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# *Adapting to Brexit: The New EU-UK Trading Relationship*

May 4, 2021

This Alert gives a high level overview of the new trading relationship between the European Union ('EU') and the United Kingdom ('UK') for goods and service supply.

The EU and the UK reached provisional agreement on a trade agreement in December 2020, and the transition period for the UK's exit from the EU ('Brexit') came to an end on 31 December 2020.<sup>1</sup> The UK Parliament approved the agreement on 30 December 2020 and, last week, the European Parliament did so also. The EU Council signed it on 29 April 2021 and the final agreement has therefore now entered into force.<sup>2</sup> In the meantime, the provisional TCA has been applied since 1 January 2021.

We set out below: (i) some key background; (ii) the main changes for goods supply; and (iii) the main changes for services. We then outline (iv) other key points in the TCA system and structure, and offer some conclusions. The Alert is quite a long read (11 pages), but we hope it is a useful and timely recap.

## 1. Key Background

The agreement is called the **'Trade and Cooperation Agreement'** ('TCA'). The TCA is more than 1,250 pages, including annexes.<sup>3</sup> It covers a large number of areas, ranging from trade in goods and services, to dispute settlement between the parties, and trade with third countries. It contains many sector-specific rules. Even so, it does not cover all the areas that were part of the UK's

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<sup>1</sup> For more specific information on the impact of Brexit on competition law, please see our Alert available at: <https://www.wilmerhale.com/en/insights/client-alerts/20200615-brexit---competition-law-in-the-uk-during-the-transition-period-and-after>

<sup>2</sup> See <https://www.europarl.europa.eu/news/en/press-room/20210423IPR02772/parliament-formally-approves-eu-uk-trade-and-cooperation-agreement>; and [https://www.consilium.europa.eu/en/press/press-releases/2021/04/29/eu-uk-trade-and-cooperation-agreement-council-adopts-decision-on-conclusion/?utm\\_source=dsms-auto&utm\\_medium=email&utm\\_campaign=EU-UK+trade+and+cooperation+agreement%3a+Council+adopts+decision+on+conclusion](https://www.consilium.europa.eu/en/press/press-releases/2021/04/29/eu-uk-trade-and-cooperation-agreement-council-adopts-decision-on-conclusion/?utm_source=dsms-auto&utm_medium=email&utm_campaign=EU-UK+trade+and+cooperation+agreement%3a+Council+adopts+decision+on+conclusion)

<sup>3</sup> See now, as published in the EU Official Journal at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L:2021:149:FULL&from=EN>.

previous EU membership and it often sets out only the principles of the new relationship, leaving the detail to other documents.<sup>4</sup>

To understand the new EU-UK trading relationship, it is also necessary to take into account:

- The **EU-UK Withdrawal Agreement** ('WA') agreed in October 2019, which entered into force in February 2020. Notably this:
  - deals with the **mobility and rights of persons resident in each territory**; and
  - established a **special status for Northern Ireland** ('NI'), so that effectively NI is both in the 'UK Single Market' (with Great Britain, i.e. England, Scotland, and Wales) and in the 'EU Single Market' (with the Republic of Ireland and the other 26 EU Member States).<sup>5</sup> There are **special rules**, including provision for no duties for products going into NI from another part of the UK if they are 'not at risk' of being exported into the EU.<sup>6</sup>
- **The UK Parliament's EU (Withdrawal) Act**, which was passed in 2018, providing that some EU law was converted into UK law when the UK exited, albeit with related amendments.<sup>7</sup>
  - Practically, this means that when trading with the UK, it is necessary to see whether the former EU law has been retained in the UK; if so, to what extent it has been amended<sup>8</sup>; and it may be necessary to see how that amended version of the law fits with the new relationship.
- **New implementing rules and guidance** in both the UK and the EU which have been adopted since 1 January 2021.

**Various issues are also still to be resolved.** Notably:

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<sup>4</sup> There are useful summaries by the EU and the UK available at: [https://ec.europa.eu/info/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement\\_en](https://ec.europa.eu/info/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement_en) ('EU Q&A'); and here: <https://www.gov.uk/government/publications/agreements-reached-between-the-united-kingdom-of-great-britain-and-northern-ireland-and-the-european-union> (the 'UK summary').

<sup>5</sup> The WA recognised that NI was in UK customs territory yet provided that some EU rules would continue to apply in NI to protect the EU Single Market/the open border between NI and the Republic of Ireland.

<sup>6</sup> See Article 5 of the Protocol on Ireland and Northern Ireland to the WA. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/840230/Revised\\_Protocol\\_to\\_the\\_Withdrawal\\_Agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840230/Revised_Protocol_to_the_Withdrawal_Agreement.pdf); and [https://ec.europa.eu/info/relations-united-kingdom/eu-uk-withdrawal-agreement/protocol-ireland-and-northern-ireland\\_en](https://ec.europa.eu/info/relations-united-kingdom/eu-uk-withdrawal-agreement/protocol-ireland-and-northern-ireland_en) (at page 96 in the link).

<sup>7</sup> This is called 'Retained EU law'. See <https://commonslibrary.parliament.uk/research-briefings/cbp-8375/>

<sup>8</sup> E.g. Following the UK's departure from the EU, market participants trading wholesale energy products for delivery in Great Britain are no longer required to report information about their trading activity to the Agency for the Co-operation of Energy Regulators (ACER) or to the Energy Regulator in Great Britain (Ofgem), see <https://www.ofgem.gov.uk/gas/wholesale-market/european-market/remit>.

- **Whether the EU will recognise UK data protection rules as ‘adequate’**, allowing for the continued flow of data between the EU and the UK. In the TCA, there is a bridging period, allowing such data transfer until 30 June 2021<sup>9</sup>. At the time of writing, the EC has issued two draft decisions on adequacy.<sup>10</sup>
- **Whether there will be a path forward to allow UK-based financial institutions to trade in the EU to some extent from the UK.** Thus far, the EU and the UK have agreed a Memorandum of Understanding for the establishment of a forum to dialogue on financial services issues, and adopted two decisions on the equivalence of UK financial supervision rules.<sup>11</sup>

Many businesses in the EU and the UK already had prepared for the new relationship between the Brexit referendum result in 2016 and the end of 2020, so the impact of the end of the transition period was not a surprise.

For others, however, the reality of the changes required only became clear in January 2021, because it was only then that they really appreciated what those changes were. Even then, much of the detail is still being implemented, so adapting to Brexit is an ongoing process, still likely to take some time.

UK exports to the EU in January 2021 were markedly less than in the same period last year, although they partially recovered in February.<sup>12</sup> What will happen through the year is an open question, since the fall may be partly because of COVID-19 related travel restrictions, and partly because some are still working through how they adapt to the changes required.

## 2. The main changes to trade in goods

These are extensive, with numerous new rules, many of which are sector-specific. We would highlight **five points** of more general application.

**First, the TCA provides generally for trade in goods with no customs duties or quotas for products which ‘originate’ in the other customs territory** (the EU or the UK).<sup>13</sup> To ‘originate’ in a territory, broadly, a product (i) must have been made there; (ii) without using materials from

<sup>9</sup> See Article 782, Interim Provision for the Transmission of Personal Data, of the TCA (with Article 783); and the [Statement on the end of the Brexit transition period - update 13/01/2021 | European Data Protection Board \(europa.eu\)](#)

<sup>10</sup> See [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_661](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_661); and [https://ec.europa.eu/info/law/law-topic/data-protection/international-dimension-data-protection/brexit\\_en](https://ec.europa.eu/info/law/law-topic/data-protection/international-dimension-data-protection/brexit_en).

<sup>11</sup> See <https://www.gov.uk/government/news/technical-negotiations-concluded-on-uk-eu-memorandum-of-understanding>. The EU has granted equivalence in relation to central counterparties and central securities depositories. There are some 28 areas in issue (see EU Q&A). The UK has made various equivalence declarations in respect of EEA Member States, allowing some access to UK markets.

<sup>12</sup> See BBC, ‘UK exports to European Union drop 40% in January’, 12 March 2021, <https://www.bbc.com/news/business-56370690>; and BBC News, 13 April 2021 ‘UK exports to EU rebound partially after January’s slump’, <https://www.bbc.co.uk/news/business-56729631>.

<sup>13</sup> See Article 21, Prohibition of Customs Duties, of the TCA, and generally Heading One, Title I, Chapter 2, Rules of Origin, of the TCA.

outside either the EU or the UK (as the case may be); or (iii) the product must be made in conformity with product-specific rules setting out how much non-originating content is allowed. The applicable rules are set out in an annex to the TCA by type of product.<sup>14</sup>

If a product does not qualify as originating in the EU or the UK, and a duty is applicable to import the product to the territory concerned, then that duty has to be paid.

Since the beginning of the year, there has been much focus on these rules of origin. While rules of origin are typical of many free trade agreements between customs territories, the entry into force of the TCA rules has raised issues. Notably:

- The TCA provides for **'bilateral cumulation'**, i.e. a product originating in the EU or the UK is considered to originate in the other territory if used as material in the production of another product there. Value added **through processing** may also be counted for origin purposes.<sup>15</sup>
- However, the TCA does not provide for **'diagonal cumulation'**, i.e. the addition of value originating in third countries with which both the EU and the UK have concluded preferential trade agreements. This has raised questions, notably for car and clothing manufacturers.
- **Where the UK is a distribution centre** for products imported from the EU, some of which stay in the UK, and some of which go back into the EU, customs duties will be payable on reimportation into the EU, insofar as the products only undergo minor processing and therefore do not qualify as originating in the UK.<sup>16</sup> This issue has come up recently, as regards the Republic of Ireland and Germany.

Clearly these rules of origin rules may affect supply chain organisation.

**Second, there is a customs border between the EU and Great Britain;** and there are **special rules for trade between the Republic of Ireland and NI and for trade between Great Britain and NI.**<sup>17</sup> **In practice, this means that companies must comply with customs controls and formalities with related administrative cost.**<sup>18</sup>

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<sup>14</sup> See Article 39, General Requirements and Annex 3, Product-Specific Rules of Origin, of the TCA. There is useful guidance in a UK government presentation on its Defra (Department for Environment, Food and Rural Affairs) website. See <https://brc.org.uk/news/food/defra-rules-of-origin-guidance/>. Generally, it is necessary to look at whether a product originates wholly in the UK or the EU; whether the amount of any processing is sufficient to count for the purpose of determining origin; and whether there are any other restrictions on non-originating content (i.e. parts of a product coming from third countries).

<sup>15</sup> See Articles 40, Cumulation of Origin and 43, Insufficient Production, of the TCA.

<sup>16</sup> See Article 43 of the TCA.

<sup>17</sup> See the Northern Ireland Protocol available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/840230/Revised\\_Protocol\\_to\\_the\\_Withdrawal\\_Agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840230/Revised_Protocol_to_the_Withdrawal_Agreement.pdf)

<sup>18</sup> See the EU Q&A and the UK summary. There is a transitional period between 1 January 2021 and 30 June 2021 for some customs formalities for goods going from the EU to the UK (but not *vice-versa*).

This may be a significant burden and may make 'just in time' deliveries difficult unless formalities are streamlined. Efforts have been made to 'facilitate' trade as far as possible in line with WTO rules, with reliance on computerised systems and recognition of "trusted traders".<sup>19</sup> However, there have been various press reports of difficulties.

**Third, companies have to organise ways to meet specific EU or UK regulatory requirements.**

Notably:

- **The TCA does not harmonise technical regulations or standards and conformity assessment procedures.** So there may be a need to comply with separate testing or other conformity procedures in the EU and the UK.<sup>20</sup>
- **The EU and the UK also have their own mandatory safety marking and labelling requirements.**<sup>21</sup> The UK Conformity Assessed 'UKCA' marking applies for products placed on the UK market and the CE marking in the EU.
- There **is also now a UK 'REACH'** (Registration, Evaluation and Authorisation of Chemicals regulation) system in addition to an EU REACH. So companies now may have to make **two REACH filings** to cover the EU and the UK, and **separate representatives** may have to be appointed in the EU and the UK.<sup>22</sup>
- There **are other new specific requirements when selling some types of products.** For example, in the case of cosmetics, companies must have a 'responsible person' for products placed on the market in the EEA, and in Great Britain, so that there is someone in jurisdiction to whom the authorities may turn for information and who is responsible for ensuring compliance with the applicable regulatory requirements.<sup>23</sup>
- There may also be a need to account for **valued added tax** ('VAT') in each territory, meaning that a local registration may be required, in addition to a 'home country' VAT number.<sup>24</sup>

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<sup>19</sup> See Heading One, Title I, Chapter 5, Customs and Trade Facilitation, of the TCA. Technically called 'Authorised Economic Operators'.

<sup>20</sup> See Heading One, Title I, Chapter 4, Technical Barriers to Trade, of the TCA.

<sup>21</sup> See Article 95, Marketing and Labelling, of the TCA and <https://www.gov.uk/guidance/using-the-ukca-marking>.

<sup>22</sup> See <https://www.gov.uk/guidance/how-to-comply-with-reach-chemical-regulations>

<sup>23</sup> See Article 73, General Principles, of the TCA and <https://www.gov.uk/government/publications/cosmetic-products-enforcement-regulations-2013>

<sup>24</sup> See <https://www.gov.uk/guidance/vat-imports-acquisitions-and-purchases-from-abroad>

**Fourth, the TCA does not harmonise measures for the protection of human and animal health and plant health on imports ('sanitary' and 'phytosanitary' ('SPS') measures),** so each party has the right to require that imports meet their standards (provided that these do not create unjustified barriers to trade).<sup>25</sup>

**Finally, particular issues apply to online sales.** Companies may need to pay VAT on EU exports to the UK and *vice-versa*, or find that their customers receive the bill. Guidance has been published on this, including in the UK with specific rules for online marketplaces.<sup>26</sup>

In the first weeks of the year, given the various uncertainties and changes, it appears that some smaller EU companies stopped supplying the UK online from the EU and *vice-versa*. Other larger companies already had adapted, with local warehousing, arrangements with aggregators for returns and absorbing the increased costs to stay competitive.

It is again an open question how this will develop, as companies work out how to deal with the changed rules.

### **3. The main changes to trade in services**

In general, trade in services is less liberal under the TCA than trade in goods, although there are obligations to ensure market access and non-discriminatory treatment between EU and UK service suppliers and investors.<sup>27</sup> We would again highlight **five points**.

**First, UK-based service suppliers, which were used to offering services throughout the EU based on their 'home country rules' generally now have to comply with the rules of the host country where the service is offered.** Establishment in the UK no longer gives 'passporting' rights to provide services in the EU. In practice, from the UK that means that they must comply with different rules in the individual EU Member States. Service suppliers may therefore have to establish in a particular country and comply with national requirements.

**This applies to financial services,** in particular insofar as generally the EU has not taken equivalence decisions, which would treat UK regulatory supervision as comparable to that in the

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<sup>25</sup> See Heading One, Title I, Chapter 3, Sanitary and Phytosanitary Measures, of the TCA (Article 69 *et seq.*) and specifically Article 73, paragraph 2. There have been eye-catching headlines about lorry drivers being told they cannot import their own sandwiches. Those used to equivalent rules when flying into the United States may not be surprised. However, for those used to the application of the internal 'EU rules', this has been a small but significant change.

<sup>26</sup> See <https://www.gov.uk/guidance/vat-and-overseas-goods-sold-to-customers-in-the-uk-using-online-marketplaces>; <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>; and <https://www.theguardian.com/money/2021/jan/21/eu-website-purchases-the-import-charges-uk-customers-have-to-pay>

<sup>27</sup> See e.g. Articles 128, Market Access, 129, National Treatment, and 130, Most-Favoured-Nation-Treatment, of the TCA.

EU.<sup>28</sup> Practically, this means that trading of EU stocks has shifted from London, to EU financial centres, in particular Amsterdam.<sup>29</sup>

**Second, it has become more complex for professions to offer services in the other territory, as automatic rights of establishment and mutual recognition of qualifications have fallen away.**<sup>30</sup> Again, it is necessary to look for recognition at EU Member State level, with the decision being discretionary rather than of right.<sup>31</sup> This applies, for example, to architects. To adapt, new mutual recognition agreements at Member State level are being sought, with interim arrangements in the meantime (and some mutual recognition with Ireland already).<sup>32</sup>

Short term business or professional mobility to offer services is still permitted, but on defined terms (such as 90 days in any six-month period) and with some restrictions on permitted activities.<sup>33</sup>

**Third, transport services are subject to more specific rules at EU level, involving some changes to business practices.** For example:

- **UK-based airlines** are able to transport passengers and/or cargo between the UK and the EU (point-to-point), but they cannot transport passengers or cargo between two points in the EU, or pick up passengers in the EU when flying beyond to a third country (e.g. London-Amsterdam-Bangkok).<sup>34</sup> As a result, some UK airlines reportedly have established separate legal entities in the EU.<sup>35</sup>
- The TCA allows for **EU and UK road hauliers to transport goods** by road between the EU and the UK and *vice-versa*, without quotas. There are also rules allowing EU and UK lorries to carry out two additional operations to move or pick up goods once they have crossed into the other territory.<sup>36</sup>
- There are also **transit rights** to allow goods to be moved across the UK from Continental Europe to the Republic of Ireland and *vice-versa*. However direct ferry services between the Republic of Ireland and the rest of the EU have expanded, as road transporters try to avoid

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<sup>28</sup> See Heading One, Title II, Services and Investment, of the TCA; the EU and the UK also agreed on a Joint Declaration on Financial Services Regulatory Cooperation, see [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/948105/EU-UK\\_Declarations\\_24.12.2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948105/EU-UK_Declarations_24.12.2020.pdf). “Equivalence” is not the same as full passporting rights because, in its current form, it is given for a defined duration and can be revoked on notice.

<sup>29</sup> Financial Times, 11 February 2021, ‘Amsterdam ousts London as Europe’s top share trading hub’ <https://on.ft.com/2LEGkUI>.

<sup>30</sup> See Heading One, Title II, Services and Investment, of the TCA.

<sup>31</sup> See Article 158, Professional Qualifications, of the TCA and related Annexes. There is provision for possible more general EU-UK arrangements for mutual recognition of professional qualifications for specific professions in the future through Partnership Council decision.

<sup>32</sup> See <https://arb.org.uk/eu-exit/eu-exit-faqs/>

<sup>33</sup> See Heading One, Title II, Chapter 4, Entry and Temporary Stay of Natural Persons for Business Purposes, of the TCA.

<sup>34</sup> See Heading Two, Aviation, of the TCA.

<sup>35</sup> See Briefing Paper 53 of the UK Trade Policy Observatory, page 4, available at: <https://blogs.sussex.ac.uk/uktpo/publications/taking-stock-of-the-uk-eu-trade-and-cooperation-agreement-trade-in-services-and-digital-trade/>

<sup>36</sup> See Heading Three, Road Transport, of the TCA.

issues arising from driving across Great Britain (customs formalities and COVID-19 restrictions).

- Under the TCA, **international maritime transport services** remain liberalised, although maritime transport of goods or people within a country's territory is excluded.

#### **Fourth, the broadcasting and music industries have been affected and are having to adapt.**

For example:

- **Audio-visual services are not covered by the TCA, so broadcasters and other audio-visual service providers based in the UK no longer have 'passporting rights' to offer their services in the EEA** (as previously under the EU Audio-visual Media Services Directive). UK based broadcasters therefore either have to obtain new licences in the EEA or to rely, as far as they can, on the European Convention on Transfrontier Television. Similarly, EU broadcasters need to obtain a licence from Ofcom to broadcast in the UK.<sup>37</sup>
- **Leading figures in the UK's music industry have also expressed concern that performing in the EU has been made harder**, as work visas may be required by some EU Member States, and more complex rules and paperwork may be required.<sup>38</sup>

**Fifth, the football industry has been directly affected.** The main point being that free movement of football players, managers and staff to the UK from the EU has ended. Now, player transfers are subject to the same rules as 'imports' of other players from outside the EEA.

As a result, the British Football Association, the Premier League and the English Football League have agreed on a new points based system, designed to allow the highly talented from abroad still to be recruited to the UK, but in practice making it more difficult for others. As a result some scouting and transfer practices (involving lesser known talents) have had to change.<sup>39</sup>

Clearly these are just a selection of important issues to illustrate what is happening.<sup>40</sup>

#### **4. Other key points on the TCA system and structure**

We would note **three**:

**First, much of the final TCA negotiations were focused on the so-called 'level playing field' for 'open and free competition and sustainable development'.**<sup>41</sup>

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<sup>37</sup> See <https://www.gov.uk/guidance/broadcasting-and-video-on-demand-services-between-the-uk-and-eu>

<sup>38</sup> See <https://lordslibrary.parliament.uk/impact-of-brex-it-on-uk-musicians-performing-in-the-eu/>

<sup>39</sup> See "Plan agreed on Entry Requirements For Overseas Players in England Post-Brexit in 2021, 1 December 2020", <https://www.thefa.com/NEWS/2020/DEC/01/GBE-POINTS-BASED-SYSTEM-LAUNCHED-011220>

<sup>40</sup> For reasons of space we have not gone into public procurement and digital trade here. These are addressed in the EU Q&A and the UK summary referred to above in footnote 4.

<sup>41</sup> See Heading One, Title XI, Level Playing Field for Open and Fair Competition and Sustainable Development, of the TCA.



The issue is that the EU considers that a trading partner like the UK, with preferential access to its Single Market, should not be able to compete unfairly through applying lower standards in terms of labour and social protection, environment and climate change protection, taxation, competition law and subsidies law. With Brexit, the UK aimed to re-establish its independence without being subject to EU standards. The UK also did not want to be obliged to follow (i.e. to keep pace with) higher EU standards in these areas in the future.

The solution in the TCA was that both sides confirmed their support for high standards in these areas; and the UK and the EU pledged to maintain existing standards as of 1 January 2021, when the transition period for Brexit ended (so-called '**non-regression**' clauses).<sup>42</sup>

In the event of 'significant divergences between the parties' which have 'material impacts on trade and investment' based on 'reliable evidence',<sup>43</sup> either party may apply 'rebalancing trade measures', which could be directed to the products affected, or others as an overall trade counterweight (and raise the issue through arbitration under the TCA).<sup>44</sup> This latter 'rebalancing measures' clause is unusual in free trade agreements and, being novel, has attracted much attention.

For business, the key point is that the TCA rules may change, with potential remedies which might be, for example, partial suspension of the TCA, or tariffs/duties on imports.

**Second, there are many structures under the TCA, designed to facilitate coordination and allow dispute resolution.**<sup>45</sup>

At the apex of the governance structure is the formal '**Partnership Council**', with a clear political function. Below that, there are numerous **trade and sectoral committees**. Whilst some have suggested that such committees may lead to permanent negotiations, they are designed to deal with implementing issues which may need working out in practice.

There are also **several systems for dispute resolution**. These are rather complex, designed to allow for remedies at varying speeds and degrees of formality.

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<sup>42</sup> See Articles 387 and 391, Non-Regression from Levels of Protection, in Chapters 6 and 7 on Labour and Social Standards and on Environment and Climate..., of the TCA.

<sup>43</sup> See Article 411, paragraphs 2 and 5, of the TCA.

<sup>44</sup> See generally Briefing Paper 54 by the UK Trade Policy Observatory, available at: <https://blogs.sussex.ac.uk/uktpo/publications/taking-stock-of-the-uk-eu-trade-and-cooperation-agreement-governance-state-subsidies-and-the-level-playing-field/>

<sup>45</sup> See the EC slides on Governance and Enforcement under the EU-UK TCA, 22 January 2021 available at: [https://ec.europa.eu/info/sites/default/files/slides\\_on\\_governance\\_and\\_enforcement\\_1.pdf](https://ec.europa.eu/info/sites/default/files/slides_on_governance_and_enforcement_1.pdf)

- There is a **general dispute settlement mechanism** and a **more specific one for some level playing field issues**. Generally these allow for ‘appropriate measures’ to be taken by a complaining party, including temporary compensation, or unilateral suspension of obligations under certain conditions, pending an **arbitral tribunal procedure** and ruling.
- There are also various **‘remedial measures’** available for each party, which are complementary to such mechanisms and arbitration. Some are highly specific and different by issue or sector.
- As noted above, there is also the **‘rebalancing measures’** clause for level playing field issues.
- Finally, there is scope for **trade and sectoral reviews** and, **every five years, a general review** of the operation of the TCA.

For business, there are two key points:

- First, there may be scope to resolve an issue through appropriate representations to the EU and the UK. Although whether there would be a willingness to do so clearly depends on understanding each side’s underlying positions and interests. As noted above, the committees are more to deal with implementing issues, than adjusting a defined ‘deal’ set out in the TCA.
- Second, changes could occur with scope for remedial or rebalancing measures in a company’s favour or to its detriment. Companies therefore will need to keep an eye on EU-UK related trade developments and make sure they know the right ways to defend their interests both in the EU and the UK.

**Third, a note like this would not be complete without a reference to Brexit and fish**, since negotiations on the issue were key until the very final round.

The EU sought to maintain access for EU fishermen and women to British waters, while the UK sought to take back control of those waters and retain a larger share of the catch. Hard bargaining followed, in particular because much of the British fish in fact is exported to the EU, so changes to catch size were linked to whether zero-rated tariff access to the EU would continue.

In the end, British fishers will receive some 25% more of the catch, phased in over five years, varying by type of fish and part of the sea.<sup>46</sup> However, there is still much debate. For example, reportedly British suppliers of fish are finding that the changed rules on imports (including catch certificates and export health certificates) and other customs formalities may be difficult to reconcile with fresh, fast supply.

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<sup>46</sup> See Heading Five, Fisheries, of the TCA, <https://www.cbi.eu/news/brexit-changes-european-and-british-seafood-market>; and the paper by ABPmer at: <https://www.abpmer.co.uk/media/3467/white-paper-eu-uk-trade-and-cooperation-agreement.pdf>

## Conclusions

All businesses whose operations involve supply in the EU and the UK, and have links between the two, are having to adapt to the new rules. Many are still doing so. It is a process which will continue for some time, as issues are clarified and solutions are sought.

Some may have to establish a branch or subsidiary in the EU or the UK, and/or develop representatives and/or facilities in the 'other territory' to maintain their goods or service supply efficiently.

Some may have to vary their patterns of supply, in terms of product sourcing and organisation to optimise for the customs and other regulatory controls of the EU or the UK.

In general, more specific rules apply to NI and therefore need checking.

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For further information on what the new legal rules are, and assistance in how to adapt to them, please contact [John Ratliff](#) in Brussels, or [Cormac O'Daly](#) in London, or any other members of [WilmerHale's Brexit Group](#).

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## Contributors



**John Ratliff**  
PARTNER

[john.ratliff@wilmerhale.com](mailto:john.ratliff@wilmerhale.com)

+32 2 285 49 08

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