ‘Guidance: Check if Authorised Economic Operator status could benefit you’ (14 January 2021): <https://www.gov.uk/guidance/authorised-economic-operator-certification> [accessed 9 March 2021]

187 BBC, ‘Brexit: Less than half of trusted trader applications approved’ (19 March 2019): <https://www.bbc.co.uk/news/business-47628769> [accessed 2 March 2021]

188 [Trade and Cooperation Agreement, 24 December 2020 \(Annex Customs-1: Authorised Economic Operators, 2\)](#)

189 Letter from Baroness Verma, Chair of the EU Goods Sub-Committee, to Rt Hon Michael Gove MP, Chancellor of the Duchy of Lancaster, 30 July 2020: <https://committees.parliament.uk/publications/2222/documents/20491/default/>

190 [Q 48](#) (Alex Veitch)

**some degree of relief. Provision for transporters—common in air freight—should also be sought.**

### **The temporary movement of goods**

139. Goods travelling temporarily out of the UK (such as goods for trade exhibitions, or musical instruments for performances) are no longer exempt from normal customs rules. ATA Carnets, which predate the TCA, are permits which enable faster movement of these goods to certain countries. There is an application process and a cost to obtaining these permits.<sup>191</sup>
140. The EU has waived the need for them under certain circumstances (for example, for musical instruments carried by an individual musician), but we received evidence that there is insufficient clarity on whether the need has been waived when entering the UK. The Association of British Orchestras told us: “We believe that the UK has applied the same exemption ... We urgently need clarification from HMRC that our interpretation is correct.”<sup>192</sup>
141. The exemption does not apply to those goods which are carried by hauliers. Temporary movement of goods in this way could include a very wide range of items, from computer monitors, picture frames or candles destined for trade exhibitions, to the equipment needed to service a motorbike in a road race pit stop, or to sound and lighting equipment for a show. The Road Haulage Association asked that the Government seek “an agreement between the UK and EU that allows unlimited road haulage for goods used in cultural and sporting events that are imported on a temporary basis (under ATA Carnets).”<sup>193</sup>
142. **The Government should urgently clarify the circumstances under which an ATA Carnet is required. Within the Trade Specialised Committee on Customs Cooperation and Rules of Origin, it should seek reciprocal exemptions for the most affected sectors.**

### **Staffing**

#### *Customs officials*

143. In our December 2020 letter on end-of-transition preparedness, we raised concerns that changes to customs requirements would “stretch the capacity of public-sector customs officials”.<sup>194</sup> The evidence presented to this inquiry was inconclusive about the capacity of UK customs officials in January 2021. Alex Veitch told us: “In the operational bits I am involved in, there are a lot of customs officials in training. They are doing exactly what they need to do there. It is very much a temporary arrangement, and we will get there.”<sup>195</sup> However, the City of London Corporation was concerned that they may not be able to deliver the expectations set out in the Border Operating Model, citing “the increase in checks required, the challenges with recruiting specialist staff, training staff in a Covid-secure environment and the tight

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191 This cost is covered in more depth in the report of the EU Services Sub-Committee *Beyond Brexit: trade in services* (23rd Report, Session 2019–21, HL Paper 248)

192 Written evidence from the Association of British Orchestras ([FUU0012](#))

193 Written evidence from The Road Haulage Association ([FUU0014](#))

194 Letter from Baroness Verma, Chair of EU Goods Sub-Committee, to Rt Hon Michael Gove MP, Chancellor of the Duchy of Lancaster, 10 December 2020: <https://committees.parliament.uk/publications/3919/documents/39339/default/>

195 [Q 41](#) (Alex Veitch)

timescales”.<sup>196</sup> Nadiya Nychay emphasised the need to continue investing in the sector: “We need to put massive resources into preparing our civil servants for their functions to handle the amount of work and the flow of trade if we want to maintain the same levels of trade.”<sup>197</sup>

144. In response to our December 2020 letter, Paymaster General Penny Mordaunt wrote: “When thinking about readiness and customs agents’ capacity, it is more appropriate to focus on the capacity to make declarations, instead of numbers of staff employed.”<sup>198</sup> This response appears not to recognise that staff numbers are an important indicator of capacity.

*The customs intermediary sector*

145. Businesses are strongly encouraged to use a customs agent or intermediary to assist with customs declarations. Logistics UK told us: “Customs declarations must be submitted by specialist customs agents with the right IT system and knowledge of how to do it.”<sup>199</sup> Anna Jerzewska said that it was important for traders to select sufficiently experienced intermediaries. She reported that inexperienced companies charging for advice “will have ramifications down the line in terms of liability”.<sup>200</sup>
146. In our December 2020 letter we concluded: “There is insufficient capacity in the customs intermediary sector to handle additional post-transition customs checks.”<sup>201</sup> That finding has been borne out. While a grant scheme has been in place to support the sector,<sup>202</sup> it has not had sufficient impact. Anna Jerzewska stated simply that “we do not have enough capacity in the industry. There are not enough people.”<sup>203</sup> The Institute for Government reported: “There have been widespread reports of firms struggling to find agents suited to their needs, finding the financial cost of securing agent capacity prohibitive, or facing delays due to the high demand on agents and pressures of training new staff.”<sup>204</sup>
147. The difficulties of finding a suitably qualified intermediary may fall particularly heavily upon smaller businesses with fewer resources and transactions. Anna Jerzewska told us: “It is a market where customs brokers can pick and choose who they want to work with. Clients are looking for new brokers.”<sup>205</sup> This confirms evidence heard in our previous inquiry:<sup>206</sup> it appears that while the sector is stretched for everybody, those businesses with least capacity to divert to customs processes are those that are struggling to find intermediaries.

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196 Written evidence from the City of London Corporation ([FUU0007](#))

197 [Q 12](#) (Nadiya Nychay)

198 Letter from Rt Hon Penny Mordaunt MP to Baroness Verma, Chair of EU Goods Sub-Committee, 29 January 2021: <https://committees.parliament.uk/publications/4514/documents/45685/default/>

199 Written evidence from Logistics UK ([FUU0011](#))

200 [Q 41](#) (Dr Anna Jerzewska)

201 Letter from Baroness Verma, Chair of EU Goods Sub-Committee, to Rt Hon Michael Gove MP, Chancellor of the Duchy of Lancaster, 10 December 2020: <https://committees.parliament.uk/publications/3919/documents/39339/default/>

202 HM Revenue & Customs, ‘Applications open for £50 million to boost UK customs intermediaries’ (29 July 2020): <https://www.gov.uk/government/news/applications-open-for-50-million-funding-to-boost-uk-customs-intermediaries> [accessed 4 March 2021]

203 [Q 41](#) (Dr Anna Jerzewska)

204 Written evidence from the Institute for Government ([FUU0019](#))

205 [Q 41](#) (Dr Anna Jerzewska)

206 Letter from Baroness Verma, Chair of EU Goods Sub-Committee, to Rt Hon Michael Gove MP, Chancellor of the Duchy of Lancaster, 10 December 2020: <https://committees.parliament.uk/publications/3919/documents/39339/default/>

148. Allie Renison from the Institute of Directors pointed to steps taken by Ireland, the Netherlands and France, which “know that their guidance will always be far too generic, so they have put fiscal support in place to help businesses access the specialist advice that will hand-hold them through the process. We urgently need some of that, otherwise businesses will cease trading.”<sup>207</sup> While the SME Brexit Support Fund will assist to some extent (and is discussed further in Chapter 9), targeted and specific support for the sector—and those who wish to use it—is urgently needed.
149. **The customs intermediary sector does not have the capacity to meet increased demand, and smaller businesses are bearing the brunt of the shortage. The Government should increase and extend grants to the sector to increase the capacity and consider what financial support could be provided to smaller businesses to access the crucial services of intermediaries.**

### IT systems

150. There were successes in the Government’s preparations for the end of the transition period. In the run-up to the end of the transition period there had been considerable concern over IT systems for declaring customs (CHIEF) and accessing Kent access permits (Check an HGV). But witnesses told us that these systems had generally worked well. Alex Veitch told us: “We have not had significant problems reported to us about these three systems.”<sup>208</sup> Of CHIEF, the Minister said: “Although we all know that it might be creaky in places it was an operational and robust system.”<sup>209</sup> Des Hiscock agreed that “the systems ... are coping far better than expected”.<sup>210</sup> Anna Jerzewska stated: “Most of the problems were to do with companies and users in general not having time beforehand and in situations where HMRC needed to change something or something was updated.”<sup>211</sup>
151. The LEP Network reported that preparedness was improving, and that there was “a marked difference on preparedness from the start to the end of January”.<sup>212</sup> The Minister told us: “We are looking at ... the other systems that we can build that will make this as seamless and as straightforward as possible.”<sup>213</sup>

### Physical infrastructure

152. Some SPS checks on UK imports have not yet been introduced. These checks had been planned for April and July 2021, but following a timetable review concluded on 11 March, the Government announced that they would be introduced in October 2021 and January and March 2022. Announcing the change, the UK’s Chief Negotiator, Lord Frost, referred to disruption arising from the COVID-19 pandemic and the concerns of businesses, but made little mention of port readiness.<sup>214</sup> The physical infrastructure for these checks is clearly a concern, though—in many cases, it is still to be built. In

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207 [Q 26](#) (Allie Renison)

208 [Q 40](#) (Alex Veitch)

209 [Q 51](#) (Penny Mordaunt MP)

210 [Q 40](#) (Des Hiscock)

211 [Q 40](#) (Dr Anna Jerzewska)

212 Supplementary written evidence from the Local Enterprise Partnership Network ([FUU0021](#))

213 [Q 51](#) (Penny Mordaunt MP)

214 Letter from Lord Frost, Minister of State, Cabinet Office, to Sir Bill Cash, Chair of the European Scrutiny Committee, and Lord Kinnoull, Chair of the EU Select Committee, 11 March 2021: <https://committees.parliament.uk/publications/5107/documents/50447/default/>

February 2021, the Minister acknowledged that “the most challenging area is infrastructure”.<sup>215</sup>

153. There have been mixed messages from the Government on its readiness to support infrastructure development. The Government told the House of Commons Public Accounts Committee that customs posts “are of course a commercial matter for the ports”.<sup>216</sup> There is, though, a Port Infrastructure Fund. Allocations of this £200 million fund to enable physical infrastructure were, we were told, announced only on 17 December 2020.<sup>217</sup> The Institute for Government told us:

“The fund was significantly oversubscribed—leaving some ports with significantly less money than they expected. The shortfall has led some ports—such as Portsmouth (which faces a £5 million shortfall)—to scale back their plans, including reducing the range of goods (such as live animals) their new border control posts will be able to handle.”<sup>218</sup>

154. Press reports appear to confirm our concern that the delay in allocating funding has led to very late construction of the necessary infrastructure.<sup>219</sup> While the introduction of SPS checks has been delayed, we remain concerned about funding limitations which could place some ports at a competitive disadvantage due to their relative capacity to facilitate checks. While there are clearly commercial considerations, the Government must more fully ensure that all ports are ready for the legally required checks to be introduced in the coming year.

155. **Funding to support the development of physical customs infrastructure has been insufficient, particularly given the very short timeframe for making improvements. We recommend that the Government release additional funding before these checks are imposed.**

### Trader awareness

156. The border requirements for UK importers to complete declarations, make VAT payments and declare compliance with rules of origin will be phased in throughout 2021. Businesses will, however, need to be able to prove adherence retrospectively, and may be subject to duties if unable to do so. We received evidence suggesting that many are not aware of this, and are thus not keeping the appropriate records. Anna Jerzewska told us:

“A lot of companies are importing without realising that they are importing. They are bringing goods in. They are supposed to be entering details into their records. They are supposed to be monitoring. They are supposed to be doing everything that importers need to do. Yet, because they are not aware of it, they bring goods in and forget.”<sup>220</sup>

215 [Q 52](#) (Penny Mordaunt MP)

216 Oral evidence taken before the Public Accounts Committee, 21 January 2021 (Session 2019–21), [Q 148](#) (Emma Churchill)

217 Written evidence from the Institute for Government ([FUU0019](#))

218 *Ibid.*

219 ‘British ports say they are not ready for Brexit customs checks’, *The Guardian* (7 March 2021): <https://www.theguardian.com/business/2021/mar/07/british-ports-say-they-are-not-ready-for-brexit-customs-checks> [accessed 9 March 2021]. See also Letter from Baroness Verma, Chair of EU Goods Sub-Committee, to Rt Hon Michael Gove MP, Chancellor of the Duchy of Lancaster (10 December 2020): <https://committees.parliament.uk/publications/3919/documents/39339/default/> [accessed 4 March 2021]

220 [Q 42](#) (Dr Anna Jerzewska)

157. The Office for Budget Responsibility forecast that customs duty revenue would be £200 million lower in 2021/22 as a result of non-compliance.<sup>221</sup> The Institute for Government stated: “Businesses may be building up customs liabilities without realising—storing up problems for the future.”<sup>222</sup> While problems have not appeared yet, they are foreseeable.
158. The full gamut of controls on imports into the UK is not yet implemented, with some customs and SPS processes being phased in. This presents a “complex patchwork timeframe of further Brexit changes”,<sup>223</sup> for which preparations must be made.
159. **The Government should embark on a renewed effort to raise awareness of record-keeping requirements, and we also recommend that the Government adopt a pragmatic approach to border inspections as new requirements are phased in.**

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221 Office for Budget Responsibility, *Economic and fiscal outlook*, CP 318, November 2020, p 138: [http://cdn.obr.uk/CCS1020397650-001\\_OBR-November2020-EFO-v2-Web-accessible.pdf](http://cdn.obr.uk/CCS1020397650-001_OBR-November2020-EFO-v2-Web-accessible.pdf) [accessed 4 March 2021]

222 Written evidence from the Institute for Government ([FUU0019](#))

223 *Ibid.*

## CHAPTER 7: VAT

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### VAT in the TCA

160. There is no explicit provision in the TCA for VAT charges, but since the UK's departure from the EU's VAT area on 1 January, the rules have changed for VAT on imports from and exports to the EU (see Box 5).

#### Box 5: Changes to VAT after the transition period

EU goods imported into the UK are now treated by HMRC in the same way as non-EU imports, rather than as intra-EU movements (which were previously classed as 'acquisitions' for VAT purposes). Where goods are sold directly to UK consumers from overseas, the overseas seller is required to register and account for UK VAT. Import VAT, rather than 'acquisition' VAT, is now due. For imports with a consignment value of £135 or lower, VAT is applied at the point of sale.<sup>224</sup>

EU Member States will treat goods entering the EU from the UK the same as goods entering from other non-EU countries, and import VAT is due when these goods arrive in the EU.

These changes do not mean VAT rates themselves have increased. Instead, as Liam Smyth of the British Chambers of Commerce told us: "The change is mainly in relation to when and how VAT is collected on the importing of goods."<sup>225</sup>

161. The TCA includes a 65-page Protocol on combating VAT fraud.<sup>226</sup> This establishes a framework for UK-EU administrative cooperation and exchange of information on VAT, including combating fraud and allowing the recovery of unpaid customs duties or VAT.<sup>227</sup> As the ADS Group told us, this "may help to affect a correct assessment of VAT, monitor the correct application of VAT, and combat VAT fraud", as well as enabling cooperation in enforcing compliance.<sup>228</sup>

### Postponed accounting

162. To mitigate potential VAT-induced cashflow problems for businesses, HMRC introduced a system of 'postponed accounting' on 1 January 2021. This allows VAT-registered traders to declare and recover import VAT on the same VAT return, rather than paying VAT upfront and claiming it back later.<sup>229</sup> Anna Jerzewska of Trade and Borders explained: "If you opt for postponed VAT accounting, you can discharge your import VAT together with your normal VAT on a quarterly basis or whenever you normally do it."

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224 HM Revenue & Customs, 'Changes to VAT treatment of overseas goods sold to customers from 1 January 2021' (3 December 2020): <https://www.gov.uk/government/publications/changes-to-vat-treatment-of-overseas-goods-sold-to-customers-from-1-january-2021/changes-to-vat-treatment-of-overseas-goods-sold-to-customers-from-1-january-2021> [accessed 4 March 2021]

225 Q 35 (Liam Smyth)

226 [Trade and Cooperation Agreement](#), 24 December 2020 (Protocol on Administrative Cooperation and Combating Fraud in the Field of Value Added Tax and on Mutual Assistance for the Recovery of Claims Relating to Taxes and Duties.)

227 [Trade and Cooperation Agreement](#), 24 December 2020 (Protocol on combating VAT fraud, Articles 1, 7–14, 25)

228 Written evidence from ADS Group ([FUU0015](#))

229 HM Revenue & Customs, 'Check when you can account for import VAT on your VAT Return' (11 February 2021): <https://www.gov.uk/guidance/check-when-you-can-account-for-import-vat-on-your-vat-return> [accessed 4 March 2021]

You do not have to pay it at the time of import; you can do it at a later point in time.”<sup>230</sup> Postponed accounting applies to all imports, not just those from the EU.

163. This mitigation was praised by witnesses. Anna Jerzewska described it as “very helpful”, while Des Hiscock of ACITA and Customs Support said: “The postponed import VAT accounting gives a huge cash-flow advantage to many UK businesses. Bear in mind that it is not only EU goods but third-country goods that we used to have to pay VAT on up front and claim it back.”<sup>231</sup>
164. However, postponed accounting helps only VAT-registered importers, and those that are not VAT-registered have experienced cashflow problems. The Crafts Council told us non-VAT registered businesses “are being charged up to 25% VAT on imports, plus 10% handling charges and increased shipping costs”.<sup>232</sup>

### The administrative burden

165. Despite the mitigation of postponed accounting, we were told, in the words of Allie Renison of the Institute of Directors, that traders had found VAT “one of the biggest headaches” since the end of the transition period.<sup>233</sup> Witnesses highlighted new administrative burdens arising from the UK’s departure from the EU’s VAT area, affecting smaller businesses in particular. The LEP Network said there had been “increased administrative burdens for companies trading with the EU in terms of accounting for and collecting VAT”, which is “largely a serious issue for SMEs”.<sup>234</sup>
166. Other administrative burdens have been caused by differences between EU Member States in the application of VAT, with UK exporters now facing the same obstacles as those from other non-EU countries. Des Hiscock explained: “One of the biggest problems we have with VAT is that customs law might be completely harmonised across the 27 EU member states but VAT law is not. It is down to the individual national Administrations.”<sup>235</sup> Similarly, Allie Renison told us that firms were now “accounting for VAT in 27 different jurisdictions, many of which require a fiscal representative”—with the roles of these representatives also differing from one Member State to another.<sup>236</sup>
167. Anna Jerzewska highlighted the impact of the loss of VAT ‘triangulation’, a facilitation under the EU VAT area which simplifies supplies of goods between three VAT-registered traders in three different EU Member States.<sup>237</sup>
168. We were told that some EU importers are requesting that UK exporters account for VAT due on goods moving into the EU. Liam Smyth described the additional administrative tasks as “really vexing” to many traders. He told us they include obtaining an EU Economic Operators Registration and Identification (EORI) number, registering for VAT in the EU, establishing

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230 [Q 46](#) (Dr Anna Jerzewska)

231 *Ibid.*

232 Written evidence from the Crafts Council ([FUU0009](#))

233 [Q 25](#) (Allie Renison)

234 Supplementary written evidence from the Local Enterprise Partnership Network ([FUU0021](#))

235 [Q 46](#) (Des Hiscock)

236 [Q 25](#) (Allie Renison)

237 [Q 46](#) (Dr Anna Jerzewska)

a business enterprise in the country of destination, and hiring both a tax accountant and a customs agent.<sup>238</sup>

### Awareness and understanding

169. Several witnesses highlighted that the complexity of new VAT requirements has contributed to a lack of trader awareness or understanding. The LEP Network said this extended to the customs intermediary sector as well as traders themselves:

“There are still some issues around UK freight forwarders not being familiar with new rules about import VAT, and how it can now be shifted to a VAT return declaration. Instead they are continuing to code import entries as last year, resulting in physical VAT charges before goods can be released by HMRC.”<sup>239</sup>

170. Des Hiscock warned that such misunderstandings mean that “people will fall foul of the law”. For example, “A lot of people are purchasing goods on a delivered duty paid basis but, under VAT law, the wrong person then owns those goods when they cross the border into the UK, which could jeopardise their input VAT claim.”<sup>240</sup> He also highlighted the lack of understanding of incoterms (see Box 6), warning that “not aligning your international trade terms with your actual transactions could prove to be a huge risk further down the line once you have a VAT audit”.<sup>241</sup>

### Box 6: Incoterms

Incoterms are a set of internationally recognised trade terms that describe the practical arrangements for the delivery of goods from sellers to buyers, and allocate the obligations, costs and risks between the two Parties. The purpose of incoterms is to ensure that responsibilities are clearly defined.<sup>242</sup>

### Financial implications

171. The new VAT requirements have had financial implications for many companies. Liam Smyth told us that the impact upon profit margins was such that companies might end up passing on the costs to the consumer.<sup>243</sup>

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238 [Q 35](#) (Liam Smyth)

239 Supplementary written evidence from the Local Enterprise Partnership Network ([FUU0021](#))

240 [Q 46](#) (Des Hiscock)

241 *Ibid.*

242 Department for International Trade, ‘International trade contracts and incoterms’, (10 January 2020): <https://www.great.gov.uk/advice/international-trade-contracts-and-incoterms/> [accessed 4 March 2021]

243 [Q 35](#) (Liam Smyth)

### Box 7: Case Study: Jellyworks Healthcare Ltd

- Jellyworks Healthcare Ltd is a London-based company which sells children’s first aid products and exports these products to six EU Member States. In January, Jellyworks told us that Brexit’s VAT implications “have permanently destroyed our EU export business”.<sup>244</sup> In supplementary evidence submitted in March, it told us it had still “not landed one order in an EU country” since the end of the transition period.<sup>245</sup>
- Jellyworks cited the costs of VAT management as a major problem: “We have been quoted initial costs of £11,905 with recurring annual costs of £9,549 for managing VAT services in the states we export to ... Jellyworks has insufficient margin to absorb the VAT management costs.”<sup>246</sup> It also provided evidence that over €3,000 of orders delivered into the EU have been placed on hold with FedEx, the delivery services company, pending correct EU VAT information. More recently, it employed the services of a VAT reclamation company, but this too is expected to incur significant costs.<sup>247</sup>
- Jellyworks also said that the fragmentation of EU VAT law puts it “at a disadvantage to our main competitor, who are EU based. They must only apply for one UK VAT number and GB EORI. We must apply for 6 and absorb management costs in 6 states.”<sup>248</sup>
- In response to these and other problems, Jellyworks said in January that it was “considering relocating to Spain, which would become our main tax base. The UK would become a subsidiary arm that we ship to. This is a viable model for us.”<sup>249</sup> As of March it had not taken this step, but had also explored the option of establishing a business in the Netherlands.<sup>250</sup>

#### The Government’s position and the need for better support

172. We asked Paymaster General Penny Mordaunt MP about the issues arising from VAT. She said the Government was “very aware” of the issues and had been encouraging businesses to use customs brokers and freight forwarders for technical support, but her answers gave little indication of whether these were short-term or long-term problems, or of what the Government could or would do to resolve them.
173. The approach of redirecting businesses to intermediaries for customs and VAT support will be insufficient to resolve the issues at hand. As we heard from the LEP Network, some freight forwarders have themselves struggled to understand the new requirements.<sup>251</sup> Moreover, as discussed in Chapter 6, there is a general lack of capacity in the customs intermediary sector, making it difficult for many businesses to find a suitably qualified intermediary.
174. Des Hiscock told us that VAT has been one of the weak points of Government support to date: “We have found the response from Government on VAT to be nowhere near what it is on customs.”<sup>252</sup> Given the administrative

244 Written evidence from Jellyworks Ltd ([FUU0002](#))

245 Supplementary written evidence from Jellyworks Ltd ([FUU0025](#))

246 Written evidence from Jellyworks Ltd ([FUU0002](#))

247 Supplementary written evidence from Jellyworks Ltd ([FUU0025](#))

248 Written evidence from Jellyworks Ltd ([FUU0002](#))

249 *Ibid.*

250 Supplementary written evidence from Jellyworks Ltd ([FUU0025](#))

251 Supplementary written evidence from the Local Enterprise Partnership Network ([FUU0021](#))

252 [Q 47](#) (Des Hiscock)

difficulties for traders of dealing with up to 27 different VAT regimes, the need for good Government support is particularly pressing in this area, and the shortcomings to date particularly disappointing.

175. **We welcome the Government's introduction of postponed accounting for VAT, which has mitigated some of the cashflow issues and, by dint of applying to non-EU trade as well, has even given some UK businesses a competitive advantage internationally. We recommend a programme of support for businesses to become VAT registered to enable more traders to benefit from these important mitigations.**
176. **Government support for promoting awareness of VAT implications has, to date, been poor. We call on the Government to take action to improve the understanding of VAT among traders and the customs intermediary sector alike.**

## CHAPTER 8: TRANSPORTING GOODS

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### Transport disruption

177. The extent of disruption to cross-border transport since the end of the transition period is difficult to quantify, but is less than we anticipated in late 2020.<sup>253</sup> We heard that “the numbers have been relatively low and isolated to specific sectors and routes”.<sup>254</sup> Paymaster General Penny Mordaunt claimed that the flow of cross-border transport “is similar to, if not exceeding, where we were for example a year ago”. The Government’s fear that “30% to 50% of HGVs might not be ready, particularly at the short straits” has “not proved to be the case”, both because “business has done a tremendous job in preparing”, and because “officials have done a very good job in communicating what needs to be done”.<sup>255</sup>
178. The relative lack of serious disruption may partly be a product of reduced traffic due to the COVID-19 pandemic, stockpiling and some traders choosing not to trade because of new requirements introduced on 1 January. The Institute for Government said traffic flows between Great Britain and the EU “were just 40% of normal” in the first week of January, rising to an estimated “70–80% of normal in the last week of January”. It continued: “There is still scope for traffic flows to increase further as stockpiles are reduced, with an associated risk of disruption.”<sup>256</sup> Liam Smyth from the British Chambers of Commerce also warned that we are not yet seeing the full impact of disruption.<sup>257</sup>

### Empty lorries

179. The flow of traffic means little, however, if it consists of lorries carrying no goods. The proportion of lorries crossing from the UK to the EU empty appears to have increased since 1 January, “suggesting suppressed levels of exports”, as the Institute for Government told us, though there are no “agreed figures”.<sup>258</sup> Alex Veitch said the “best available data” indicate that, whereas “about 30% of trucks ran empty from GB to the EU pre-Brexit”, the Government has told the logistics industry that “empty running is currently about 50%”.<sup>259</sup>
180. There are several possible reasons. Alex Veitch said “the cost of trade has gone up”, potentially creating “a systemic issue for SMEs or larger businesses in doing fewer exports to the EU”.<sup>260</sup> The Institute for Government noted reports of firms reliant on parts or products imported from the EU “paying for lorries to return to the EU empty (and thereby avoiding the need to comply with most border formalities), in order to reduce the risk of them being delayed in returning to the EU to collect future deliveries”.<sup>261</sup>

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253 See letter from Baroness Verma, Chair of EU Goods Sub-Committee, to Rt Hon Michael Gove MP, Chancellor of the Duchy of Lancaster, 10 December 2020: <https://committees.parliament.uk/publications/3919/documents/39339/default/>

254 [Q 38](#) (Alex Veitch)

255 [Q 50](#) (Penny Mordaunt MP)

256 Written evidence from the Institute for Government ([FUU0019](#))

257 [Q 32](#) (Liam Smyth)

258 Written evidence from the Institute for Government ([FUU0019](#))

259 [Q 43](#) (Alex Veitch)

260 *Ibid.*

261 Written evidence from the Institute for Government ([FUU0019](#))

181. One impact of the increase in empty lorries, the LEP Network told us, is that drivers from Eastern Europe are “not coming in the same numbers”, because they are “unwilling to return to Europe from the UK with an empty truck”.<sup>262</sup> We would add that the movement of empty lorries creates entirely unnecessary carbon emissions.

*Short-term problems*

182. Much of the disruption since 1 January appears to be the result of short-term problems that, while unwelcome, are being or are likely to be resolved as the new requirements bed in. Fergus McReynolds from Make UK noted that shipping costs “have increased significantly since the beginning of the year”, but argued that “the time and cost implications should become more predictable in the future”.<sup>263</sup>
183. Des Hiscock of ACITA and Customs Support said this rise in transport costs was “definitely driven in part by the unpreparedness of some sectors of the transport industry”, as well as by “frustration on the part of those who have prepared and who are struggling with the differing procedures and regulations” in each EU Member State.<sup>264</sup> Liam Smyth told us that many transport companies, fearful of disruption caused by incorrect documents, “are now carrying goods only if they are also responsible for the paperwork”. This is causing “big price inflation”, with transport costs rising “threefold in some examples”.<sup>265</sup>
184. The LEP Network said “initial teething issues” were “resolving themselves”, with the Port of Dover, for example, reporting that “specific and detailed problems” had reduced from 200 per day at the start of the year to some 10 or 15 per day. It added that hauliers were “getting used to what is required and being better prepared”, resulting in “a marked difference on preparedness from the start to the end of January”.<sup>266</sup> As an example of improvements since the end of the transition period, the Minister highlighted the Kent access permits, where “in early January we were looking at 60% of hauliers having the correct paperwork ... That has now increased to 85%.”<sup>267</sup>

*Structural problems*

185. Other problems seem unlikely to be resolved without significant changes. Fergus McReynolds said that in some sectors and for some businesses, the disruption “is structural and it will change their supply chains”, adding that it may “mean that it is not necessarily economically viable to continue to operate in the way they have done historically”. Whereas the role of the Specialised Committees is to “make sure that we address system issues very quickly”, some structural issues simply “cannot be addressed because of the nature of the agreement that was concluded”.<sup>268</sup>
186. The TCA creates a Specialised Committee on Road Transport, but softening the impacts of the new requirements does not appear to be its primary focus. It is a forum in which the UK and the EU can discuss the impact

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262 Supplementary written evidence from the Local Enterprise Partnership Network ([FUU0021](#))

263 [Q 19](#) (Fergus McReynolds)

264 [Q 38](#) (Des Hiscock)

265 [Q 32](#) (Liam Smyth)

266 Supplementary written evidence from the Local Enterprise Partnership Network ([FUU0021](#))

267 [Q 50](#) (Penny Mordaunt MP)

268 [Q 19](#) (Fergus McReynolds)

of new regulatory measures relating to road transport proposed by either Party, potentially leading to “appropriate remedial measures, including the suspension of obligations under this Agreement”.<sup>269</sup> David Thorneloe said there is “less cause for optimism” about this Specialised Committee than its air transport counterpart, and that it “seems to be set up around enforcement and ensuring that there is no rowing back from cooperation”, because “the EU fears that the UK would seek to undercut the EU market with lower regulatory measures”.<sup>270</sup>

187. **Some of the issues disrupting transport flows are likely to be short-term, but swift Government action is required to minimise their consequences and lower transport costs. At the same time, we ask the Government to identify and consult with the industries likely to struggle most to move goods in the long term, to consider what mitigations might help to preserve trade flows.**

### Groupage

188. Problems with groupage—the consolidation of various consignments, often from multiple companies, on a single lorry—have the potential to be a long-term brake on trade in goods. Each element of the load must have the required paperwork before the vehicle can travel. If one consignment of goods on the lorry does not, the entire load is delayed and may be returned. Luke Hindlaugh from the Food and Drink Federation described such problems as a permanent new feature:

“You can get it right as many times as you want, but if someone else gets it wrong, the lorry is held up. One of our members has had orders for about 50 different consignments. Most of them were on groupage and only about two made it over the EU border; the rest of the 48 were held up. The lorries cannot move; none of the orders in those groupage loads can move. It is very tough to overcome some of those things, and they are very much here to stay.”<sup>271</sup>

189. The LEP Network told us: “Some hauliers are suspending groupage operations into Europe as each delivery requires significant amounts of paperwork to accompany it, there are significant time and labour costs and one small error can delay the whole load.”<sup>272</sup> Similarly, the Institute for Government noted reports in “the weeks following the end of the transition period” of logistics firms withdrawing groupage services, “in order to reduce the amount of paperwork each lorry had to carry and minimise the risk of trucks being stopped at the border”.<sup>273</sup> It is unclear how far this situation has improved.
190. Smaller businesses appear to have borne the brunt of groupage-related disruption. Jo Lappin of the LEP Network said groupage problems are “having a very disproportionate effect on small businesses”, as “a lot of hauliers do not want to take your goods because they are less confident that you have complied with the requirements”.<sup>274</sup> Fergus McReynolds said such “weakest-link-in-the-chain issues” are affecting SMEs “much more” than

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269 [Trade and Cooperation Agreement, 24 December 2020 \(Article ROAD.11.1\)](#)

270 [Q 10](#) (David Thorneloe)

271 [Q 22](#) (Luke Hindlaugh)

272 Supplementary written evidence from the Local Enterprise Partnership Network ([FUU0021](#))

273 Written evidence from the Institute for Government ([FUU0019](#))

274 [Q 34](#) (Jo Lappin)

larger companies.<sup>275</sup> The Institute for Government noted that small firms affected in this way “often have few economically viable alternatives to ship their goods”.<sup>276</sup>

191. Cheesemakers Alvis Brothers Ltd welcomed the Government’s Groupage Export Facilitation Scheme (GEFS), which allows exporters of SPS products—provided they have received an attestation from an official veterinarian or food competent certifying officer within the last 30 days—to supply an export health certificate for a consignment rather than each product within it. The company said GEFS “makes trade smoother, faster and cheaper” than using individual EHCs, “but will require investment in veterinary resource, processes and then the ability to update the EU Common Health Entry Documents (CHED) on arrival in the EU so that product can be distributed to more than one destination”. It also called on the Government to extend the 30-day attestation period, noting that no hauliers are offering groupage services outside GEFS.<sup>277</sup>

### *Groupage of SPS products for Northern Ireland*

192. Alex Veitch highlighted problems with groupage of SPS products moving from Great Britain to Northern Ireland, but said Logistics UK had worked with the Department for Environment, Food and Rural Affairs (Defra) and Northern Ireland’s Department of Agriculture, Environment and Rural Affairs (DAERA) to “come up with a pilot process” and “develop specific guidance for doing SPS loads by groupage from GB to NI”.<sup>278</sup>
193. Acknowledging that groupage “has been one of the hardest things to get right under the new requirements”, Emma Churchill, Director General of the Border and Protocol Delivery Group at the Cabinet Office, described the process developed by Defra, DAERA and Logistics UK. It “sets out two different models that can be used”. The first is “a consolidation hub, whereby the mixed products arrive in one specific premises and are consolidated and certified as a single unit. That means that a single certification officer can place a seal on the final load and can send it with the confidence that it will get across.” The second is “a linear model, whereby hauliers can pick up several consignments from multiple locations but the guidance allows for the individual certification along the way”.<sup>279</sup>
194. **We are concerned that groupage problems appear to be having a disproportionate effect on smaller exporters. We welcome the steps taken to mitigate such problems for the movement of food and animal products, including the Groupage Export Facilitation Scheme (GEFS). We recommend that the Government urgently extend the 30-day attestation period for GEFS and implement a similar scheme for other goods.**

### **UK haulage within the EU**

195. The TCA allows unlimited point-to-point haulage access between the UK and the EU without permit requirements. It also allows UK hauliers to continue to travel through the EU en route to European Conference of

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275 [Q 19](#) (Fergus McReynolds)

276 Written evidence from the Institute for Government ([FUU0019](#))

277 Written evidence from Alvis Brothers Ltd ([FUU0005](#))

278 [Q 43](#) (Alex Veitch)

279 [Q 62](#) (Emma Churchill)

Ministers of Transport (ECMT) member countries without an ECMT permit, which the Chartered Institute of Logistics and Transport described as a “key” provision.<sup>280</sup>

196. However, traders must comply with new transit requirements. Des Hiscock said many UK exporters “do not realise that if they want to deliver something into Austria, for example, they cannot just pass an export document”, but must also have “a transit document so that the goods can transit those European Union countries to facilitate the VAT requirements so the customs clearance would ultimately take place only in Austria”.<sup>281</sup> Similarly, Liam Smyth pointed to “major issues with the use of transit documents” and “unanticipated demand for transit movements”, since there is “insufficient capacity for transit guarantees in the UK” and “the drivers of the trucks are unfamiliar with the system”.<sup>282</sup> The absence of new requirements of this type when moving goods within Great Britain could feasibly give EU hauliers an advantage over UK hauliers.

### *Cross-trade and cabotage*

197. The TCA states that UK lorries “may undertake up to two laden journeys from one Member State to another Member State, without returning to the territory of the United Kingdom”. This is known as cross-trade. They may also make “one laden journey within the territory of a Member State”—known as cabotage. Lorries from Northern Ireland may carry out two cabotage operations in the Republic of Ireland, and EU lorries may carry out two in the UK.<sup>283</sup> Before the end of the transition period, UK hauliers were subject to EU rules allowing unlimited cross-trade and up to three cabotage journeys in the territory of another Member State.
198. The Road Haulage Association commented that the arrangements agreed “work reasonably well for UK and EU haulage operators”, and therefore “most goods transportation is adequately catered for”. In some markets, however, they “cause serious problems”.<sup>284</sup> Other witnesses concurred, with Logistics UK describing the provisions as “incompatible with certain business models, i.e. when the same load needs to be moved to different successive locations across Europe and returning to the UK between these deliveries is unnecessary and inefficient”. As service providers—for example, travelling musicians—are more heavily affected by these limitations than those trading in goods, these provisions are examined in more detail in the report by the EU Services Sub-Committee.<sup>285</sup>
199. **In the absence of greater bilateral cross-trade and cabotage rights for UK and EU hauliers, we encourage the Government to seek opportunities to negotiate exemptions for the categories of goods most affected by the restrictions in the TCA.**

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280 Written evidence from the Chartered Institute of Logistics and Transport ([FUU0003](#))

281 [Q 43](#) (Des Hiscock)

282 [Q 32](#) (Liam Smyth)

283 [Trade and Cooperation Agreement, 24 December 2020 \(Article ROAD.4\)](#)

284 Written evidence from the Road Haulage Association ([FUU0014](#))

285 European Union Committee, *Beyond Brexit: trade in services* (23rd Report, Session 2019–21, HL Paper 248)

### Aviation

200. The TCA allows unlimited point-to-point traffic between UK and EU airports. The ADS Group welcomed the “inclusion of a comprehensive air services agreement that allows flights to continue between the UK and EU without quantitative restrictions on passengers or cargo”.<sup>286</sup>
201. The TCA commits the UK and the EU to “cooperate in removing obstacles to doing business for air carriers of both Parties where such obstacles may hamper commercial operations, create distortions to competition or affect equal opportunities to compete”. It establishes a Specialised Committee on Air Transport to “monitor progress in effectively addressing matters relating to obstacles to doing business for air carriers”.<sup>287</sup> David Thorneloe told us there was “scope for optimism” about this Specialised Committee, whose “purpose is to remove obstacles to trade”.<sup>288</sup>

### *The fifth freedom of the air*

202. The fifth freedom of the air refers to an aeroplane flying between two foreign countries on a journey originating or ending in its own country. Under the TCA, there are no fifth freedom rights for passenger transport, but the UK and individual EU Member States are free bilaterally and reciprocally to agree fifth freedom rights for cargo. For example, there is no provision for a UK airline to fly from the UK to France, deposit and collect passengers then continue on to Germany. Such an itinerary could take place if the aeroplane were transporting goods rather than passengers, but only if the UK had come to bilateral, reciprocal agreements with both France and Germany.
203. Alex Veitch said Logistics UK “would like to see a deepening of the arrangements on air transport for the so-called fifth freedom to add liberalisation to air travel, which would benefit both passengers and freight”. He expressed hope that such a liberalisation “could be negotiated through an addition to the air services agreement with the EU”.<sup>289</sup> In written evidence, Logistics UK noted that bilateral agreements with Member States were only temporary arrangements and called for long-term reassurance.<sup>290</sup> The Chartered Institute of Logistics and Transport commented on the importance of fifth freedom rights for London Heathrow’s status as an international hub.<sup>291</sup>
204. **The Government should seek to negotiate full fifth freedom rights in the EU for cargo and passengers at the earliest opportunity. As an interim measure, it should seek liberal bilateral arrangements for cargo with as many individual Member States as possible.**

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286 Written evidence from ADS Group ([FUU0015](#))

287 [Trade and Cooperation Agreement, 24 December 2020 \(Article AIRTRN.12\)](#)

288 [Q 10](#) (David Thorneloe)

289 [Q 45](#) (Alex Veitch)

290 Written evidence from Logistics UK ([FUU0011](#))

291 Written evidence from the Chartered Institute of Logistics and Transport ([FUU0003](#))

## CHAPTER 9: GUIDANCE, ADVICE AND SUPPORT

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### Guidance

205. The Government has issued extensive guidance seeking to help businesses navigate the complex new requirements introduced by the TCA and the end of the transition period. This includes, for example, a sprawling web of pages on GOV.UK covering a range of narrow and broad topics, as well as a 315-page Border Operating Model setting out the requirements for moving goods between the UK and the EU.<sup>292</sup>
206. Witnesses welcomed the guidance, but suggested the Government could make it simpler for businesses to understand. Alex Veitch from Logistics UK was impressed with the guidance provided in various formats, but said that turning “dense, complex legal texts” into business-friendly guidance is “a tricky job and one that will take months and months to get right”.<sup>293</sup> Liam Smyth from the British Chambers of Commerce told us that the Government expects “traders to interpret that guidance and, frankly, to make fiscal declarations on that basis and suffer the consequences should they get them wrong”. He added that while some guidance was initially unclear, some of the problems were being addressed.<sup>294</sup>
207. In areas where business preparations were contingent on the provisions of the TCA, part of the problem, as the Institute for Government told us, is that the short time between the agreement of the TCA and its entry into force “left little time for businesses to make sense of the provisions” and “made it much harder for firms to adapt to new trading rules”. Necessarily, there was even less time for them to read and digest the Government’s guidance before the end of the transition period. For example, the guidance on rules of origin was published only on 29 December 2020, and the Border Operating Model updated only “five hours before many of the changes came into effect”.<sup>295</sup> As Allie Renison from the Institute of Directors put it: “On the guidance, it was simply that there were reams of it coming quite late in the day, so now there is a plethora of it for businesses to wade through.”<sup>296</sup>
208. Fergus McReynolds from Make UK said guidance could be made more impactful and useful by “making sure that there are worked examples”, and “case studies on things that have come up in questions that we have had from companies”.<sup>297</sup> Even very narrow issues and processes may require guidance. As Paymaster General Penny Mordaunt told us, some of the problems for businesses are “narrow but deep”.<sup>298</sup> The Cabinet Office’s Emma Churchill told us the Government has “learned some lessons” and is “now responding” to requests from business “to make sure that our guidance was actionable and that we included alongside it the kind of operational case studies that really helped not just with what people had to do, but how they had to do it”.<sup>299</sup>

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292 Cabinet Office, *The border with the European Union* (December 2020) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/949579/December\\_BordersOPModel\\_2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/949579/December_BordersOPModel_2.pdf) [accessed 4 March 2021]

293 Q 39 (Alex Veitch)

294 Q 26 (Liam Smyth)

295 Written evidence from the Institute for Government (FUU0019)

296 Q 26 (Allie Renison)

297 Q 24 (Fergus McReynolds)

298 Q 63 (Penny Mordaunt MP)

299 Q 52 (Emma Churchill)

209. Some witnesses suggested the Government had contributed to confusion by seeking to pass off new requirements as simpler than they in fact are. Liam Smyth told us: “Some might say that the focus in the specific guidance on the TCA was in order to make the agreement sound more attractive than perhaps it was. It is only through going into the detail that one realises what the guidance did not say, rather than what it said.”<sup>300</sup> Des Hiscock of ACITA and Customs Support said: “We need to stop trying to soften the message. We must realise that crossing an international border is not as easy as filling in a couple of forms. The potential sanctions for misinterpreting those rules of origin and getting things wrong are significant. We need to tell it like it is.” Many businesses, he added, “based on the original messaging from government”, erroneously think “they can buy a piece of software that will solve all their cross-border requirements or fill in a form and their problems will be solved”.<sup>301</sup>

### Advice and support

210. While general guidance is plentiful, there is clearly a shortage of specific advice and support tailored to businesses’ needs. The LEP Network called for “some direct and continued hand holding support to businesses to help them to navigate the changes and be better prepared to ensure that fully compliant paperwork is in place”.<sup>302</sup> Alessandro Marongiu from the SMMT told us “businesses face issues on so many different fronts that navigating” the Government’s “comprehensive” guidance and “translating it into actions that make the whole thing work” can be “overwhelming”. He told us that “many businesses need bespoke services”. These are “often costly and are an additional strain in an already critical situation where businesses are dealing with depressed demand and a very serious change in trading terms with their biggest trading partner”.<sup>303</sup>
211. Liam Smyth called for advice that was “indemnified against someone’s profession so that they can make the statement to HMRC: ‘I believe this to be the case, because I have taken that advice’. If there is an argument about it later, they have some recourse to the advice.” He urged the Government to help businesses overcome their “frustrations” with the new requirements by ensuring that they “have the advice and guidance they need and that they keep on their trading journey”.<sup>304</sup>
212. As there is “so much for the food and drinks industry to do and understand, be it customs, sanitary and phytosanitary requirements or VAT”, Luke Hindlaugh said that the Government should be “bringing all of that together and providing some hands-on support for businesses”.<sup>305</sup> This would involve “walking people through it so that they can identify the common mistakes they are making and address them, or find ways to redirect the logistics routes they use”.<sup>306</sup>

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300 [Q 26](#) (Liam Smyth)

301 [Q 39](#) (Des Hiscock)

302 Supplementary written evidence from the Local Enterprise Partnership Network ([FUU0021](#))

303 [Q 24](#) (Alessandro Marongiu)

304 [Q 33](#) (Liam Smyth)

305 [Q 24](#) (Luke Hindlaugh)

306 [Q 23](#) (Luke Hindlaugh)

*Existing support*

213. The level of support currently being provided appears to vary significantly between public bodies. Witnesses praised the work of the Cabinet Office's Border and Protocol Delivery Group (BPDG) and of specific teams within HMRC. The Institute for Government said it has "heard positive feedback" for the BPDG's regular calls with stakeholders, "which have provided a way to ensure stakeholders are kept abreast of emerging issues (and solutions) and have allowed firms to quickly raise questions and receive answers".<sup>307</sup> Des Hiscock praised the "great" support from the BPDG and HMRC's external stakeholder engagement teams and said "things around CHIEF could have been a lot worse" without it.<sup>308</sup>
214. Anna Jerzewska of Trade and Borders also praised HMRC's experts, but was concerned that the staff with whom most businesses will interact may not possess the same expertise. She said that "HMRC has always been incredibly supportive", but warned that with increased demand and a "lack of sufficiently trained staff in the call centre", initial support on HMRC helplines is "quite basic". She said that "proper interpretation, proper guidance and proper advice" are available only when calls are escalated.<sup>309</sup>
215. The experience of sustainable clothing trader Mantis World illustrates this point. Amid the company's uncertainty over whether tariffs apply on goods traded between the UK and EU but originating from developing countries with Generalised Scheme of Preferences access to both the UK and the EU, it had received incorrect advice from HMRC. Mantis World complained that while some of the "chaos" involved in trying to move goods between the UK and the EU since 1 January "can be attributed to the 'teething difficulties' cited by the Government ... the confusion cannot".<sup>310</sup>

*Rules of origin*

216. Witnesses sought improved support from the Government on rules of origin above all else. Anna Jerzewska said that she had encountered "an incredible number of questions from companies struggling with rules of origin". While advice was needed on "customs declarations, border processes and so on", rules of origin "have taken over as the main area of difficulty for companies". The Government's guidance on rules of origin "is not necessarily fit for purpose from a business perspective, especially in a situation where we do not have capacity in the industry, enough customs advisers or enough brokers".<sup>311</sup>
217. Jo Lappin of the LEP Network reported that 60% of businesses at a recent Institute of Export and International Trade event had not understood rules of origin or how they needed to manage them: "The only way we will get a solution is by very direct, bespoke hand-holding for the businesses concerned."<sup>312</sup> Des Hiscock called for "better guidance and understanding on the requirements for proving origin", as well as "process alignment" from EU Member States.<sup>313</sup>

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307 Written evidence from the Institute for Government ([FUU0019](#))

308 [Q 40](#) (Des Hiscock)

309 [Q 41](#) (Dr Anna Jerzewska)

310 Written evidence from Mantis World ([FUU0016](#))

311 [Q 39](#) (Dr Anna Jerzewska)

312 [Q 26](#) (Jo Lappin)

313 [Q 49](#) (Des Hiscock)

218. Liam Smyth said that the Government has improved its initial advice on rules of origin, but that “guidance is not the same as advice. It does not point a business to the options or to an answer for their specific product, their specific customer type or their market, and that is what they are looking for right now.”<sup>314</sup>
219. **The Government’s detailed guidance on changes for traders is welcome, but it needs to be easy for businesses to understand—including those with lower English-language skills—and honest about the complexity of some of the new requirements. The Government should supply more specific scenarios to help businesses make sense of the mass of information available to them.**
220. **We welcome indications that the Government is starting to take this message on board. But the Government should take further steps to improve the advice and support it provides to businesses. This includes providing additional training to ensure that all officials interacting with businesses give accurate and informed advice.**

### Policy options

221. Jo Lappin praised the Government’s provision of “additional resource to businesses through EU transition advisers” but noted that “the funding and those posts run out at the end of March”, when “most businesses will still be getting to grips with what they need to do to manage the end of the transition period”. She therefore argued that “careful thought needs to be given to how we continue to hand-hold businesses through some fairly complex issues”.<sup>315</sup>
222. As mentioned above (see paragraph 210), several witnesses called for financial support to enable traders to access private-sector advice. The Government responded to such calls on 11 February with the announcement of a £20 million SME Brexit Support Fund, to help SMEs “adjust to new customs, rules of origin, and VAT rules when trading with the EU”. SMEs whose only foreign trade is with the EU can apply for grants of up to £2,000 “to pay for practical support including training and professional advice to ensure they can continue trading effectively with the EU”. The announcement cited Rt Hon Michael Gove MP, Chancellor of the Duchy of Lancaster, saying that the funding would help SMEs “prepare for further changes as we implement our own import controls”.<sup>316</sup>
223. **The introduction of the SME Brexit Support Fund is a welcome step, but the level of funding provided may be insufficient. We urge the Government to monitor the fund’s performance closely to ensure it is helping SMEs access the support they need and, if necessary, take swift action to adjust its parameters accordingly.**
224. **The end of March is too soon for funding for EU transition advisors to end. New requirements are to be introduced later in 2021 and many companies are still struggling with those introduced in January. We recommend that the Government extend this funding until the end of 2021.**

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314 Q 25 (Liam Smyth)

315 Q 25 (Jo Lappin)

316 Cabinet Office, ‘Government announces £20 million SME Brexit Support Fund’ (February 2021): <https://www.gov.uk/government/news/government-announces-20-million-sme-brexit-support-fund> [accessed 4 March 2021]

## SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

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### Overarching findings

1. An agreement with the EU is far better than a ‘no deal’ outcome, but the TCA does not rectify significant regulatory, logistical and administrative barriers to trade arising from the UK’s status as a third country. These barriers particularly affect smaller businesses and those unaccustomed to submitting trading paperwork. In practice, the current outcome falls far short of the ambition of frictionless trade. (Paragraph 21)
2. We regret the Government’s decision to defer establishing the Partnership Council and other bodies and urge it to review this position. Given the many practical difficulties arising in the TCA’s implementation, we urge the Government to work with the European Commission to set up these governance bodies swiftly, and to ensure that they operate inclusively and with transparency. (Paragraph 22)
3. The Government’s future approach to trade with the EU should be ambitious. It must implement the TCA with as little disruption as possible and utilise the bodies established by the agreement to their fullest extent to reach a smoother trading relationship with the EU. We urge both Parties to work in the spirit of cooperation and openness in service of this objective. (Paragraph 23)

### Level playing field

4. Following the closure of its consultation on 31 March, the Government should move swiftly to introduce a transparent subsidy control regime. While the nature of this regime should be driven by the consultation responses, we recommend support to help smaller firms navigate the new requirements for cross-border trade as one initial area of focus for UK subsidy control policy. In this regard, the new £20 million SME Brexit Support Fund is a welcome step in the right direction, but we are concerned that the funding provided will be insufficient to meet its objectives. (Paragraph 38)
5. We welcome the Government’s stated commitment to high labour and social standards and urge it to approach any changes to these standards with caution. When it identifies a need to amend the current standards, it should proceed with transparency and only after consultation, taking into account the potential impact on UK-EU trade in goods. (Paragraph 42)
6. Notwithstanding its confidence that the TCA’s complex dispute resolution measures will be used infrequently, we recommend that the Government work with the EU to clarify publicly the precise circumstances in which either Party is likely to invoke them. (Paragraph 49)

### Rules of origin

7. Rules of origin were among the biggest issues facing traders following the TCA’s implementation. The very short period between publication and implementation exacerbated administrative difficulties and costs. Businesses will adapt over time, but the Government must ensure full awareness of the need to follow the rules during the grace period. (Paragraph 62)

8. We recommend that the Government embark on a programme of industry engagement to identify and pursue simplifications to adherence processes. (Paragraph 63)
9. The Government should make full use of the Trade Specialised Committee on Customs Cooperation and Rules of Origin to ensure consistency in implementation across the UK and EU. (Paragraph 64)
10. We recommend that the Government regularly publish detailed, sector-specific data on preference utilisation, and use it both to identify particularly affected sectors and to inform future dialogue with the EU on the implementation of the TCA. (Paragraph 67)
11. Through continued engagement at the Partnership Council, we urge the Government to seek a negotiated exemption with the EU, allowing non-processed EU-originating goods to be re-exported to the EU without tariffs. In the meantime, the Government should encourage and support affected businesses to apply for duty relief, and to use transit procedures. (Paragraph 75)
12. The EU's rejection of diagonal cumulation in the TCA negotiations was disappointing, and its absence is likely to have a negative impact on supply chains and exporters in developing countries. Although re-negotiation of this issue appears unlikely in the short term, the Government should continue to make the case for full diagonal cumulation and push for related amendments when the TCA's provisions are reviewed. (Paragraph 80)
13. Rules of origin present both short-term administrative issues and long-term structural challenges, chiefly where certain products do not qualify for zero tariffs under the TCA. (Paragraph 84)
14. Rules of origin requirements are likely to trigger substantial supply chain shifts in certain sectors and adjusting to these changes will incur significant costs for many UK businesses, as well as exporters in developing countries. Targeted intervention could, however, enable some sectors of UK manufacturing to benefit from supply chain shifts. We recommend that the Government take an ambitious approach to the onshoring of some manufacturing processes. For example, the Government should seek to attract manufacturers of cells and battery packs for electric vehicles to shift production to the UK. (Paragraph 85)

#### **Technical barriers to trade**

15. The failure to agree mutual recognition of conformity assessment will cause duplication of testing of certain products, for which businesses will incur significant costs. The Government should develop comprehensive consultation mechanisms to enable businesses and trade bodies to regularly feed into, and remain informed of, regulatory policy. (Paragraph 97)
16. The Government must further consider temporary recognition arrangements to enable pre-transition contractual obligations to be fulfilled. It should raise this issue with the EU in the Trade Specialised Committee on Technical Barriers to Trade. (Paragraph 100)
17. Continued cooperation on technical barriers to trade is critical. While continuing to seek mutual recognition of conformity assessment, the Government must engage with businesses and regulatory authorities to

identify areas where regulatory cooperation can be improved, and seek agreement to empower specific regulatory authorities from both Parties to recognise standards set by, and products approved by, the other. (Paragraph 104)

### Sanitary and phytosanitary measures

18. Traders in animal and plant products have been hit harder by red tape than perhaps any others since 1 January. Many of their products cannot be stockpiled but face the most stringent checks. While some of the sector's problems will improve as stakeholders gain familiarity with new requirements—at a cost—physical SPS checks could become a permanent barrier to trade in animal and plant products unless the UK and the EU can agree mitigations to the current regime. (Paragraph 123)

### Customs

19. The UK's Authorised Economic Operator scheme is, for many businesses, inaccessible. The time-consuming application process and the high threshold for approval means that few businesses can take advantage of the simplifications it provides. We recommend that the Government take steps to simplify the application process and lower the threshold for entry, to enable easier access for small businesses. (Paragraph 135)
20. We recommend that the Government seek the EU's agreement to a trusted trader scheme to enable those businesses that do not meet the Authorised Economic Operator criteria to benefit from some simplifications to customs or safety and security processes. This scheme could be tiered to enable even smaller businesses to access some degree of relief. Provision for transporters—common in air freight—should also be sought. (Paragraph 138)
21. The Government should urgently clarify the circumstances under which an ATA Carnet is required. Within the Trade Specialised Committee on Customs Cooperation and Rules of Origin, it should seek reciprocal exemptions for the most affected sectors. (Paragraph 142)
22. The customs intermediary sector does not have the capacity to meet increased demand, and smaller businesses are bearing the brunt of the shortage. The Government should increase and extend grants to the sector to increase the capacity and consider what financial support could be provided to smaller businesses to access the crucial services of intermediaries. (Paragraph 149)
23. Funding to support the development of physical customs infrastructure has been insufficient, particularly given the very short timeframe for making improvements. We recommend that the Government release additional funding before these checks are imposed. (Paragraph 155)
24. The Government should embark on a renewed effort to raise awareness of record-keeping requirements, and we also recommend that the Government adopt a pragmatic approach to border inspections as new requirements are phased in. (Paragraph 159)

### VAT

25. We welcome the Government's introduction of postponed accounting for VAT, which has mitigated some of the cashflow issues and, by dint of applying to non-EU trade as well, has even given some UK businesses a competitive advantage internationally. We recommend a programme of

support for businesses to become VAT registered to enable more traders to benefit from these important mitigations. (Paragraph 175)

26. Government support for promoting awareness of VAT implications has, to date, been poor. We call on the Government to take action to improve the understanding of VAT among traders and the customs intermediary sector alike. (Paragraph 176)

### **Transporting goods**

27. Some of the issues disrupting transport flows are likely to be short-term, but swift Government action is required to minimise their consequences and lower transport costs. At the same time, we ask the Government to identify and consult with the industries likely to struggle most to move goods in the long term, to consider what mitigations might help to preserve trade flows. (Paragraph 187)
28. We are concerned that groupage problems appear to be having a disproportionate effect on smaller exporters. We welcome the steps taken to mitigate such problems for the movement of food and animal products, including the Groupage Export Facilitation Scheme (GEFS). We recommend that the Government urgently extend the 30-day attestation period for GEFS and implement a similar scheme for other goods. (Paragraph 194)
29. In the absence of greater bilateral cross-trade and cabotage rights for UK and EU hauliers, we encourage the Government to seek opportunities to negotiate exemptions for the categories of goods most affected by the restrictions in the TCA. (Paragraph 199)
30. The Government should seek to negotiate full fifth freedom rights in the EU for cargo and passengers at the earliest opportunity. As an interim measure, it should seek liberal bilateral arrangements for cargo with as many individual Member States as possible. (Paragraph 204)

### **Guidance, advice and support**

31. The Government's detailed guidance on changes for traders is welcome, but it needs to be easy for businesses to understand—including those with lower English-language skills—and honest about the complexity of some of the new requirements. The Government should supply more specific scenarios to help businesses make sense of the mass of information available to them. (Paragraph 219)
32. We welcome indications that the Government is starting to take this message on board. But the Government should take further steps to improve the advice and support it provides to businesses. This includes providing additional training to ensure that all officials interacting with businesses give accurate and informed advice. (Paragraph 220)
33. The introduction of the SME Brexit Support Fund is a welcome step, but the level of funding provided may be insufficient. We urge the Government to monitor the fund's performance closely to ensure it is helping SMEs access the support they need and, if necessary, take swift action to adjust its parameters accordingly. (Paragraph 223)
34. The end of March is too soon for funding for EU transition advisors to end. New requirements are to be introduced later in 2021 and many companies

are still struggling with those introduced in January. We recommend that the Government extend this funding until the end of 2021. (Paragraph 224)

## APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

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### Members

Lord Berkeley  
 Baroness Chalker of Wallasey  
 Lord Faulkner of Worcester  
 Lord Inglewood  
 Baroness Kramer  
 Lord Lamont of Lerwick  
 Lord Lilley  
 Lord Russell of Liverpool  
 Lord Shipley  
 Lord Turnbull  
 Baroness Verma  
 Lord Wood of Anfield

### Declarations of interest

Lord Berkeley  
*Vice President, Chartered Institute for Transport*

Baroness Chalker of Wallasey  
*No relevant interests to declare*

Lord Faulkner of Worcester  
*Chairman, Great Western Railway Advisory Board*  
*Chairman, Alderney Gambling Control Commission*  
*Her Majesty's Government's Trade Envoy to Taiwan*

Lord Inglewood  
*President of the National Sheep Association and of the Livestock Auctioneers Association;*  
*Farmer and Landowner, and owner of historic house;*  
*Chair, Cumbria Local Enterprise Partnership;*  
*President of British Art Market Federation;*  
*Pensioner from European Parliament*

Baroness Kramer  
*No relevant interests to declare*

Lord Lamont of Lerwick  
*Director, Devon European Opportunities Trust*  
*Director, Compagnie Internationale de Participations Bancaires et Financières (CIPAF)*  
*Director, Chelverton UK Dividend Trust*  
*Adviser, Halkin Investments*  
*Adviser, Official Monetary and Financial Institutions Forum (OMFIF)*  
*Adviser, Meinhardt Engineering Group, Singapore*

Lord Lilley  
*House and smallholding with sheep in France*

Lord Russell of Liverpool  
*No relevant interests to declare*

Lord Shipley  
*No relevant interests to declare*

Lord Turnbull  
*No relevant interests to declare*

Baroness Verma

*No relevant interests to declare*

Lord Wood of Anfield

*Chair of the United Nations Association (UNA-UK)*

*Director, Good Law Project*

*Director of Janus Henderson Diversified Income Trust*

The following Members of the European Union Select Committee attended the meeting at which the report was approved:

The Earl of Kinnoull (Chair)

Baroness Couttie

Baroness Donaghy

Lord Faulkner

Lord Goldsmith

Baroness Hamwee

Lord Lamont

Baroness Neville-Rolfe

Lord Oates

Baroness Primarolo

Lord Ricketts

Lord Sharkey

Lord Teverson

Lord Thomas of Cwmgiedd

Baroness Verma

Lord Wood of Anfield

During the consideration of the report the following Members declared an interest:

The Earl of Kinnoull (Chair)

*Farming interests as principal and as charitable trustee, in receipt of agricultural subsidy*

*Chairman, Culture Perth and Kinross, in receipt of governmental subsidy*

*Chairman, United Kingdom Squirrel Accord, in receipt of governmental monies*

*Shareholdings as set out in the register*

Baroness Couttie

*Non-Executive Director, Mitie*

*Commissioner, Guernsey Financial Services Commission*

*Special Advisor, Heyman AI Ltd*

Baroness Donaghy

*Former President of the Trades Union Congress*

*Former member European Trades Union Congress*

*in receipt of USS Pension*

Lord Faulkner of Worcester

*Chairman, Great Western Railway Advisory Board*

*Chairman, Alderney Gambling Control Commission*

*Her Majesty's Government's Trade Envoy to Taiwan*

Lord Goldsmith

*Partner of Debevoise & Plimpton LLP international law firm with offices in the UK and various EU cities amongst others*

## Baroness Hamwee

*No relevant interests to declare*

## Baroness Neville-Rolfe

*Former Commercial Secretary, HM Treasury*

*Chair, Assured Food Standards Ltd*

*Chair, UK ASEAN Business Council*

*Non-Executive Director, Capita Plc*

*Non-Executive Director, Secure Trust Bank*

*Shareholdings as set out in the register*

*Trustee (Non-Executive Director), Thomson Reuters Founders Share Company*

*Health Data Research UK, Chartered Secretary*

*Fellow of ICSA, The Chartered Governance Institute*

## Lord Oates

*Director, Centre for Countering Digital Hate*

*Chairman, Advisory Board, Weber Shandwick UK*

*Director, H&O Communications Ltd.*

## Baroness Primarolo

*Non-executive director and chair, Thompson's Solicitors*

## Lord Ricketts

*Non-Executive Director, Group Engie, France*

*Strategic Adviser, Lockheed Martin UK*

*Charitable activities as set out in the Register of Interests*

## Lord Sharkey

*Chair of the Association of Medical Research Charities*

*Chair of the Specialised Healthcare Alliance*

*Member of Council at University College London*

## Lord Teverson

*Trustee, Regen SW*

*In receipt of a pension from the European Parliament*

## Lord Thomas of Cwmgiedd

*Arbitrator, Essex Court Chambers*

*Chancellor, Aberystwyth University*

*Chairman, London Financial Markets Law Committee*

*First Vice-President, European Law Institute*

*Member, First Minister of Wales' European Advisory Group*

A full list of Members' interests can be found in the Register of Lords' interests:  
<https://members.parliament.uk/members/lords/interests/register-of-lords-interests>

## APPENDIX 2: LIST OF WITNESSES

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Evidence is published online at <https://committees.parliament.uk/work/956/future-ukeu-relations-trade-in-goods/> and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with \*\* gave both oral and written evidence. Those marked with \* gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

### Oral evidence in chronological order

**	Nadiya Nychay, Partner, Dentons	<a href="#">QQ1–12</a>
**	Christophe Bondy, Partner, Steptoe & Johnson LLP	
*	David Thorneloe, Legal Director, Pinsent Masons LLP	
**	Alessandro Marongiu, International Trade Policy Manager, Society of Motor Manufacturers and Traders	<a href="#">QQ13–24</a>
*	Luke Hindlaugh, Senior EU and International Food Trade Executive, Food and Drink Federation	
*	Fergus McReynolds, Director of EU Affairs, Make UK	
*	Liam Smyth, Director, Trade Facilitation, British Chambers of Commerce	<a href="#">QQ25–37</a>
**	Jo Lappin, Chief Executive, Cumbria Local Enterprise Partnership	
*	Allie Renison, Head of EU and Trade Policy, Institute of Directors	
*	Alex Veitch, General Manager of Public Policy, Logistics UK	<a href="#">QQ38–49</a>
*	Dr Anna Jerzewska, Director, Trade and Borders	
*	Des Hiscock, Regional CEO of Customs Support and Director-general at ACITA	
*	Rt Hon Penny Mordaunt MP, Paymaster General	<a href="#">QQ50–63</a>
*	Emma Churchill, Director-General, Border and Protocol Delivery Group, Cabinet Office	
*	Will Hayter, Director, EU Exit Transition Taskforce, Cabinet Office	

### Alphabetical list of all witnesses

	Adam Bennett and Professor David Vines	<a href="#">FUU0006</a>
	ADS Group - Aerospace, Defence, Security & Space	<a href="#">FUU0015</a>
**	Alessandro Marongiu, International Trade Policy Manager, Society of Motor Manufacturers and Traders ( <a href="#">QQ13–24</a> )	<a href="#">FUU0020</a>

- \* Alex Veitch, General Manager of Public Policy,  
Logistics UK ([QQ38-49](#))
- \* Allie Renison, Head of EU and Trade Policy, Institute  
of Directors ([QQ25-37](#))
- Alvis Brothers Ltd [FUU0005](#)
- \* Dr Anna Jerzewska, Director, Trade and Borders  
([QQ38-49](#))
- The Association of British Orchestras [FUU0012](#)
- The British Poultry Council [FUU0013](#)
- The British Standards Institution (BSI) [FUU0023](#)
- The British Veterinary Association [FUU0010](#)
- The Chartered Institute of Logistics and Transport  
(CILT) [FUU0003](#)
- \*\* Christophe Bondy, Partner, Steptoe & Johnson LLP  
([QQ1-12](#)) [FUU0018](#)
- City of London Corporation [FUU0007](#)
- The Crafts Council [FUU0009](#)
- \* David Thorneloe, Legal Director, Pinsent Masons LLP  
([QQ1-12](#))
- \* Des Hiscock, Regional CEO of Customs Support and  
Director-general at ACITA ([QQ38-49](#))
- DWF [FUU0022](#)
- \* Emma Churchill, Director-General, Border and  
Protocol Delivery Group, Cabinet Office ([QQ50-63](#))
- \* Fergus McReynolds, Director of EU Affairs, Make UK  
([QQ13-24](#))
- The Institute for Government [FUU0019](#)
- Jellyworks Ltd [FUU0002](#)  
[FUU0025](#)
- \*\* Jo Lappin, Chief Executive, Cumbria Local Enterprise  
Partnership ([QQ25-37](#)) [FUU0021](#)
- \* Liam Smyth, Director, Trade Facilitation, British  
Chambers of Commerce ([QQ25-37](#))
- Logistics UK [FUU0011](#)
- \* Luke Hindlaugh, Senior EU and International Food  
Trade Executive, Food and Drink Federation  
([QQ13-24](#))
- Mantis World [FUU0016](#)
- \*\* Nadiya Nychay, Partner, Dentons ([QQ1-12](#)) [FUU0017](#)
- \* Rt Hon Penny Mordaunt MP, Paymaster General  
([QQ50-63](#))

The Railway Industry Association (RIA)

[FUU0024](#)

The Road Haulage Association (RHA)

[FUU0014](#)

RSPCA

[FUU0008](#)

\* Will Hayter, Director, EU Exit Transition Taskforce,  
Cabinet Office ([QQ50-63](#))

### APPENDIX 3: CALL FOR EVIDENCE

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The House of Lords EU Goods Sub-Committee, chaired by Baroness Verma, has launched an inquiry into the future of the UK-EU relationship, focussing on trade in goods. This will examine the impact of the provisions set out in the EU-UK Trade and Cooperation Agreement (TCA). The Committee is interested in your views on the TCA and what it will mean for you or your business or policy area.

The Committee invites interested individuals and organisations to submit written evidence to this inquiry by 5 February 2021.

#### Background

UK exports of goods to EU countries in 2019 were valued at £170.6 billion, accounting for 46% of total UK goods exports. The UK imported goods worth £267.4 billion from the EU, representing 53% of the UK's total imported goods.<sup>317</sup>

The Trade and Cooperation Agreement between the UK and the EU establishes a new framework for trade and cooperation between the parties. The Committee will examine the provisions relating to trade in goods, and where UK-EU relations should go from here.

The Committee is interested in the impact that the Trade and Cooperation Agreement has had to date and in what a future UK-EU relationship could look like. The Committee would welcome views on areas of interest that are cross-cutting and may impact a large number of sectors, as well as specific sectoral implications.

The areas of the TCA that relate to the EU Goods Sub-Committee's remit include, but are not limited to:

- (a) Non-tariff barriers to trade:
- (b) Rules of Origin
  - (i) Technical barriers, such as regulatory requirements and conformity assessments
  - (ii) Measures for sanitary and phytosanitary products
- (c) Customs and trade facilitation:
  - (i) The Authorised Economic Operator scheme
  - (ii) Measures to combat VAT fraud
  - (iii) Recovery of taxes and duties
- (d) Transport
  - (i) Transportation of goods by air, rail, road or sea
  - (ii) Safety and regulation
- (e) The 'level playing field':
  - (i) State aid
  - (ii) Regulations on labour

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<sup>317</sup> Office for National Statistics, 'UK Balance of Payments, The Pink Book: 2020': <https://www.ons.gov.uk/economy/nationalaccounts/balanceofpayments/bulletins/unitedkingdombalanceofpaymentsthepinkbook/2020> [30 October 2020]

## (iii) The rebalancing mechanism

## (f) Public Procurement

Diversity comes in many forms, and hearing a range of different perspectives means that Committees are better informed and can more effectively scrutinise public policy and legislation. Committees can undertake their role most effectively when they hear from a wide range of individuals, sectors or groups in society affected by a particular policy or piece of legislation. We encourage anyone with experience or expertise of an issue under investigation by a Select Committee to share their views with the Committee, with the full knowledge that their views have value and are welcome.

If you wish to contribute your experience and expertise to the inquiry, please respond to the questions below, indicating which policy areas listed above you are responding in relation to. There is no obligation to answer every question.

Please indicate which aspect of the Trade and Cooperation Agreement you are responding in relation to. You are welcome to respond to any that apply.

- (1) As opposed to other possible outcomes, what does the presence of an EU-UK free trade agreement mean for trade in goods?
- (2) What is your assessment of the relevant provisions in the TCA and their impact on your business or policy area?
- (3) What do those provisions achieve?
- (4) What, if any, challenges arise because of those provisions? How should these challenges be addressed and what support is needed, if any?
- (5) What do you identify as the most important issues that the TCA leaves for further negotiation? What would represent a best-case resolution of these issues?
- (6) Within the parameters of the TCA, what should the UK seek to accomplish with the EU in relation to your industry or policy area in the short, medium and long term?

## APPENDIX 4: LETTER FROM LORD GOLDSMITH TO LORD KINNOULL, 25 FEBRUARY 2021

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### International Agreements Committee's submission on the TCA

Dear Charles

I am writing to set out the International Agreements Committee's views on the UK-EU Trade and Cooperation Agreement (TCA) and, in particular, its impact on trade with non-EU countries and the position of UK companies in international supply chains.

As you know, Chapter 2 of the TCA sets out the rules that goods must meet to qualify for tariff-free exports under the TCA. In broad terms, they state that:

- goods produced in the UK can be treated as if they originated in the EU, and vice versa;
- EU materials used in UK products, and UK materials used in EU products will also count as their own, i.e. as “originating” in exports to each other (subject to some minimum processing thresholds). This means those goods and materials can continue to be traded tariff-free between the UK and the EU in an arrangement known as bilateral cumulation.

Because UK and EU supply chains are highly enmeshed, UK negotiators had, however, pushed for more liberal rules of origin, allowing for so-called diagonal cumulation of origin between the UK, the EU and those countries with which both the UK and the EU have free trade agreements. This would have allowed UK manufacturers to count, for example, South Korean parts as originating in the UK in exports to the EU. Equally, EU manufacturers would have been able to continue to count UK parts as originating in the EU in exports to South Korea. Full preferential access would have been maintained by all three Parties into each other's markets.

To mitigate the loss of such full preferential access after the end of the transition period with trade partners that both the UK and EU have trade agreements with, the roll-over trade agreements negotiated by the UK Government all include an extended cumulation of origin, allowing the UK and the other Party to recognise materials from the EU as their own. In some agreements this arrangement is open-ended, while in others it is time-limited.

The UK's recent agreement with Canada, for example, enables producers and manufacturers in the UK and Canada to use EU materials and count these as originating in exports to one another for a minimum period of three years.<sup>318</sup> This benefits UK and Canadian producers and manufacturers as they can keep their existing supplier base and do not need to source their materials from elsewhere. It also benefits the EU suppliers, whose position in the supply chain remains secure and unaffected by the changed UK-EU trading relationship.

However, UK companies supplying materials or parts to EU companies for subsequent export to a common trade partner country, do not enjoy equivalent benefits under the terms of the TCA. Where the final product has been

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318 Agreement, done at Ottawa on 9 December 2020, between the United Kingdom of Great Britain and Northern Ireland and Canada on Trade Continuity, CP 351, 2020, Annex 30-D: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/942941/CS\\_Canada\\_1.2020\\_Agreement\\_on\\_Trade\\_Continuity\\_UK\\_Canada.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/942941/CS_Canada_1.2020_Agreement_on_Trade_Continuity_UK_Canada.pdf) [accessed 19 February 2021]

substantially transformed by the EU company or the use of the UK material does not breach the permitted limits for non-originating content—and this will vary by export destination—this is of course not an issue. However, there will invariably be instances where using a UK supplier will mean the EU company losing preferential access for its exports. In those cases, the UK company will likely become less attractive as a supplier and may lose its place in the supply chain.

A few industries, such as the aerospace sector, will be shielded from the impact of the new rules of origin because of multilateral international agreements that already provide for zero tariffs on specified goods. And some sectors will be more affected than others. The integrated nature of automotive supply chains means the car industry is particularly exposed. For example, when the Committee took evidence on the UK's trade agreement with Japan, witnesses emphasised that diagonal cumulation was crucial for the car industry. The Society of Motor Manufacturers explained that the UK is “part of a European industry and a European supply chain, so a lot of our parts and components ... come into the UK, are processed and might go back again.”<sup>319</sup>

The North East England Chamber of Commerce told us that diagonal cumulation was vital for the UK's manufacture of electric vehicles, as the EU is not well developed in electric vehicle production and many parts need to be imported from Japan. We therefore welcome the transitional rules of origin in Annex Orig-2B of the TCA that allow for a higher proportion of non-originating materials to be included in electric accumulators for automotive use and electric vehicles until the end of 2026.

We however regret the way in which the Government has presented the benefits of the new trade agreements concluded to date. The new trading terms are being compared persistently against those that would have applied in the absence of any agreement, rather than against those that applied to the UK as a member of the EU. As set out above, failure to secure diagonal cumulation in the TCA inevitably means that for some UK businesses trading terms with third countries will now be worse than they were. Any overall benefits that may result from our ability to conclude our own deals are, as yet, unproven.

I hope you have found this letter helpful for the purposes of the Committee's reports on the UK-EU TCA. It is based on our experience of scrutinising roll-over trade agreements and on evidence collected in past inquiries. I am copying this letter to Baroness Verma as Chair of the EU Goods Sub-Committee, given it touches on areas also covered by, and of interest to, her Committee.

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319 Oral evidence taken before the International Agreements Committee, 14 September 2020, (Session 2019-21), [Q 12](#) (Mike Hawes)

**APPENDIX 5: GLOSSARY**

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AEO	Authorised Economic Operator
ATA Carnet	An international customs and temporary export-import document which allows the temporary movement of goods without the payment of duties or import taxes
BCP	Border control post
BEIS	Department for Business, Energy and Industrial Strategy
Bilateral cumulation	A provision in a free trade agreement allowing the parties to cumulate inputs from one another when assessing the origin of a product
BPDG	Border and Protocol Delivery Group
CAA	Civil Aviation Authority
Cabotage	Laden journeys undertaken by a vehicle of one country within the territory of a second
CHIEF	Customs Handling of Import Export Freight service; the IT system for customs declarations
Conformity assessment	The procedures for ensuring a product meets necessary regulatory requirements before it is placed on the market
Cross-trade	Laden journeys undertaken by a vehicle of one country from a second country to a third, without returning to its home territory in between
DAERA	Northern Ireland's Department of Agriculture, Environment and Rural Affairs
Defra	Department for Environment, Food and Rural Affairs
Diagonal cumulation	A provision in an FTA which allows the parties to cumulate inputs from third countries (typically those with which both parties have a free trade agreement) when assessing the origin of a product
EASA	European Union Aviation Safety Agency
ECMT permit	European Conference of Ministers of Transport permit
EORI number	Economic Operators Registration and Identification number: required to move goods between the UK and the EU
EHC	Export health certificate
Fifth freedom of the air	The right of an airline to fly between two foreign countries on an itinerary originating or ending in its own country, depositing and collecting goods or passengers en route

FTA	Free trade agreement
GEFS	Groupage Export Facilitation Scheme
Groupage	The consolidation of various consignments, often from multiple companies, on a single lorry
Incoterms	A set of internationally recognised trade terms that describe the practical arrangements for the delivery of goods from sellers to buyers, and allocate the obligations, costs and risks between the two Parties
LEP	Local Enterprise Partnership
Level playing field	Provisions in a trade agreement to limit regulatory competition between jurisdictions in areas such as subsidies and employment standards
Local content threshold	A minimum threshold for the product content deriving from the parties in an FTA; the threshold determines whether a product is considered to be originating
Postponed VAT accounting	A measure which allows traders to declare and recover import VAT on the same VAT return, rather than paying VAT on import and reclaiming it later
Preference utilisation	The extent to which imports eligible to enter a country using an FTA's zero or lower tariffs actually enter under these rates
PSRs	Product-specific rules of origin
Rebalancing mechanism	A process outlined in the TCA allowing either Party to introduce temporary tariffs if it assesses that the other's rules have introduced enough divergence to significantly affect bilateral trade or investment. The process allows for countermeasures if the initial measures are deemed unfair, and potentially amendments to or termination of parts of the TCA.
Rules of origin	A set of criteria which establish the 'economic nationality' of a product; to benefit from reduced tariffs in an FTA, products must comply with rules of origin
SMMT	Society of Motor Manufacturers and Traders
SPS	Sanitary and phytosanitary
Statement on Origin	A statement describing the originating product in sufficient detail to enable its identification; used to determine the origin of a product
Subsidies	Direct or indirect financial contributions from the state granted to certain companies, usually to promote a social good or address a market failure
TCA	EU-UK Trade and Cooperation Agreement

Transit	A customs procedure which allows for the temporary suspension of duties and taxes that are applicable at import; goods placed under Transit are subject to these formalities at the point of destination rather than at the point of entry
UCC	Union Customs Code

