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Working with Europe and the EU – A New Context

2.2

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1



Working with Europe and the EU – A New Context

25-27 November 2024

Day 2

How does the new framework of UK-EU relations work?

- **Trade in goods**

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2

TCA Structure

| Parts | One: Common and institutional provisions | Two: Trade, transport, fisheries and other arrangements | | | | | | Three: Law enforcement and judicial cooperation in criminal matters | Four: Thematic Cooperation | Five: Participation in Union programmes, sound financial management and financial provisions | Six: dispute settlement and horizontal provisions | Seven: Final provisions | Annexes |
|----------|--|---|---------------------------------------|--|--|-----------------|-----------------------|---|--|--|---|-------------------------|---------|
| Headings | | One: Trade | Two: Aviation | Three: Road Transport | Four: Social Security Coordination and visas for short-term visits | Five: Fisheries | Six: Other provisions | | | | | | |
| Titles | I General Provisions II Principles of interpretation and definitions III Institutional framework | I Trade in goods II Trade in services III Trade in trade IV General agreements, payments, transfers and temporary safeguard measures V Trade in intellectual property VI Public procurement VII Services and investment-related enterprises VIII Energy IX Global regulatory practices and regulatory cooperation X Level playing field for open and fair competition and sustainable development XI Exceptions | I Air transport II Aviation safety | I Transport of goods by road II Transport of passengers by road | I Social security coordination II Visa for short-term visits | | | I General provisions II Requests for assistance and public cooperation data III Transfer and processing of passenger name record data IV Cooperation on operational information V Cooperation with law enforcement VI Cooperation with Eurojust VII Surrender VIII Extradition IX Transfer of criminal record information X Administrative handling and counter-terrorist financing XI Offence and confiscation XII Mutual assistance XIII Dispute settlement | I Health security II Other security | | I Dispute settlement II Basis for cooperation III Fulfillment of obligations and safeguard measures | | |



Trade and Cooperation Agreement: Overview

- Part 1: Common and Institutional Provisions
- **Part 2: Trade**
- Part 3: Law and Enforcement and Judicial Cooperation in Criminal Matters
- Part 4: Thematic Cooperation
- Part 5: Participation in Union Programmes
- Part 6: Dispute Settlement and Horizontal Provisions
- Part 7: Final Provisions

+ Annexes



Part 2: Trade

- **Heading One: Trade**
- Heading Two: Aviation
- Heading Three: Road Transport
- Heading Four: Social Security Coordination and Visas for short-term visits
- Heading Five: Fisheries



5

Part 2: Heading One (Trade)

- **Trade in Goods**
- Trade in Services and Investment
- Digital Trade
- Capital Movements and Payments
- Intellectual Property
- Public Procurement
- SMEs
- Energy
- Transparency
- Good regulatory practices and regulatory cooperation
- Level playing field provisions
- Exceptions



6

Part 2: Heading One (Trade)

No tariffs or quotas

But...

Customs checks
Regulatory checks
(including rules of origin)

Dual burden on regulatory
compliance
No harmonised trade
rules

Level Playing Field
requirements

And...

Northern Ireland

Part 2: Heading One (Trade)

- No customs duties (*Article 21*)
- But only for goods 'originating in the other parties' (see *Articles 37-68 and six Annexes*)
- Rationale for **rules of origin**:
 - Limit preferential tariffs that originate in the UK or EU
 - Avoid undermining arrangements with third countries
 - Avoid distortion of competition

Part 2: Heading One (Trade)

- **Relevance for business**

Sufficient amount of processing necessary to qualify

Limits parts and ingredients from third countries (supply chains and sourcing)

Need to provide evidence of what is in the product and complete all paperwork

- **Otherwise, 'Most Favoured Nation' tariffs apply**

EU Common Customs Tariff

UK Global Tariff



Rules of Origin

Simple examples of origination:

- Products are wholly obtained (agricultural products): *Articles 39(1) & 41*
- Products produced exclusively from originating materials in that party: *Article 39(1)(b)*
- Products produced in that party incorporating non-originating materials (subject to conditions in *Annex 3*): *Article 39(1)(c)*



Rules of Origin: Specific Rules

Rules on processing (*Article 39(2)*):

- The product has acquired originating status
- The product is incorporated as a material in another product
- Then the non-originating materials used in the production of that product are not considered as non-originating

Example: UK engine consists of 30% non-originating content but is considered as originating

If the engine is included in a car, it counts as 100% towards the originating content of the car



Rules of Origin: Rules on cumulation

- **Product originating in the UK (or EU)** will be considered as originating in the EU (or UK) if that product is used as a material in the production of another product in the EU (or UK)

Example: EU tomatoes are used in the UK to produce chopped tomatoes (when the chopped tomatoes are exported back to the EU they are 'originating')

- **No bilateral cumulation in case of *Article 43*** (insufficient production)
- **No diagonal cumulation**

Cumulation in a third state with which both parties have an FTA

Example: a manufacturer who imports inputs from Japan into the UK (under the UK-Japan CEPA) will face tariffs when exporting the finished product to the EU



Non-Tariff Barriers

- **Import and Export Restrictions** (*Article 26*)
 - A party shall not adopt or maintain any prohibition or restrictions on the importation of any good of the other party (or on the exportation), except in accordance with *Article XI of GATT (1994)*
 - Prohibition of price restrictions or licensing requirements

- **National Treatment** (*Article 19*)
 - Each party shall accord national treatment to the goods of the other party in accordance with *Article III of GATT (1994)*

Non-Tariff Barriers, cont.

- UK (EU) goods must meet requirements (e.g. product standards) of the EU (UK) in addition to the UK (EU) requirements
 - But national treatment based on *Article 19* (no discrimination in respect of internal taxation and regulation)

- Mitigation measures
 - Sanitary and Phytosanitary (SPS) measures: *Articles 69-87*
 - Technical Barriers to Trade (TBT): *Articles 88-100, Annexes 11-15*
 - Customs and trade facilitation measures: *Articles 101-122*
 - Level Playing Field measures: *Articles 355-411*

Level Playing Field Provisions in Part 2: Heading One (Trade)

- **Areas**

Subsidy control; competition; state-owned enterprises; taxation; labour and social policy; environment and climate; other rules on trade and sustainability
Specific limitations for each area

- **Enforcement**

Domestic enforcement mechanisms

Dispute Settlement under TCA (not for competition) with special procedures in LPF

Unilateral measures

- **Rebalancing Measures (Article 411)**

Just a minute...



Northern Ireland

- The TCA does not apply to trade between the EU and Northern Ireland
- Trade is subject to the *Windsor Framework*
 - Northern Ireland applies EU internal market rules to ensure free trade (but VAT and excise duty adjustments; recognition of medicines approved in GB; restriction of EU subsidy control regime)
 - Some checks for trade between GB and NI
- Windsor Agreement seeks to ensure smooth flow of trade within the UK Internal Market
 - Green lanes and red lanes;
 - Recognition of medicines approved in GB
 - Supply of certain products (agrifood, parcels)

Northern Ireland

- **Trade between EU and NI**
 - No customs procedures or controls
- **Trade between GB and NI**
 - EU tariffs are applied to goods from GB by the UK on behalf of the EU unless those goods are not 'at risk' of moving to the EU (in particular Ireland)
 - Checks when goods are at risk (red lane)
 - Simplified process of moving goods that are not 'at risk' (green lane)
 - Special framework for agrifood retail trade, parcel deliveries, and movement of pets
- **Trade between NI and GB**
 - Limited checks

Northern Ireland – Dispute Settlement and Safeguard measures

- **Dispute settlement options**
 - Infringement proceedings in CJEU or
 - Possibility of national courts to request a preliminary ruling from CJEU
- Article 16 WF: **Safeguard Measures**
 - Initiation
 - “...application of Protocol leads to serious economic, societal or environmental difficulties that are liable to persist or to diversion of trade”
 - Unilateral action to take appropriate safeguard measures, with priority for those that least restrict the functioning of the Protocol
 - Retaliation: the other side can take proportionate rebalancing measures



Northern Ireland – Stormont Brake (1)

- Set out in Article 13(3a) and (4), and Annex I of the Windsor Framework
- Scope of application:
 - Only covers EU rules that apply in Northern Ireland are significantly amended or replaced
 - Needs operational Stormont Executive and Assembly in regular session



Northern Ireland – Stormont Brake (2)

- Petition of Concern: at least 30 MLAs from at least two parties
- But notification can only be made under restrictive conditions:
 - “Used in most exceptional circumstances and as a last resort”
 - Amended act has a “significant impact specific to everyday life of the communities in Northern Ireland”
- Where those conditions are met, UK government notifies EU:
 - Amended or replaced act does not apply in Northern Ireland
 - Joint Committee discusses to resolve the matter
 - Where the Joint Committee cannot agree to add the amended rule to the WF, “the Union shall be entitled, after giving notice to the United Kingdom, to take appropriate remedial measures”



Northern Ireland – Stormont Brake (3)

- Brake is very difficult to use and applies to only a small sub-set of relevant EU legislation
- However, sits with only WF commitments & obligations by EU and UK to ensure extensive consultation and information-sharing in pre-legislative phase, to avoid issues arising in first place
- System rests on high and persistent level of engagement by UK with EU legislative process



Future Developments

• Reviews (selection)

- Aluminium quota review available 1 January 2026
- 30 June 2026: Adjustment period for access to waters ends
- 2027: Rules of Origin for electric vehicles and batteries change (with no further change permitted until 2032)
- 2032: Amendment of Rules of Origin for electric vehicles and batteries possible