CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE

AGENDA

8th Meeting, 2021 (Session 5)

Thursday 4 March 2021

The Committee will meet at 8.45 am in a virtual meeting that will be broadcast on www.scottishparliament.tv.

1. **EU trade and co-operation agreement**: The Committee will take evidence from—

   Stephen Phillips, Partner, CMS;

   Professor Andrea Nolan, Principal, Edinburgh Napier University and Convener, Universities Scotland International Committee;

   William Bain, Trade Policy Adviser, British Retail Consortium;

   and then from—

   Michael Russell, Cabinet Secretary for the Constitution, Europe and External Affairs, David Barnes, Deputy Director, EU Exit Strategy and Negotiations, Justin McKenzie Smith, Deputy Director, EU Exit and Economy, Directorate for International Trade and Investment, and Lewis Hedge, Head of Regulatory Cooperation and Cross-Border Trade, Scottish Government.

2. **Consideration of evidence (in private)**: The Committee will consider the evidence heard earlier in the meeting.

3. **Correspondence (in private)**: The Committee will consider draft correspondence.
The papers for this meeting are as follows—

**Agenda item 1**

Note by the Clerk  
PRIVATE PAPER

**Agenda item 3**

PRIVATE PAPER

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Culture, Tourism, Europe and External Affairs Committee

8th Meeting, 2021 (Session 5), Thursday 4 March 2021

EU-UK Trade and Co-operation Agreement

Note by the Clerk

Introduction

1. The Committee has undertaken scrutiny, in recent weeks, of the impact of the EU-UK Trade and Co-operation Agreement (TCA) upon key sectors of the Scottish economy and on the scrutiny process in the European Parliament of the TCA. This week’s evidence session on the TCA is divided across two panels of witnesses. Firstly, consideration of the impact of the TCA on the higher education, financial services and retail sectors of the Scottish economy. Secondly, the Cabinet Secretary for the Constitution, Europe and External Affairs will provide the Scottish Government perspective on the TCA.

Evidence session

2. The Committee will take evidence on the TCA from—

Panel One – Sectoral representatives

- William Bain, Trade Policy Adviser, British Retail Consortium;
- Professor Andrea Nolan, Principal of Edinburgh Napier University and Convener of Universities Scotland International Committee;
- Stephen Phillips, Partner, CMS.

Panel Two – Scottish Government

- Michael Russell MSP, Cabinet Secretary for the Constitution, Europe and External Affairs, Scottish Government;
- David Barnes, Deputy Director, EU Strategy and Negotiations;
- Justin McKenzie Smith, Deputy Director, EU Exit and Economy;
- Lewis Hedge, Head of Regulatory Cooperation and Cross-Border Trade.

Supporting Information

3. A written submission has been provided by the Confederation of British Industry (Scotland) which is provided at Annex A to this paper. A SPICe briefing paper considering the impact of the TCA on the higher education, retail and services
sectors as well as the implications for small businesses is provided in Annexe B to this paper. Full details of the Committee’s scrutiny of the TCA can be accessed at—

Stephen Herbert
Clerk
Culture, Tourism, Europe and External Affairs Committee
1 March 2021
Written Submission from Confederation of British Industry (CBI) Scotland

Overview

On 24th December 2020, the UK and EU agreed a new Trade and Cooperation Agreement (TCA) to govern the future trading and security relationship between the two parties following the UK’s departure from the EU in January 2020.

The deal provides firms with vital certainty, avoiding costly tariff and quota restrictions both sides would have faced in a no deal scenario. Yet, with the TCA only being secured with days to spare prior to the end of the Transition Period on 31st December 2020, businesses have spent the subsequent weeks attempting to get to grips with what the deal means in practice. Firms have spent considerable resources to understand the practical and operational implications of the new agreement and what the new processes and procedures mean for them and their supply chains.

Since the TCA was secured, the CBI has been in daily contact with firms to hear first-hand the key implications of the for business, how firms are interacting with the latest government guidance and what issues companies are encountering in adjusting to the realities of the new UK-EU trading relationship.

The CBI has hosted virtual roundtables across the UK, including in Scotland, engaging with over 500 firms across all sectors of the economy. This exercise was conducted in conjunction with the CBI’s regular programme of member engagement via ad hoc calls, webinars and manning of an email inbox.

In addition, engagement with the CBI’s specialist Customs Working Group and NI Protocol Working Group has provided detailed feedback on the cross-border movement of goods between both EU-GB and GB-NI borders, and any operational challenges in applying both the TCA and the Northern Ireland Protocol.

The key themes arising from these conversations, and the challenges firms are currently facing, is summarised in the note below.

Customs & EU-GB border

At the start of 2021, traffic at the border was lower than usual – both between the UK and EU, and between Great Britain and Northern Ireland. This was not unexpected, as many businesses had planned this through increased deliveries at the end of 2020, stockpiling, and planned factory closures. Outbound flows at crossings have steadily increased in the weeks since.

Firms are continuing to deal with new customs processes and paperwork whilst managing delays at ports, issues around groupage and inconsistent approaches from different customs authorities when it comes to paperwork.
In the first few weeks of the year, businesses have reported some immediate challenges:

**IT system disruption**

- Businesses are worried the Customs Handling of Import and Export Freight (CHIEF) system is “creaking” under the onslaught of declarations, which would cause significant delay and disruption to supply chains.
- Large businesses are seeing a number of requests for UK EORI numbers to be supplied to EU – but there is a significant level of misunderstanding on the EU side.
- Traces – the EU ended access for a number of GB companies on 1st January and this is proving challenging.

**Delays in clearance**

- Previously, goods required permission to proceed would be processed in minutes, but there have been instances where this is taking hours - with potential for missed freight connections.
- Delays in clearing through customs clearance agency: examples given of getting correct paperwork to ship returnable packaging. This was previously part of a continuous loop, with parts coming in that require a set amount of packaging, but now have additional layers of paperwork required to return packaging to EU. Companies have had to employ additional staff to process this – diverting resources from other parts of the business and reducing cashflow.

**Concerns over enforcement levels**

- Uncertainty remains over the level of enforcement by EU member states when exporting goods which may have the wrong marking/labelling. The CBI have urged UK and EU customs authority to coach businesses through this process, rather than penalising.
- Reports that a customs clearance agent is taking a zero-tolerance approach; firms uncertain whether the same level of enforcement is being applied at EU state borders. This means that businesses are in practice not facing one set of rules for exporting to the EU, but up to 27, increasing uncertainty in supply chains and making them much more complicated to manage.

**Increased costs**

- Cost of shipping containers has increased from £2,500 to £10,000 overnight, which have increased overheads by £250,000 a month for one firm. Costs have risen between 10%-400%.
- Pallet costs have increased by up to £200 per pallet – costly for smaller traders.
- Increased overheads and costs of trade put increasing pressure of businesses cashflow and bottom line, with many firms forced to increase
prices to absorb them. One firm has increased prices by 15%-20% across its range.

- Early concerns about the cost implications of applying separate EU and UK conformity marks and labels – not immediate costs, but one firm estimates £2.5-£5k per product (design changes, tooling) and will need to start the process for this soon.

**GB-NI Trade**

- As with the main GB-EU crossings, traffic between GB and NI has seen additional frictions. For those trading between GB and NI, NI-based firms have appeared more prepared for the changes, compared to GB-based companies. Whilst the initial easement periods were welcomed, firms are now needing the certainty of what the new timescale is for easements will be.
- The development of a complete, documented model for GB-NI movements would be very beneficial for firms trying to map out and understand the systems and processes for these movements.

**Trader Support Service (TSS)**

- The TSS has been an invaluable service for many firms but it is reported that it could be more efficient - it is very labour intensive and data entry processes could be improved and streamlined.
- Businesses in NI and GB reported issues with accessing the information they need to continue supplying goods in accordance with the rules.
- There are system issues with linking into Irish customs system and VAT numbers.

**Customs, routes and paperwork**

- Some of the most prepared businesses are concerned about the knock-on impacts of other traders/hauliers not being up to speed on current processes.
- Whilst physical checks on lorries going into Northern Ireland were recently paused, accompanying paperwork was still required to be completed by firms.
- Concerns over GB port facilities from NI agri-food for declaring the weight of consignments – this may be required for shipping GB-NI, but not all GB port facilities have weighbridges for consignments.
- The increase in bureaucracy is challenging even for prepared and well-resourced firms.

**Rules of Origin**

With guidance now published, firms are getting to grips with what the rules will mean for their products. Many are still trying to figure out what their supply chains and composition of products means for tariffs, and costs on them as a business to process this additional information.
Guidance

- Beyond the hundreds of pages in the TCA, the initial guidance produced by the UK government is 37 pages long and daunting for businesses that have never encountered Rules of Origin before.
- Many firms in the UK lack previous experience in managing Rules of Origin – both on supply chain compliance and administration. This is particularly difficult for small and medium sized firms who lack resource or capacity to navigate the new rules. However, even larger businesses are still processing what impact the rules will have.
- Some firms are struggling to get their EU suppliers to provide the Statement on Origin (SoO) needed to reduce import duties to zero.
- Businesses are now trying to gauge whether they can discern whether they are compliant and can complete the declarations required in order to access tariff-free trade, or whether to accept the cost of tariffs, and pass on or absorb this cost.

Bilateral Cumulation

- The nature of the TCA's bilateral cumulation agreement means that many businesses who import components from non-EU suppliers, or their EU suppliers do, are now realising that they will not meet the thresholds to be exported/imported tariff free between the UK and EU.
- The cost of compliance with Rules of Origin can be estimated to be the equivalent of a 3-5% tariff, and so the decision whether to go to the effort of complying or to pay the tariff will depend on the individual business product tariffs and their margins.
- This is also compounded by confusion over how this interacts with the UK-Swiss agreement, where the Swiss government has interpreted the agreement to not cumulate with EU-UK-Swiss goods. While the governments are working to resolve this, in the meantime Swiss and UK businesses are left suddenly facing tariff barriers.
- In Northern Ireland, many importers bring in mixed lorries of UK/RoI goods. Manufacturers, including good and drink businesses, then relabel products for RoI in GB – which in turn could cause rules of origin concerns, threatening existing supply chains.
- One Northern Irish business said the Rules of Origin were a “nightmare to trace where a raw material ends up and in what market.”

Enforcement

- Some declarations and EU governments are requiring EORI numbers for shipments. This is sensitive commercial information for businesses, and many feel uncomfortable disclosing information on forms that are then made widely available.
- The 12-month grace period for suppliers’ declarations is only helpful for some businesses, however it does not remove the administrative burden -
statements of origin are still required. Furthermore, it still required businesses to be confident that they are compliant with the rules and without the full knowledge of what audit or enforcement down the road could mean.

**UK-EU Services Trade**

Whilst a data adequacy decision was a welcome step towards securing the free flow of data between the UK and EU, there remain other areas to build upon, including mutual recognition of professional qualifications (MRPQs) through the partnership council or bilateral agreements.

- While services provisions have been included – and can sound quite impressive at face value – services trade will get more complex and businesses will need to start looking at the rules for each member state. COVID restrictions on travel – a key way in which services are traded - has reduced disruption, but likely to increase as restrictions are lifted.
- The decision on UK-EU data adequacy, which came in February, is a welcome step towards securing the free flow of data between the UK and the EU, which is critical for businesses across the economy from automotive to logistics.
- Firms are looking for clarity on MRPQs and what it means in practice for the continued provision of services in the EU from UK-based firms. Whilst it is welcome that the deal provides a pathway, firms need to understand what comes next, and what this means for the process for securing recognition. The loss of automatic recognition adds levels of complexity and administrative challenges for firms.
- Business mobility will become more of a challenge when face to face services increases. Greater understanding and guidance around visa requirements and what business activity can be undertaken in each member state will be required as firms grapple with different requirements across the EU27. This creates additional costs, administration, and time for firms.
- Reports of a lengthy process (8-10 weeks) to get visas to EU countries processed. One firm has seen up to 40 employees who work with customer commitments in Germany, France and Spain impacted, and is causing delays.
- For financial services, firms are awaiting the three months of intensive dialogue, which aims to deliver a MOU on FS equivalence by the end of March 2021.
IMPACT OF THE EU-UK TRADE AND COOPERATION AGREEMENT FOR SCOTTISH HIGHER EDUCATION

Context

Giving evidence to the Committee on 12 November, Wendy Alexander from Universities Scotland highlighted higher education’s key concerns ahead of any deal being reached—

“The sector’s greatest concern on Brexit, and critically if there is no deal, is that we would no longer be a member of the horizon 2020 programme or its successor, horizon Europe. Those are the six-year programmes of European research. Horizon is the most successful European research programme, and Scotland has done incredibly well out of it. We have won competitively £755 million over the past six years of the horizon 2020 programme. All of that will go unless we are participants in the next scheme. The UK Government has said that it will try to match the scheme if there is no deal but, fundamentally, such programmes are about global collaboration, so that is in play.

On the impact of that on fees from international students from outwith the EU, I note that those students come to the UK and specifically to Scotland, as others have said, for reputation, and that reputation is fundamentally based on research excellence. We have four of the top 200 universities in the world. The students come for that reputation, which will be at risk if our scientists are excluded from participation in the major European research programmes.

The other thing, which is a smaller-scale issue but is also significant, is that many international students who come here want to see Europe. They come and participate in programmes such as Erasmus, which is the other area that is at risk as a result of not reaching a deal.”

The Trade and Cooperation Agreement

The EU-UK Trade and Cooperation Agreement includes provisions for UK participation in the future Horizon Programme if a financial arrangement can be found. However, the UK will no longer participate in Erasmus with the UK Government instead operating its own “Turing scheme”. In a briefing for MSPs published in October 2020, Universities Scotland wrote—
“Our concerns are that a successor scheme would be inferior to Erasmus+ if it did not also include staff mobility or international collaborative projects as the current scheme does. Additionally, there has been speculation that a UK domestic alternative scheme would only fund UK students on exchange, not operate on the reciprocal basis that the Erasmus+ model does. This would leave the UK or UK universities to reach bilateral deal with other governments and/or institutions which is far more time and resource intensive for institutions and is likely to reduce the range of options available to students relative to the opportunities available in Erasmus+.”

SPICe has published a blog on university research funding and student mobility after Brexit.

The Turing Scheme

A recent House of Commons Library briefing on the new Turing Scheme provided details on the budget and aims of the programme as follows—

“The scheme will be backed by £110 million, and will provide funding for around 35,000 participants in universities, colleges, and schools to go on placements and exchanges across the world from September 2021.

On 6 February 2021, the website for the Turing Scheme was launched and it provides details about funding and eligibility to enable organisations to prepare for bids to open in March 2021 for six weeks.

Projects must focus on four main objectives:

- Global Britain
- Levelling up
- Developing key skills
- Value for UK taxpayers”.

Staff and Student Mobility

Alongside the UK’s decision not to participate in the Erasmus programme which will impact on both student and staff mobility, the Trade and Cooperation Agreement does not provide for staff mobility for higher education professionals. Instead, each Member State will operate its own system which will require students and university staff hoping to study or work in an EU member state to comply with the individual rules of each country.

Further information on student and staff mobility can be found in this SPICe FAQ on the impact of Brexit on citizens.

Iain Mclver
SPICe Research, 1 March 2021
IMPACT OF THE EU-UK TRADE AND COOPERATION AGREEMENT FOR SERVICES

The Trade and Cooperation Agreement

Whilst the new Agreement provides a number of measures to facilitate the trade in goods, it is more limited in its coverage of trade in services. At the end of the transition period, the UK lost the right to free movement of persons and the right to provide services across the EU.

For financial services this means that UK based providers no longer have rights to passporting which facilitates the provision of financial services across the EU without the need for further authorisation. Instead, the UK will hope to secure an equivalence agreement which would mean the EU recognising the regulations of the UK as compliant with, and equivalent to, the EU’s own. A decision on equivalence does not form part of the new Agreement and is currently subject to EU-UK negotiations. According to the UK Government—

“The Agreement also includes provisions to support trade in services (including financial services and legal services). This will provide many UK service suppliers with legal guarantees that they will not face barriers to trade when selling into the EU and will support the mobility of UK professionals who will continue to do business across the EU.”

The European Commission describes the approach for service providers in the Agreement as being based on the principle of non-discrimination—

“The non-discrimination obligations of the Agreement ensure that service suppliers or investors from the EU will be treated no less favourably than UK operators in the UK, and vice-versa. This entitles them to receive more favourable treatment than that granted to service suppliers or investors of third countries without similar provisions in place.

Naturally, given that the UK will no longer be in the Single Market, all UK service suppliers and investors must abide by the domestic rules, procedures and authorisations applicable to their activities in the countries where they operate.

For UK service suppliers, this means complying with – often varying – host-country rules of each Member State, as they will no longer benefit from the 'country-of-origin' principle, mutual recognition or 'passporting'.”
Following the end of the transition period, UK service providers will face different rules in different EU countries which they will need to comply with to allow them to operate in each country. Whether UK service providers will be able to comply with the different rules of each country will impact on their ability to provide services.

Adapting to the Trade and Cooperation Agreement

Giving evidence to the Committee in November 2020, Stephen Phillips of CMS highlighted the high level of preparedness for Brexit amongst financial services firms in the UK in the following terms—

“When it comes down to it, we are not going to be in the single market. I should imagine that the FS sector wishes to have as much access as possible. From that perspective, not being part of the single market means that companies need to make alternative arrangements, which they have done by setting up subsidiaries. That is not necessarily the end of the world; it just adds to cost and means that certain people have to be transferred out of Scotland to service those companies.

Reflecting on what might be included in the new Trade and Cooperation Agreement, Stephen Phillips set out the views of different services sectors and their concerns about what the Agreement might or might not cover as follows—

“There are still some concerns in the legal and accountancy sector about the fact that some of the privileges that it had in the single market have still not been bottomed out—for instance, mutual recognition of qualifications and the ability for people to be seconded between European countries for short periods, which happens in many legal and other professional services companies.

There is also some concern that the idea of drop in and drop out, which allows lawyers to go and give advice in other countries for limited periods, has still not been clarified. The way in which that is being addressed is that the Law Society of Scotland is speaking to other law societies in Europe to try to get some form of mutual recognition. It must be understood that this is not purely about the UK and EU level; it is also about the member state to member state level.”

In relation to financial services, it has been reported that Amsterdam has overtaken London as Europe’s top share trading centre following the end of the transition period. In addition, Ireland’s European Commissioner Mairead McGuinness, has suggested that jobs and investment are likely to continue to leave the City of London for the European Union due to Brexit.

Equivalence decision

As the UK has left the Single Market, UK financial services providers can no longer benefit from passporting allowing them to offer those services across the EU. Instead the UK Government was seeking an equivalence decision which would allow
UK financial services providers to operate across the EU. Negotiations ahead of an EU equivalence decision have been taking place. At present there has been no official update on progress. However, Politico published a report on 19 February summarising the negotiations. Reporting on the nature of the EU’s offer, Politico suggested that the approach—

“is unlikely to pave the way for Brussels to recognize the “equivalence” of British rules — dashing the hopes of some City of London figures to claw back business that's shifted to the EU27 since Brexit.”

In terms of what happens in the future Politico suggested the following approaches—

“The EU insists it is holding back from declaring the U.K. equivalent in investment banking and trading because it is worried about British deregulation putting the bloc's financial stability at risk.

British officials call that stance a veil for the dual goal of grabbing as much business from London while demonstrating the benefits of EU membership.”

Iain McIver
SPICe Research
1 March 2021
IMPACT OF THE EU-UK TRADE AND COOPERATION AGREEMENT FOR SMALL BUSINESSES

Context

The EU-UK Trade and Cooperation Agreement provides for zero tariffs and zero quotas on the trade in goods between the UK and the EU. Whilst the deal addresses tariff barriers, it does not include any sort of agreement in terms of Non-Tariff Barriers (NTBs). As the UK in a Changing Europe outlines—

“Non-tariff barriers (NTBs) can also make trading difficult. For example, countries want to be confident that imported food is safe, that animals and plants are free from disease or pests, and that other goods meet safety or labelling requirements. Exporters must produce goods that satisfy the requirements of importing countries and provide paperwork to show that those requirements are met. Even after Brexit, UK manufacturers wanting to sell into the EU market will have to produce their goods in accordance with EU standards.”

The EU’s Q&A on the agreement addresses the issue of NTBs stating—

“Trading under ‘FTA’ (free trade agreement) terms – even one as ambitious as this one, with zero tariffs or quotas – will inevitably be very different compared to the frictionless trade enabled by the EU’s Customs Union and Single Market. In particular:

rules of origin will apply to goods in order to qualify for preferential trade terms under the agreement
all imports will be subject to customs formalities and will need to comply with the rules of the importing party;
and all imports into the EU must meet all EU standards and will be subject to regulatory checks and controls for safety, health and other public policy purposes.”

Barriers for small businesses?

During recent evidence sessions the Committee has heard from witnesses that the new barriers to trade with the EU will be especially difficult for small and medium sized enterprises. For example, Charlie Adam of the National Farmers Union Scotland highlighted the challenges around groupage for smaller exporters—
“One that has been mentioned relates to what is known as groupage, which is when a number of smaller producers share a truck for deliveries and either one part of that load is rejected and they all suffer, or they send a load over in a half-full or quarter-full truck. I heard of one example recently where there were just six pallets on a whole articulated truck. That obviously involves a huge cost and a certain amount of risk. For smaller producers, for whom groupage is probably the only economic way of getting their material across, the problem is considerable and could lead some of them to give up.”

The new barriers to trade with the EU are particularly challenging for small businesses. Charlie Adam told the Committee—

“The message that I am getting is that that is particularly likely to be an issue for smaller firms. That is probably where the biggest potential loss is. The fear is that they will not send their goods to the continent because of the difficulty and the cost.”

James Withers told the Committee that trading with the EU is now worth very small margins to business—

“At best, EU trade has now become a high-risk, long-odds gamble, which, a lot of the time, involves loads that are very valuable. The businesses for which that can go wrong are operating on small margins. We are talking about a generation of businesses that are now more fragile than they have been in a lifetime because of the impact of the pandemic and the closure of many of their traditional markets, particularly in hospitality at home and abroad.”

These small margins will be particularly difficult for small and medium sized businesses exporting to the EU. On a similar note, Jimmy Buchan of the Scottish Seafood Association told the Committee that small businesses have been particularly hit by the new Agreement in the following terms—

“The deal that we have falls far short of any aspiration of anyone in the seafood trade, whether catcher, processor or logistics operator—I will not hide from that. It is the worst-case scenario, in which businesses are struggling to get seafood to market. However, we are where we are, and we must work through the issue case by case and item by item. We must look at what needs to be put in place to improve the situation and get things back to some sort of normality, bearing in mind that we have a new normal—that is, consideration needs to be given to whether the Government can give assistance with the cost of the export health certificates and the paperwork trail. All those things cost money. If we are talking about an extra £200 per consignment, even a small company that has five consignments a day will be looking at an extra cost of £1,000, which will have to come out of the bottom line of the business.

Small businesses have been hit really badly in that regard. We must look at having a system that compensates for that loss or we will lose those
businesses. That might encourage more small traders to start trading again, because part of the reason why we are where we are is that cost is part of the blockage. That applies not only to the cost of the paperwork, but to the profitability of a deal.”

In written evidence submitted to the Committee, CBI Scotland highlighted the difficulties for small and medium sized businesses of the new Agreement citing rules of origin as an example—

“Many firms in the UK lack previous experience in managing Rules of Origin – both on supply chain compliance and administration. This is particularly difficult for small and medium sized firms who lack resource or capacity to navigate the new rules. However, even larger businesses are still processing what impact the rules will have.”

In addition to rules of origin, potential impacts on supply chains as a result of the new border processes could lead to delays in getting UK goods to EU suppliers (and vice versa) and as a result lead to SMEs in the UK being cut out of EU supply chains or in EU parts no longer being able to be part of UK supply chains.

CBI Scotland also highlighted the increased cost to trade with the EU, highlighting the cost of pallets which have increased by up to £200 per pallet – costly for smaller traders.

Iain McIver
SPICe Research
1 March 2021
IMPACT OF THE EU-UK TRADE AND COOPERATION AGREEMENT FOR SCOTTISH RETAILERS

Context

Following agreement of the new EU-UK Trade and Cooperation Agreement, the British Retail Consortium (BRC) described the new business environment for retailers in the following way:

“Every retailer selling imported goods from the EU or exporting products to the EU is facing huge changes in the way we do business. Within the UK, new trading rules now operate between GB and NI.”

The new Agreement

Following the announcement of the new EU-UK Trade and Cooperation Agreement, William Bain, Policy Adviser at the BRC published an article setting out the contents of the new Agreement and the BRC’s reaction to the Agreement. William Bain wrote—

“The deal secures many of the main objectives set by the BRC and the industry over the past year since the start of the future relationship negotiations, so the key elements are very much welcome in avoiding tariffs on everyday goods, providing some relief for cross-border traders, and offering the basis of future co-operation.”

However, the BRC also acknowledged there were problems in the early part of the year adding that—

“We are focused on working with Government to help ease the problems of new procedures for exports, labelling and compliance on both the UK and EU markets.”

Perishable Goods

Over the last month, the Committee has heard evidence about the difficulties exporters are having in getting perishable goods to the EU market. These barriers to trade may have affected UK retailers getting goods to its EU businesses.

The UK will introduce checks on EU goods coming into the UK from 1 April. When these new checks are introduced it is possible disruption at the border could lead to
delays for UK retailers receiving goods (especially food and drink) to place on supermarket shelves for example. It is not clear at this stage what planning UK retailers are undertaking for such a scenario when checks on imports begin.

**Rules of Origin**

A challenge for Scottish retailers following the UK’s departure from the EU may be complying with rules of origin. In terms of how the rules of origin work under the EU-UK TCA, they are set out in two parts:

**General Provisions.** These are rules that apply to all products being traded under preference. They include both the primary and administrative requirements.

**Product-specific rules of origin (PSRs).** These are the specific rules that set out, for every product based on their Harmonized System (HS) code, what the requirements are for that product to be considered 'originating'. The HS, or Harmonized Commodity Description and Coding System, was developed by the World Customs Organisation (WCO) to describe and classify groups of goods and is used by more than 200 countries worldwide. The Annex to this guidance provides further detail on how to find out a product's HS code. The product-specific rules are included under Annex orig-2 (Product-specific rules of origin) of the TCA.

According to the UK Government, “to be considered originating and qualify for preferential tariffs, products must be sufficiently worked or processed within the parties to the agreement. By contrast, non-originating materials are materials imported from third countries. Non-originating may also refer to materials whose origin is unknown or not possible to determine.”

The BRC has recognised that a key issue for its members is the way in which rules of origin apply within the new Agreement. According to the BRC—

“The new rules are very complex, with different rules applying to non-specific and product specific goods, as well as complications in how zero tariffs are applied to these goods when they cross in and out of different customs territories.”

**UK retailers operating in the EU**

Following the end of the transition period, UK retailers operating in the EU appear to have struggled to get their goods across to their outlets in the EU. For example, photos have been published in newspapers and shared on social media of empty shelves in Marks and Spencer’s stores in France, Belgium and Ireland. According to the Retail Gazzette, retailers have faced challenges in getting goods to the EU and in getting goods from the EU. The Gazzette cited research by the Chartered Institute of Procurement & Supply (CIPS)—
“Delays getting goods into the UK since the start of the year will result in stock shortages for retailers and inflated shop prices for consumers, according to a new report.

The warning follows a survey of 350 UK supply chain managers which found that almost two out of three have experienced delays of at least two to three days getting goods into the country.

The main reason is the time taken for customs officials to work through new post-Brexit paperwork, said the Chartered Institute of Procurement & Supply (CIPS).

The situation is only slightly better for exports, with 44 per cent experiencing delays of at least two to three days getting goods into the EU, the report said.”

According to the CIPS, it has evidence of drivers being turned away at or before the border for not having the correct paperwork. It is worth noting that these reported delays come despite the fact that many new import certifications are still yet to come into force. According to the CIP’s John Glen—

“We are well into the second month of the new arrangements and the hope that delays at the border would reduce as freight volumes returned to normal and customs systems became used to the new processes has not come to pass.

What is even more concerning is that the delays are continuing to get longer, putting more and more pressure on the UK’s supply chains and affecting the timely delivery of much-needed goods.

The paperwork required at the border is not going to change anytime soon, so we should brace ourselves for these delays to continue for at least the next few months.

New requirements for import certifications are also rapidly approaching and these will only add to the paperwork required, causing further delays for businesses.

The knock-on impact of these delays will trickle far down the supply chain and ultimately result in stock shortages and inflated prices for consumers.”

**Northern Ireland Protocol**

At the end of the transition period, the terms of the Ireland and Northern Ireland Protocol which was agreed as part of the Withdrawal Agreement took effect. From a customs perspective, Northern Ireland remains part of the UK customs territory. However, the Protocol requires that there will be no customs checks or controls on the island of Ireland and no customs declarations, tariffs or quantitative restrictions for the trade in goods between Northern Ireland, Ireland and the rest of the EU.
As a result, it is expected that customs formalities will be required on goods entering NI from GB whilst based on the UK’s Government’s position set out in its Command Paper no paperwork or formalities will be required on goods moving from NI to GB except in a few, pre-defined cases. The Protocol also means that Northern Ireland will also effectively remain part of the Single Market in goods. As a result, all goods entering or exiting Northern Ireland (NI) have to comply with EU product regulations and other technical regulations. This also means that certification, authorisation, assessments, registration and approval for NI products are all affected.

As a result of the Protocol, from 1 January 2021 Northern Ireland has been required to comply with EU rules on Sanitary and Phytosanitary (SPS) eligible goods and animals trade. As a result, all agri-food goods, plants and animals entering Northern Ireland from GB, must do so via a Northern Ireland Point of Entry (POE). In addition, customs checks are also required on goods entering Northern Ireland from GB.

Some of the new requirements facing goods travelling from GB to Northern Ireland are yet to be fully introduced. For instance—

“for a period of three months (until 1 April 2021), goods from certain food suppliers, approved by the UK as meeting a range of trust criteria, can enter NI from GB under a number of conditions. Traders will be expected to demonstrate a continuous improvement in their compliance performance and will be required to move towards full compliance with EU law by 1 April 2021.”

Members heard shortbread highlighted as a possible example of a food which will face checks from 1 April during the evidence session with Scotland Food and Drink. In addition, products of animal origin also have a grace period—

“for a period of six months, some chilled meats, which are usually prevented or restricted from entering the EU from Third Countries, can continue to enter NI from GB under a number of conditions. Traders will be expected to demonstrate a continuous improvement in their compliance performance and will be required to move towards full compliance with EU law by 1 July 2021. At this juncture these products will no longer be able to enter NI from GB.”

UK retailers operating in Ireland and Northern Ireland (including independent businesses have reported difficulties in getting some goods from Great Britain to Northern Ireland and as a result, the range of goods on sale in Great Britain is not currently on sale in Northern Ireland supermarkets for example.

In addition, a number of UK retailers (including Halfords, John Lewis, Fortnum & Mason and AO) have been unable to deliver products from Great Britain to Northern Ireland.

Aodhan Connolly, Director for Northern Ireland at the British Retail Consortium (BRC) has suggested things might get worse before they improve. In part this may be because of the new checks and procedures which will come in from 1 April—
“Retailers have been making the situation work because they are bending over backwards to make sure they can serve people here.

But they know that change is coming in April, and then we could have a perfect storm.

New rules on parcels and products of animal origin will come in as well pressure on the supply chain as hospitality will be reopening, schools will be re-opening and we have the change of seasons for goods.”

Iain McIver
SPICe Research
1 March 2021