

# THE UK-EU TRADE AND CO- OPERATION AGREEMENT

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## THE 2020 FUTURE RELATIONSHIP NEGOTIATIONS

- October 2019 Political Declaration pointed towards zero-tariff, zero-quotas trading relationship but no customs union and no alignment (for GB) with EU legislation on products or services. No role for CJEU. EU said zero-tariff relationship tied to deal on fisheries access and level playing field.
- Stated this relationship contingent upon fair competition and level playing field on environmental, labour, social and climate change rules involved in production of goods. EU approach traced back to 2017 Joint Report.
- PM in Greenwich speech in February 2020 pivoted to say only Canada-style deal being sought by UK so no need for a level playing field series of commitments. UK emphasising sovereignty and precedents of agreements made by EU previously.
- Negotiations began in March 2020. UK negotiators said could go no further than non-regression on international labour and environmental standards, mirroring approach in CETA. EU said no deal possible on those terms.



## THE 2020 FUTURE RELATIONSHIP NEGOTIATIONS

- EU produced draft negotiating text in March, the UK in April.
- UK sought mutual recognition on qualifications, conformity assessment for goods, equivalence for food regulations, customs facilitations without alignment on rules, generous rules of origin with full cumulation of UK-EU preferential trade partners content. UK also sought equivalence on organics and wines, access for Mode 4 supply on services. Annexes on pharmaceuticals, chemicals. Most based on EU precedents but not entirely upon the Canada-EU agreement. Separate regulators and authorisation processes.
- EU dug in and rejected many UK asks as cherry picking. Said zero-zero agreement only available on basis of fair competition and level playing field.
- Debate quickly focused on three key areas: fisheries, governance of agreement and level playing field.



## THE EU-UK TCA – KEY ELEMENTS

- Covers trade, science, educational, cultural, security co-operation, health, cyber-security.
- 7 Parts; 49 Annexes covering product specific rules of origin, medicines, chemicals, organics, wines, AEOs, business visits, transport of goods by road, fisheries; Protocols on VAT, customs, social security co-ordination; and Declarations.
- Part 1 – Institutional Provisions (reinforces foundation of agreement in international law, and that rulings on agreement by one party cannot bind the other party) [Article COMPROV.13]
- In terms of enforcement of private rights, Article COMPROV.16 states: “a Party shall not provide for a right of action under its law against the other Party on the ground that the other Party has acted in breach of this Agreement or any supplementing agreement.” (reinforcing key points on sovereignty).



## THE EU-UK TCA – KEY ELEMENTS

- Part 1 (continued): Title III creates the series of political institutions which will govern the TCA, led by the Partnership Council, comprised of UK Ministers and EU representatives. May meet quarterly. Would be first port of call for resolution of any disputes. Can also amend, advise on implementation of the TCA. A Trade Partnership Committee and a further 10 Specialised Trade Committees on issues from SPS to customs to digital trade are created.
- Further 8 non-trade Specialised Committees and 4 Working Groups are created. There is also provision for Parliamentary co-operation through a Partnership Assembly between MPs and MEPs.
- Article INST.7 provides for at least yearly consultation on the Agreement through domestic advisory groups with business organisations, trade bodies, and other civil society actors. A Civil Society Forum meeting at least annually will also be set up [Article INST.8]



## THE EU-UK TCA – KEY ELEMENTS

- Part 2: Trade, Transport, Fisheries and Other Arrangements
- Article GOODS.5 prohibits customs duties on goods originating in the other party (unless as permitted elsewhere in the TCA). This also extends to export duties and other charges and to goods being despatched for repair.
- Customs and other fees and formalities should be limited to the costs of the services involved.
- Trade remedies (such as anti-dumping duties, safeguarding measures and countervailing duties) may be imposed by either side on the other under relevant WTO rules [Article GOODS.17]
- No new tariff rate quotas are created by the TCA – both parties agree to make use of their current TRQs [Article GOODS.18]
- Where customs rules are being circumvented, either party has the right to suspend the preferential treatment of the goods complained of for up to 6 months (after notifying and consulting with the other party through the PC) [Article GOODS.19]



## THE EU-UK TCA – KEY ELEMENTS

- Part 2 (continued): Chapter 2 lays down the rules of origin under which preferences can be claimed – these do not allow cumulation of non-EU content or processing in terms of meeting the qualifying content quotas. Sufficient processing or content coming from the other party counts towards originating content [Article ORIG.4]
- The definitions of wholly obtained goods, insufficient production, and tolerances (weight (15%)/prices (10%)), in terms of non-product specific rules of origin are also set out in this Chapter. Packing materials are excluded.
- Simplified processes on claiming preferential tariff treatment are set out in Chapter 2, Section 2 – based either on a statement of origin (in the form set out by ANNEX ORIG-4 within an invoice) that the product is originating made out by the exporter, or by the importer's knowledge that the product is originating. Importer records must be kept for 3 years after importation of the product. The exporter must keep the records for 4 years.
- An exemption is also permitted to allow for submission of claims for preferential tariff treatment within 3 years of the importation of the goods [Article ORIG.18a]



## THE EU-UK TCA – KEY ELEMENTS

- Part 2 (continued): Chapter 3 lays down the rules on SPS (sanitary and phytosanitary measures).
- Based on the WTO SPS Agreement. Not EU law. No third country equivalence relationship in place either. Means full third country SPS rules can be applied to GB SPS goods entering the EU.
- In general these should be proportionate to the risks identified and not more trade restrictive than necessary to achieve the importing Party's appropriate level of protection. Both parties agree to facilitate trade through e-certification [Article SPS.5]
- The importing Party shall not introduce authorisation requirements which are additional to those which apply at the end of the transition period, unless the application of such requirements to further products is justified to mitigate a significant risk to human, animal or plant health.
- The importing Party may maintain a list of approved establishments meeting its import requirements as a condition to allow imports of animal products from these establishments [Article SPS.8]



## THE EU-UK TCA – KEY ELEMENTS

- For GB, UK Govt has agreed to risk assessed approach and may conduct no more than 1% physical openings of relevant products. EU rules can permit 15% or 30% openings of containers of such products from third countries where no equivalence arrangement is in place.
- UK no longer bound by precautionary principle on food regulation.
- Both parties agreed to co-operate on animal welfare, sustainable food and antimicrobial resistance.



## THE EU-UK TCA – KEY ELEMENTS

- Part 2 (continued), Chapter 4: Technical barriers to trade (non-food goods). Again the text here is based on WTO rules, not the rules of the EU Single Market.
- WTO TBT Agreement is made part of the TCA.
- Each Party shall use relevant international standards as a basis for its technical regulations except when it can demonstrate that such international standards would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued [Article TBT.4]
- There is no mutual recognition agreement on conformity assessment [Article TBT.6]
- That means for products to be sold on both markets, separate conformity assessment processes must be undertaken and relevant markings affixed to goods (subject to the unilateral easement by the UK Govt for GB until 1 January 2022 in respect of CE marked goods).



## THE EU-UK TCA – KEY ELEMENTS

- Part 2 (continued), Chapter 5: Customs facilitation. Sets out aims for simplifying and modernising customs procedures, facilitating transit, supply chain security and risk management, and relations with the business community.
- Allows each Party to simplify their customs procedures through customs declarations containing a reduced set of data or supporting documents, periodical customs declarations for the determination and payment of customs duties and taxes covering multiple imports within a given period after the release of those imported goods, self-assessment of and the deferred payment of customs duties and taxes until after the release of those imported goods and the use of a guarantee with a reduced amount or a waiver from the obligation to provide a guarantee [Article CUSTMS.5]
- Customs controls, other than random checks, shall primarily be based on risk analysis using electronic data-processing techniques [Article CUSTMS.7]
- Will be mutual recognition of UK and EU AEO schemes [Article CUSTMS.9]
- Reference point for this chapter is the WTO Trade Facilitation Agreement not the Union Customs Code.



## THE EU-UK TCA – KEY ELEMENTS

- Part 2 (continued), Chapter 5: Customs facilitation. Commitment in principle to facilitate a single window for customs processes [Article CUSTMS.17]
- Ro-Ro facilitation [Article CUSTMS.18] - adopt or maintain procedures allowing for the submission of import documentation and other required information, including manifests, in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival, and undertake to facilitate the use by operators of the transit procedure, including simplifications of the transit procedure as provided for under the Common Transit Convention.
- ANNEX ORIG-1 contains the introductory notes to the product specific rules of origin.
- ANNEX ORIG-2 contains the product specific rules of origin themselves.
- ANNEX ORIG-3 provides the text of the supplier's declaration.
- ANNEX ORIG-4 sets out the text on the statement of origin.



## THE EU-UK TCA – KEY ELEMENTS

- Title II – Services and Investment
- Far-reaching carve outs from market access on AV, financial services, accountancy, most legal services, design, architecture.
- Chapter 4 contains rules on temporary stays for business purposes: includes internal meetings and conferences, but not attracting clients or servicing the general public in the other jurisdiction [Article SERVIN.4.3] and only for 90 days in any 180 day period.
- There are formal arrangements for secondment (intra-company transferees), which permit pensions and social security co-ordination for the period of secondment.
- No comprehensive mutual recognition provisions for qualifications.



## THE EU-UK TCA – KEY ELEMENTS

- Title III – Digital Trade
- Aim is to facilitate digital trade, to address unjustified barriers to trade enabled by electronic means and to ensure an open, secure and trustworthy online environment for businesses and consumers.
- Maintains right to regulate of each side. No customs duties to be applied on electronic transmissions [Article DIGIT.8]
- Contracts may be concluded by electronic means and both sides must ensure their regulation does not create obstacles for the use of electronic contracts nor results in contracts being deprived of legal effect and validity solely on the ground that the contract has been made by electronic means [Article DIGIT.10]



## THE EU-UK TCA – KEY ELEMENTS

- Title III – Digital Trade
- Each side commits to adopting measures to build online consumer trust in e-Commerce transactions such as proscribing fraudulent and deceptive commercial practices; requiring suppliers of goods and services to act in good faith and abide by fair commercial practices, including through the prohibition of charging consumers for unsolicited goods and services; requiring suppliers of goods or services to provide consumers with clear and thorough information; and to grant consumers access to redress for breaches of their rights, including a right to remedies if goods or services are paid for and are not delivered or provided as agreed [Article DIGIT.10]



## THE EU-UK TCA – KEY ELEMENTS

- Title III – Digital Trade
- E-authentication services can continue to be used but for a particular category of transactions, the method of electronic authentication or trust service is certified by an authority accredited in accordance with its law or meets certain performance standards which shall be objective, transparent and non-discriminatory and only relate to the specific characteristics of the category of transactions concerned [Article DIGIT.11]
- Also commit to entrusting their consumer protection agencies or other relevant bodies with adequate enforcement powers and the importance of cooperation between these agencies in order to protect consumers and enhance online consumer trust [Article DIGIT.13]



## THE EU-UK TCA – KEY ELEMENTS

- Title V – Intellectual Property
- Objectives are to facilitate the production, provision and commercialisation of innovative and creative products and services between the Parties by reducing distortions and impediments to such trade, thereby contributing to a more sustainable and inclusive economy; and to ensure an adequate and effective level of protection and enforcement of intellectual property rights.
- Rules based on international agreements not EU law – so on trade marks is the Nice Agreement 1957
- Each Party shall provide that the registration of a trade mark confers on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties not having the proprietor's consent from using in the course of trade [Article IP.20]



## THE EU-UK TCA – KEY ELEMENTS

- Title V – Intellectual Property
- Each Party shall provide for a system for the registration of trade marks in which each final negative decision taken by the relevant trade mark administration, including partial refusals of registration, shall be communicated in writing to the relevant party, duly reasoned and subject to appeal [Article IP.21]
- With respect to goods under customs control, each Party shall adopt or maintain procedures under which a right holder may submit applications to a competent authority to suspend the release of or detain suspected goods. For the purposes of this Section, "suspected goods" means goods suspected of infringing trade marks, copyrights and related rights, geographical indications, patents, utility models, industrial designs, topographies of integrated circuits and plant variety rights [Article IP.53]



## THE EU-UK TCA – KEY ELEMENTS

- Title XI (level playing field): covers environmental, labour, social, climate change regulation as well as tax and subsidies competition. Commitments to sustainable development and environmental protection (climate neutrality by 2050).
- EU feared without control on subsidies UK could pivot economy to become manufacturing hub with lower regulatory standards but access to full cumulation with all EU and UK trade agreements. Would cede competitive advantage to UK, incompatible with zero-tariff, zero-quotas access to EU Single Market.
- UK accepted non-regression on international standards but not on baseline of EU rules interpreted by CJEU.
- Eventually EU proposed option of commonly agreed rules as baseline of LPF, with evolution clause as regulations evolved over time. UK rejected this.
- EU then sought toolbox of responses if UK undercut regulations including tariffs on UK goods seeking access to EU Single Market. Baseline could be determined by either side autonomously. UK rejected this strongly.



## THE EU-UK TCA – KEY ELEMENTS

- Title XI (level playing field): If either side chooses to diverge from commonly agreed baseline, then the other side has range of policy tools available, including imposing tariffs on the other party's goods following consideration within arbitration panel (within 49 days in total).
- But this would not be autonomous – it would depend upon an arbitration process during which the dispute could be de-escalated.
- On state aid EU abandoned early plans for dynamic alignment after UK opposition.



## THE EU-UK TCA – KEY ELEMENTS

- Title XI (level playing field): Competition policy - each Party shall maintain a competition law which effectively addresses the following anticompetitive business practices [Article 2.2]:
- Agreements between economic actors, decisions by associations of economic actors and concerted practices which have as their object or effect the prevention, restriction or distortion of competition; and abuse by one or more economic actors of a dominant position.
- Each Party shall maintain an operationally independent authority or authorities competent for the effective enforcement of its competition law [Article 2.3]. Presumably the CMA will act as the UK regulator.



## THE EU-UK TCA – KEY ELEMENTS

- Title XI (level playing field): Competition policy – common principles on subsidy control. Subsidies should [Article 3.4]:
- Pursue a specific public policy objective to remedy an identified market failure or to address an equity rationale such as social difficulties or distributional concerns.
- Be proportionate and limited to what is necessary to achieve the objective.
- Be designed to bring about a change of economic behaviour of the beneficiary that is conducive to achieving the objective and that would not be achieved in the absence of subsidies being provided.
- Not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy.
- Be an appropriate policy instrument to achieve a public policy objective and that objective cannot be achieved through other less distortive means.
- Be positive contributions to achieving the objective outweighing any negative effects, in particular the negative effects on trade or investment between the Parties.
- These principles must be set out in law by each Party - the legality of an individual subsidy will be determined by the principles



## THE EU-UK TCA – KEY ELEMENTS

- Title XI (level playing field): Competition policy – prohibited subsidies [Article 3.5]:
- Subsidies in the form of a guarantee of debts or liabilities of an economic actor without any limitation as to the amount of those debts and liabilities or the duration of that guarantee
- Subsidies for restructuring an ailing or insolvent economic actor without the economic actor having prepared a credible restructuring plan
- Export subsidies, except export credits and export credit guarantee or insurance programmes
- Subsidies contingent upon the use of domestic content
- Other than in exceptional circumstances, subsidies for the rescue and restructuring of insolvent or ailing economic actors should only be allowed if they contribute to an objective of public interest by avoiding social hardship or preventing a severe market failure, in particular with regard to job losses or disruption of an important service that is difficult to replicate. Except in the case of unforeseeable circumstances not caused by the beneficiary, they should not be granted more than once in any five year period.
- Economic actors must use subsidies only for the specific purpose for which they are granted [Article 3.6].



## THE EU-UK TCA – KEY ELEMENTS

- Title XI (level playing field): Remedies for unlawful subsidies [Article 3.11]:
- Either side may make a written request for information and consultations regarding a subsidy that it considers causes, or there is a serious risk that it will cause, a significant negative effect on trade or investment between the Parties.
- The requesting Party should provide in that request all relevant information to enable the Parties to find a mutually acceptable solution
- No later than 30 days from the date of delivery of the request the requested Party shall deliver a written response providing the requested information to the requesting Party, and the Parties shall enter into consultations, which shall be deemed concluded 60 days from the date of delivery of that request, unless the Parties agree otherwise.
- No earlier than 60 days from the date of delivery of the request the requesting Party may unilaterally take appropriate remedial measures if there is evidence that a subsidy of the requested Party causes, or there is a serious risk that it will cause a significant negative effect on trade or investment between the Parties.



## THE EU-UK TCA – KEY ELEMENTS

- Title XI (level playing field): Remedies for unlawful subsidies [Article 3.11]:
- No earlier than 45 days from the date of delivery of the request referred to the requesting Party shall notify the requested Party of the remedial measures that it intends to take.
- The requesting Party shall provide all relevant information in relation to the measures that it intends to take to enable the Parties to find a mutually acceptable solution.
- The requesting Party may not take those remedial measures earlier than 15 days from the date of delivery of the notification of those measures to the requested Party.
- A Party's assessment of the existence of a serious risk of a significant negative effect shall be based on facts and not merely on allegation, conjecture or remote possibility. Also based on reliable evidence and not merely on conjecture or remote possibility, and shall relate to identifiable goods, service suppliers or other economic actors, including, if relevant, in the case of subsidy schemes.



## THE EU-UK TCA – KEY ELEMENTS

- Title XI (level playing field): Remedies for unlawful subsidies [Article 3.11]:
- Should apply to a change in circumstances that would create a situation in which the subsidy would cause such a significant negative effect must be clearly predictable.
- The Partnership Council may set out a list of indicative negative effects on trade and investment, but this is without prejudice to either side's ability to take measures, ie. tariffs.



## THE EU-UK TCA – KEY ELEMENTS

- Title XI (level playing field): Remedies for unlawful subsidies [Article 3.11]:
- Reference to arbitration can be made by written request within a further five days of measures being applied by a Party to determine whether a remedial measure taken by the requesting Party is inconsistent, or if there was a failure to consult, or properly notify.
- If the panel finds against the requesting party, it has 30 days to remedy the situation and suspend the measures it took.



## THE EU-UK TCA – KEY ELEMENTS

- Title XI (level playing field): Chapter 6 – labour and social standards –
- Each party’s law and standards (defined in international commitments) will apply governed by a non-regression clause.
- 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 [Article 6.2]
- Applies to -
  - fundamental rights at work
  - occupational health and safety standards
  - fair working conditions and employment standards
  - information and consultation rights at company level
  - restructuring of undertakings



## THE EU-UK TCA – KEY ELEMENTS

- Title XI (level playing field): Chapter 7 – environmental and climate standards –
- Each party’s law and standards which have the purpose of protecting the environment, including the prevention of a danger to human life or health from environmental impacts (defined in international commitments) will apply governed by a non-regression clause.
- A Party shall not weaken or reduce, in a manner affecting trade or investment between the Parties, its environmental levels of protection or its climate level of protection below the levels that are in place at the end of the transition period, including by failing to effectively enforce its environmental law or climate level of protection. [Article 7.2]



## THE EU-UK TCA – KEY ELEMENTS

- Title XI (level playing field): Chapter 7 – environmental and climate standards –
- Applies to -
- industrial emissions;
- air emissions and air quality;
- nature and biodiversity conservation;
- waste management;
- the protection and preservation of the aquatic environment;
- the protection and preservation of the marine environment;
- the prevention, reduction and elimination of risks to human health or the environment arising from the production, use, release or disposal of chemical substances
- the management of impacts on the environment from agricultural or food production, notably through the use of antibiotics and decontaminants



## THE EU-UK TCA – KEY ELEMENTS

- Title XI (level playing field): Chapter 7 – environmental and climate standards –
- Applies to -
- industrial emissions;
- air emissions and air quality;
- nature and biodiversity conservation;
- waste management;
- the protection and preservation of the aquatic environment;
- the protection and preservation of the marine environment;
- the prevention, reduction and elimination of risks to human health or the environment arising from the production, use, release or disposal of chemical substances
- the management of impacts on the environment from agricultural or food production, notably through the use of antibiotics and decontaminants



## THE EU-UK TCA – KEY ELEMENTS

- Title XI (level playing field): Chapter 7 – environmental and climate standards –
- Several key principles are adopted in Article 7.4 -
- the principle that environmental protection should be integrated into the making of policies, including through impact assessments
- the principle of preventative action to avert environmental damage
- the precautionary approach to regulation
- the principle that environmental damage should as a priority be rectified at source
- the polluter pays principle



## THE EU-UK TCA – KEY ELEMENTS

- Title XI (level playing field): Chapter 8 – sustainable development standards –
- This chapter seeks to enhance the integration of sustainable development, notably its labour and environmental dimensions, in the Parties' trade and investment relationship and in this respect to complement the commitments of the Parties under Chapters 6 and 7.
- Based on international conventions, not EU law.
- Each Party commits to respecting, promoting and effectively implementing the internationally recognised core labour standards, as defined in the fundamental ILO Conventions, which are:
  - (a) freedom of association and the effective recognition of the right to collective bargaining;
  - (b) the elimination of all forms of forced or compulsory labour;
  - (c) the effective abolition of child labour; and
  - (d) the elimination of discrimination in respect of employment and occupation



## THE EU-UK TCA – KEY ELEMENTS

- Title XI (level playing field): Chapter 9 – enforcement of non-regression commitments
- A Party may, after 90 days from the receipt of a request for consultations, request that a panel of experts be convened to examine that matter, by delivering a written request to the other Party.
- The request shall identify the measure at issue, specify and explain how that measure does not conform with the provisions of the relevant Chapter or Chapters in a manner sufficient to present the complaint clearly.
- The experts proposed as panellists must have specialised knowledge or expertise in labour or environmental law, other issues addressed in the relevant Chapter or Chapters, or in the resolution of disputes arising under international agreements.



## THE EU-UK TCA – KEY ELEMENTS

- Title XI (level playing field): Chapter 9 – enforcement of non-regression commitments
- If material impacts on trade or investment between the Parties are arising as a result of significant divergences between the Parties, either Party may take appropriate rebalancing measures (including tariffs) to address the situation. Such measures shall be restricted with respect to their scope and duration to what is strictly necessary and proportionate in order to remedy the situation. Priority shall be given to such measures as will least disturb the functioning of this Agreement. A Party's assessment of these impacts shall be based on reliable evidence and not merely on conjecture or remote possibility. [Article 9.4]
- The concerned Party shall, without delay, notify the other Party through the Partnership Council of the rebalancing measures it intends to take , providing all relevant information. The Parties shall immediately enter into consultations. Consultations shall be deemed concluded within 14 days from the date of delivery of the notification, unless they are jointly concluded before that time limit.



## THE EU-UK TCA – KEY ELEMENTS

- Title XI (level playing field): Chapter 9 – enforcement of non-regression commitments
- If no mutually acceptable solution is found, the concerned Party may adopt rebalancing measures no sooner than five days from the conclusion of the consultations, unless the notified Party requests within the same five day period, the establishment of an arbitration tribunal by means of a written request delivered to the other Party in order for the arbitration tribunal to decide whether the notified rebalancing measures are consistent this Chapter.
- If the arbitration tribunal has found the rebalancing measures to be consistent with paragraph 2, the concerned Party may adopt the rebalancing measures as notified to the other Party.



## THE EU-UK TCA – KEY ELEMENTS

- Title XI (level playing field): Chapter 9 – TCA review clause (rebalancing)
- In order to ensure an appropriate balance between the commitments made by the Parties in this Agreement on a more durable basis, either Party may request, no sooner than four years after the entry into force of this Agreement, a review of the operation of Heading One [Trade] of this Agreement. The Parties may agree that other Headings of this Agreement may be added to the review [Article 9.4]
- Such a review shall commence at a Party's request, if that Party considers that measures have been taken frequently by either or both Parties, or if a measure that has a material impact on the trade or investment between the Parties has been applied for a period of 12 months.
- For the purposes of this paragraph, the measures in question are those which were not challenged or not found by an arbitration tribunal to be strictly unnecessary pursuant to point (d) or (h) of paragraph 3.
- This review may commence earlier than four years after the entry into force of this Agreement (ie. after provisional application ceases or on 1 March 2021).



## THE EU-UK TCA – KEY ELEMENTS

- Title XI (level playing field): Chapter 9 – TCA review clause (rebalancing)
- If an amending agreement is not concluded within one year from the date the Parties started negotiations, either Party may give notice to terminate Heading One [Trade] or any other Heading of the Agreement that was added to the review, or the Parties may decide to continue negotiations.
- If a Party terminates Heading One [Trade], Heading Three [Road transport] shall be terminated on the same date. The termination shall take effect three months after the date of such notice.



## THE EU-UK TCA – KEY ELEMENTS

- Final Provisions (General review clause & termination clause):
- The Parties shall jointly review the implementation of this Agreement and supplementing agreements and any matters related thereto five years after the entry into force of this Agreement and every five years thereafter [Article FINPROV.3]
- Either Party may terminate this Agreement by written notification through diplomatic channels. This Agreement and any supplementing agreement shall cease to be in force on the first day of the twelfth month following the date of notification [Article FINPROV.8]
- The UK also has the right to be consulted where new applications are made for membership of the EU, and the impact upon the TCA, including its amendment [Article FINPROV.10]



## THE EU-UK TCA – KEY ELEMENTS

- Data flows:
- Adequacy decision still expected from European Commission/EEA/CH to allow flows of personal data from EEA countries and Switzerland to UK.
- In the meantime a four month easement is created to permit flows of personal data – this can be extended to up to six months if required [Article FINPROV.10A]
- If the adequacy decision is made, that would place data flows on a more consistent basis.
- But adequacy can be revoked by the EU within 28 days.
- Effect will be to keep UK data protection legislation effectively in lockstep with EU legislation particularly GDPR.
- Companies should be aware of where the information is stored (where are the servers?) and who processes the information.



## THE EU-UK TCA – KEY ELEMENTS

- Entry into force [Article FINPROV.11]:
- This Agreement shall enter into force on the first day of the month following that in which both Parties have notified each other that they have completed their respective internal requirements and procedures for establishing their consent to be bound.
- The Parties agree to provisionally apply this Agreement from 1 January 2021 provided that prior to that date they have notified each other that their respective internal requirements and
- procedures necessary for provisional application have been completed (which they now have).
- Provisional application shall cease on one of the following dates, whichever is the earliest:
- (a) 28 February 2021 or another date as decided by the Partnership Council; or
- (b) the day referred to above.



## THE EU-UK TCA – KEY ELEMENTS

- ANNEX-TBT-3: CHEMICALS
- The Parties acknowledge that the commitments made under this Annex do not prevent either Party from setting its own priorities on chemicals regulation, including establishing its own levels of protection in respect of the environment, and human and animal health.
- Each Party shall implement the UN GHS as comprehensively as it considers feasible within its respective system, including for chemicals that are not within the scope of this Annex, except where there are specific reasons to apply a different labelling system for particular chemical products in their finished state intended for the final user. Each Party shall periodically update its implementation based on the regularly issued revisions of the UN GHS.
- The Parties recognise that voluntary cooperation on chemicals regulation can facilitate trade in ways that benefit consumers, businesses and the environment and that contribute to enhancing the protection of human and animal health.



## THE EU-UK TCA – KEY ELEMENTS

- ANNEX-TBT-3: CHEMICALS
- The Parties commit to facilitating the exchange of non-confidential information between their responsible authorities, including through cooperation on electronic formats and tools used to store data.
- The Parties shall cooperate and exchange information with respect to any issue relevant for the implementation of this Annex within the Trade Specialised Committee on Technical Barriers to Trade.



## THE EU-UK TCA – KEY ELEMENTS

- ANNEX-TBT-4: ORGANIC FOOD PRODUCTS
- An equivalence relationship is entered into in respect of organic food products.
- However, the recognition of equivalence referred to in paragraphs 1 and 2 shall be reassessed by each Party by 31 December 2023 in view of the date of application of 1 January 2022 of Regulation (EU) 2018/84.
- If, as a result of that reassessment, equivalence is not confirmed by a Party, recognition of equivalence shall be suspended.
- Each side will permit the entry onto the market of organic produce from the other party and are accompanied by a certificate of inspection issued by a control body recognised by the receiving party.



# THE EU-UK TCA – KEY ELEMENTS

## APPENDIX A

### ORGANIC PRODUCTS FROM THE UNITED KINGDOM FOR WHICH THE UNION RECOGNISES EQUIVALENCE

<b>Description</b>	<b>Comments</b>
Unprocessed plant products	
Live animals or unprocessed animal products	Includes Honey
Aquaculture products and seaweeds	
Processed agricultural products for use as food	
Processed agricultural products for use as feed	
Seeds and propagating material	

The organic products listed in this Appendix shall be unprocessed agricultural or aquaculture products produced in the United Kingdom or processed agricultural products for use as food or feed that have been processed in the United Kingdom with ingredients that have been grown in the United Kingdom or that have been imported into the United Kingdom in accordance with United Kingdom laws and regulations.



# THE EU-UK TCA – KEY ELEMENTS

## APPENDIX B

ORGANIC PRODUCTS FROM THE UNION FOR WHICH THE UNITED KINGDOM RECOGNISES EQUIVALENCE

Description	Comments
Unprocessed plant products	
Live animals or unprocessed animal products	Includes Honey
Aquaculture products and seaweeds	
Processed agricultural products for use as food	
Processed agricultural products for use as feed	
Seeds and propagating material	

The organic products listed in this Appendix shall be unprocessed agricultural or aquaculture products produced in the Union or processed agricultural products for use as food or feed that have been processed in the Union with ingredients that have been grown in the Union or that have been imported into the Union in accordance with the Union laws and regulations.



## THE EU-UK TCA – KEY ELEMENTS

- ANNEX-TBT-5: TRADE IN WINE
- For wine produced in a Party and placed on the market in the other Party, the documentation and certification that may be required by either Party shall be limited to a (self-)certificate, as set out in Appendix C, authenticated in conformity with the exporting Party's laws and regulations. A certificate required may take the form of an electronic document [Article 3].



## THE EU-UK TCA – KEY ELEMENTS

- ANNEX-TBT-5: TRADE IN WINE
- A Party shall not require any of the following dates or their equivalent to appear on the container, label, or packaging of wine [Article 4]:
  - (a) the date of packaging;
  - (b) the date of bottling;
  - (c) the date of production or manufacture;
  - (d) the date of expiration, use by date, use or consume by date, expire by date;
  - (e) the date of minimum durability, best-by-date, best quality before date; or
  - (f) the sell-by-date.
- Either Party may require the display of a date of minimum durability on products that on account of the addition of perishable ingredients could have a shorter date of minimum durability than would normally be expected by the consumer.



## THE EU-UK TCA – KEY ELEMENTS

- ANNEX-TBT-5: TRADE IN WINE - Article 4:
- Each Party shall ensure that a code is indicated on the label of packaged products that allows for the identification of the lot to which the product belongs, in accordance with the legislation of the Party exporting the packaged product. The lot code shall be easily visible, clearly legible and indelible. A Party shall not allow the marketing of packaged products which do not comply with the requirements set out in this paragraph.
- Each Party shall permit mandatory information, including translations or an indication of the number of standard drinks or alcohol units whenever required, to be displayed on a supplementary label affixed to a wine container. Supplementary labels may be affixed to a wine container after importation but prior to the product being placed on the market in the Party's territory, provided that the mandatory information is fully and accurately displayed.
- The importing Party shall not require the display on the label of allergens which have been used in the production of wine but are not present in the final product.



## THE EU-UK TCA – KEY ELEMENTS

- ANNEX-TBT-5: TRADE IN WINE - Article 5
- Wine which, at the date of entry into force of this Agreement, has been produced, described and labelled in accordance with the laws and regulations of a Party but in a manner that does not comply with this Annex, may continue to be labelled and placed on the market as follows [Article 5]:
  - (a) by wholesalers or producers, for a period of two years from the entry into force of this Agreement; and
  - (b) by retailers, until stocks are exhausted.



## LEGAL EFFECTS AND RATIFICATION

- **Legislation at Westminster** – EU (Future Relationship) Act 2020 received Royal Assent early on 31 December 2020 to give legal effect to the Deal. Henry VIII powers in clause 29 allow UK law to be construed subject to the TCA. Other delegated legislation needs to be passed retrospectively, eg. on UKGT.
- **EU position more complex** – EU Council and European Commission signed the agreement on 30 December. UK PM also signed on that date. Provisional application to be authorised under EU Treaties for two months until the European Parliament has ratified the agreement.

*Private & confidential: Not for Wider Dissemination*

# What does the new UK-EU Agreement mean for Northern Ireland?

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**30 Dec 2020**



- **What happened last week?**



- On Christmas Eve the UK and EU signed a trade and co-operation agreement
- A great achievement given only 10 months of negotiations
- This is of course hugely welcome but what of anything does it do for Northern Ireland?

**Sadly not very much.....**

- **It was envisaged that any FTA would supersede the NIP**
  - However there are no provisions within the TCA that supersede any provisions within in the NIP. Mainly because in any of the areas that it could have, it is extremely light in substance.
- **It does however compliment the NIP in certain areas**
  - On road haulage, UK operators are generally limited to undertaking 1 laden journey within an EU state; NI operators are permitted to undertake 2 such journeys in Ireland. Non-NI traders (e.g. ROI) will be subject to the UK's full process for third country customs and agri-food checks on entering GB.
  - The ability to provide cross-border passenger transport services on the island of Ireland is protected (Article X+2)(p. 258)
- **The TCA does plug the obvious gap in the NIP on fishing**
  - the inclusion of fisheries in the TCA is to be welcomed and removes the need for the Joint Committee to take a decision on customs exemptions for fish landed in NI by NI vessels

- **It does remove some customs friction**
  - A 'zero-tariff, zero quota' deal does reduce some of the friction on GB-NI goods movements; there will be no tariffs on GB goods even if they are 'at risk' of onward movement into the EU, although the significance of this has been reduced by Joint Committee decisions on 8 Dec 2
- **It does NOT remove customs formalities**
  - TCA contains no measures designed to reduce the formalities, checks and controls required on the Irish Sea border, although through cooperation managing the border should be easier and could become easier with further customs cooperation

- **The TCA is spectacularly unhelpful on SPS**
  - The TCA includes very limited provision for mutual recognition/equivalence. e.g. on SPS; the effect increases the likelihood of regulatory divergence between GB and NI and so friction on the GB-NI movement of goods.
- **There will be friction:**
  - This means there will be non-tariff barriers to trade and costs. Now, what percentage of physical checks will be carried out has to be decided and there is always the room for further co-operation in this area..... But that does not help us now.

- **The good news:**

- The TCA does cover some issues of importance to NI business and those trading with NI that are not addressed in the Protocol - e.g. services, security and judicial cooperation that Brexit will cause for cross-border cooperation.

- **The bad news**

- The substance of the new arrangements in the TCA are so wafer thin that they do little to address the disruption that Brexit will cause for cross-border cooperation or for businesses trading with NI.

- **NEW RED TAPE FOR NORTHERN IRELAND:**

- EORI numbers
- Simplified frontier declarations & supplementary declarations
- safety & security declarations
- Goods Vehicle Movement Service
- TRACES pre-notification
- Export Health Certificates
- Plant Health Certificates
- Identity document & physical checks on SPS goods
- Dual VAT system
- UK Trader Service,
- ATA carnet or other duty suspension for temporary imports
- Catch certificates.

