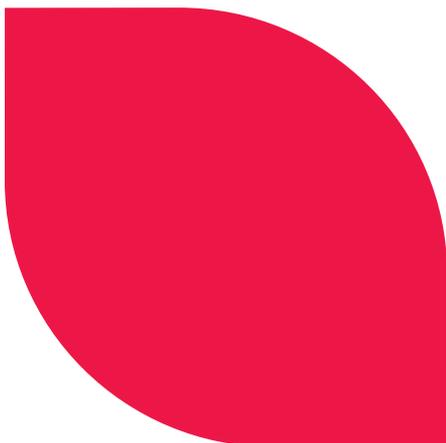




**THE TRADE AND COOPERATION  
AGREEMENT: TWO YEARS ON  
PROPOSALS FOR REFORM BY UK BUSINESS**





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# Introduction

**The second year for UK businesses trading with the EU under the Trade and Co-operation Agreement (TCA) has been a tough one. It has coincided with the start of a forecast lengthy period of recession<sup>1</sup> and economic and supply chain shocks caused by the war in Ukraine. What could have been explained as short-term disruption to cross-border trade, as the TCA began to be used by businesses in 2021, has become more clearly identifiable as creating structural barriers to UK-EU trade. As many as 42% of product lines previously exported from the UK to the EU were stopped during the first 15 months of the TCA<sup>2</sup>. In 2022, UK goods exports to the EU recovered through the end of Q1 and into Q2, but by the end of Q3, goods exports (which had been inflated by fuel exports to the EU) had tipped once again into negative territory, and services exports remained flat<sup>3</sup>.**

For many businesses, 2022 was the year they clearly identified which barriers to trade were leading to a fall-off in exports to the EU, or else causing them to cease trading with customers entirely. It has also been the year in which the debate on trade barriers has separated into three clear areas. The first is barriers which can be tackled within the context of the TCA, the second is issues which will require further arrangements sitting alongside the TCA, and the third is problems which remain unresolvable in the current UK political context. This is especially relevant given the current state of EU-UK relations (mostly caused by the continued disagreements over the Protocol on Ireland/Northern Ireland), which worsened through 2022 and remain uncertain at the year's end.

There have also been shifts in the planned implementation of new rules and regulations. The UK government did not introduce full border controls on imported EU products of animal origin or plant products from July onwards, as had been intended. Apart from pre-notification of animal origin or plant product movements, documentary and identity paperwork and checks were not introduced for inbound produce arriving in GB from the EU. Instead, the UK government decided to defer the introduction of these controls (to all GB imports of these goods) until the first tranche of its Target Operating Model is introduced at the end of 2023<sup>3</sup>. For GB exports of these goods to the EU however, the full effect and costs of these controls have been in place since the start of the TCA. They continue to be the costliest and most troublesome non-tariff barrier to UK-EU trade in 2022<sup>4</sup>.

As the economic effects of the pandemic eased, business travel picked up again between the UK and EU. With it however, the real obstacles presented by the TCA to providing in-person services in the EU, and the restrictions of permitted days of business travel during each six-month period, became more real to many firms. In 2021, the UK's trade in services surplus was 6% of GDP - down from 6.7% in 2020. The largest drop was in the financial services trade surplus - down £4bn from 2020 - linked to the introduction of the TCA<sup>5</sup>.

With free movement of people by now a distant memory, key economic sectors such as care, logistics and hospitality suffered labour and skills shortages throughout 2022, as the UK's points-based system continued to favour higher skilled industries.

Between December 2021 and December 2022, business faced the following regulatory and non-tariff barrier landscape on trade in goods and services:

- Evidential easements on proof of origin through certain simplified documents ceased on 31 December 2021. Firms began to be asked by national customs authorities for fuller documentation to prove goods satisfied product-specific rules of origin to qualify for zero-tariff treatment. Some faced demands for payment of duties if they could not definitively prove the origin of their goods.
- Full cross-border documentation (including customs declarations and safety/security certificates) and checks on goods moving from GB to the EU.
- Export Health Certificates on products of animal origin or plant products exported from GB to the EU.
- Import VAT levied on cross-border goods trade from GB to the EU (and vice versa) and on services from the UK to the EU (and vice versa).
- GB SMEs making use of the EU import-One Stop Shop (iOSS) for goods transactions to EU customers under €150 in value are required to have a fiscal representative (a registered company able to declare and pay VAT) in the EU. For goods over the threshold there is a prospect of similar treatment in the future, under forthcoming EU VAT reforms applicable to third country merchants.
- On imports, the introduction of identity and physical checks on plant products or products of animal origin inbound from the EU to GB was postponed from mid-2022 until the end of 2023 at the earliest. The same occurred with safety and security certificate requirements.
- Limited market access in services, including for multiple sectors: financial, travel, legal, design and architectural services, plus the scope of UK and EU reservations on cross-border services (numbering over 1,000).

<sup>1</sup>Office for Budget Responsibility, Economic and Fiscal Outlook (November 2022) [https://obr.uk/docs/dlm/uploads/CCS0822661240-002\\_SECURE\\_OBR\\_EFO\\_November\\_2022\\_WEB\\_ACCESSIBLE.pdf](https://obr.uk/docs/dlm/uploads/CCS0822661240-002_SECURE_OBR_EFO_November_2022_WEB_ACCESSIBLE.pdf)

<sup>2</sup>See Office for National Statistics, UK Trade: September 2022 (November 2022) <https://www.ons.gov.uk/economy/nationalaccounts/balanceofpayments/bulletins/uktrade/september2022>

<sup>3</sup>See UK Government, The Border with the European Union: Importing and Exporting Goods (June 2022) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1083393/2022-06-15\\_Border\\_Operating\\_Model\\_\\_1\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1083393/2022-06-15_Border_Operating_Model__1_.pdf)

<sup>4</sup>J Du and O Shepotylo, TCA, Non-tariff Measures and UK Trade (ERC Research Paper No 98, May 2022) <https://www.enterpriseresearch.ac.uk/wp-content/uploads/2022/06/ERC-ResPap98-TCA-Non-tariff-Measures-and-UK-Trade-Du-Shepotylo-1.pdf>

<sup>5</sup>Office for National Statistics, UK Balance of Payments: Pink Book 2022 (October 2022) <https://www.ons.gov.uk/economy/nationalaccounts/balanceofpayments/bulletins/unitedkingdombalanceofpaymentsthepinkbook/2022>

- Tight regulation of short-stay business activities, including requirement for UK nationals not to spend more than 90 days out of any 180-day period in the EU. Fingerprint and face photo capture requirements for UK nationals entering the EU, together with introduction of a new electronic travel security system, EU ETIAS, in 2023.
- Certification and testing requirements on highly regulated goods entering the EU from GB, such as compliance with EU REACH.
- Contact between professional regulators in the UK and EU continued throughout the year but there was no evidence of imminent progress on mutual recognition of professional qualifications between both sides.

Businesses in Northern Ireland faced additional uncertainty over how customs, VAT and border checks on goods and packages from GB would operate in the future, given the continuing negotiations between the UK government and the EU, and the introduction of the Northern Ireland Protocol Bill, currently before the UK Parliament.

Businesses across the UK have continued to make the necessary adjustments to review their supply, sourcing, and distribution chains, and follow the guidance from the UK government and European Commission as best they can. They are also engaging with UK policy makers on the implications of the Retained EU Law (Revocation and Reform) Bill, with the prospect of key retained EU-derived regulations expiring by the end of 2023. And they are staying up-to-date on forthcoming regulations they must still follow from the EU too – in areas such as supply chains<sup>6</sup>, semi-conductors<sup>7</sup>, and the Carbon Border Adjustment Mechanism legislation<sup>8</sup>, due to be implemented by 2026.

During our survey work on EU-UK trade, we have spoken with thousands of UK businesses. They cover the entire range of economic activities, from services exporters to importers of food products. As many as half of them are involved in generating the export-led growth which the UK government's Global Britain approach aims to champion. The data they provide, and the stories they tell of their experiences of the new cross-border trading terms with the EU, provide convincing evidence of what needs to change to make the TCA work better for business as we enter its third year.

We make refreshed policy recommendations based on this new evidence – on the actions the UK government and European Commission could take in the coming months in the specialised Committees under the TCA; those issues which could be resolved before the first review of the TCA through side agreements; and the more structural reforms which both sides could focus on in the run up to the 2026 review.

<sup>6</sup> [https://single-market-economy.ec.europa.eu/document/785da6ff-abe3-43f7-a693-1185c96e930e\\_en](https://single-market-economy.ec.europa.eu/document/785da6ff-abe3-43f7-a693-1185c96e930e_en)

<sup>7</sup> <https://data.consilium.europa.eu/doc/document/ST-14668-2022-INIT/en/pdf>

<sup>8</sup> [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/698889/EPRS\\_BRI\(2022\)698889\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/698889/EPRS_BRI(2022)698889_EN.pdf)

## SECTION 1

# THE KEY PARTS OF THE TCA: HOW ARE THE TRADING TERMS WORKING FOR BUSINESS?

## Tariffs and Rules of Origin

Over 200,000 UK companies (including many SME exporters) had only ever traded across borders within the EU customs union and Single Market on a tariff-free, but also near frictionless, basis. They were aware that the UK would leave the EU customs union and not form any new customs union relationship with the EU. That change meant they had to be prepared by registering for EORI numbers, finding customs intermediaries, or speaking to their local Chamber of Commerce or Chamber Customs about the process of 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 GB on 1 January 2021.

In terms of the Protocol on Ireland/Northern Ireland (in the Withdrawal Agreement), companies in NI were required to be aware of the compliance processes in connection with checks on goods coming from GB. By contrast, goods produced in and moving from NI to the EU were treated as if they were EU goods, without the need for border checks. Various easements – unilateral and bilateral – were introduced to prevent most checks having to be conducted. The current easements are open-ended unilateral ones from the UK government, which have been noted by the EU. This has resulted in a degree of trade diversion, particularly pronounced in terms of goods moving via the GB to NI sea crossings and avoiding GB to ROI crossings at Holyhead. There has also been a reordering of supply and sourcing chains from some companies operating in NI, sourcing more strongly from ROI to avoid border friction East/West across the Irish Sea. Alongside these trends in North/South and East/West trade flows has been the political uncertainty from the UK-EU negotiations on Protocol compliance, the continued absence of a functioning NI Executive and the worsening state of UK-EU relations overall in the past 12 months, including diplomatic conflict over the NI Protocol Bill. It provides UK ministers with powers to attempt to unilaterally make provision in policy areas covered by the Protocol, including on customs, regulatory requirements, and indirect tax.

Full border controls were applied to GB goods being exported into the EU from 1 January 2021. Alongside customs documentation, this requires safety and security certificates to accompany consignments. 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.

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. 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 GB businesses 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. Although some larger firms have been able to mitigate their exposure to customs duties by using customs warehousing and returned-goods relief, some companies have had no choice but to off-shore their distribution networks into the EU for EU-originating goods. One UK member company told us they had to form a commercial entity 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 trading across the new customs and VAT borders, has moved from GB into the EU.

The lack of cumulation 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, based overseas, have already identified problems on lack of flexibility on cumulation - in terms of trade in the European neighbourhood beyond the EU.

This is undoubtedly one of the issues for the first fundamental review of the TCA in 2026, in addition to whether more off-the-shelf options, such as UK accession to the Pan-Euro-Mediterranean (PEM) Convention, would provide UK businesses with additional flexibilities on cumulation.



## Customs and Hauliers

In the early weeks of 2021, Roll on-Roll off freight from GB into the EU was 25% less than in January 2020. This recovered from around March 2021. Nevertheless, outbound HGV traffic from GB to the EU was 6.7% lower in the period between January and June 2021, compared with the same period in 2018<sup>9</sup>. Information exchanged between French and UK customs authorities on how traders and hauliers could bring themselves into compliance with customs and other border control rules, led to a sharp fall in the number of non-compliant traders by the end of February 2021.

The forecasts of seven-mile-long lorry queues in Kent in the reasonable worst-case scenarios<sup>10</sup> did not happen. However, this was partly caused by exporting traders refraining from exporting in the early weeks of 2021. The effects of the pandemic were also felt on cross-border and global trade over this period. When they did resume trading in greater numbers from March 2021, they have reported inconsistent application of customs and other border rules in different EU member states. In 2022, the borders issues faced by importers and exporters became less around familiarity with the TCA and grew more structural in nature.

These changes represent only the first half of the new GB trading border with the EU. Inbound GB customs and border controls from the EU were not introduced by the UK government from mid-2022 on economic, particularly business costs and inflation, grounds. Ministers decided to phase in controls for the EU and the rest of the world at the GB border from December 2023. This is being done as part of its new Target Operating Model (TOM), delivered through the first release of the UK Single Trade Window. The BCC is engaging with HMRC over design and functionality of the inbound customs documentation, safety and security and export health certificate requirements set to form part of this. The timetable for this changeover is tight throughout 2023, and a further delay cannot be ruled out. Some firms noted this year the asymmetry of the arrangements on safety and security certificates and animal and plant product requirements between the import and export aspects of goods trade with the EU.

The TCA customs rules are based on the WTO Trade Facilitation Agreement terms, not the EU Union Customs Code (UCC), so although there are ambitions to simplify customs processes over time and to move towards a Single Window for these, there are no specific benchmarks to measure this against. As the UK did not wish to align with the UCC (in respect of GB), exporters were required from 1 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. Changes in the UCC will take effect soon, and the EU is preparing to introduce its own Single Customs Window. These initiatives may create opportunities for more efficient cross-border GB-EU goods trade, but it will also mean new processes and rules for GB exporters, customs brokers, and freight forwarders to get used to.

<sup>9</sup> <https://www.nao.org.uk/wp-content/uploads/2021/11/The-UK-border-Post-UK-EU-transition-period.pdf> at page 36.

<sup>10</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/920675/RWCS\\_for\\_our\\_borders\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/920675/RWCS_for_our_borders_FINAL.pdf)

## Agri-food Exports – Export Health Certificates and Border Checks

For GB agri-food goods being exported into the EU, export health certificates (EHCs) signed by a vet are required 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 GB into EU territory.

The cost, complexity, and requirement for veterinarian signature of EHCs caused significant hardship for agri-food exporters in 2021 and 2022, particularly SMEs. The TCA rules were based upon the relevant WTO rules, but with little more in the way of facilitation for smoother trade. In the absence of an equivalence relationship, or a wider veterinary agreement with the EU, the UK, in respect of GB, has a weaker relationship with the EU on checks on these foodstuffs and plant products, than goods coming from New Zealand. GB exporting businesses 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 customers.



## VAT

From our members' surveys throughout the last two years, import VAT has emerged as one of the key barriers to GB-EU goods trade. Its complexity has led some firms to establish commercial entities within the EU (and register for VAT purposes within the EU) to service EU customers, taking 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 to register for VAT purposes in more than one EU member state. GB SMEs with export orders valued at less than €150 through 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 from doing business with EU customers.

The TCA contained only limited references to VAT. On automatic departure from the EU Common VAT Area at the start of 2021, GB traders became third country traders for VAT purposes. Goods movements ceased to be intra-EU transfers, subject to acquisition VAT; instead, becoming imports subject to import VAT. Goods moving either from GB to the EU, or in the other direction, became subject to import VAT on arrival at customs in the receiving country. Couriers or freight forwarders then 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 rejection of the goods and attempts to return them.

An easement on postponed VAT accounting for UK companies, called for by the BCC<sup>11</sup>, was adopted, which relieved the potential cashflow burden for UK importing firms. Different rules for NI traders operate under the Protocol, which treats them as if they were EU traders in terms of trade with EU businesses and customers, with goods movements not subject to import VAT.

There have also been problems caused by the ending of policy alignment between the UK and EU on VAT. On 1 January 2021, the UK introduced a new online system for VAT accounting for third country importers, but the corresponding EU system was not introduced until 1 July. Forthcoming changes in EU VAT law mean further divergence is likely between the two jurisdictions in the coming years.

As stated previously, GB SMEs selling goods valued under €150 into the Single Market through the EU online import One Stop Shop (iOSS) portal have also faced additional compliance costs of EU fiscal representation. This has added to the other disincentives of doing business with EU customers. The system applies only to goods purchases of less than €150, with purchases above that value still subject to normal VAT levying processes at customs on arrival in the receiving country. The EU has consulted on plans this year to remove this threshold<sup>12</sup> – meaning in the future all GB goods sold via the iOSS may require a fiscal representative.

<sup>11</sup> <https://www.britishchambers.org.uk/news/2018/08/bcc-comments-on-brexit-notices-a-start-but-businesses-need-more-detail>

<sup>12</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13186-VAT-in-the-digital-age/public-consultation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13186-VAT-in-the-digital-age/public-consultation_en)

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 many of our companies would like to see a real cost-benefits analysis of returning to a common VAT framework between the UK and EU. VAT remains one of the main obstacles to trade for GB companies with EU customers and suppliers.

## Services Access, Labour Mobility and Supply Chains

The TCA provisions on trade in services are based on WTO agreements (including the General Agreement on Trade in Services (GATS)). Audio-visual services are excluded, alongside financial services, accountancy, architecture, design, and most legal services. 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 contact between UK and EU services regulators, the pace of progress in reaching any mutual recognition arrangements has been slow and requires more political steer from both the UK and EU. A mutual recognition agreement reached during the initial TCA review would demonstrate clear progress, but action is required before then.

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

We recommend the UK government introduces broad temporary visas of up to two years duration and widens the shortage occupations list to allow the Migration Advisory Committee (MAC) to tender new advice to UK government ministers. Labour and skills shortages are particularly pronounced in food manufacturing and picking, hospitality, logistics, haulage, and transport sectors.

## 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 have 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 GB, with a separate UK (NI) system being required for NI because of the Protocol.

For products being sold on the GB and EU markets, separate conformity assessment processes will have to be undertaken and relevant markings affixed to goods. Dual-marked goods will be allowed to circulate in both markets – but the key issue for manufacturers, particularly SMEs, would be the cost and complexity of duplicating conformity assessment processes. This is subject to unilateral easements adopted by the UK government for GB to allow CE-marked components, goods, and spare parts to circulate in GB until the end of 2024 (this was extended by a further 24 months this autumn following BCC representations). The easement has additional flexibility if the UKCA markings are on accompanying letters or electrical cables; in these cases, they may circulate in the UK without being affixed to the goods, until the end of December 2027.

In the BCC's International Trade Survey in October 2021, almost two thirds of respondents, for whom certification marking was applicable, said their preference would be to permanently retain the EU's CE certification marking system. This is to keep costs low and allow for continuity of integrated supply chains. Goods finished and assembled in GB often contain components manufactured and conformity assessed in the EU or other countries which are part of the CE marking system. Businesses welcomed the extension of the dual system but find it only an initial step in responding to the reality of complex manufacturing supply chains. We call upon the UK government to take further action – unilaterally or through the Trade Partnership Committee – to relieve this burden on businesses by extending the period of both marks being able to circulate freely in the UK until at least the end of 2026. This should give sufficient time for arrangements on the permanent usage and circulation of CE marked items throughout the UK to be made. We also need a mutual recognition agreement on conformity assessment to be reached by both sides to underpin this. And for the UK to continue to align with product standards and safety rules required to sustain the continuation of CE marked goods in the GB and UK internal markets.

## Chemicals

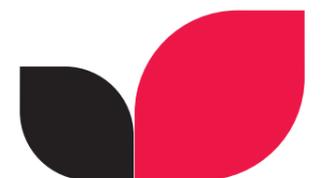
The TCA contained special annexes on trade in chemicals, which create the means for regulatory cooperation and exchange of information. The UK did not, however, pursue a relationship based on regulatory alignment. This means, that in respect of GB, it left the EU Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) system at the end of the transition period and created a separate UK REACH system for GB. "Grandfathering" of existing approvals was permitted; but for newly authorised products, duplication of registration by traders is now required for the sale of that product 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 arrangements<sup>13</sup>. Compliance burdens continue to be raised by SMEs trying to trade cosmetics and other chemicals products in GB and in 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 NI, under the Protocol, the EU REACH system continues to apply.

## Data Flows

A temporary transition period on data flows between the UK and EU applied from January 2021 until the EU made adequacy decisions in late June that year, under the General Data Protection Regulation (GDPR) and the Law Enforcement Directive. 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. This means that adequacy will continue to be reviewed should key elements of GDPR be removed in the UK. Data remains a significant concern for UK businesses, with 34% of firms having reported difficulties transferring data in 2022, in our surveys.



<sup>13</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1038660/20211206-reach-letter-chemicals-industry.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1038660/20211206-reach-letter-chemicals-industry.pdf)

## SECTION 2

# WHAT BUSINESSES HAVE TOLD US IN 2022 ABOUT USING THE TCA

**The BCC has 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 our most recent survey on the subject was our International Trade Survey from July 2022. This survey had 1,168 respondents within the UK, with 37% in manufacturing, 26% engaging in Business-to-Consumer (B2C) trade, and 37% in Business-to-Business (B2B) trade. 92% of them were SMEs (fewer than 250 employees). Additionally, 55% of respondents reported that they export (which is broadly consistent with the profile of Chamber businesses), with 89% of these respondents saying they export to the EU.**

In terms of the macro-economic picture, services exports were modelled by the UK Trade Policy Observatory (UKTPO) as having declined in the order of 12% in the first half of 2021<sup>14</sup>, with goods exports to the EU also down significantly. The Office for National Statistics (ONS) data on goods trade in September 2021 showed UK goods exports to the EU were still £0.5bn lower than in September 2018, despite having recovered since the start of 2021. The Office for Budget Responsibility (OBR) in its October 2021 analysis<sup>15</sup> found a 4% structural lowering of long-term growth, because of the non-tariff barriers to goods and services trade erected by the TCA.

The survey revealed serious issues with current economic and trading conditions, particularly in relation to the trading relationship with the EU and global supply chain disruption

- Inflation is the top issue affecting business performance and growth, with utilities, shipping containers, raw materials, and labour costs all cited as the main drivers.
- General export performance remains weak for many SMEs due to inflation, loss of competitiveness, transport disruption, and additional trade costs and barriers.
- Many SMEs are generally disconnected with the UK government on trade policy and have low awareness and engagement on developments in this area.

The global economic shutdown in response to Covid-19, and subsequent reopening, led to a surge in demand for certain items (such as shipping containers) and job roles. Coupled with constrained supply, this has led to unprecedented inflationary pressures and skills shortages.

Half (52%) of respondents overall said they are experiencing shortages of goods and services, rising to almost three-quarters (70%) for manufacturers. Since January 2022, the cost of trade has gone up for 8 in 10 firms (80%), while overall sales margins have decreased for more than half (53%).

Businesses we spoke to consistently pointed to increased costs and administrative burdens caused by the TCA, as contributory factors to inflation and disruption.

<sup>14</sup> See Y Ayele, Post-Brexit: Trade in Goods and Services (II), (UKTPO Briefing Paper No 63, 2021) <https://blogs.sussex.ac.uk/uktpto/publications/post-brexit-ii-trade-in-goods-and-services/>

<sup>15</sup> Office for Budget Responsibility, Economic and Fiscal Outlook (October 2021), pp 58.

Businesses in the survey have been clear on their experiences of the TCA:

“Electronics always goes through cycles, but this has been magnified by Covid ... plus the impact upon shipping. Brexit has also had its part to play with labour movement.”

**Small manufacturer in Sussex**

“Customs on both sides of the EU border seem to have a separate set of rules to be able to charge different amounts for the same thing. We don’t know until it’s too late what these costs are.”

**Small retailer in Dundee**

“Customers wouldn’t buy from the UK because of cashflow VAT implications on purchasing goods. They have to pay VAT on import and claim it back. This reduced their cash flow and working capital. We now have an EU company and manage the UK-EU transaction internally and ship goods to our EU customers from our EU company, even though goods are packaged in the UK as they always were.”

**Medium sized wholesaler in Staffordshire**

“Leaving the EU made us uncompetitive with our EU customers. We would have lost all of our EU trade without a base in the EU. This has cost our business a huge amount of money which could have been invested in the UK had it not been for Brexit.”

**Small retailer in Ayrshire**

“We purchase material from our sister companies within the EU. Bringing material into the UK has been much harder and more costly since Brexit, especially with regards to delays at UK ports. This has caused extended lead times and delays in delivering to our customers.”

**Small retailer in Herefordshire**

“The regulatory misalignment with EU is a disaster for our industry which has highly regulated products. Additionally, the transport system in the UK is old and poorly managed.”

**Small wholesaler in Suffolk**

“The biggest challenge to our business has been the impact of Brexit. The cost of doing business with the EU has increased significantly since Brexit. We have made it much more difficult to trade with our easiest markets as a result of leaving the single market.”

**Small retail / wholesale firm in Ayrshire**

“Our biggest difficulty is trading directly to customers in the EU without the significant customs charges. Trading shampoos to countries like Spain who only allow EU trade without barriers. Having to have a physical presence in the EU for regulatory purposes. Finding new markets means travelling to far flung destination at a time when margins are being significantly squeezed.”

**Micro retail / wholesale firm in Kent**

“Brexit is an economic disaster for us. We can still do business in Europe but at a much-reduced margin and it is much more difficult. With fuel costs likely to stay extremely high and global logistics in disarray we see extraordinarily little prospect of finding export sales in markets further afield to make up for the loss of business on our doorstep.”

**Micro retail or wholesale firm in South Cheshire**

“Exporting goods into the EU since Brexit, it continues to prove difficult. We have experienced a lot of our goods going missing when they reach customs control. Due to additional import costs, we have found that quite a few of our EU customers that we have dealt with for a long time, in regard to providing a qualifying service, now stay within the EU instead of the UK.”

**Small manufacturer in the East Midlands**

“Brexit has been the biggest ever imposition of bureaucracy on business. Simple importing of parts to fix broken machines or raw materials from the EU have become a major time-consuming nightmare for small businesses, and Brexit related logistics delays are a massive cost when machines are stood waiting for parts. We used to export lesser amounts to the EU, but the bureaucracy makes it no longer worthwhile.”

**Small manufacturer in Dorset**

“Our UK sales to EU have fallen by 60% whilst our ES sales within the EU have increased by 60%. Unless matters change regarding Brexit, and the TCA, then we will begin planning to relocate our UK manufacturing to the EU.”

**Micro manufacturer in the Wirral**

“Global supply chain disruption caused by Covid and sharp practices by shipping lines. Also, the impact of non-UK national drivers now being reluctant to operate in the UK following Brexit.”

**Medium sized logistics firm in London**

“The biggest challenge is the fact the UK has become very isolated on the trade side because of its decision to do Brexit in the way that we did (hard Brexit). This has caused a big decrease of business, trade, and opportunities for my business. Whatever way I look at it, everything has become a lot more complicated, costly, and lengthy to engage in international trade, which has meant many businesses have pulled back from the EU and are only focussing on the UK market, therefore decreasing opportunities for business with our close geographic foreign markets.”

**Micro admin, support, or consulting firm in Essex**

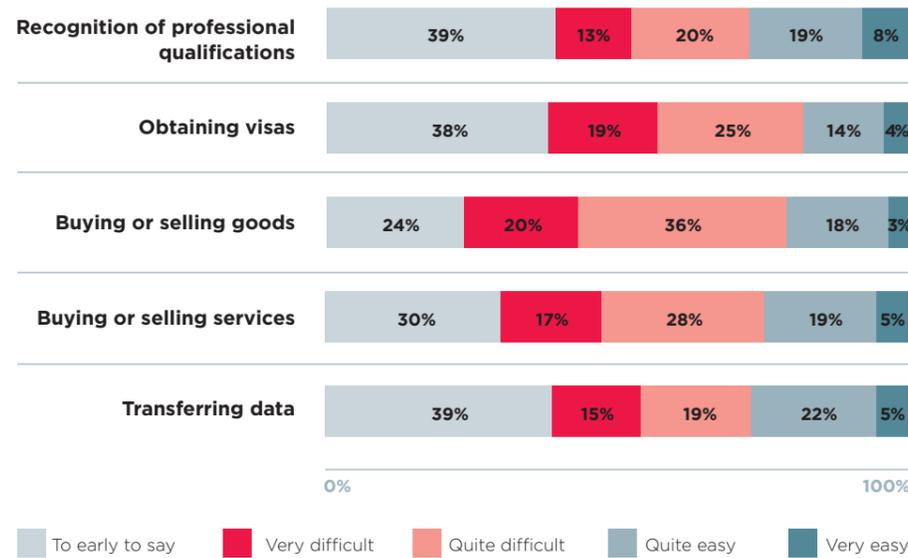
“Pre-Brexit we exported 25% of our product into the EU – we were working towards increasing this to over 30% as our biggest customer of the business was in France. Since leaving the EU, we have lost 100% of our export market: there is no export market for us! Our customers advised us that transport was taking too long (we make a perishable product), having gone from 3-5 days to over 3 weeks for arrival. Our French customer advised that tariffs and taxes, etc. had doubled and it was no longer financially viable to import our product as the costs could not be passed on. We are now trying to find additional domestic outlets for those equivalent sales, in a market which was already tight and of course, now is more crowded than ever, as competitors who also previously exported are now doing the same.”

**Micro manufacturer in Herefordshire and Worcestershire**



## International Trade Survey 2022

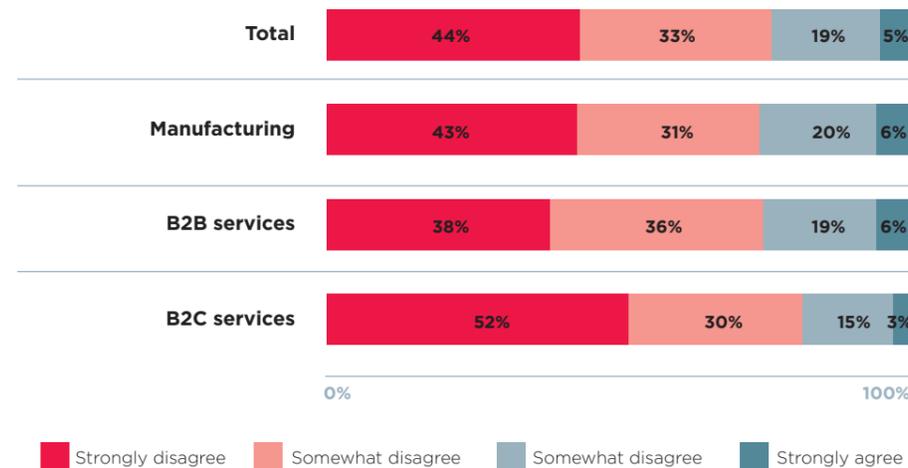
“Across each of the following broad areas, how easy or difficult has it been for your business or supply chain to adapt to changes flowing from the TCA?”



Overall, 56% of respondents report difficulties adapting to change in buying/selling goods, 45% report difficulties in buying/selling services, 44% report difficulties obtaining visas, 34% report difficulties transferring data, and 33% report difficulties recognising professional qualifications.

BASE: (Recognition of professional qualifications: N = 322; Obtaining visas: N = 311; Buying or selling goods: N = 534; Buying or selling services: N = 386; Transferring data: N = 337. 92% SMEs). This excludes respondents who said 'not applicable to my business'

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



Overall, 77% of respondents 'disagreed' that the TCA is enabling their business to grow or increase sales, while 24% 'agreed'. B2C service firms were more likely to 'disagree', with the proportion rising to 82%.

BASE: (Total: N = 514; Manufacturing: N = 229; B2B services: N = 159; B2C services: 92% SMEs). This excludes respondents who said 'not applicable to my business' or 'need more information'

### SECTION 3

## WHAT IS COMING NEXT IN 2023?

**Full border, VAT and customs controls on GB goods moving to the EU were introduced by EU member states on 1 January 2021. The second part of the GB border controls on goods entering the UK from the EU, inbound controls, was partially phased in from 1 January 2022. Import VAT requirements now apply to goods moving from the EU to GB (and vice versa). The final phase of inbound border controls on goods being imported from the EU is expected to come into effect on 31 December 2023, as part of a new Borders system from HMRC (the Target Operating Model).**

### KEY DATES AND CHANGES

#### 1 March 2023

Introduction of EU import control system (ICS2, Phase 2) for air freight – requires entry summary declarations for goods transported by air into the EU.

#### End May 2023

EU Entry/Exit System to come into operation for third country nationals entering the EU, requiring 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 – 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 November 2023

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

#### 31 December 2023

- Documentary and identity checks at GB Border Control Posts (BCPs) on plant products and meats or meat products from the EU begin from this date, in line with a whole of world approach to border controls.
- Safety and security certificates required to accompany consignments.
- Requirements for Export Health Certificates (EHCs) on animal origin product imports and Phytosanitary Certificates on plant product imports apply from this date.
- Forms part of the Target Operating Model (delivered by the first release of the UK's new Single Trade Window). Involves 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.
- Put together, these new rules represent a significant new import system for GB businesses being delivered in stages from the end of 2023. The BCC and Chamber Customs have been preparing our members, but trader readiness in the EU, and the introduction of new IT systems, to underpin the Single Trade Window, mean these will be a huge challenge for businesses, especially SMEs, in a time of recession.
- Easements on cumulation within the TCA Rules of Origin on electric vehicles (EVs) and batteries are due to change. A higher proportion of value of the vehicles and the batteries must be from the UK or EU only (45% and 50-60% respectively), ruling out current levels of battery sourcing from Asia. Without an extension of the easements, this would mean that some EVs no longer qualify for tariff-free export to the other market, and a 10% tariff would apply.



## SECTION 4

# OUR POLICY RECOMMENDATIONS

**Given the range of issues which Chamber member companies have raised on the realities of trade with the EU in 2022, our policy recommendations are split into three categories:**

1. Those which the UK government and the European Commission could resolve over the next twelve months, through the Trade Partnership Committee and the sectoral trade committees, under the TCA, which have now started to meet;
2. More medium-term issues, which could be addressed by side agreements to the TCA between now and the initial comprehensive review of the Agreement in 2026; and
3. Longer-term issues, which may require the cover of the 2026 review for thoughtful consideration.

## SHORT TERM

- Simpler guidance on customs, rules of origin and other key issues, ensuring it is 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 trading with the EU.
- Introduce a range of short-term visas for work purposes for up to two years in duration, and broaden the reach of the shortage occupations list, to deal with the current challenges of labour and skills shortages in many sectors of the UK economy.
- Focus on making agreements with individual EU member states as appropriate, on mutual recognition of professional qualifications.
- Prioritise the flow of goods through the GB border, in determining the frequency of documentary and physical checks carried out by UK Borders staff on goods moving inbound into Great Britain from 1 December 2023.
- Ensure the trusted trader schemes, introduced from late 2023 for inbound GB border controls of goods, are as open and usable as possible by small, medium, and larger sized importers, and their suppliers, to keep compliance burdens on animal and plant product controls light touch.

- Reflect the realities of modern manufacturing supply chains by not prohibiting CE-marked goods or components from circulating in GB after the end of 2024. Maintain the current position until at least the end of 2026, pending discussions to make usage of CE marking in the UK permanent.
- Increase the reach and effectiveness of UK government communications with EU suppliers and GB importers (and work with the Chamber Network) throughout 2023, ahead of border controls coming into operation at the end of December.
- Scale up the early work of the EU-UK sectoral committees under the TCA by producing as much joint guidance as possible (for example on rules of origin) and share that in good time with business.
- Reach a compromise on the implementation of the Protocol on Ireland/Northern Ireland with the European Commission in the early months of 2023, to ensure stability in NI and for the overall UK-EU trading relationship.

Delay the sunset clause of the Retained EU Law (Revocation and Reform) Bill until 2026 and build in safeguards to protect the UK internal market and international trading companies. Involve businesses in full consultations on any proposals for laws to expire, be preserved or in sectors where amendment is being considered.

#### 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 reaching 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 different compliance dates for significant changes in business practice (as we saw in 2021 over VAT).

#### THE 2026 TCA REVIEW

- Consider the balance between reservations and market access for services and economic priorities for both sides in a global context, where services exports provide the greatest boost to growth.
- Deepen VAT cooperation 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-benefits analysis on a cross-EU-UK framework for VAT on traded goods.
- Consider the scope of the product-specific rules of origin and cumulation, including whether off-the-shelf options, such as the UK re-joining the PEM Convention, could provide additional flexibility in the absence of more bespoke arrangements.
- 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 business 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 or even elimination of export health certificates (EHCs).
- Consider the convincing case for the UK re-accessing to the Lugano Convention to allow businesses certainty on enforcement of civil and commercial judgements in the UK and the EU.



## SECTION 5

## CONCLUSIONS

**The evidence of the first two years of the TCA is that, together with the aftershock from the pandemic, the war in Ukraine, and extreme inflationary pressures, it is creating powerful economic headwinds for UK companies trying to trade with the EU as we enter recession.**

Trade with the EU accounts for 42% of all UK exports. Some of these headwinds may yet prove cyclical, but others appear highly structural in nature, 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 worsened for many firms as the last 24 months have gone on.

This should provide deep pause for thought by decision makers. Dissatisfaction about what is not in the TCA has grown among businesses, as the last two years have progressed. The sudden imposition of non-tariff barriers in business sector after sector, has led many businesses to conclude it does not currently 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 and help generate more economic growth and tax revenues desperately needed by the UK. We have offered a range of policy options, which could be adopted next year in some cases, well before 2026 in others, and broader themes for consideration in the initial comprehensive review of the TCA in 2026.

We hope the UK government and European Commission will listen carefully to our voice and ideas, to ensure that in 2023, and beyond, the TCA can work better for business.





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