



**THE TRADE AND COOPERATION
AGREEMENT THREE YEARS ON
PROPOSALS FOR REFORM BY UK BUSINESS**





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¹Part of the UK Withdrawal Agreement from the EU.

Introduction

The third year of the Trade and Co-operation Agreement (TCA) has seen several significant milestones that have changed some of the dynamics of the UK's trading relationship with the EU. These include the introduction and phased implementation of the Windsor Framework², a welcome thawing of UK-EU relations thereafter, and the UK rejoining the Horizon Europe research and scientific co-operation programme, as well as Copernicus³.

Domestically, the UK government chose to pull back on some of its deregulatory agenda under the Retained EU Law (Revocation and Reform) Act⁴. It removed the sunset clause on all retained EU law initially in scope of the legislation, and scrapped only a few hundred affected laws, instead of more than 4,000 originally planned. It also made a welcome and pragmatic decision to allow certain categories of CE marked goods to continue be placed on the UK internal market, in respect of Great Britain⁵.

Businesses continue to manage the compliance burdens introduced in 2021, for traders in Great Britain sending goods to the EU.

These include, but are not limited to:

- customs declarations,
- safety and security certificates,
- evidence of origin of goods, or inputs into the manufacture of goods,
- import VAT requirements,
- export health certificates for certain food and plant origin products, and
- requirements under the EU's REACH system (the Registration, Evaluation, Authorisation and Restriction of Chemicals)⁶.

For most businesses, this has become part of the everyday task of cross-border trade, but for others, in 2023 as in the previous two years, the burden proved too much, and some stopped exporting to the EU.

Professor Jun Du at Aston University has discovered a reduction of between 20-42% in traded product varieties in the first 15 months after the end of the transition period in December 2020⁷. The Office for Budget Responsibility (OBR) in its October 2021 analysis⁸ found a 4% structural lowering of long term UK GDP growth, because of the non-tariff barriers to goods and services trade erected by the TCA. In its November 2023 Autumn Statement study, it found the UK had become the least trade-dense economy in the G7 for trade in goods.

² See https://assets.publishing.service.gov.uk/media/63fccf07e90e0740d3cd6ed6/The_Windsor_Framework_a_new_way_forward.pdf accessed on 7 December 2023.

³ Effective 1 January 2024 – see https://ec.europa.eu/commission/presscorner/detail/en/statement_23_4375 and https://ec.europa.eu/commission/presscorner/detail/en/IP_23_6327 accessed on 7 December 2023.

⁴ <https://www.legislation.gov.uk/ukpga/2023/28/enacted> accessed on 7 December 2023.

⁵ <https://www.gov.uk/government/news/uk-government-announces-extension-of-ce-mark-recognition-for-businesses> accessed on 7 December 2023

⁶ See Regulation (EC) No 1907/2006 accessed at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02006R1907-20221217> on 7 December 2023.

⁷ See J Du et al, How Did Brexit Affect UK Trade? (2023) 18 Contemporary Social Science, vol 2, pages 266-283. Accessed at <https://doi.org/10.1080/21582041.2023.2192043> on 7 December 2023.

⁸ Office for Budget Responsibility, Economic and Fiscal Outlook (October 2021), pp 58.

This approach was endorsed in its November 2023 fiscal and economic analysis, where it found that trade intensity had fallen by 1.7% compared with 2019 levels – by contrast the average increase in trade intensity across G7 countries over the same period was 1.9%⁹. This significant loss of trade with the EU has been focused on goods exports rather than services so far¹⁰.

This year also brought into sharp focus what the next phase of Brexit means for UK businesses trading across both the English Channel and the Irish Sea, as regulatory divergence reared its head.

This autumn, UK exporting businesses had to adjust to EU sanctions legislation on Russian sourced or processed steel and the first roll out of new reporting requirements on the EU Carbon Border Adjustment Mechanism (CBAM)¹¹ to six categories of goods. New legislation on deforestation¹² in supply and in sourcing chains will affect UK exporting companies late next year, and further EU measures on supply chain attestations will also impact UK firms¹³. These changes have emphasised that the UK's trading relationship with the EU is not static but will continually evolve as new policies and regulations are introduced by both sides. This makes effective regulatory co-operation and dialogue between the UK and EU crucial, if we are to reduce furthering business compliance difficulties now and in the near future.

2024 will represent the next phase of altered UK-EU trading terms, with the introduction of the Border Target Operating Model (BTOM) from the end of January¹⁴. This will mean export health certificates (EHCs) for medium risk EU plant and animal origin products entering Great Britain. At the end of April, checks and controls at ports will begin on a percentage of these imported products, and at the end of October, safety and security certificate requirements will be in place for EU goods entering Great Britain. These checks and controls will involve additional costs for businesses, either for importers in Great Britain or for their suppliers in the EU. The next phase of rollout of the Windsor Framework, customs¹⁵ and labelling requirements for certain dairy products moving from Great Britain to Northern Ireland¹⁶, will also feature in the autumn of next year, with a final rollout in 2025. For Northern Ireland businesses, the changing pattern of EU regulation for goods, and managing compliance for the UK internal market, has become a daily reality.

⁹ Office for Budget Responsibility, Economic and Fiscal Outlook (November 2023), pp 46, Chart 2.17.

¹⁰ See Jonathan Portes, The impact of Brexit on the UK economy: Reviewing the evidence (CEPR, 2023) accessed at <https://cepr.org/voxeu/columns/impact-brexit-uk-economy-reviewing-evidence> on 7 December 2023.

¹¹ Regulation (EU) 2023/956 accessed at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023R0956> on 7 December 2023.

¹² Regulation (EU) 2023/1115 accessed at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023R1115> on 7 December 2023.

¹³ See the European Commission's original proposal from 2022 for a revised Corporate Sustainability and Due Diligence Directive at https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF concluded its final round of trilogue discussions in December 2023. Accessed on 7 December 2023.

¹⁴ Cabinet Office, The Border Target Operating Model (August 2023) accessed at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1182464/Final_Border_Target_Operating_Model.pdf on 7 December 2023.

¹⁵ <https://www.gov.uk/government/publications/moving-parcels-from-great-britain-to-northern-ireland-under-the-windsor-framework-from-30-september-2024> accessed on 7 December 2023.

¹⁶ <https://www.gov.uk/guidance/labelling-requirements-for-certain-products-moving-from-great-britain-to-retail-premises-in-northern-ireland-under-the-retail-movement-scheme> accessed on 7 December 2023.

The BCC's Insights Unit has spoken to thousands of businesses while researching EU-UK trade, in the last year alone. They cover every sector, from services exporters to importers of food products. The data they supply, and the stories they tell of trade with the EU, provide convincing evidence of what needs to change - to make the TCA work better as we enter its fourth year.

There is a mood of realism but also ambition from UK and EU businesses after three years of the TCA. The political context is also relevant, with European Parliament elections looming (leading to new institutional mandates from mid-2024), the US Presidential election next November, and a likely general election in the UK. Therefore, major changes in the trading relationship appear unlikely, but this does not mean we cannot seek clarity or movement on a range of issues. These include mobility and professional qualifications recognition, creation of new youth mobility schemes, clear decision-making on emissions trading schemes linkages, improvements in the operation of VAT and SPS (sanitary and phytosanitary) rules. These are all achievable goals in the near term, allied to reforms in how future divergence is managed through regulatory dialogue involving business.

We make refreshed policy recommendations based on our new evidence from business; on the actions the UK government and EU institutions could take in the next twelve months. These can be made via the Specialised Committees under the TCA, while the more structural reforms could be a focus for both sides in the run up to the 2025/2026 review or other political discussions after the 2024 election cycle is complete.





SECTION 1

THE KEY PARTS OF THE TCA:

HOW ARE THE
TRADING TERMS
WORKING FOR
BUSINESS?



Tariffs and Rules of Origin

Before the TCA came into force at the start of 2021, over 200,000 UK companies (including many SME exporters) had only ever traded with the EU on a tariff-free, but also near frictionless, basis. They were aware, though, that the UK would leave the EU customs union and begin a new relationship with the EU. That change meant they had to register for EORI (Economic Operators Registration and Identification) numbers, find customs intermediaries, or speak to their local Chamber of Commerce or Chamber Customs about making customs declarations. They also had to familiarise themselves with relevant origin, safety, and security certification to accompany consignments of goods moving to the EU. All of this commenced for outbound goods from Great Britain on 1 January 2021. A temporary waiver on the need to produce suppliers' certificates for these cross-border goods movements applied, in both directions, until 1 January 2022 but was then removed. Some companies have chosen to establish entities in the EU – Estonia has an e-residency programme for companies to register which is wide in its scope¹⁷.

For inbound goods of animal and plant origin coming to Great Britain from the EU, the controls applicable to these movements will begin to be introduced from 31 January 2024. This will be done as part of the Border Target Operating Model (BTOM), in three separate milestones. Customs, VAT and origin evidence requirements on inbound goods were introduced in 2021, but the obligations on safety and security certificates will come into force for EU goods imports to Great Britain from October 2024.

The TCA contains rules on what inputs qualify for zero-tariff treatment. In most cases, goods must contain a requisite percentage of originating material from either the UK and/or the EU. These percentages are set out in product-specific rules of origin, which must be met to claim zero-tariff treatment. Goods which contain too much other content do not qualify for zero-tariff treatment, and goods which have not been sufficiently processed or made in the UK do not qualify either.

The TCA has meant two important structural changes for businesses in Great Britain on tariffs and rules of origin:

1. Goods cannot be imported from the rest of the world, then re-exported tariff-free to the EU, without sufficient processing. So, movements of non-originating goods have to be very carefully considered (with use of customs warehousing where appropriate) to mitigate exposure to additional tariffs on re-export to the EU.
2. Goods cannot be imported from the EU, then distributed tariff-free from the UK (GB) back into the EU, without sufficient processing. They are non-qualifying goods. Some larger firms have mitigated their exposure to customs duties by using customs warehousing and returned-goods relief, but others have had no choice but to set up distribution networks in the EU, for EU-originating goods. UK member companies have told us they had to form commercial entities and register for VAT in both the Netherlands and Germany, to comply fully with relevant commercial and VAT rules. Distribution infrastructure for a growing number of companies has moved from Great Britain into the EU.

¹⁷ <https://www.e-resident.gov.ee/> accessed on 7 December 2023.

The lack of cumulation¹⁸ within the TCA rules of origin has led to reduced choice in sourcing components, ingredients, or parts for UK manufacturers. Members of our Global Business Network of British Chambers have already identified problems on lack of flexibility on cumulation - in terms of trade in the European neighbourhood beyond the EU, such as Serbia, Albania, and Montenegro.

The BCC has suggested options, such as UK accession to the Pan-Euro-Mediterranean (PEM) Convention¹⁹. This would provide UK and EU businesses with additional flexibilities on diagonal cumulation, alongside EU and UK inputs, in goods destined for export to markets around the European neighbourhood or the Middle East and North Africa.

As 2023 went on, louder calls for action were made on the cliff-edge on rules of origin changes which exporters of electric vehicle batteries in both the UK and EU were facing. From 1 January 2024, the phasing in of a higher percentage of local content was set to be introduced (45% of the value of the electric vehicle and 60% of the battery pack would have to originate in the UK or EU). If this was not met, then non-qualifying vehicles or batteries faced a 10% tariff on imports from each other's market. On 6 December, a potential solution emerged with the European Commission proposing a one-off, three-year extension of the existing provisions until January 2027. This still requires the endorsement of other EU institutions, and an agreement in the Partnership Council with the UK government²⁰. The BCC supports this solution to allow for a more comprehensive solution to be found. This could either be through changes in UK/EU battery production capacity, or further measures, given the importance of global supply issues around critical minerals and metals involved in electric vehicle battery production.

¹⁸ Cumulation is the concept whereby content which is not wholly obtained or transformed from the parties to a bilateral or plurilateral trade agreement may be included as qualifying content for the purpose of product specific rules of origin. It can apply in several forms, including diagonal or full cumulation with other trading partners. The UK negotiated extended cumulation provisions on EU content in its continuity rollover trade deals with Canada and South Korea around the expiry of the Brexit transition period.

¹⁹ See https://taxation-customs.ec.europa.eu/customs-4/international-affairs/pan-euro-mediterranean-cumulation-and-pem-convention_en accessed on 7 December 2023.

²⁰ https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6369 accessed on 7 December 2023.

Customs and Hauliers

TCA customs rules are based on WTO Trade Facilitation Agreement terms, not the EU Union Customs Code (UCC). This means it is difficult to benchmark ambitions to simplify customs processes over time and move towards a Single Trade Window approach. As the UK did not wish to align with the UCC (in respect of Great Britain), exporters were required from January 2021 to have safety and security certificates, accompanying other customs documentation, with their consignments. These have added further costs to exporting to the EU, which traders in Norway and Switzerland do not experience as their governments had negotiated waivers with the EU. An ambitious package of EU customs reforms has also been announced this year, including a review of the Union Customs Code (UCC), although some of these changes may not be delivered until nearer the end of the decade²¹.

By 2022, the borders issues faced by importers and exporters became less around familiarity with the TCA and grew more structural in nature. For example, the introduction of the EU import control system (ICS2, Phase 2) for air freight required entry summary declarations for goods transported by air into the EU. Phase 3 for maritime, road and rail is due to begin implementation next March²².

Many traders are still concerned about the inconsistent application of customs rules by member state customs authorities²³. EU proposals to create an EU Customs Authority²⁴ by the end of the decade may help in reducing these disparities. But we would urge greater co-operation in the meantime between UK and EU customs authorities with those economic stakeholders with roles in cross-border trade and logistics, to resolve ongoing problems now.

The phasing in by the UK government of the BTOM in 2024 is also accompanied by the rollout of the initial phase of the Single Trade Window from October 2024, as part of its Borders 2025 initiative²⁵. The BTOM will involve considerable additional costs on EU trade for importers of record in Great Britain or their EU suppliers, with the government estimating the cost to be around £330m per annum²⁶. This is likely to expand inflationary pressures on some imported goods.

The Cabinet Office (which hosts the Border and Protocol Delivery Group) has confirmed the changes will proceed on the timetable set out in August 2023. It has also stated that all other required infrastructure at ports and border entry points for goods will be delivered and operational on time. The BCC has urged the UK government to utilise a strong communications campaign so that importers in the UK, and their suppliers in the EU, know what they have to do. We have also asked both the European Commission and UK government to co-operate closely together, to make these changes work as smoothly as possible next year for customers and suppliers alike.

²¹ See https://taxation-customs.ec.europa.eu/customs-4/eu-customs-reform_en accessed on 7 December 2023.

²² See https://taxation-customs.ec.europa.eu/customs-4/customs-security/import-control-system-2-ics2-0_en accessed on 7 December 2023.

²³ See eg. on application of rules on Authorised Economic Operators in this EU Court of Auditors report accessed at <https://www.eca.europa.eu/en/publications/SR-2023-13> on 7 December 2023.

²⁴ https://taxation-customs.ec.europa.eu/customs-4/eu-customs-reform_en accessed at 7 December 2023.

²⁵ See https://assets.publishing.service.gov.uk/media/5fdb2bcdd3bf7f40d85bcfd0/2025_UK_Border_Strategy.pdf accessed on 7 December 2023.

²⁶ See letter from Baroness Neville-Rolfe to Stella Creasy MP covered here: <https://www.ft.com/content/015elf25-0725-49f1-9a7d-bf9ec0dc4678> accessed on 7 December 2023.

Agri-food Exports - Export Health Certificates and Border Checks

Since January 2021, export health certificates (EHCs) signed by a vet have been required for certain agri-food goods from Great Britain exported into the EU. These are for consignments of plant products or products of animal origin. Physical and identity checks are also conducted, alongside other border checks, on a limited number of trucks and containers crossing from Great Britain into EU territory. From 31 January 2024, EHCs will also be required for medium-risk plant and animal origin products moving in the other direction, from the EU into Great Britain. And from 30 April 2024, movements must take place via designated Border Control Posts (BCPs). These will involve documentary, physical and identity checks for a certain percentage of traffic, which is not within the scope of trusted trader schemes for large or regular importers of EU fresh produce.

The cost, complexity, and requirement for veterinarian signature of EHCs caused significant hardship for agri-food exporters in 2021 and 2022, particularly SMEs²⁷. The TCA rules were based upon the relevant WTO rules, but with little more in the way of facilitation for smoother trade. The UK sought an equivalence-style relationship on plant and animal products in the TCA negotiations in 2020, but this was not agreed. UK negotiators gave regulatory autonomy precedence over any arrangements which would have involved alignment with EU rules. At the time, the prospects of a free trade agreement with the US were higher than now, and any UK alignment with EU plant and animal product rules would have been problematic, if not fatal, to the prospects of a deal. Subsequently, traders in Great Britain, with no equivalence relationship or a wider veterinary agreement with the EU, have a weaker relationship with the EU on these checks than goods coming from New Zealand. Exporting businesses in Great Britain, and their customers in the EU, have paid the price through delays, wastage of food and higher costs as a result. In some cases, they have entirely abandoned trade in agri-food products with EU customers²⁸.

The BCC favours a negotiated veterinary agreement between the UK and EU, based on the Swiss or Norway models, which would eliminate the requirement for EHCs in either direction. This may impact on future free trade agreement negotiations, but on balance we have concluded this is the right decision given the nature of agri-food supply chains in and out of Great Britain. It would also ensure that some of the costs involved in Windsor Framework compliance would be reduced or fall away as well, depending upon the scale of the regulatory commitments undertaken. Such an agreement would cut the costs of doing trade for UK and EU exporters and would be mutually beneficial for traders in the EU and Great Britain.

²⁷ See Jun Du et al (2023), *supra*.

²⁸ See M Gasiorek et al, *The Challenges Facing UK Firms: Trade and Supply Chains* (UKTPO, 2023) drawing upon BCC research accessed at <https://blogs.sussex.ac.uk/uktpo/files/2023/03/73-final.pdf> on 7 December 2023.

VAT

From BCC research throughout the last two years, import VAT has emerged as one of the key barriers to GB-EU goods trade. The TCA contained only limited references to VAT. On automatic departure from the EU Common VAT Area at the start of 2021, traders in Great Britain became third country traders for VAT purposes. Goods movements ceased to be transfers within the EU and became imports subject to import VAT. Goods moving either from Great Britain to the EU, or in the other direction, are subject to import VAT on arrival at customs in the receiving country. Couriers or freight forwarders have subsequently sought the VAT due, and handling charges, directly from customers, sometimes at point of delivery. In some cases, this led to unexpected charges for import VAT not explained at point of sale, leading to the rejection of goods and attempts to return them. Although these issues have declined over time as the new rules have become more familiar to customers.

This complexity has led some firms to establish commercial entities within the EU (and register there for VAT purposes) to service EU customers. This has taken jobs and investment away from the UK. For companies wishing to trade in the EU under EU FTA trade preferences, some have faced requirements both to form commercial entities and register for VAT purposes in more than one EU member state. SMEs in Great Britain with exports valued at less than €150, which use the EU online import One Stop Shop (iOSS) portal, have also had to pay for a fiscal representative within the EU. This has added to the disincentives around doing business with EU customers. However, the EU has consulted on plans to remove this threshold²⁹ – meaning in the future all goods from Great Britain sold via the iOSS may need a fiscal representative.

The BCC recently partnered with the Amazon Small Business Accelerator to run a series of round tables with SME exporters to understand their challenges and to share solutions. Many participants raised the impact of import VAT changes when selling to EU customers³⁰.

An easement on postponed VAT accounting for UK companies, called for by the BCC³¹, was adopted, which relieved the potential cashflow burden for UK importing firms. Different rules are in operation for Northern Ireland traders, which treats them as if they were EU traders, so goods movements are not subject to import VAT.

²⁹ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13186-VAT-in-the-digital-age/public-consultation_en accessed on 7 December 2023.

³⁰ <https://www.britishchambers.org.uk/policy-campaigns/global-britain/our-impact/maximising-the-opportunities-of-trading-internationally-via-e-commerce/> accessed on 7 December 2023.

³¹ <https://www.britishchambers.org.uk/news/2018/08/bcc-comments-on-brexit-notice-a-start-but-businesses-need-more-detail> accessed on 7 December 2023.

There have also been problems caused by the ending of policy alignment between the UK and EU on VAT. Forthcoming changes in EU VAT law mean further divergence is likely between the two jurisdictions in the coming years.

Firms in Norway – similarly outside the EU Common VAT area – enjoy more convenient arrangements, which limit the requirements to have a fiscal intermediary in the EU and give firms greater flexibility. Similar provisions could be negotiated between the UK and the EU through the relevant specialised committee. The BCC raised this issue during the autumn 2022 meeting of the Civil Society Forum, attended by UK government and EU officials and stakeholders from across the UK and EU. But, as of December 2023, it has still not been resolved through action taken by the specialised committee. The UK government is supportive of the change, but the European Commission is unpersuaded as yet.

Significant changes in EU VAT law are in the legislative process at EU level which will affect traders in Great Britain from 2026 to 2028. These will be outlined in section 4 of this report. VAT remains one of the main obstacles to trade for Great Britain companies with EU customers and suppliers.



Services Access and Labour Mobility

The TCA provisions on trade in services are also based on WTO agreements (including the General Agreement on Trade in Services (GATS)). Audio-visual services are excluded, but market access is provided for in terms of financial services, accountancy, architecture, design, and most legal services, with the terms of access varying as per the mode of supply of the cross-border service³². Temporary stays in other areas for business purposes, for example conferences and internal company meetings, are permissible, but are restricted to 90 days in any 180-day period. Secondment is possible within companies with locations in either market. However, there is a lack of comprehensive provisions on mutual recognition of professional qualifications in the TCA. Although there has been work conducted between UK and EU services regulators, the pace of progress in reaching any mutual recognition arrangements has been slow and requires further political steer from both the UK and EU. An agreement reached during the initial TCA review would demonstrate clear progress, but action needs to be accelerated before then.

Previous arrangements, involving free movement of workers from the European Economic Area (EEA), ended on 31 December 2020, although applications for settled status in the UK by EU nationals have continued. Member companies across the UK have continually reported significant levels of labour and skills³³ shortages in all sectors, from care to hospitality to HGV drivers to manufacturing production.

In relation to youth mobility, no provisions on this were negotiated as part of the TCA. This is now widely seen by business, labour, and third sector stakeholders as a serious omission. It affects everything from school trips and membership of the EU's Erasmus+ scheme, to summer jobs in either labour market. By contrast, the UK has agreed a substantial youth mobility scheme with Australia, covering all under 35s with visas, for up to three years in duration, to allow young people from either country to work in the other³⁴. We invite both the UK government and EU to match the ambition of this type of mobility scheme, by negotiating arrangements to allow for young people to work, study and visit the other territory, demonstrating the common social, economic and cultural ties across the continent.

³² See Annexes 21-22 of the Trade and Co-operation Agreement and this explainer at [https://trade.ec.europa.eu/access-to-markets/en/content/eu-uk-trade-and-cooperation-agreement#:~:text=The%20EU%20UK%20Trade%20and%20Cooperation%20Agreement%20\(TCA\)%20provides,computer%2Drelated%20and%20digital%20services%2C](https://trade.ec.europa.eu/access-to-markets/en/content/eu-uk-trade-and-cooperation-agreement#:~:text=The%20EU%20UK%20Trade%20and%20Cooperation%20Agreement%20(TCA)%20provides,computer%2Drelated%20and%20digital%20services%2C) accessed on 7 December 2023.

³³ See eg. BCC Quarterly Economic Surveys from 2021 Q3-2023 Q1 accessed at <https://www.britishchambers.org.uk/insights-unit/quarterly-economic-survey/> on 7 December 2023.

³⁴ See eg. <https://minister.homeaffairs.gov.au/AndrewGiles/Pages/changes-to-working-holiday-maker-and-uk-youth-mobility-scheme.aspx> accessed on 7 December 2023.

Conformity Assessment and Markings on Industrial and Electrical Goods

Conformity assessment processes on industrial and electrical goods fall within the category of Technical Barriers to Trade (TBT) within trade rules. The TCA provisions took the WTO TBT Agreement as the baseline, but no mutual recognition agreement was reached on conformity assessment. During the negotiations, the UK made clear it would not seek to remain part of the CE marking system of conformity assessment and markings. Instead, it would establish its own UKCA system for Great Britain, with a separate UK (NI) system, due to the Northern Ireland Protocol.

The initial policy decisions from the UK government, derived from its approach to the TCA negotiations, ran like this: for products being sold on the Great Britain and EU markets, separate conformity assessment processes would have to be undertaken and relevant markings affixed to goods. Dual-marked goods would be allowed to circulate in both markets. But the key issue for manufacturers, particularly SMEs, was the cost and complexity of duplicating conformity assessment processes. To ease the implementation of this policy decision, unilateral easements were adopted by the UK government, for Great Britain, to allow CE-marked components, goods, and spare parts to circulate until the end of 2024 (this was then extended by a further 24 months in autumn 2022 following BCC representations).

In the BCC's International Trade Survey in October 2021, almost two thirds of respondents for whom certification marking was applicable, said their preference was to permanently retain the EU's CE certification marking system. This was to keep costs low and allow for continuity of integrated supply chains. Goods finished and assembled in Great Britain often contain components manufactured and conformity assessed in the EU or other countries which are part of the CE marking system. In 2022, businesses welcomed the extension of the dual system but found it only an initial step in responding to the reality of complex manufacturing supply chains. We called upon the UK government to take further action – unilaterally or through the Trade Partnership Committee – to relieve the burden it placed on businesses. We asked for the period of both conformity marks being able to circulate freely in the UK to be extended until at least the end of 2026. This would give sufficient time for arrangements on the permanent usage and circulation of CE marked items throughout the UK to be made.

After a long campaign, the UK government accepted the BCC's case in the summer of 2023, announcing that CE marked goods in most sectors would indefinitely be permitted to be placed on the market in Great Britain³⁵. However, this does not as yet apply to construction sector products, where a separate decision is required by the Department of Housing, Communities and Levelling Up. It also does not apply to medical devices, where UKCA testing and markings will be eventually required on those goods placed on the market in Great Britain.

³⁵ See <https://www.gov.uk/government/news/uk-government-announces-extension-of-ce-mark-recognition-for-businesses>, supra.

The decision on CE marked goods was very well received by industry but has caused problems for the UK conformity assessment body sector. This makes a powerful case for a mutual recognition agreement on conformity assessment to be reached by the UK and EU. This would allow standard and regulatory testing to CE-marking standards across both markets, providing the necessary capacity for business.

The decision to retain CE marking for Great Britain has shown the wisdom of retaining a common regulatory approach on traded goods with the EU. But it has also flagged how difficult the processes of managing regulatory divergence across both markets is. This is further complicated by the impact of the Windsor Framework - where Northern Ireland continues to follow many EU regulations, so it can maintain an open border with the Republic of Ireland, but is also part of the UK's internal market.



Chemicals

The TCA contained special annexes on trade in chemicals, which created the means for regulatory cooperation and exchange of information. The UK did not, however, pursue a relationship based on regulatory alignment. This means that in respect of Great Britain, it left the EU Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) system at the end of the transition period. Instead, it created a separate UK REACH system for Great Britain. “Grandfathering” of existing approvals was permitted; but for newly authorised products, duplication of registration by traders is now required to sell it in both markets.

This has introduced significant added cost pressures. The UK government has offered a delay in compliance with the full registration requirements involved with UK REACH, pushing this back until 27 October 2025. This also gives it time to consult business and others on these arrangements³⁶. Compliance burdens continue to be raised by SMEs trying to trade cosmetics and other chemicals products in Great Britain and the EU. Solutions are not easily foreseeable here, given the inclusion of these products within a key part of the EU Single Market approach to regulation.

In Northern Ireland, under the Windsor Framework, the EU REACH system continues to apply³⁷.

Data Flows

A transition period on data flows between the UK and EU applied from January to June 2021 when the EU made adequacy decisions, under the General Data Protection Regulation (GDPR)³⁸ and the Law Enforcement Directive³⁹. These permit the flow of personal data, such as employee or customer data, from the EU to the UK. The UK government has made divergence in some parts of the data protection and compliance policies inherited from the EU a key element of its agenda on regulatory reform. The Data Protection and Digital Information Bill⁴⁰, carried forward into the current Parliamentary session in the November 2023 King’s Speech, will have to ensure its adherence to key principles of data protection law, from the EU jurisdiction, to maintain the data adequacy relationship.

Adequacy decisions permitting lawful EU to UK flows of personal data are key for business particularly given the ongoing issues the EU is having on securing a legal data flow regime to the US by other mechanisms. The stability of arrangements to facilitate personal and business data flows remains a significant concern for UK businesses, with BCC research showing 34% of firms reporting difficulties transferring data in 2022.

³⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1038660/20211206-reach-letter-chemicals-industry.pdf accessed on 7 December 2023.

³⁷ See <https://www.daera-ni.gov.uk/articles/reach-regulation> accessed on 7 December 2023.

³⁸ Article 45 (1), GDPR.

³⁹ Directive (EU) 2016/680.

⁴⁰ See <https://bills.parliament.uk/publications/53287/documents/4126> accessed on 7 December 2023.

Windsor Framework

The Windsor Framework (formerly known as the Protocol on Ireland/Northern Ireland) is the part of the EU-UK Withdrawal Agreement which provides for an underlying legal basis for two-way trade between Northern Ireland and Great Britain, and Northern Ireland and the EU. Its purpose is to maintain an open border between Northern Ireland (part of the UK) and Ireland (within the EU). In practice, this means providing Northern Ireland firms with friction-free access to the EU Single Market, avoiding customs and VAT barriers, alongside retaining Northern Ireland's role within UK VAT and customs territories. Over 300 specific pieces of EU law were retained in Northern Ireland, via the Protocol. This made sure many industrial or agri-food goods made in Northern Ireland, and sold in the EU Single Market, would be made in accordance with EU legislation, avoiding any requirement for checks. In doing so, the EU was prepared to extend to Northern Ireland one of its four Single Market freedoms – free movement of goods. This was the minimum policy measure needed to sustain an open land border, and Northern Ireland/Ireland trade in many sectors.

The issues which emerged were in relation to the resulting checks and paperwork required on goods moving from Great Britain to Northern Ireland. This was as a result of the application of EU VAT law, the Union Customs Code, and EU food safety, hygiene and marketing rules. Problems emerged in several areas:

- The requirement for supplementary customs declarations on Great Britain to Northern Ireland goods movements;
- An export health certificate (EHC) being sought for each individual product of animal origin or plant product, potentially running to hundreds of EHCs per truck or lorry. This was preventing some food products from Great Britain being sold in Northern Ireland at all (such as chilled sausages);
- Customs declarations being required for each postal packet or parcel being sent either from businesses or consumers in Great Britain to customers, firms, friends or family in Northern Ireland;
- A bar on the marketing of UK-alone authorised medicine products in Northern Ireland;
- Potential restrictions on the supply of Great Britain sourced steel in Northern Ireland;
- The application of UK VAT and Excise policy to reduce the cost of certain goods in hospitality and Net Zero transition sectors; and
- The scope of EU rules on permitting subsidies within the Great Britain subsidy regime also being applicable in Northern Ireland.

Discussions on all these areas were held over many months between the UK government and the European Commission. A complex sequence of bilateral, and in some cases UK unilateral, easements reduced the impact of these trade requirements. But the need for a durable solution to provide certainty for businesses in Great Britain and Northern Ireland was seen as a priority.

Apart from a few cases, mainly in connection with VAT, the Windsor Framework does not remove the EU legislation applicable in Northern Ireland. But it does create a balanced method of overlaying new requirements on how it will operate in practice between Great Britain and Northern Ireland. It does this through a mixture of amendments to relevant EU law, to the Protocol itself, and various Joint and Unilateral Declarations from both sides. The EU could make the necessary changes to its legislation, with the Joint Committee (under the Withdrawal Agreement) making other key changes involving both sides while also taking note of any Unilateral Declarations being made.

One of the main ways in which trade is now facilitated across the Irish Sea is through real-time EU access to HMRC data on products and consignments moving from Great Britain to Northern Ireland. Monitoring of this data, and the ability of the European Commission to request real-time action by HMRC on questionable consignments, fulfils the needs of the EU. The EU is able to control those goods at risk of entering the Single Market, by the creation of a “Green Lane” (with minimal checks and paperwork) for goods destined for end usage or consumption in Northern Ireland. At the same time, those goods at risk of entering the EU Single Market pass through the “Red Lane” and undergo full EU customs and SPS checks.

There are three forms of Trusted Trader Scheme involved with the Windsor Framework. The first covers customs processes for goods sent from Great Britain to Northern Ireland by haulage or freight. The second will cover the arrangements for authorised Great Britain operators in the courier, parcel delivery or online platform sectors to send goods with minimal paperwork to customers in Northern Ireland from October 2024. The third covers checks on plant products or products of animal origin (meat, fish, eggs, composite, or dairy products) being sent over from Great Britain for consumption in Northern Ireland only.

The first scheme was put in place by September 2023 and involves a reduction in the number of information fields on transaction documents for customs purposes, down from 80 to around 20. It is open to companies based in Great Britain that are in good (financial) standing with HMRC. The requirement for supplementary customs declarations is removed from goods moving by haulage or freight from Great Britain to Northern Ireland. Neither will safety and security certificates be required when the deal is fully implemented, with the reduced amount of accompanying data in customs processes being delivered through usage of the Trader Support Service (TSS).

The second scheme applies to Business to Consumer (B2C) and Business to Business (B2B) despatch of postal packets and parcels from Great Britain to Northern Ireland and will enter into force in October 2024. It is applicable to approved fast parcel operators, online platforms, courier and postal services. Firms will be able to supply less information to these approved operators when sending goods by these means, and the operators will engage with HMRC over the necessary data to be sent.

The third scheme is a permanent form of the STAMNI (Scheme for Temporary Agri-food Movements to Northern Ireland) easements which had applied since the introduction of the Protocol in early 2021. It covers approved firms who apply for a reduction in the level of paperwork and checks accompanying movements of SPS goods (plant products and products of animal origin) between Great Britain and Northern Ireland. Firms in this scheme need to prove the provenance and traceability of their goods and attest to meeting UK public health standards for goods destined for end use consumption in Northern Ireland.

Goods have to be marked, and by July 2025 all retail products (other than loose fruits and vegetables) will have to be individually labelled 'Not for EU'. This is to show they will only be used or consumed in Northern Ireland or Great Britain. At the same time, the frequency of identity checks on these goods is reduced to risk-based levels of around 5% of consignments. A single certificate covers mixed loads of many such items in trucks and lorries moving from Great Britain to Northern Ireland. Documentary checks of these certificates will now be performed electronically for users of the scheme.

A further customs change from the Agreement is that the requirement for Exit Summary Declarations on goods moving from Northern Ireland to Great Britain will be removed for qualifying goods. This is under the "unfettered access" promise for Northern Ireland manufactured goods moving into other parts of the UK internal market.

Other changes are the removal of Northern Ireland from forthcoming small business changes in EU VAT rules, the application of UK VAT and excise rates to certain beers served in hospitality premises, and to green goods sited on immovable property (e.g. heat pumps). Amendments to certain consequences from EU State Aid law in Northern Ireland also broaden the range of permissible subsidies which the UK government can make. Northern Ireland also has access to the EU Tariff Rate Quota on steel, which should facilitate movement of steel products from Great Britain to Northern Ireland without running the risk of 25% tariffs. Finally, the issue in relation to access by Northern Ireland citizens to medicines authorised by the UK regulatory system is facilitated in terms agreed by both sides.

The most visible sign of implementation has been the introduction of a Green Lane for those firms moving animal or plant origin goods from Great Britain. In the first months of implementation there have been no major issues with the new processes and movement of affected goods across to Northern Ireland.

Further rollout stages of labelling for goods moving via the Green Lane are due in 2024 (and 2025), opening it up to all goods. The BCC called for an adjustment fund to support the introduction of labelling among SMEs. And in September 2023, the UK government's Northern Ireland Office announced the creation of such a fund of up to £50m for first phase labelling transition costs. So far, implementation of the Windsor Framework has gone smoothly, but the 2024 phase could be the biggest test to date. We urge all agencies to work in concert to ensure this phase and the final one in 2025 are introduced in a business friendly way. We specifically recommend the application of the transition fund for labelling costs be applied to both phases 2 and 3 as well as to ongoing costs from phase 1, so that firms are supported in all elements of their transition costs to new labelling rules.



SECTION 2

**POST 2021
REGULATORY
DEVELOPMENTS IN
THE UK AND THE
EU - MANAGING
DIVERGENCE**



Apart from in Northern Ireland, under the Windsor Framework, EU rules have ceased to have direct effect in the UK since January 2021 and the expiry of the transition period. The EU (Withdrawal) Act 2018 provided for necessary EU legislation, caselaw and associated rules to be given effect in the UK, to ensure economic and legal continuity. Under the TCA, both sides agreed to regulatory co-operation while respecting their own autonomy to change legislation as two distinct territories.

Retained EU Law

The focus within the UK government has been on using this new regulatory freedom to revoke, amend, or otherwise deal with retained EU law. Legislation would initially have revoked all retained EU legislation by the operation of a sunset clause at the end of 2023. However, amendments made late on in the Bill's legislative passage radically changed its effects. These removed the sunset clause completely, and instead specified a list of around 600 retained laws to be revoked or amended, while the remainder of retained EU law would continue in operation. There was little desire from businesses for the instability of mass removal of this legislation and some relief that a more nuanced approach to retained EU legislation has been adopted.

While this debate raged, the UK government's attitude to new EU legislation was being developed, partly through the Windsor Framework, with a whole of UK approach to regulation in key areas in mind. In most sectors, a policy of soft alignment with the substance of new EU legislation has been pursued, with exceptions on some climate and environmental rules, and only occasional divergence on food legislation. Nevertheless, there is a lack of a policy framework, effective scrutiny, and consultation with business and other stakeholders on incoming regulation from the EU where this has reach across effects to UK companies seeking to export or undertake commercial activities in the EU.

A survey of almost 1,000 businesses (mostly SMEs), conducted by the BCC in October 2022, showed that levels of awareness of the then Retained EU Law Bill were very low: 30% were not aware of the Bill, 41% were aware but knew no details, 25% said they knew some details, and only 4% comprehensively understood what it meant. The survey also found that only a small minority of firms (around 15-18%) viewed deregulation across a range of areas such as employment, health and safety, or product safety, as either a top or high priority.

Regulatory divergence

So far, divergence has, in part, been in relation to some climate standards policies, and limited parts of the rulebook on agri-food. But the biggest shift has been on initiatives in financial services and banking, such as the Edinburgh Reforms⁴¹. Some differences are becoming clearer, with a post-Brexit British government more inclined to restore risk-based approaches to regulation than the precautionary principles adopted by the EU regulatory order. On key policy areas such as carbon leakage, corporate responsibility on supply chains, and deforestation, the UK is wrestling with whether to follow the EU, or passively diverge⁴². The second option while preserving UK regulatory autonomy, brings with it, under certain regulations, an increase in trading costs for companies with operations or clients in both Great Britain and the EU.

The EU's trade and industrial policies have continued to evolve, through the rollout of its Open Strategic Autonomy approach⁴³. This uses trade remedies instruments and its own new supply chain rules to be more assertive. This includes tackling supply chain security issues which arose through the pandemic and the outbreak of the war in Ukraine. The Chips Act⁴⁴, Anti Coercion instrument⁴⁵, and its Green Deal⁴⁶ have all been adopted as part of its industrial strategy. Further measures may be undertaken at EU and member state level to permit subsidies in key sectors like electric battery and vehicle production.

In 2023, the impact of new EU measures has been felt by UK exporting companies seeking to sell goods in the EU. Compliance with new EU sanctions legislation⁴⁷ on Russian sourced or processed steel involves third country exporters providing mill certificates, for most but not all purposes, as evidence that the steel is not Russian in origin or processing. This has proven difficult for some of UK companies, and the BCC has been working with the UK government and European Commission on ways to provide greater certainty and flexibility for UK exporting suppliers in this sector.

⁴¹ See <https://www.gov.uk/government/collections/financial-services-the-edinburgh-reforms> accessed on 7 December 2023.

⁴² ie. by not following EU legislation with similar legislative action or regulatory decisions in the UK, therefore creating a regulatory divergence between the two jurisdictions.

⁴³ See https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_645 accessed on 7 December 2023.

⁴⁴ Regulation (EU) 2023/1781 - see <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023R1781> accessed on 7 December 2023.

⁴⁵ See <https://www.consilium.europa.eu/en/press/press-releases/2023/10/23/trade-council-adopts-a-regulation-to-protect-the-eu-from-third-country-economic-coercion/> accessed at 7 December 2023.

⁴⁶ See https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en accessed on 7 December 2023.

⁴⁷ See eg. Guidance at https://finance.ec.europa.eu/system/files/2023-10/faqs-sanctions-russia-listed-goods_en.pdf accessed on 7 December 2023.

CARBON LEAKAGE AND EU CARBON BORDER ADJUSTMENT MECHANISM

The EU's Carbon Border Adjustment Mechanism (CBAM) started phasing in from 1 October 2023. It is the EU's flagship measure to deal with carbon leakage - the importation of products into the EU which use production processes that release higher levels of carbon and other Greenhouse Gases (GHGs) than it allows. This risk of carbon leakage may be higher in certain energy-intensive industries⁴⁸. When fully in place from January 2026, the system will impose charges on goods which originate from sources which do not operate equivalent climate regulations. These will be based on the difference between the assessed carbon price of goods under the EU's carbon pricing through its Emissions Trading Scheme (ETS) and that of the origin country of the goods being imported.

For now, the key obligation from the EU CBAM is on the importer of record in the EU to report on the GHGs embedded into the group of products to which the rules apply⁴⁹. This includes iron and steel (including downstream uses of these by manufacturers), hydrogen, fertiliser, cement, aluminium, and electricity. Eventually the scheme will cover more than half of all goods within scope of the EU ETS. The reporting obligation effectively requires GB exporters to provide details of any products in scope of this phase of CBAM being sent to the EU. Embedded emissions, as well as direct and indirect emissions (e.g. electricity used in production of goods) will have to be reported by the importer in the EU on a quarterly basis.

In terms of the Implementing Regulation⁵⁰ and the guidance provided to third country economic operators⁵¹, businesses in Great Britain sending goods to the EU are strongly advised to draw up a list of all goods they produce, including those made with precursors obtained from outside their production facilities. They should then check the list against the range of products in Annex 1 of the EU CBAM regulations to establish which of their goods fall within scope. A specific template for communications between the exporting producer, outside the EU, and the importer of record, inside the EU, is recommended for use. This provides a comprehensive picture of embedded emissions within CBAM goods - required to meet the reporting obligations. Producers in Great Britain now have to adopt processes for weekly, and in some cases daily, monitoring of gas usage, to provide the information related to the reporting requirements. Companies in the steel sector have already found the transition to the requirements onerous, and methods of simplifying the compliance evidence need to be sought. The status of CBAM in Northern Ireland has yet to be resolved by the European Commission and UK government as at mid-December 2023, ie. whether it will be treated as part of the UK for this purpose, or whether it is treated in terms of EU legislation given effect to by the Windsor Framework (or added thereto)⁵².

⁴⁸ https://climate.ec.europa.eu/eu-action/eu-emissions-trading-system-eu-ets/free-allocation/carbon-leakage_en#:~:text=Carbon%20leakage%20refers%20to%20the,increase%20in%20their%20total%20emissions accessed on 7 December 2023.

⁴⁹ https://taxation-customs.ec.europa.eu/carbon-border-adjustment-mechanism_en accessed on 7 December 2023.

⁵⁰ See Commission Implementing Regulation (EU) 2023/1773 at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023R1773> accessed on 7 December 2023.

⁵¹ See https://taxation-customs.ec.europa.eu/system/files/2023-11/CBAM%20Guidance_non-EU%20231121%20for%20web_0.pdf accessed on 7 December 2023.

⁵² In terms of Annexes 2 and 3 of the Windsor Framework.

The UK government consulted in 2023 on similar policies to tackle carbon leakage⁵³, including the introduction of a potential UK CBAM later this decade. On 18 December 2023 it responded formally to the consultation⁵⁴, endorsing the principle of a UK CBAM being created and in operation by 2027. It would not cover the electricity sector, unlike the EU version. The issue of ETS linkage was not addressed in the consultation response by HM Treasury. But the clock is ticking with potentially only two years to go until the impact of the EU CBAM, which could make UK goods exports to the EU more expensive and less competitive.

The BCC seeks close engagement with government on the design and implementation of the proposed UK CBAM by 2027, including sectors it will apply to, and to resolve issues in Northern Ireland around application of CBAM rules. This should cover most goods within the scope of the Emissions Trading Scheme, alongside suitable adjustment periods, and seek formal linkages with the EU CBAM/ETS to avoid creation of new trade frictions. The Emissions Trading Schemes of the UK and the EU should be formally linked by an agreement made under the legal basis provided for in the Trade and Co-operation Agreement⁵⁵.

DEFORESTATION AND SUPPLY CHAIN LEGISLATION

The EU Deforestation Regulation⁵⁶ will come into effect on 30 December 2024 and create reporting requirements for SMEs and larger businesses alike, while excluding products which contribute to deforestation from entering the EU Single Market. Micro and small businesses will have until 30 June 2025 to move into compliance with the Regulation. Further measures to enhance corporate responsibility on supply chains are being implemented by the EU institutions. We await UK government decisions on similar measures here.

⁵³ See <https://www.gov.uk/government/consultations/addressing-carbon-leakage-risk-to-support-decarbonisation> accessed on 7 December 2023.

⁵⁴ See https://assets.publishing.service.gov.uk/media/657c7fbd95bf65000d7190cb/2023_Government_Response_-_Addressing_Carbon_Leakage_Risk.pdf accessed on 18 December 2023.

⁵⁵ Article 392 (6), Trade and Co-operation Agreement.

⁵⁶ Regulation (EU) 2023/1115.

EU VAT CHANGES

The EU's current legislative proposals as part of its VAT in the Digital Age (ViDA) policy reforms prepare European companies for the further expansion of e-commerce and trade digitalisation. The reforms also seek to reduce the VAT gap between the taxes potentially recoverable from businesses and the revenues actually paid. The aim is to cut the gap by up to €11bn per year over the next decade. They are also the first major change to EU VAT laws since the UK left the common VAT area as part of the Brexit process. They will nevertheless affect UK companies – some of this will be welcome, but other effects will likely prove more challenging. It should also be remembered that Northern Ireland continues to apply EU VAT law on traded goods but not services, and these EU reforms will have relevance there for its trading relationship with the EU.

The legislation has not been adopted this year, which was the original plan, and will now stretch into 2024 during the remainder of the current mandate of the EU institutions. Originally to be introduced by 2028, under new Digital Reporting Requirements (DRR) e-invoicing would be the mandatory means of invoicing for intra-EU supplies of goods and services. The implementation of this will now be delayed until 2030. Some of the reforms will simplify compliance burdens for third country exporters like Great Britain. For example, registering in one EU state for VAT will be all that is required for a company, rather than having to register in multiple EU states where commercial activity is conducted. The introduction of this is likely to be delayed from 2025 until 2026.

The deemed supplier principle⁵⁷ will be extended potentially from 2026 into new sectors such as transport and hospitality accommodation, which use online platforms. They will assume liability to levy VAT if the individual suppliers have not done so. A major change will be a mandatory requirement on on-line platforms to use the import One Stop Shop (i-OSS) for goods being sent to EU customers from outside the EU. At the same time, a broader obligation for other transactions will mean all goods entering the EU will have to use i-OSS. The current rules apply to goods under €150 in value only.

In services, third country exporters of services via remote means into the Union will be brought within the scope of VAT rules and will have to account for the VAT due on the supply of services to individual EU customers via the OSS. On balance, these measures appear to fulfil the remit of tackling the fiscal gap from VAT fraud – some of them will offer simplifications for UK traders, but others will mean greater complexity and compliance burdens in offering cross-border services.

⁵⁷ This where online platforms or marketplaces facilitating the supply of goods are in certain circumstances under VAT rules deemed to have supplied the goods themselves.

CONCLUSIONS

On regulation more widely, there is good sense in keeping business costs as low as possible, by mirroring the primary regulations adopted by the European Union on traded goods, particularly those in highly regulated sectors. The regulatory compliance difficulties which have arisen in 2023, for example the EU Russian steel sanctions and the first reporting period of CBAM, make a powerful case for regulatory co-operation between the EU and UK. This would minimise business compliance frictions particularly given key new regulatory developments for UK traders set to come into force in the coming years.





SECTION 3

**WHAT BUSINESSES
HAVE TOLD US IN
2023 ABOUT USING
THE TCA**



Through its Insights Unit, the BCC runs an extensive research programme which has been surveying businesses on attitudes towards trade for many years. Since the start of 2021, we have been assessing the ease or difficulty with which businesses have adapted to rules flowing from the TCA and seeking business views on wider issues relating to trade. This report draws on the most recent data collected by the BCC Insights Unit, in its annual International Trade Survey from July 2023. This received 733 responses from businesses across the UK, with 33% in the manufacturing sector, 19% in Business-to-Consumer (B2C) services, and 42% in Business-to-Business (B2B) services. 97% of participants were SMEs (fewer than 250 employees). Additionally, 48% of respondents reported that they export, which is broadly consistent with the profile of Chamber member businesses.

The survey revealed issues with current economic and trading conditions for SMEs, including:

- Ongoing issues for businesses following the rules of the TCA;
- Relatively low optimism overall around global trade, given current and future trade barriers; and
- A near-total lack of awareness of incoming changes to trade policy, such as CBAM and BTOM.



BCC SURVEYS ALSO RECEIVE HUNDREDS OF CASE STUDIES FROM BUSINESSES. BELOW IS A SELECTION OF THEIR EXPERIENCES OF TRADE WITH THE EU:

“Since Brexit, selling into the EU has become much more difficult. But more importantly our experience has been that EU companies view the UK in a different way and are more reluctant to buy from us. We used to exhibit in Europe but now have stopped as European companies are very reluctant to start any form of dialogue with UK companies if there are European alternatives.”

Medium-sized manufacturer in the Black Country

“Still the biggest challenge, apart from difficult general economic climate (especially inflation), is the difficulty exporting to the EU, our key export market. Our goods are subject to sanitary and phytosanitary procedures which are onerous, costly, ever-changing and a massive barrier to our products being competitive in the EU against EU-produced goods. The lack of a comprehensive veterinary agreement with the EU is a serious impediment to making trade with the EU easier.”

Small manufacturer in Dorset

“The TCA is some improvement on the prior position but still more barriers to export to the EU than many other places in the world. There needs to be a more comprehensive FTA that gets us closer to the situation we had pre-Brexit. One example: it’s massively complicated to get goods back from EU to UK for repairs, paperwork nightmare, and it’s restricting our opportunities for growth.”

Small manufacturer in Suffolk

“We used to export a range of products to Northern Ireland, Ireland, and mainland Europe. The increase in time to transact, the complexity of paperwork required and the need to deal with VAT and duty have all but eliminated this area of trade for us. That said, domestic issues are far more of a concern to us.”

Medium-sized retail and wholesale firm in North and Western Lancashire

“Even though our products are manufactured using wholly UK sourced materials we still are having customs officers applying import duties to our goods through not correctly reading the documentation. This results in us having to duplicate orders for export and incurring extra costs of transport and the return of any goods back to us just to keep our customers happy and loyal. This places immense commercial and physical strain on our resources.”

Micro manufacturer in North and Western Lancashire

“The risk-based system for animal imports from the EU should consider the risk of each product. However, all live animals are classed as high risk regardless. My product carries no risk to the environment and aren’t part of the human food chain. Yet currently they are still regarded as high risk. This seems to make the system a blunt tool from an importer’s perspective.”

Small hospitality firm in Coventry and Warwickshire

“Since Brexit, it has become more difficult and more expensive to export to our customers in the EU. It has become necessary to import more goods from Asia directly into the EU because that is the least costly supply route. Brexit has created the biggest challenges during the 25 years of managing this business and we are still waiting to see any of the benefits that were promised.”

Micro retail or wholesale firm in North East England

“Transporting of goods between the UK and EU and vice versa remains the biggest issue for us when dealing with EU customers and suppliers. Would have thought by now that these logistical issues would have been resolved, as only adding costs to all involved.”

Small retail or wholesale firm in Essex

“Continued difficulties serving our long-standing EU customers – 50% of our turnover – has been reducing our profitability and will likely lose us business. The current EU-UK agreement does not make for ‘free’ trade. The government’s stated efforts for further away trade deals does not help, but distracts attention from unresolved problems. Supply chain bottlenecks and cost increases also continue to affect us.”

Medium-sized manufacturer in Cambridgeshire

“Each member state has different rules for UK workers, most are unclear of their requirements and the costs related to finding out, and the disruption if we get it wrong, is significant.”

Small construction, engineering, or trades firm in Glasgow

“Selling services to EU is now a bureaucratic nightmare requiring a work permit as a self-employed person. Even worse is the total lack of available advice about what to do as each EU state has its own rules. Therefore, reliant upon EU member states interpretation of TCA.”

Micro services firm in North East England

“The biggest business challenges are importing parts from EU into the UK. Unfortunately, Brexit had a huge impact on our organisation. Since Brexit, any payment received from our clients in Middle East in Euro currency is charged a huge bank charge of nearly 80 Euros. We were informed by our bank that this is because the UK is out of the European Monetary System (EMS), therefore all Euro payments will be charged a fee which is having significant impact on our payments.”

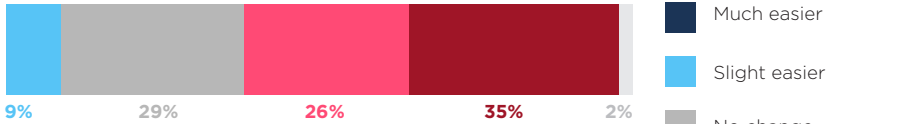
Small construction, engineering, or trades firm in London



Compared to one year ago (July 2022), do you think exporting or importing to or from the following has generally become easier or more difficult?

BASE: European Union (EU): N = 301; Markets outside of the EU: N = 28

European Union (EU)



Markets outside of the EU



0% 100%

60%

ALMOST TWO-THIRDS OF EXPORTERS TO THE EU SAY TRADE WITH THE EU IS MORE DIFFICULT THAN ONE YEAR AGO.

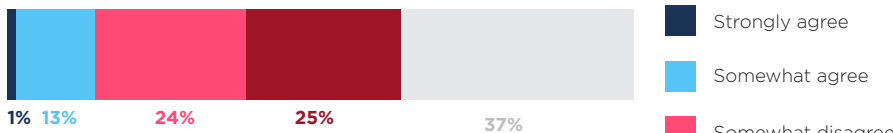
18%

AROUND ONE-FIFTH OF EXPORTERS TO THE REST OF THE WORLD SAY TRADE TO THOSE MARKETS IS MORE DIFFICULT.

To what extent do you agree or disagree that the UK-EU Trade and Cooperation Agreement (TCA) is enabling your organisation to grow or increase sales?

BASE: Total: N = 654; Exporters: N = 311

Exporters



Total



0% 100%

49%

AROUND HALF OF EXPORTERS DISAGREE THE TCA IS ENABLING THEM TO GROW OR INCREASE SALES, LARGELY UNCHANGED FROM 2022.

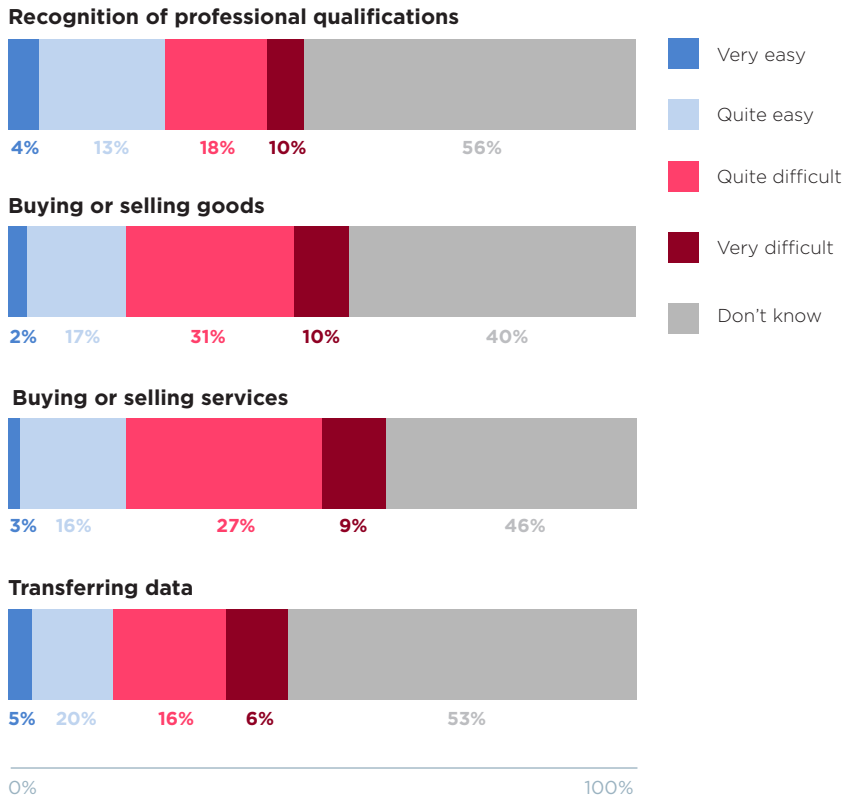
14%

AGREE IT IS HELPING THEM.



Across each of the following broad areas, how easy or difficult is it for your organisation or supply chain to adapt to changes flowing from the TCA?

BASE: Recognition of professional qualifications: N = 294; Buying or selling goods: N = 389; Buying or selling services: N = 341; Transferring data: N = 302



Regardless of whether or not your organisation currently exports, which of the following, if any, would you consider to be barriers to exporting?

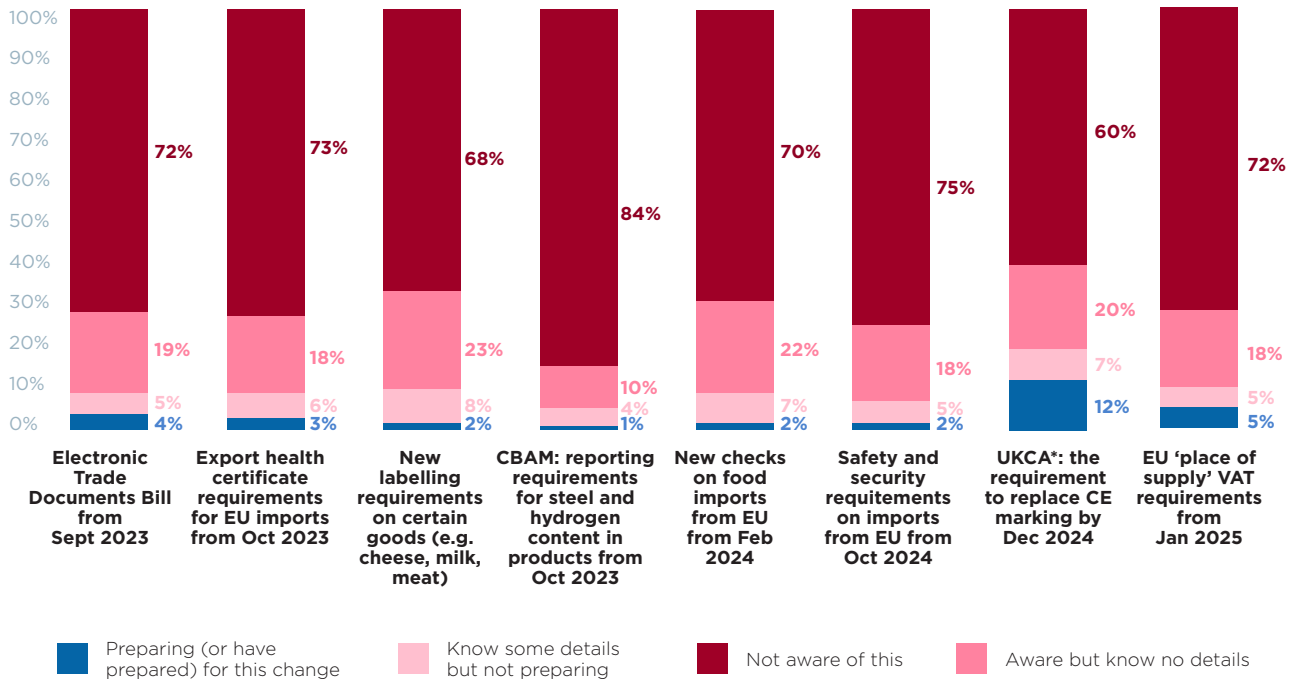
BASE: N = 647



Section 3 What Businesses Have Told Us In 2023 About Using The TCA

For each of the following scheduled changes relating to international trade, describe how much you know.

BASE: N = 633



*The UKCA requirement was made voluntary mid-way through the survey fieldwork period'



84%

OF MANUFACTURERS ARE UNAWARE OF NEW REPORTING REQUIREMENTS (CBAM) ON EXPORTS OF GOODS CONTAINING HIGH-CARBON STEEL, AND SELECTED OTHER PRODUCTS, TO THE EU STARTING IN OCTOBER 2023.

87%

EXPORTERS ARE EITHER UNAWARE OR UNPREPARED FOR NEW EU VAT REQUIREMENTS DUE IN JANUARY 2026-2028.

43%

OF MANUFACTURERS ARE STILL UNAWARE OF THE UK'S NOW VOLUNTARY, ALTERNATIVE PRODUCT SAFETY MARKING SYSTEM TO THE CE MARK.

CONCLUSIONS FROM THIS YEAR'S SURVEY

The compliance burdens from the structural barriers to trade introduced under the TCA are still difficult for large numbers of traders, particularly SMEs, hoping to export to the EU. There is still widespread unhappiness with the continuing scale of this paperwork burden. Three years on from the TCA being negotiated, 49% of exporters actively 'disagree' that it is helping them grow. Worryingly, there are very low levels of knowledge of key elements of the Border Target Operating Model due to come into operation soon. Awareness of other key regulatory changes affecting the competitiveness of UK exports in the EU Single Market and additional regulatory and compliance burdens is also poor.

This emphasises the key role that enhanced regulatory dialogue and co-operation has between the UK and EU, and the need for business to be involved. A more inclusive approach would help companies fully prepare. It is vital that they receive practical, clearer guidance on major policy changes which affect their ability to trade with customers in the EU.



SECTION 4

WHAT IS COMING UP IN THE NEXT TWO YEARS?



Inbound border controls in Great Britain, on plant and animal products from the EU, will be phased in from the end of January 2024. Import VAT requirements now apply to goods moving from the EU to Great Britain and vice versa.

KEY CHANGES IN THE NEXT TWO YEARS

31 January 2024

Introduction of requirement for inbound medium risk plant and animal product movements from the EU to Great Britain to be accompanied by an export health certificate.

1 March 2024

Potential third stage rollout date for ICS2 (Import Control System) phase 3 for maritime, road and rail movements of products into the EU (still under review at time of publication).

30 April 2024

Documentary and identity checks at Great Britain Border Control Posts (BCPs) on plant and animal products from the EU begin from this date. This is in line with a 'whole of world' approach to border controls which forms part of the Border Target Operating Model. It will involve digitisation and simplification of certificates and paperwork, plus easements and absence of physical checks for trusted traders importing animal and plant products from the EU and beyond.

End summer 2024

EU Entry/Exit System to come into operation for third country nationals entering the EU. This means fingerprints and captured facial images to be recorded, as well as the name of the individual, type of travel document, date, and place of entry to the EU. This is intended to replace manual stamping of passports, but there are concerns the system may increase delays at ports, transport hubs, and other border crossing points.

1 October 2024

Second stage of Windsor Framework compliance measures come into effect. It includes extending the Green Lane to all goods and the introduction of the new customs treatment of postal packets and parcels moving from Great Britain to Northern Ireland. Labelling of dairy products moving across from Great Britain will also be put in place. In practice, this also means meat and dairy products will all require individual labelling for sale in Great Britain.

30 October 2024

Safety and security certificates required to accompany consignments from the EU, as part of rollout by HMRC of the UK Single Trade Window.

30 December 2024

EU Deforestation Regulation set to enter into effect for larger businesses – including UK companies – covering cattle, cocoa, coffee, palm oil, rubber, soya and wood products and derivations thereof, including meat, leather, chocolate, paper, printed books produced on or after 29 June 2023.

31 December 2024

Deadline for consent motion in Northern Ireland Assembly on Articles Five to 10 of the Windsor Framework.

TBC 2024

Introduction of visa waiver for short stays (up to 90 days out of each 180-day period) and pre-travel authorisation system for UK nationals seeking to travel to the EU. This will be through the rollout of the European Travel Information and Authorisation System (ETIAS).

EU Corporate Sustainability Due Diligence Directive due to become law, for implementation by EU member states in 2026.

30 June/1 July 2025

EU Deforestation Regulation set to enter into effect for smaller and micro businesses.

Third stage of Windsor Framework compliance measures come into effect, including labelling of fish, fruit and vegetables, composite food products moving from Great Britain to Northern Ireland. Again, in practice this means fruit, vegetables and composite products will all require individual labelling if sold in Great Britain.

1 January 2026

EU CBAM rollout to be completed, with charges introduced. Application of some of the EU ViDA VAT reform package for online platforms and other operators.





SECTION 5

OUR POLICY RECOMMENDATIONS



Given the range of issues which Chamber member companies have raised on the realities of trade with the EU in 2023, our policy recommendations are split into three categories:

- **Short-term** issues which the UK government and the European Commission could resolve over the next twelve months. This could be through the Trade Partnership Committee and the sectoral trade committees, under the TCA, which have now started to meet;
- More **medium-term** issues, which could be addressed by side agreements to the TCA as part of the initial review of its operation in 2025/26; and
- **Longer-term** issues, which will require a more substantial review of the TCA.

SHORT TERM

- Engagement between the UK government and the European Commission (and in the future, the proposed European Customs Agency) to develop simpler guidance on customs, rules of origin and other key issues. This must then be consistently applied across all 27 EU member states and in the UK. Joint guidance should be produced which is clear, practical, and accessible for business in both the EU and UK.
- Reach an agreement on VAT cooperation with the EU to reduce the number of UK companies requiring a fiscal intermediary in the EU to conduct cross-border trade – as exists for companies in Norway.
- Focus on making agreements with regulators individual EU member states, as appropriate, on mutual recognition of professional qualifications.
- Ensure the trusted trader arrangements, introduced from 2024 for inbound Great Britain border control of goods, are as open and usable as possible by small, medium and larger-sized importers and their suppliers. This should keep compliance burdens, on animal and plant product controls, light touch.
- Reflect the realities of modern manufacturing supply chains by extending the ability to sell CE marked products in Great Britain to the construction sector. Consider changing the terminology to stress that the permissible usage of CE marking in the UK internal market is permanent.
- Engage comprehensively with businesses in Great Britain and Northern Ireland on implementation of the Windsor Framework. This should include the forthcoming customs processes, their implementation, and food labelling requirements. This will ensure stability in both Northern Ireland and for the overall UK-EU trading relationship. Extend the operation of the Windsor Framework labelling adjustment fund to SMEs involved in phases two and three of compliance in October 2024 and July 2025.

- If the charging element of the EU CBAM proceeds on schedule in January 2026, the Emissions Trading Schemes of the UK and the EU should be formally linked by an agreement. This could be made under the legal basis provided for in the Trade and Co-operation Agreement. This would provide certainty to boost investment potential in the European neighbourhood for green technologies and energy, and avoid new, unnecessary barriers to trade.
- Develop stronger arrangements for regulatory co-operation between the EU and UK (including business dialogue and consultation) to minimise business compliance frictions with new rules.
- New UK regulations or decisions not to regulate, undertaken following regulatory dialogue with our major trading partners, should be evaluated to check whether they increase net trade costs for importers and exporters in the economic sectors concerned.

MEDIUM TERM

- Negotiate a veterinary or animal origin and plant product agreement with the EU, either to reduce the complexity of, or to eliminate, the need for Export Health Certificates on agri-food imports and exports.
- Negotiate a supplementary mutual recognition agreement on conformity assessment and markings of industrial, electrical and electronic goods.
- Deliver further flexibility on travel for business purposes and the range of business activities which can be undertaken.
- Make agreements with the European Commission and – where appropriate – bilaterally with member states, on widening access for labour mobility across key sectors of the economy. And reach agreements on mutual recognition of professional qualifications.
- Develop a closer regulatory policy relationship to ensure better co-ordination between the EU and UK, so that businesses do not face new trade barriers through passive regulatory divergence, without appropriate scrutiny and the ability to have their voices heard.
- Negotiate comprehensive Youth Mobility schemes between the UK and EU, covering school visits and exchanges, associate membership of Erasmus+, and the ability to work for young people, under time-limited visas.
- Consider the scope of the product-specific rules of origin and cumulation with the wider European neighbourhood. This should include whether off-the-shelf options, such as the UK re-joining the Pan-Euro-Mediterranean (PEM) Convention, could provide additional supply chain security and flexibility, in the absence of more bespoke arrangements.

LONGER-TERM

- Consider the balance between reservations and market access for services. This should take into account the economic priorities for both sides in a global context, where services exports provide the greatest opportunity to boost growth.
- Deepen VAT co-operation and adopt common regulatory approaches. Facilitate e-commerce and greater cross-border trade in goods, by cutting cross-border VAT red tape. Produce a cost benefit analysis on a cross-EU-UK framework for VAT on traded goods.
- Look afresh at whether adjustments to certain product-specific rules of origin would be of mutual benefit to both the UK and the EU; for example in the electric vehicle industry and pan-European supply and sourcing chains.
- Deepen provisions on digital trade and facilitate trade in green goods and services, to ensure these can be traded in both directions at lower cost and with fewer barriers on market access.
- Broaden the categories for cross-border labour mobility and increase the qualifying days in each six-month period.
- Develop deeper regulatory cooperation on conformity assessment, chemicals and technical barriers to trade. Where strong economic and business arguments exist then trade volumes can be increased, and regulatory compliance costs lowered.
- Develop policies for more efficient trade facilitation, including whether agreements and waivers can be reached to dispense with safety and security certificates on goods movements.
- If not already resolved, reach solutions on lowering costs of agri-food imports and exports by simplification, digitalisation and elimination of export health certificates (EHCs).
- If not already resolved, secure linkage of the UK and EU ETS.
- Consider the convincing case for the UK rejoining the Lugano Convention, to allow businesses certainty on enforcement of civil and commercial judgements in the UK and the EU.





SECTION 6

CONCLUSIONS



Three years of the TCA, together with the aftershocks from the pandemic, the war in Ukraine, and extreme inflationary pressures, is creating powerful economic headwinds for UK companies trading with the EU. This is leading to more companies withdrawing from exporting.

Trade with the EU accounts for 42% of all UK exports. Some of these headwinds may yet prove cyclical, but others appear highly structural, and have already led to changes in commercial behaviour and operations, particularly around labour, rules of origin and VAT. The difficulties in using the TCA have not significantly improved for many firms as the last 36 months have gone on.

This should provide deep pause for thought by decision makers on both sides of the Channel. Dissatisfaction about what is not in the TCA has grown among businesses, as the last three years have progressed. The imposition of non-tariff barriers in business sector after sector, has led many firms to conclude it does not allow free trade.

The lived experiences of exporting companies we have presented here must lead to more pragmatism in how the TCA can be made to work for businesses. This would help generate more economic growth and tax revenues desperately needed by the UK and EU alike. We have offered a range of policy options, which could be adopted before, and subsequent to, the review of the TCA's operation in 2026.

We hope the UK government and European Commission will listen carefully to our voice and ideas to ensure that, in 2024 and beyond, the TCA can work better for business.





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