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## **Constitution, Europe, External Affairs and Culture Committee**

# **UK-EU Trade and Cooperation Agreement: Barriers to trade in goods and opportunities to improve the UK- EU trading relationship**



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# Constitution, Europe, External Affairs and Culture Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

- (a) the Scottish Government's EU and external affairs policy;
- (b) policy in relation to the UK's exit from the EU;
- (c) the international activities of the Scottish Administration, including international development; and
- (d) any other matter falling within the responsibility of the Cabinet Secretary for the Constitution, External Affairs and Culture and any matter relating to intergovernmental relations within the responsibility of the Deputy First Minister.



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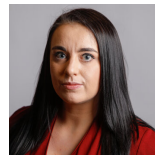
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# Introduction

1. This report details the findings and recommendations of the Constitution, Europe, External Affairs and Culture Committee ('the Committee') following its [inquiry](#) in relation to the Review of the EU-UK Trade and Cooperation Agreement (TCA).
2. The TCA, which entered into force on 1 May 2021, governs the UK's relationship with the European Union (EU) post-Brexit. There is provision for a joint review of the implementation of the Agreement five years after its entry into force. In anticipation of this review, the Committee scrutinised the operation of the Free Trade Agreement element of the TCA. The inquiry focused on how trade in goods between the EU and UK is currently working, and where there are opportunities to improve the trading relationship.
3. The [call for views](#) on the inquiry was issued on 29 September 2023 and closed on 30 November 2023. It received 16 submissions. The Committee held a series of evidence sessions between February and June 2024. The Committee received a further 14 written submissions in advance of these sessions.
4. To learn more about the challenges facing Scottish firms trading with the EU and how these might be addressed, the Committee visited the premises of two Scottish businesses who are trading with the EU—Macswen of Edinburgh, and Aldomak. The Committee also considered the operation of the TCA and the Windsor Framework as part of its visit to Belfast and Dublin in November 2023 where it met with academics, businesses, government officials, and parliamentarians.
5. The Committee thanks all those organisations and individuals who provided the written and oral evidence and facilitated and participated in the external visits that have helped to inform the inquiry and the findings which follow.
6. This inquiry concluded in advance of the 2024 UK General Election and change in UK Government. The position of the new UK Government is not yet clear in relation to all of the issues this report covers. However, in general terms, the Labour Party set out in its election manifesto that it will "reset the relationship" with the EU and "seek to deepen ties with our European friends, neighbours, and allies." In relation to trade, it said it "will work to improve the UK's trade and investment relationship with the EU, by tearing down unnecessary barriers to trade."<sup>1</sup>
7. While the Committee agreed that the initial focus of this inquiry should be on trade in goods, a number of other significant issues were also raised in evidence, including trade in services and the mobility of people. The Committee will continue to take evidence on these issues in the Autumn and report in due course.
8. This report is solely focused on trade in goods. It first considers the challenges experienced by Scottish businesses exporting goods to the EU following Brexit under the terms of the TCA, and then the opportunities for improving the UK-EU trading relationship.
9. The report sets out the Committee's recommendations on where such improvements can be made to the trading relationship, with a view to informing the forthcoming TCA review as well as improved relations between the UK, including

Scotland, and the EU.

10. The Committee will write to the Cabinet Secretary for the Constitution, External Affairs and Culture and to the UK Government Minister for the Constitution and European Union Relations, seeking a response to the findings and recommendations of this report, and inviting the UK Minister to give evidence following the Committee's consideration of the written response.
11. The Committee will also share the report with the UK delegation and EU delegation of the UK-EU Parliamentary Partnership Assembly, the EU Ambassador to the UK, the Foreign Affairs and International Trade Committees in the European Parliament, and the relevant Commissioner for the European Commission.
12. Thereafter, the Committee will visit Brussels to promote the findings and recommendations of the report with the European Commission, European Parliament, and other stakeholders in the EU.

# Scope of the review of the TCA

13. The forthcoming review of the TCA was central to the Committee’s inquiry. As outlined in Article 776 of the TCA, the UK Government and European Commission “shall jointly review the implementation of this Agreement and supplementing agreements and any matters related thereto five years after the entry into force of this Agreement and every five years thereafter.”<sup>2</sup> The first review is due to be undertaken in 2026. In anticipation of this review, the Committee sought to understand how the trading relationship could be improved.
14. In its report, *‘Reviewing the Trade and Cooperation Agreement: potential paths,’* UKICE highlighted that “the review clause is vague: it does not specify a date, nor describe the process, nor specify results which need to be produced”.<sup>3</sup>
15. It considered that while it therefore “does not obligate” the UK Government and European Commission to “do anything other than conduct a light-touch stocktake of the agreement,” “the review could be more wide-reaching” if both parties wished, however “this would require the UK and EU to jointly agree on the aims and process.”<sup>3</sup>
16. UKICE sets out three potential models for the review of the TCA—
  - A minimalist approach which involves a technical check on how the TCA is being implemented, as part of existing reporting duties;
  - A moderate approach which seeks to realise more of the TCA’s potential by acting on as yet unfulfilled commitments in the treaty, and/or improving underlying processes and structures; or
  - A maximalist approach which looks to negotiate the widening or deepening of the scope of the TCA, by adding new elements.<sup>3</sup>
17. UKICE suggested that “existing governance structures could address most of the matters covered” by the minimalist and moderate models referenced above, and therefore the UK and EU do not necessarily need to wait until a formal review of the TCA to address these issues.<sup>3</sup> Negotiations to widen or deepen the scope of the TCA need also not be constrained to the confines of the formal review.
18. A number of witnesses, including the Scottish Advisory Forum on Europe (SAFE), believed that the European Commission would “take a very narrow view on and strict interpretation of the article.”<sup>4</sup> The view of the Independent Commission on UK-EU Relations was that the European Commission “does not want to change the TCA but that it is willing, at any point, to negotiate additional agreements. Some of those might involve a more complicated process than the amendments with the Partnership Council.” It added that “clearly, a procedure for talking about such matters is set out in the TCA.”<sup>5</sup>
19. However, the Committee heard that there was nevertheless an opportunity to improve the agreement. The Scottish Chambers of Commerce stated that while “major changes in the trading relationship appear unlikely,” “this does not mean we



- cannot seek clarity or movement on a range of issues.”<sup>6</sup>
20. Prosper agreed that “there is scope to make improvements, particularly if we focus on mutual benefits and mutual areas of interest.”<sup>7</sup> The British Chambers of Commerce also advocated for focusing on areas of “common benefits”.<sup>7</sup>
  21. The Committee heard from the business community that there was a desire for the review to focus on reducing trade barriers. Seafood Scotland considered that the “starting point” for the review should be “how we improve trade.”<sup>8</sup>
  22. FSB recognised that there is “no single silver bullet to reduce friction” in trade with the EU, but suggested that there are a “number of things that could ease some of the burdens, reduce some of the costs and just make trade that little bit more appealing and less burdensome for small businesses.”<sup>7</sup>
  23. Northern Ireland Chambers of Commerce and Industry (NICCI) viewed that it is “crucial” that the review “goes beyond being a simple technical review” and instead “focuses on the removal of barriers to trade to the mutual benefit of the economies involved.”<sup>9</sup>

# Overview of the free trade agreement

24. Prior to the UK's exit from the EU, trade between the UK and EU was tariff-free and frictionless due to the UK as an EU member state being part of the Single Market and the Customs Union. The TCA, which governs the UK's relationship with the EU post-Brexit, includes a basic free trade agreement. Under the terms of the TCA, there are zero tariffs and zero quotas on trade in goods between the UK and the EU. However, the TCA does not include an agreement in relation to non-tariff barriers. As a result, there are now significant non-tariff barriers for UK businesses exporting goods to the EU. The free trade agreement in the TCA is also supported by other measures, such as level playing field provisions.
25. The TCA does not provide for common regulatory standards for goods. As the UK is no longer required to observe EU rules, the respective regulations in the UK and EU may therefore diverge over time. As a result, customs and regulatory checks are imposed at the EU border, with all imports to the EU market required to meet all EU regulatory standards. Checks are also now being phased in on goods from the EU entering the UK.
26. However, the agreement does include "provisions aimed at preventing and addressing unnecessary technical barriers and requirements, including through bilateral cooperation, and simplifying procedures used to demonstrate compliance with them (conformity assessment procedures)." It also includes special arrangements for close cooperation on regulatory standards in specific areas.<sup>10</sup>
27. The National Farmers Union Scotland (NFUS) told the Committee that while the UK-EU trading relationship under the TCA is "tariff free and quota free", "it is certainly not friction free".<sup>11</sup> The Agricultural Industries Confederation Scotland (AIC) agreed that while "the TCA enabled a free trade agreement in goods between the EU and the UK", "there remain a number of fundamental challenges with the TCA that contribute to considerable friction in trading goods".<sup>12</sup>
28. The European Commission outlined that trading under free trade agreement terms, even under an agreement "as ambitious" as the TCA with zero tariffs or quotas, "will inevitably be very different compared to the frictionless trade enabled by the EU's Customs Union and Single Market." In particular, it highlighted—
- rules of origin will apply to goods in order to qualify for preferential trade terms under the agreement;
  - all imports will be subject to customs formalities and will need to comply with the rules of the importing party;
  - and all imports into the EU must meet all EU standards and will be subject to regulatory checks and controls for safety, health, and other public policy purposes.<sup>13</sup>
29. A summary from the European Parliamentary Research Service of the non-tariff barriers in place following the UK's exit from the EU and the entry into force of the TCA is set out below—

” “The EU introduced full customs controls from 1 January 2021, requiring customs declarations for all imported goods from Great Britain... as well as an Exit Summary Declaration containing key safety and security information. Additional processes are needed for certain goods such as hazardous materials and agri-products, and physical checks may be undertaken at the border. For example, businesses are obliged to pre-notify imports of animals, plants, and high-risk food and feed, and to provide health certificates and veterinary checks. Imported plants and plant products require phytosanitary inspection.”<sup>14</sup>

30. UK in a Changing Europe (UKICE) explained in relation to the purpose of such non-tariff barriers that “countries want to be confident that imported food is safe, that animals and plants are free from disease or pests, and that other goods meet safety or labelling requirements”. Therefore, “exporters must produce goods that satisfy the requirements of importing countries and provide paperwork to show that those requirements are met.”<sup>15</sup>

**31. The Committee recognises that the operation of the new trading relationship with the EU has been challenging for businesses in Scotland. The Committee considers that the forthcoming review of the TCA provides an opportunity to improve the operation of the new trading relationship.**

32. We consider the impact of non-tariff barriers to trading with the EU under the terms of the TCA on Scottish businesses and their exports post-Brexit in greater detail in the next section.

# Impact of non-tariff barriers to trading with the EU on businesses

33. As a result of there being no agreement on non-tariff barriers within the TCA, there are significant non-tariff barriers for UK businesses exporting goods to the EU. However, the Committee heard of the critical importance of EU markets for Scottish exports. Salmon Scotland said the EU was the “most significant region for Scottish salmon exports in both value and volume terms, accounting for more than 60 per cent of our exports”.<sup>16</sup> Seafood Scotland agreed that “access to EU markets is critical to the seafood industry in Scotland” with “seven out of the top ten export markets for Scottish seafood” being “EU member states, accounting for 70% of Scottish seafood exports (by value).”<sup>17</sup>
34. The Association of the British Pharmaceutical Industry (ABPI) highlighted that the “majority” of exports from its sector go to the EU, and suggested that with “many” of its members having a “presence in the UK and the EU”, “we are intrinsically linked”.<sup>4</sup> The Federation of Small Businesses (FSB) also pointed to its research which has “consistently shown that Europe is the largest destination for UK SME exports”.<sup>18</sup>
35. Overall, industries reported a mixed picture in terms of their post-Brexit exports to the EU. For example, the Scotch Whisky Association (SWA) said that “exports have held up well in the EU”, with EU exports in 2022 up 8% compared to 2019.<sup>4</sup> Conversely, Salmon Scotland reported that while “in 2019, there were over 53,000 tonnes of Scottish salmon exported to the EU”, by 2023, this had reduced to around 44,000 tonnes. It estimated this represented “a loss in export value to the EU in the region of £80-£100 million”.<sup>16</sup>
36. The Committee also heard that while the initial impact of Brexit had negatively impacted exports to the EU, there was evidence of some recovery, but that many sectors had not yet recovered to pre-Brexit levels. Scottish Development International (SDI), the international arm of Scottish Enterprise, said that the group of companies it works with initially “saw trade with Europe fall quite dramatically”, but “trade has now started to increase” with the “majority of their sales” coming from the EU.<sup>7</sup> Quality Meat Scotland (QMS) similarly acknowledged that “exports to the EU have recovered, after an initial dip”, with beef exports within 4% and lamb exports within 0.5% of pre-Brexit levels.<sup>11</sup>
37. However, the Committee heard that the additional challenges created by non-tariff barriers to trade with the EU had impacted small and medium-sized enterprises (SMEs) to a greater extent than larger businesses. Logistics UK reported that “in the period after EU exit, there was a fall in UK exports to the EU, which was driven largely by sole exporters and smaller businesses”. It viewed that “the disproportionate impact on smaller operators is certainly a concern”.<sup>9</sup>
38. Seafood Scotland considered that “there does not seem to have been a reduction in the amount of seafood that is traded with Europe; it is simply that the trade has moved to the larger organisations that can cope with it”.<sup>8</sup> Innovate Foods also viewed that “the more regulation and the more inhibition there is on trade, the more

likely it is that businesses will have to become bigger for their activity to be afforded".<sup>19</sup> QMS said that for SMEs, "exports continue to face much greater disruption and cost, and some smaller firms have exported significantly less, or even stopped exports altogether due to the level of cost becoming prohibitive."<sup>20</sup>

39. Overall, research by the Economic and Social Research Institute from October 2022 found that there had been reductions in UK to EU goods trade by 16% and reductions in trade from the EU to UK by 20%, relative to the scenario in which Brexit had not occurred. It said that "although goods trade between the EU and UK recovered most of its previous level in value terms following the sharp fall in the early months of 2021, this recovery leaves it well below the levels that would have been expected if it had performed on a comparable level with other trade partners."<sup>21</sup>
40. The Scottish Government's view is that "the TCA represents a significant step backwards in our trading relationship with the EU, when compared with the benefits the UK enjoyed as a member state." It highlighted that "modelling by the National Institute of Economic and Social Research shows the UK economy is now 2.5% smaller than it would have been in the EU, a gap which could increase to 5.7% by 2035. In Scotland, this equates to a cut in public revenues of around £2.3 billion in 2023."<sup>22</sup>
41. The Committee recognises that exports to the EU from Scotland have generally fallen post-Brexit under the terms of the trade agreement within the TCA, with a disproportionate impact on SMEs. However, that exports have also experienced some recovery since the initial impact of Brexit.
42. We also note the Scottish Government's view that "the TCA represents a significant step backwards in our trading relationship with the EU", as well as its view that the "only way" to obviate the "damage that Brexit has caused" is to "rejoin the single market and the European Union".<sup>23</sup>
43. We consider the specific barriers for businesses which have contributed to this overall picture in more detail below.

## Regulatory standards and checks

44. The Committee heard that a key barrier for trade with the EU under the terms of the TCA is that the agreement does not provide for common regulatory standards for goods, which necessitates full customs and regulatory checks on goods entering the EU from the UK. Below, we consider—
  - The challenges resulting from UK-EU regulatory divergence;
  - The challenges for businesses of the requirement to comply with EU regulations in order to export to the EU market;
  - The particular challenges for agri-food producers as a result of the EU sanitary and phytosanitary requirements; and
  - The restrictions on exports of certain goods as a result of a lack of regulatory alignment.

## Regulatory divergence

45. As the UK is no longer required to observe EU rules, the respective regulations in the UK and EU may therefore diverge over time. The Committee heard that there had been increasing regulatory divergence between the UK and EU, which could make compliance with EU regulations and, in turn, trade with the EU more challenging.
46. UKICE said that “there have been quite significant changes” to EU rules and regulations, which together “could create quite significant new trade bureaucracy between the UK and the EU”.<sup>24</sup>
47. Some witnesses suggested that there was a lack of resource within the UK Government to keep pace with changes in EU regulations, resulting in passive divergence. AIC explained its view that “divergence has been either wilful, by the UK Government, or passive, whereby the EU has carried on regulating, which is understandable, and we have done nothing either in Scotland or the UK, purely because we have not had a mandate to do anything.”<sup>11</sup>
48. AIC said that there was a “constant volume of new regulated issues coming through” at an EU level, however, in its view there was a “lack of necessary resource” at a UK level, “given that we are, in effect, replicating many functions that were once done by the European Commission and its agencies.”<sup>11</sup> NFUS agreed that while “there is a raft of regulations” from the EU side relating to agriculture, the environment, animal health and welfare, there has not been “capacity in DEFRA and other departments to deal with those issues”.<sup>11</sup>
49. The Scottish Government has a “commitment to align with the European Union where appropriate”.<sup>25</sup> The Committee commissioned Dr Lisa Whitten, Queen’s University Belfast, to produce an EU law tracker to assist the Scottish Parliament in scrutinising the commitment to align with EU law. In the first two reports, published in [September 2023](#) and [March 2024](#), Dr Whitten set out that “overall there has not been significant divergence between Scots Law and EU Law in areas that are in the scope of the alignment commitment during the reporting period”.<sup>26 27</sup> As the EU law tracker reports make clear, however, the scope of the alignment commitment is limited to areas of devolved competence in Scotland. This means that full implementation of the alignment policy could only ever partially mitigate, in Scotland, any regulatory divergence between other parts of the UK and the EU.
50. She explained that “most instances of divergence or potential divergence arise from relatively minor changes in EU law via the development of tertiary legislation and/or updates to secondary legislation via repeal and replacement of EU law alongside change adopted in UK and/or Scots Law to reflect the fact that the UK is no longer a Member State of the EU.”<sup>27 26</sup>
51. Whilst the tracker has not identified significant policy changes at EU level, that are directly relevant to the alignment commitment, some of the changes to EU law made by tertiary legislation and updates to secondary legislation may have an impact on the technical standards which apply to goods which circulate within the Single Market, and which would therefore need to apply to goods produced in Scotland for export to the EU. Over time these technical changes will create more

significant divergence between EU and Scots/UK law.

52. Witnesses suggested that the resulting divergence from EU regulations would impact on trade. UKICE explained that there has been a “slow drip” of divergence “that will create new regulatory barriers”.<sup>24</sup> The Independent Commission on UK-EU Relations suggested that “if the UK pursues further divergence from the EU it would risk the imposition of further tariffs or quotas and the narrowing in scope of the TCA”. It also highlighted that “given that European product standards are recognised globally, further divergence would be counterproductive in building stronger trading relationships with non-EU markets.”<sup>28</sup>
53. Divergence does not necessarily restrict trade, as it is a matter for businesses to decide whether to export and to align with the regulations of the EU. However, the Committee heard that divergence could make trade much more challenging. AIC considered that “we should not underestimate the impact of the divergence of the past four or five years”. It argued that the emerging challenge of “divergence in regulatory standards between GB and the EU” is “causing difficulties” for its members to trade goods.<sup>11</sup>
54. UKICE considered that as these trade “issues grow and grow, there will be a stronger imperative for a UK Government that wants to improve its trading links with the EU to nullify the effects.” It considered that this “will mean either alignment with EU regulation or finding another way of getting around” these regulatory barriers.<sup>24</sup>
55. The Committee heard that there was a desire from businesses to seek closer regulatory alignment between the UK and EU in order to ease trade frictions. Scottish Quality Crops said it “would be concerned about any drift from European technical standards and legislation that complicate the ability to trade, or to gain scheme equivalence and access to EU markets.”<sup>8</sup>
56. Prosper viewed that there is a need to “carefully manage” the “regulatory picture, whether divergence is active or passive, to ensure that we do not create fragmentation and that we co-operate around alignment”. Its view was that divergence “is a barrier to trade and cooperation that will only become more disruptive over time without joint monitoring and management.”<sup>7</sup>
57. The Scottish Chambers of Commerce also sought “a closer regulatory policy relationship to ensure co-ordination between the UK and EU”, so that “businesses do not face new trade barriers through passive regulatory divergence”.<sup>6</sup>
58. Dr Peter Holmes told the Committee that “alignment itself does not get you free access [to the EU market] because it has to be backed up by conformity and accreditation,” with an “enforcement mechanism” to guarantee alignment with EU rules.<sup>5</sup> However, Dr Holmes also commented that “the more that we are seen to be aligned de facto, the less the EU considers us a risk... the EU will stop fewer lorries at Calais if it believes that the UK is actually doing the right things”.<sup>5</sup>
59. The Independent Commission on UK-EU Relations said that even if businesses produced to EU standards and regulations, “we would still have to show a piece of paper at the border to say that we have done so, so those trade barriers remain.”<sup>5</sup> To eliminate these barriers to trade, the UK Government would need to seek a

formal agreement with the EU.

60. **The Committee recognises that increasing regulatory divergence between the UK and EU presents challenges for businesses to comply with changing EU regulations in order to export to the EU, and could increasingly act as a barrier to future trade as such divergence intensifies.**
61. **At the same time, the Committee recognises the Scottish Government’s policy commitment to align with EU law where appropriate. The Committee seeks further clarity from the Scottish Government on the impact its alignment policy has had on businesses, including the extent to which it has facilitated improved trade with the EU, as this is unclear from the evidence we received. The Committee also asks the Scottish Government to provide an update on what additional resource and capacity has been required in supporting the commitment to align with EU law, including replicating those functions that were once undertaken by the European Commission and its agencies.**
62. **The Committee also notes the concerns of businesses regarding the lack of clarity in relation to regulatory divergence between the UK and EU. The Committee believes that the UK Government should establish a UK-wide portal, in collaboration with the devolved governments, which provides an accessible and real time summary of regulatory divergence both between the UK and EU and within the UK.**
63. **The Committee highlights the views of business representative bodies that there is a need to seek closer regulatory alignment with the EU. We also recognise that while greater alignment would ease trade frictions to some extent, the administrative and technical challenges associated with border checks would remain without a formal agreement with the EU on alignment or equivalence of standards.**

64. Below, we consider the challenges faced by businesses in complying with changing EU regulations as a result of divergence, and in managing the administrative requirements of customs and regulatory checks.

## **Regulatory compliance**

65. The Committee heard that businesses continued to experience difficulties in navigating the customs and regulatory requirements of trading with the EU. The Institute of Directors (IoD) said that 46% of its members “indicated that they are finding the trading relationship with the EU challenging”.<sup>7</sup> The Scottish Chambers of Commerce also highlighted that “almost two thirds (60%) of firms trading with the EU say it is now more difficult to do so than it was a year ago”, with 41% facing “difficulties adapting to its rules on buying and selling goods”.<sup>6</sup>
66. As summarised by the Food and Drink Federation (FDF) Scotland, for Scottish businesses exporting to the EU, “maintaining access to the EU market requires compliance with EU regulations,” including where these may differ from UK



- standards.<sup>29</sup> However, the Committee heard that monitoring regulatory changes, including in policy and technical standards, to enable businesses to comply with often-changing EU regulations was resource intensive for businesses and representative bodies.
67. AIC raised the challenges for businesses in keeping pace with changes in EU technical standards. It said that there are “always individual products, such as herbicides, animal feeds and regulated products that are facing either withdrawal or ending of their licences.” It said such “small misalignments happen all the time and can be really niche and specific” and that businesses and representative bodies “have to try to keep up with every single one of those changes.”<sup>11</sup>
68. Devro also highlighted that “the problem is that the issues are usually specific to a product”, and therefore while businesses can get support on the “generalities”, to trade with the EU they “have to either find a consultant or body that can provide that information” on product specific regulations or “recruit someone who has or can build those skills”.<sup>19</sup> Salmon Scotland said that the industry has “had to have more people in station” to monitor regulatory developments.<sup>8</sup>
69. Aldomak, a confectionary manufacturer based in Giffnock, said that as a small business “we cannot be experts in absolutely everything, so we would really like to be able to say, ‘I want to export some orange-flavoured fudge to Poland with all of these ingredients. What do I need?’ and to get the answer, ‘Here it is.’”<sup>19</sup>
70. Beyond monitoring changes to EU standards and ensuring the goods comply with EU regulations, the Committee also heard that businesses experience challenges with managing the administrative requirements of the customs and regulatory checks. The Scottish Chambers of Commerce stated that “businesses continue to manage the compliance burdens” which “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).”<sup>6</sup>
71. FSB identified that “the most commonly reported issues relate to the loss of or delays in product transportation, difficulties completing customs paperwork and navigating VAT processes”.<sup>18</sup>
72. FDF Scotland detailed that “new customs procedures, including documentation and checks, can create delays and additional administrative burdens for food producers” and stated that “this is particularly relevant for perishable goods, where timely transportation is crucial”.<sup>29</sup> Seafood Scotland explained that “additional processes, certification, and documentation, mainly to ensure compliance with customs, rules

of origin and SPS requirements under the TCA and to meet EU official controls for third countries, have added a considerable time and cost burden for Scottish seafood traders.”<sup>17</sup>

73. Witnesses raised that smaller businesses found navigating the customs and regulatory requirements, including keeping pace with regulatory developments, particularly challenging. SAFE viewed that “small and medium-sized enterprises do not have a lot of manpower to be able to understand the complexity of customs and administration”. SWA agreed that “when challenges come up around border processes or requests for certification, SMEs in particular can struggle” due to not having the “in-house capacity.”<sup>4</sup> SDI also reported that “lots of food and drink companies in Scotland do not have the resources to have a dedicated export manager, so that job might be done by someone who is also dealing with the UK market.”<sup>7</sup>
74. In addition to the administrative burden, the Committee also heard that many businesses were struggling to manage the associated additional costs. SDI set out its view that “the TCA has created a threshold effect whereby, after its introduction, companies that were previously just about to be profitable in Europe were not anymore, because of the administrative burdens that the TCA had generated”.<sup>7</sup>
75. SAMW provided an example of a larger meat processor which sends five containers to the EU per week and estimated that it spends an additional £300,000 a year on staffing and paperwork costs to manage non-tariff barriers. It considered that this would be a “huge cost” to meat businesses operating on a profit margin of 1.5%.<sup>8</sup> Devro considered that as a result of the additional costs incurred in trade with the EU post-Brexit, Scottish businesses are now at a “competitive disadvantage” to businesses based in the EU. It estimated its additional costs compared to EU competitors to be “in the region of an extra 7 per cent”.<sup>19</sup>

**76. The Committee recognises that Scottish businesses are experiencing significant difficulties in navigating and complying with the customs and regulatory requirements of trading with the EU. These challenges for businesses include the administrative burdens associated with customs and regulatory checks and monitoring divergence to enable compliance with often-changing EU regulations, as well as the associated increased costs of trading with the EU.**

77. We consider the support needed for businesses to manage the complexity of the trading environment, including with monitoring divergence in order to comply with EU regulations, in a later section.

## Sanitary and phytosanitary measures

78. Sanitary and phytosanitary (SPS) measures are designed to protect humans, animals, and plants from diseases, pests, or contaminants. Goods subject to these measures are food products, live animals, products of animal origin, animal feed as well as plants and plant products.

79. Following Brexit, UK exporters of agri-food products are now required to meet the EU's SPS requirements. These exports are subject to checks at the EU border and, where appropriate, will require the checking of export health certificates.
80. An export health certificate (EHC) is an official UK Government document, issued by the Animal and Plant Health Agency. It must be signed by an official veterinarian or local authority inspector, that confirms that certain food or animal products meet the import requirements of another country. An EHC is required for each product at the time it is exported.<sup>30</sup>
81. NFUS described "the requirement for veterinary attestation for any product of animal origin" as the "main challenge" to its members of meeting the EU's SPS requirements. It said this requirement "adds additional cost and burden to the primary producer and complexity through the supply chain".<sup>31</sup>
82. The British Chambers of Commerce also highlighted that the requirements for export health certificates and checks on agrifood goods "have added vast amounts of bureaucracy and cost for agrifood traders".<sup>7</sup>
83. QMS highlighted that not only do the requirements for veterinary checks and export health certificates come at "a significant cost to business", but these requirements also come "at a time when labour-market challenges in recruiting vets into the UK, and into Scotland in particular, mean that we do not have enough vets to do that, which adds risk."<sup>11</sup> AIC similarly referenced this "limited veterinary capability, which has impacted on fish feed exports from Scotland to the EU and Scandinavia".<sup>11</sup>
84. In relation to compliance with the EU's SPS regulations, the Scottish Association of Meat Wholesalers (SAMW) expressed frustration that "how we operate in Scotland is still very much aligned with how things operate in Europe" but on each shipment "we have to verify that and prove that it is the case". It highlighted that, where containers carry a mix of products, "not just one but multiple export health certificates are required".<sup>8</sup>
85. SAMW explained that "each meat product that leaves this country has to be stamped to verify that our public health arrangements meet the public health arrangements in Europe", a process which it said, "comes with a lot of cost, a lot of veterinary time spent inspecting products and associated paperwork."<sup>8</sup>
86. In addition to the administrative requirements associated with exporting agri-foods, the Committee heard that customs and regulatory checks at the EU border have been a particular problem for agri-foods subject to SPS measures, given the time-sensitive nature of these goods.
87. Seafood Scotland said that customs and SPS checks are "matters of considerable concern given their potential to cause delays" at points of entry to the EU market. It explained that given the nature of seafood, where the freshness of the product is "key", "there is a diminution in achievable market price as each day of this shelf life passes", and therefore "delays can be very damaging" and can "ultimately undermine the profitability" of the aquaculture, fisheries, and fish processing sectors.<sup>17</sup>
88. QMS agreed that "where the border control checks have involved physical

inspections, this can result in significant delays to shipments, potentially reducing the value of fresh product on arrival”.<sup>20</sup> It provided an example within the last nine months where “two lorries were held up at a checkpoint in France in one weekend, which meant that about £250,000 of stock had to be written off”.<sup>11</sup>

89. Macsween also provided an example of goods being held up at border control points, due to the regulations changing as the product arrived. It reported that a four-month delay led to the customer paying over £5,000 in transportation and veterinarian charges for goods of a similar value.<sup>19</sup>
90. Furthermore, Innovate Foods, a Scottish-based producer of finger foods, referenced an incident whereby its goods were held up at the border due to a “disagreement about the binding tariff notice on the commodity code”. It said that this “went backwards and forwards for six weeks, by which time the product had melted and was written off”, and as a result, it had “not tried to ship to Europe since then, but we are about to start trying again”.<sup>19</sup>
91. The Scottish Government indicated that SPS measures posed particular challenges for Scottish exports, outlining that “Scottish agrifood exports comprise a larger share of our GDP than in the rest of the UK and we account for 30% of total UK food and drink exports”.<sup>32</sup>

**92. The Committee acknowledges that the aforementioned challenges in complying with EU regulations are particularly heightened for agri-food producers required to meet the EU’s SPS requirements, with additional requirements for veterinary inspections, and particular risk due to the time-sensitive nature of the products if goods are delayed during border checks.**

93. In the next section of the report, on opportunities to improve the trading relationship, we consider the importance of a veterinary agreement in supporting UK businesses to export agri-food products to the EU, as a central recommendation ahead of the TCA review.

## Restricted goods

94. Witnesses have also highlighted where the lack of regulatory alignment has impacted on businesses’ ability to continue exporting certain goods to the EU. For example, the export of Scottish seed potatoes or processed meats, including fresh mince and meat preparations, to the EU is no longer permitted. FDF Scotland has called for trade in these restricted and prohibited items to restart.<sup>29</sup>

### *Processed meats*

95. QMS said that prohibitions on exporting fresh mince and meat preparations, such as sausages, “continue to limit the volume of exports”.<sup>20</sup> It also told the Committee that some of its exporters had to change how they manage those products in order to ensure they can service existing contracts<sup>11</sup> and provided an example that a “Scottish company which supplies a global burger chain has had to open, at a

significant cost, a facility in Europe to mince fresh beef to allow them to continue to service the contract.”<sup>20</sup>

### **Seed potatoes**

96. The Committee heard that “as an EU Member State, Britain exported around 30,000 tonnes of seed potatoes, worth £13.5 million, to mainland Europe each year and the majority of these were high-health stocks grown in Scotland”.<sup>31</sup> However, that the EU market for seed potatoes closed “overnight” as a result of the restrictions.<sup>8</sup>
97. NFUS said that “it is a great disappointment that it was not possible for the UK and the EU to agree equivalence on seed potatoes, resulting in significant prohibitions on seed exports to the EU”. It added that “the consequence for growers has been immediate and grave”.<sup>31</sup>
98. SAFE highlighted that “the UK Government has refused to dynamically align with the EU sanitary and phytosanitary measures and the EU is unwilling to grant a derogation, so everybody is a bit at loggerheads”. It suggested that “if we had more conflict resolution opportunities around the governance structures” of the TCA, “we could perhaps reach resolution on some of the issues.”<sup>4</sup>
99. NFUS argued that “whilst it has not been possible to agree to dynamic alignment on standards for seed [potato] production”, in its view, “to continue blocking the UK’s application for equivalency to export is incompatible with the TCA” given the deal “specifically incorporate[s] measures that deal with SPS measures in the absence of dynamic alignment”.<sup>31</sup>
100. It further outlined that, in its view, “the derogation that allowed EU seed potatoes to come into the UK has...been unhelpful in encouraging an agreement on equivalence”, with this “asymmetrical arrangement” putting “UK producers at a disadvantage”.<sup>31</sup>
101. The UK Domestic Advisory Group (DAG) outlined in its *Priorities Report 2024-25* that the EU’s restrictions on seed potato imports from Great Britain following the UK’s withdrawal from the EU has been “significantly impacting GB exports” of seed potatoes. The report notes that “EU and GB producers would support a GB derogation based on demonstrating equivalence of regulations”.<sup>33</sup>
102. The Scottish Government stated that one of its key objectives in relation to the TCA is to “secure an in-principle agreement that could reopen EU markets to Scotland’s seed potato exporters.” It updated the Committee that “discussions are continuing, and the latest position is that the EU have proposed to carry out an audit of the UK sector, to aid consideration of whether trade can be resumed.”<sup>22</sup>
- 103. The Committee agrees with the views of stakeholders and the Scottish Government that there is a need for a derogation to be granted to allow Scotland’s seed potato exporters to access their significant market in the EU.**

104. **We note that discussions were ongoing between the UK Government and European Commission, and encourage both parties following the respective UK and EU elections to commit to achieving a positive resolution on this issue for Scottish businesses, whether through the TCA review or existing TCA governance structures.**

## Checks on goods entering the UK from the EU

105. When the UK left the EU's legal order at the conclusion of the transition period at the end of December 2020, customs and regulatory checks at the EU border were immediately imposed on UK goods being exported to the EU. However, the UK Government delayed the introduction of routine regulatory checks on goods being imported to the UK from the EU.<sup>34</sup>
106. Checks and declarations at the UK border are required to ensure that goods comply with UK safety and production standards and have met UK customs requirements. Checks are also needed to ensure continued biosecurity and food safety, including through SPS checks.
107. In August 2023, the UK Government published its Border Target Operating Model (BTOM) which set out its new approach to safety and security controls (applying to all imports), and SPS controls (applying to imports of live animals, germinal products, animal products, plants, and plant products) at the border.<sup>35</sup>
108. These new checks are being rolled out in a phased approach from January 2024, with an early focus on the introduction of SPS checks, as set out below—
- From 31 January 2024 – The introduction of health certification on imports of medium risk animal products, plants, plant products and high-risk food and feed of non-animal origin from the EU. The removal of pre-notification requirements for low-risk plant and plant products from the EU. Pre-notification requirements remain for medium and high-risk products. Pre-notification requires importers to pre-notify authorities before high-risk goods arrive in Great Britain.
  - From 30 April 2024 – The introduction of documentary and risk-based identity and physical checks on medium risk animal products, plants, plant products and high-risk food and feed of non-animal origin from the EU. Existing inspections of high-risk plants/plant products from the EU will move from taking place at their destination to Border Control Posts. There will also be a simplification of imports from non-EU countries meaning a similar approach to checks on low-risk goods as will take place on EU goods. This will include the removal of health certification and routine checks on low-risk animal products, plants, plant products from non-EU countries as well as reduction in physical and identity check levels on medium-risk animal products from non-EU countries.<sup>34</sup>
  - From 31 October 2024 – The introduction of 'safety and security declarations',

which provide a range of details on the goods' journey and contents, for all goods moving from the EU into GB.<sup>36</sup>

109. However, UKICE said that “the UK Government opted not to switch full controls on at the end of April, as the necessary systems were not in place – instead promising that checks would be ‘scaled up’ over time”. It considered that “full-scale inspections would have risked long delays at the border, leading to goods perishing and supply chains being disrupted, though the ongoing uncertainty has frustrated businesses and port operators.”<sup>36</sup>
110. UKICE commented that while the UK Government “may be tempted to delay the full implementation of the BTOM to avoid new trade frictions”, the “continued unwillingness to implement border controls – a core commitment it made in the TCA – is one of many factors dampening the EU’s interest in negotiating new trade-related agreements with the UK.” Therefore, it viewed that “completing the implementation would thus aid a future government seeking to reach an agreement to reduce border frictions through a closer trade relationship.”<sup>36</sup>
111. The Committee heard from witnesses that the initial absence of checks on goods entering the UK from the EU, in contrast to the level of checks imposed on UK exports to the EU, had created an uneven playing field for businesses.
112. SAMW explained that without checks on goods entering the UK, “a European exporter exporting to the UK would notice no difference at all” post-Brexit.<sup>8</sup> NFUS said that the absence of checks and “asymmetric trade added costs to our businesses, impacting on our competitiveness, while putting at risk the biosecurity of our country.”<sup>31</sup> QMS characterised this as a “very unequal operating environment for businesses”.<sup>11</sup>
113. The Scottish Fisherman’s Federation (SFF) highlighted the “additional costs and administrative requirements for UK exporters that are not reciprocated for imports from the EU to UK” and considered it to be “imperative that the UK Government puts in place effective border controls so that consumers in the UK are properly protected, and that UK seafood exports don’t continue to be at a competitive disadvantage.”<sup>37</sup>
114. NFUS therefore welcomed the phased introduction of border checks on animal and plant products by the UK Government through the BTOM.<sup>31</sup> Macsween said it was “hugely frustrated that the model has taken so long to come to fruition” given the uneven playing field.<sup>19</sup> Innovate Foods said that “we should have had symmetry to our inhibitions years ago, because that was the only way that the EU would have taken a step back”.<sup>19</sup> Devro said the introduction of border controls would “create a fairer playing field for businesses.”<sup>19</sup>
115. However, QMS’s view was that an uneven playing field would remain despite the BTOM being introduced, as this “will result in a reduced SPS-related burden on importers from the EU compared to the burden which is still faced by GB exporters to the EU, potentially limiting leverage for the UK side in negotiations on an agreement.”<sup>20</sup>

116. Several stakeholders expressed their hope that the introduction of the BTOM may nevertheless give the UK Government leverage in negotiations with the European Commission to ease barriers to trade.
117. Devro's view was that "a bit of pain for the EU should help with some leverage on the mutual recognition of veterinary standards approach." <sup>19</sup> SAMW considered that the BTOM "will change the dynamic" and reported that meat processors in Europe have said that the situation is "changing their attitude". <sup>8</sup> Seafood Scotland agreed that "the situation gives us leverage to get people round the table again to talk". <sup>8</sup>
118. Businesses exporting to the EU welcomed that the introduction of border checks on goods entering the UK from the EU would create a more level-playing field. However, the Committee heard that there will be an impact on supply chains for Scottish businesses who import from the EU, which will need to be managed.
119. The Committee heard that there remained uncertainty around what was expected of businesses importing from the EU under the new model. AIC said its members were "not confident of what would be expected of them when full inspection checks phase in". <sup>12</sup> SDI said that it was a "live topic" given checks were being phased in, and as such it was "working with companies along the way, as that happens," to support them. <sup>7</sup>
120. The UK DAG said that the SPS measures under the BTOM, including digital health certificates and physical checks for EU-originated animal and related products, "continue to be a significant concern for UK importers and their EU supply chains." <sup>33</sup>
121. The Committee was also informed that there were concerns around the designation of goods in the SPS category under the BTOM. SDI explained that "high-risk products will have to go through 100 per cent physical checks, whereas medium-risk and low-risk products will have a lower threshold". It said that it would be offering "advice on how to assess which products are low risk, medium risk or high risk". <sup>7</sup> However, that companies had been expressing "concerns" about goods being wrongly designated". <sup>7</sup>
122. Devro said it supported "the idea of low, medium and high risk" but its view was that "too many things are being put into the medium risk category that are low risk. <sup>19</sup> SDI said that this could "lead to whole consignments being checked that would not have had to be checked", which "holds up consignments" and "creates particular challenges for time-sensitive goods." <sup>7</sup>
123. Scottish Quality Crops told the Committee that grain has been classified as low risk by the risk model and therefore considered the system to be "fairly pragmatic". <sup>8</sup>
124. Furthermore, SDI stated that there had been "concerns that there are not enough vets in certain EU countries, which means that the checks that must be done for SPS goods are not being done in a timely manner." <sup>7</sup> Devro echoed that in the EU "they do not have enough official vets to meet all the requirements and they do not understand what will be required when they ship into the UK, just as a lot of manufacturers in the UK did not know what to do." <sup>19</sup>



125. The Scottish Government Cabinet Secretary for Rural Affairs, Land Reform and Islands told the Committee in April 2024 in that “the model illustrates the harsh realities of Brexit and is something I would have rather not had to implement, however, bringing in border controls on imported goods is a necessity resulting from the UK no longer being an EU member.” She said that “additional delays would simply pose further risk to our collective biosecurity and create even more uncertainty for industry.”<sup>38</sup>
126. In evidence to the Committee in June 2024, the Cabinet Secretary for the Constitution, External Affairs and Culture said that “we run the risk that some [trade] barriers will be heightened, because the UK Government has yet to implement its border regime in its entirety and we do not yet have clarity from the Labour Party on whether it will do so. If it does, I think that we can look at there being additional problems in relation to our trade with the European single market.”<sup>23</sup> The position of the incoming UK Government in relation to the Border Target Operating Model is not yet clear.

### ***Border controls at Cairnryan***

127. In relation to the introduction of border controls in Scotland, the Committee’s adviser Professor Katy Hayward highlighted the “symbolically significant” commitment in the UK Government’s [Safeguarding the Union command paper](#) that there will be no border control post built at Cairnryan, the ferry port between Scotland and Northern Ireland.<sup>39</sup>
128. Professor Hayward said that “the lack of a Border Control Post does raise the question of how to manage Irish/EU goods that enter GB via NI”. She highlighted that the commitment for the UK Government to “develop an approach to checks and formalities on non-qualifying goods entering GB via Cairnryan” should be “followed carefully.” She also indicated that “its weaknesses will be seen in the entry of EU goods into Scotland that may be avoiding UK border controls elsewhere.”<sup>39</sup>
129. Logistics UK said it was “keen” to see how the commitments for no border control post at Cairnryan and to uphold Northern Ireland’s unfettered access to the GB market “interacts with the [BTOM] when physical checks are introduced on goods coming into the west coast.”<sup>9</sup> It considered there is “a need for a greater flow of information” from the UK Government” about “Cairnryan and west coast operations, checks and facilities,” and that this needs to be “easily digestible for businesses”.<sup>9</sup>
130. The Cabinet Secretary for Rural Affairs, Land Reform and Islands set out in April 2024 that “our stakeholders want clarity about how this model impacts them”. However, that “there are still unanswered questions preventing industry from getting clear answers about how to conduct their businesses. For example, interactions between the BTOM and the Windsor Framework remain unclear. Therefore, west coast arrangements have not yet been decided and checks there are not yet coming online.”<sup>40</sup>
131. She told the Committee that “while we anticipate that some elements of the regime – such as checks on goods entering Scottish ports from the island of Ireland – will not come into force until next spring, due to a variety of UK Government delays and decisions, the Scottish Government remains committed to delivering the model to

ensure appropriate biosecurity protections and provide desperately needed and long overdue clarity to businesses.”<sup>38</sup>

132. **The Committee recognises the frustrations of many stakeholders that the initial absence of checks on goods entering the UK from the EU, in contrast to the level of checks imposed on UK exports to the EU, created an uneven playing field for businesses and risked compromising biosecurity.**
133. **The Committee notes the Cabinet Secretary for Rural Affairs, Land Reform, and Islands’ view that border controls on goods entering the UK from the EU are a “necessity” which “illustrates the harsh realities of Brexit”, and that “additional delays would simply pose further risk”; as well as the Cabinet Secretary for the Constitution, External Affairs and Culture’s view that the full implementation of the BTOM could cause “additional problems in relation to our trade with the European single market”. The Committee would welcome further clarity from the Scottish Government on its asks of the new UK Government with regards to delivering border controls on goods entering the UK from the EU. We would also welcome further clarity on the Scottish Government’s role and the steps it will take to deliver the BTOM in Scotland.**
134. **We also invite the new UK Government to provide greater clarity to businesses on their plans for the BTOM, including the timetable for its introduction and how it will interact with the Windsor Framework, as well as support and guidance for those importing from the EU on what is required from them. We further encourage the UK Government to take into consideration the concerns raised by several witnesses regarding the designation of goods in the SPS category under the BTOM.**

## Rules of origin

135. A further non-tariff barrier to trade is that ‘rules of origin’ apply to goods in order to qualify for the preferential trade terms (i.e., zero quotas and zero tariffs) under the TCA. This means that manufacturers in the UK are required to demonstrate the originating status of goods traded with the EU.
136. Make UK, the manufacturer’s organisation, state that rules of origin “allows an importing country to identify and classify the origin of a product.” However, while “it is a straightforward process when the product is produced in a single country”, given “modern global supply chains comprising of components and processes undertaken in numerous states, the application of [rules of origin] can be very complex.”<sup>41</sup>
137. The Independent Commission on UK-EU Relations outlined in its report on *Brexit and Goods* how rules of origin apply under the TCA—

- ” “... this is a complex system whereby tariffs may be imposed on goods if a certain percentage of the product originated outside of the UK or EU. The percentage of the product which must originate in the UK or EU varies from sector to sector, and even product to product. Rules of origin will change over time as certain exemptions expire. For example, as of next year 45% of an electric vehicle’s value will be required to originate in the UK or EU to qualify for tariff-free trade, otherwise it will face a 10% export tariff. This percentage will then rise again in 2027...”<sup>28</sup>
138. FDF Scotland outlined that “meeting these rules can be complex for industries with global supply chains, potentially affecting the cost and efficiency of production.”<sup>29</sup>
139. AIC told the Committee that the “ongoing challenges” with rules of origin have meant that “many third countries are bypassing trade with the UK” because “in many cases, insufficient processing takes place in the UK in order to bring about a change of ‘chapter’ of product” and therefore “tariffs are liable when either routed via the EU or the UK to onward destinations.”<sup>12</sup>
140. Evidence of origin of the product must also be provided to satisfy the rules of origin and qualify for the preferential trade terms. A University of Sussex Trade Policy Observatory study from 2021 found that between £2.5bn and £3.5bn of British exports, approximately 10% of exports to the EU, faced a tariff in the first three months of the TCA agreement being operational.<sup>42</sup>
141. Moving forward, the UK DAG has said that, in the short-term, it wants to see “the (perceived) lack of guidance on the evidence levels required to comply with Rules of Origin (i.e., documentation to demonstrate where goods originate from)” addressed, and in the longer-term, a review of the rules of origin in the TCA.<sup>33</sup>
142. In the longer-term, the Scottish Chambers of Commerce called for both parties to “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.”<sup>6</sup>
143. The Independent Commission on UK-EU Relations outlined that “one suggested fix to the current system is an approach where tariffs are only paid on the parts of a final product that do not meet the rules of origin, rather than the entire product itself. This would produce a graded system, where, in simple terms, the tariffs vary according to the percentage of the product produced outside the UK or EU.” However, it noted that “this would likely require the UK to make significant further concessions.”<sup>28</sup>
144. The Scottish Government noted that an extension of a rules of origin deadline affecting electric vehicles, which had been a priority of the UK Government, had been agreed between the UK and EU through the relevant TCA structures.<sup>22</sup>
- 145. The Committee encourages the UK Government to continue to seek to negotiate adjustments to the rules of origin on exporting to the EU, as well as ensuring there is full and clear guidance for UK businesses on the**

**evidence needed to comply with the rules.**

## How businesses have responded to trading barriers

146. The Committee heard that many businesses had changed their business model post-Brexit, as a result of the new non-tariff barriers to exporting to the EU under the terms of the TCA.

### ***Opening premises in the EU***

147. The Committee heard that some businesses have either joined forces with an EU-based company, or opened manufacturing or distributions centres in the EU to make servicing the EU market easier.

148. AIC told the Committee that some of its members are “investing in EU based warehousing and logistics in order to reduce [the] number of dispatches from UK” or have had to “move manufacturing capacity out of UK in order to service EU and other export trade.”<sup>12</sup>

149. DLF Seeds, which breeds seeds and makes seed mixtures for UK and Irish businesses, said that after its supply to Ireland had “hit the buffers”, in 2021-22 it “decided to build a new plant in Waterford to supply both the Republic of Ireland and Northern Ireland, because it is much easier supplying from the Republic of Ireland to Northern Ireland than it is growing and mixing” in the UK.<sup>19</sup>

150. FSB reported that some of its members had “done things such as opening a distribution centre in the EU or looking at having bonded warehouses in the EU to make their distribution into the single market easier”, however it outlined that as “those are very expensive options”, “only a really small number of businesses have been able to do that.”<sup>7</sup>

151. Innovate Foods said it joined the German-headquartered Frostkrone Food Group in 2018 because, “when I looked at the potential consequences of Brexit, I thought that I needed a manufacturing partner that would allow me to continue to supply my European customers.”<sup>19</sup>

### ***Withdrawing from the EU market***

152. Other businesses, conversely, had decided to withdraw from exporting to the EU market as a result of these non-tariff barriers. SDI said that some businesses had stopped exporting to the EU market “because it is just too expensive and difficult”.<sup>7</sup>

153. QMS also reported that some of its businesses “are no longer exporting to the EU and have removed themselves from that market” and were therefore having to look at other markets and new distribution routes.<sup>11</sup> AIC similarly reported that some of its members have had to “cease exports to EU given that they are now non-competitive”, with “costs and delays” leading EU customers to “go elsewhere”.<sup>12</sup>

154. FSB said that a “significant number” of SME exporters “have stopped trading with the EU permanently”, while others had “held off trading with the EU and paused activity temporarily” but “have since restarted”.<sup>7</sup>
155. Prosper said “a wide range of businesses have faced higher costs, decreased export values from sales into the EU and/or cancelled or delayed plans for expansion into the EU market.”<sup>7</sup> It also noted that some businesses “have started to lose customers in the EU, based on the perception that there are extra difficulties involved in doing business with UK-based suppliers.”<sup>7</sup>
156. Manufacturing Northern Ireland commented that “the UK is quickly becoming one of the most expensive places in the world in which to do business as a result of all the policy choices that the UK Government has made”.<sup>9</sup>
157. SDI similarly reported insights that “some European buyers in the food and drink industry would now prefer not to source from Scotland or UK, where they can source locally within Europe, because trading with Scotland has become more challenging”, for example with “products taking longer to arrive” and “increased costs in some cases”. It highlighted that “this can have impacts on our ability to grow demand for Scottish products within the EU and facilitate new trade opportunities for Scottish exporters.”<sup>43</sup>

### Exporting to non-EU markets

158. The Committee heard that in some cases it was simpler for businesses to export to other markets further afield than the EU, and therefore that some businesses were focusing their attention on non-EU markets.
159. For example, Macsween said that “the way that products of animal origin are considered as they enter Europe means that it is significantly harder to export there than it is to other countries in the world”. It cited Canada, the United States, the United Arab Emirates and Singapore as countries which are “far more straightforward” to export to “because there is a more settled passage for products to move”.<sup>19</sup>
160. Innovate Foods also commented that it currently exports to China, Hong Kong, Japan, Korea, Malaysia, Singapore, and the Gulf states, and that this is “far easier” than its experience of shipping to the EU.<sup>19</sup>
161. The IoD said that some of its larger members are looking at exporting outwith the EU, because that is simply easier for them”, however it identified that “more examples of the ‘how’ and best practice and successful case studies would be really helpful” to support this.<sup>7</sup>
162. SDI explained that “we used to have friction-free trade with the EU, but we do not have that under the TCA, so trading with the EU is now more comparable to trading with other markets”, and as a result “we are seeing much more ambition and interest in moving east”. It reported that it has been undertaking “a lot of activity in the middle east—particularly on food and drink—to support companies with opportunities over there, while ensuring that we are still raising the profile of opportunities in the EU.”<sup>7</sup>

163. **Overall, in the Committee’s view, it is clear that the UK-EU trading relationship post-Brexit, under the terms of the TCA, has presented significant new challenges for Scottish business exporting to the EU.**
  164. **In particular, the non-tariff barriers resulting from the agreement, such as the requirement for full customs and regulatory checks on goods, have placed considerable administrative, resource and cost pressures on businesses, with many withdrawing from the EU market as a result. The Committee also heard that SMEs, which have been less able to absorb the additional costs and regulatory burdens as larger businesses, have particularly struggled.**
  165. **At the same time, we recognise that these challenges are both a consequence of leaving the EU and the type of Brexit which the TCA was intended to deliver. We also recognise that it is unlikely that the EU will be willing to substantially renegotiate the agreement, but that there are nevertheless significant opportunities to improve the trading relationship.**
166. In the next section, we consider the opportunities to improve the terms of the TCA and the UK-EU trading relationship.

# Opportunities to improve the UK-EU trading relationship

167. Below we consider the opportunities to improve the UK-EU trading relationship through—

- Negotiating adjustments to the TCA, or supplementary agreements;
- Improved governance of the existing TCA, including through the Specialised Committees and civil society engagement; and
- Support from the UK and Scottish Government to help businesses navigate the new UK-EU trading environment, including ongoing regulatory divergence.

## Adjustments to the TCA and supplementary agreements

168. A primary vehicle for improving the UK-EU trading relationship will be the negotiation of adjustments to the TCA, or supplementary agreements, including through the review of the TCA and beyond.

169. As noted earlier, we recognise that increasing regulatory divergence between the UK and EU presents challenges for businesses, and could increasingly act as a barrier to future trade as such divergence intensifies. Consequently, stakeholders suggested there is a need to seek closer regulatory alignment with the EU. However, the administrative and technical challenges associated with border checks would remain without the UK Government coming to a formal agreement with the EU on dynamic alignment or equivalence of standards. Therefore, supplementary agreements or adjustments to the TCA which the UK Government may wish to seek to reduce non-tariff barriers to trade will likely necessitate greater regulatory alignment for the UK with the EU.

170. Below we identify key areas of potential alignment in which we believe the UK Government and European Commission should seek to make progress.

### Veterinary agreement

171. A significant proportion of the evidence the Committee heard concerned the challenges facing businesses trading agri-goods, which are particularly affected by non-tariff barriers, in particular SPS measures. Therefore, the Committee heard overwhelming support from the business community for a veterinary agreement between the UK and the EU.

172. A veterinary agreement would involve either dynamic alignment with, or recognition of equivalence of, respective SPS standards, and thereby reduce the need for documentation and checks on relevant goods. Most witnesses identified such an agreement as a key priority for developing the TCA to reduce frictions to trade.

173. AIC supported “the prioritisation of a veterinary agreement with the EU”.<sup>11</sup> Prosper

said its members “would like to see progress being made on a veterinary agreement”.<sup>7</sup> Salmon Scotland sought a “bespoke and mutually convenient” SPS agreement which “returns efficiencies to supply chains on both sides”.<sup>16</sup>

174. The Scottish Government outlined that an agreement could—

- Reduce or remove many of the new barriers to trade in goods since Brexit (e.g. reducing the need for form filling, inspections and checks at the border);
- Improve the volume of agri-food trade, including streamlining trade in food and drink products, especially beneficial for perishable products that need to be moved quickly;
- Restore access to EU markets for specific products that are currently barred, such as live bivalve molluscs (LBMs);
- Deliver high biosecurity standards and protections and ensuring quality products for consumers;
- Help us work together to tackle disease outbreaks and other risks, through facilitating access to counterparts such as agencies and alert systems about plant and animal health outbreaks and potential product concerns;
- Reduce checks needed on goods moving between Northern Ireland (NI) and Great Britain (GB), and reopen the market for barred goods; and
- Help us join up with the European Food Safety Authority (EFSA), to share information and ensure decisions include Scottish evidence and data, including sharing best practice and observer status where applicable.<sup>32</sup>

175. Several of the organisations supporting a veterinary agreement highlighted the reduction of border checks as a key potential benefit of an agreement being negotiated.

176. QMS indicated that a veterinary agreement could “reduce the administrative burden on exports” and “reduce the level of identity and physical checks performed on consignments at the border”.<sup>20</sup> FSB said it would support a veterinary agreement to “reduce” SPS checks.<sup>7</sup> The Scottish Chambers of Commerce called on the UK Government to negotiate an agreement “either to reduce the complexity of, or to eliminate, the need for Export Health Certificates on agri-food imports and exports.”<sup>6</sup>

177. In 2021, the Confederation of British Industry (CBI) had called for “a bespoke veterinary agreement” to “significantly reduce the burden of SPS checks”, identifying this as a key business priority for UK-EU trade post-Brexit.<sup>44</sup>

178. Scottish Quality Crops recognised that “SPS measures are useful in protecting the health of Scottish crops against exotic incursions”, but considered that “there needs to be a balance with ease of trade” and therefore judged that “a single area that recognises equivalence in SPS standards across EU and GB borders would seem positive.”<sup>45</sup> SAFE said such an agreement would “not only ensure the safety of traded food but also enhance efficiency by harmonizing standards and procedures”.



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179. SAMW said that if agreement could be reached with the EU to “recognise that our product and processes are equivalent to or the same as European processes, we would have an opportunity to simplify the documentation and the inspections that take place, which would ultimately lead to a reduction in costs and ease the friction in moving products to Europe.”<sup>8</sup>
180. Devro considered that the “best solution” for trade would be to “have mutual recognition or a veterinary agreement” which enabled “free flow” of trade and removed “unnecessary” requirements which it said are “not doing anything apart from adding cost and complexity to the system”.<sup>19</sup> Manufacturing Northern Ireland said a veterinary agreement would “significantly remove” some of the trade frictions currently experienced, “particularly in the GB to Northern Ireland supply chain.”<sup>9</sup>
181. The sole organisation to express concern to the Committee regarding a veterinary agreement was the SFF. It said it “could not support a veterinary agreement between the UK and EU that compromised any further the UK’s status as an independent coastal state” and would “oppose fishing opportunities or any aspect of fisheries management being linked either directly or indirectly with negotiations for any veterinary agreement”.<sup>37</sup>
182. The Scottish Government and the British Chambers of Commerce both cited research from Aston University which found that having a “a veterinary agreement that went beyond the existing TCA provisions would increase agri-food exports from the UK to the EU by at least 22.5%. Imports from the EU would also increase by 5.6%”.<sup>46</sup>
183. The Cabinet Secretary for Rural Affairs, Land Reform and Islands told the Scottish Parliament in April 2024 that she had “repeatedly urged the UK Government to negotiate a comprehensive veterinary agreement with the EU – sensibly and pragmatically aligning standards that would reduce the financial and administrative requirements that [the Border Target Operating Model] will create for some businesses here in Scotland.”<sup>40</sup>
184. The Cabinet Secretary for Constitution, External Affairs and Culture said that a veterinary agreement would be “one of the biggest prizes, short of rejoining the single market and the European Union”, given it would “reduce the necessity for about 90 per cent of cross-border checks” and thereby “make export and import much easier.”<sup>23</sup>
185. While the UK Government has not formally set out its position, the Labour Party manifesto committed to “seek to negotiate a veterinary agreement to prevent unnecessary border checks and help tackle the cost of food”.<sup>1</sup>

### ***Dynamic alignment vs Agreement on equivalence of standards***

186. A veterinary agreement between the UK and EU could be modelled on the EU’s existing agreements with New Zealand or Switzerland.
187. As explained in a House of Commons Library briefing, “the EU-NZ agreement is an ‘equivalence agreement’, in which both sides certify their rules and regulations are

equivalent to each other, allowing them to reduce border processes for agri-food.”

<sup>47</sup> UKICE said that the EU’s agreement with New Zealand “recognises their respective SPS standards as equivalent, which significantly simplifies export procedures for agri-food compared to the TCA.” <sup>3</sup>

188. Alternatively, the EU’s veterinary agreement with Switzerland, which is based on Swiss alignment with EU SPS and animal health rules, has led to the removal of “all documentary and identity checks, and most physical checks, as well as most veterinary certificates. However, it requires Switzerland to largely align to the EU’s food and plant safety and animal health rules.” <sup>47</sup>
189. UKICE made clear that “there is a big difference between Swiss-style alignment and New Zealand-style alignment”, with the Swiss model involving “dynamic alignment with EU regulation” and the removal of “more or less all bureaucracy”. On the other hand, the New Zealand model involves a “more limited” form of alignment “that allows for some minimisation of bureaucracy”. <sup>24</sup>
190. The British Chambers of Commerce said that a “mutual recognition type of agreement, which would not involve dynamic alignment” should still increase exports, but would not lead to as high levels of growth in exports as a maximalist agreement with dynamic alignment. <sup>7</sup>
191. QMS indicated support for a mutual recognition style agreement as a minimum. It said that while “at least 15 per cent of shipments have to be checked” from the UK, the EU’s veterinary agreement with New Zealand “means that only 2 per cent of its imports are checked, which will reduce to 1 per cent”. It said that “it would certainly help our businesses in reducing cost and reducing risk to move towards the 2 per cent level that such a veterinary agreement would give.” <sup>11</sup>
192. UKICE reflected that “the political barriers to opening negotiations are also significant. The UK would have to be prepared to continuously align with a range of EU regulations while having no say over them. The EU would have to have confidence that future UK governments (of any political persuasion) would maintain regulatory alignment and implement their obligations in good faith.” <sup>3</sup>
193. On the UK dynamically aligning with EU food safety regulations, Devro considered that as “we have to align with those anyway, given that we ship to the EU”, it could accept dynamic alignment as “the cost of reduced friction in the trade of animal products”. <sup>19</sup>
194. UKICE stated that a veterinary or SPS agreement could constitute a new chapter in the TCA or a supplementing treaty. However, it said it “would require a detailed and comprehensive negotiation, with the parties first needing to decide the exact areas they would want the agreement to cover”, and with negotiations having to “address how the UK demonstrates equivalence and how the two sides can monitor that the other is living up to its obligations”. <sup>3</sup>
195. On the scope of any agreement, the Scottish Government stated that it wants “a comprehensive agreement with a wide scope”, and that “it will be necessary to ensure that the rules that govern the products to be traded are aligned between the EU and Scotland/UK”. It said that “given the importance of the food and drink

sectors to Scotland's economy", it will "move quickly to open collaborative discussions with our partners on a comprehensive veterinary and SPS agreement".

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196. **The Committee agrees with the overwhelming majority of stakeholders, the Scottish Government, and the UK Government, that there is a need to seek a veterinary agreement with the EU to significantly reduce border checks and the administrative burden on exports of agri-foods to the EU, and ease trade—whether through dynamic alignment with EU SPS and animal health regulations, or the recognition of the equivalence of respective SPS standards, which would also involve a degree of regulatory alignment with EU.**
197. **The Committee also considers that there is a need to involve the devolved governments in the process for agreeing a veterinary agreement with the EU—and more broadly in the process for improving relations with the EU—given the extent to which the trading relationship impacts on devolved areas, and within the context of the new UK Government's commitment to reset its relationship with the devolved governments.<sup>i</sup>**

## Mutual recognition of conformity assessments

198. Conformity markings are used to indicate that a product is safe and meets the standards of the country it is to be sold in. UKICE outlined that the UK Government "sought, but failed to obtain, an agreement on mutual recognition of conformity assessments as part of the TCA negotiations" which "would have allowed UK and EU certifying bodies to confirm that a product made in one territory meets the regulations of the other". It explained that "absent an agreement, a British product being exported to the EU has to be certified by an EU-based body and awarded an EU 'CE' mark, creating administrative costs."<sup>3</sup>
199. The mutual recognition of conformity assessments, which would allow for UK and EU certifying bodies to confirm that a product made in one territory meets the regulations of the other, could be a potential agreement which would make UK-EU trade "easier", according to UKICE.<sup>3</sup>
200. The Scottish Chambers of Commerce also called for the UK Government to "negotiate a supplementary mutual recognition agreement on conformity assessment and markings of industrial, electrical and electronic goods."<sup>6</sup> SPICe noted that "as with an SPS agreement, mutual recognition of conformity assessments is likely to require UK-EU regulatory alignment as currently takes place between the EU and Switzerland."<sup>48</sup>

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<sup>i</sup> The Minister for the Constitution and EU Relations in the UK Government [told the Committee](#) that "we know our relationship with the EU also has implications for the constitution, and many aspects of the Withdrawal Agreement and the Trade and Cooperation Agreement fall within devolved competence. This is one of many reasons it is important that we reset relations between the four governments within the UK."

201. However, UKICE said that the UK Government had “decided to accept CE-marked goods on the GB market indefinitely, rather than requiring goods (including EU imports) to have a ‘UKCA’ mark from 2025.” It noted that this “reduces the appeal for the EU to sign up to a mutual recognition agreement, as its businesses already get the main benefit – not being required to obtain separate certifications for the GB and EU markets.”<sup>3</sup>
202. The UK DAG told the Committee that “businesses are finding having to operate two systems challenging”, with it particularly “costly and complex for a small business to apply a UK standard and an EU standard” which “might discourage some small businesses from exporting to the EU.” It said, therefore, that “anything that can reduce the administrative burden and ensure consistency between the UK and the EU, with mutual recognition agreements on conformity assessment, and make it easier for both sides to trade will be of great importance to us.”<sup>49</sup>
203. The Scottish Government said it urges the UK Government to “prioritise cooperating with the EU to remove unnecessary Brexit red tape and technical barriers to trade, including seeking a Mutual Recognition Agreement on Conformity Assessment with the EU.”<sup>22</sup> The new UK Government’s position is not yet known.

**204. The Committee agrees with the views of stakeholders and the Scottish Government that the UK Government should seek a mutual recognition agreement with the EU on conformity assessments, which would allow for UK and EU certifying bodies to confirm that a product made in one territory meets the regulations of the other, and further reduce barriers to trade. The Committee recognises that this may mean UK-EU regulatory alignment is required, as is the case for the EU-Switzerland agreement.**

## Aligning emissions trading schemes

205. A further area for potential co-operation in order to facilitate UK-EU trade is the linkage of emissions trading schemes (ETS), which cap and impose tariffs on carbon emissions in certain sectors. The TCA commits both parties to giving “serious consideration to” linking their respective schemes.
206. The Committee heard that the introduction of the EU Carbon Border Adjustment Mechanism (CBAM)—which places a tariff on carbon intensive products imported by the EU—could lead to additional trade costs for some UK businesses, in the absence of an agreement of aligning ETS.
207. UKICE said that the “failure to link the schemes will create new trade costs for UK exporters of cement, iron, steel, aluminium, fertilisers, electricity and hydrogen to the EU”, when the EU CBAM – “which effectively applies the EU ETS to third country imports – takes provisional effect in October 2023”.<sup>3</sup>
208. It explained that “UK exporters will have to report on the emissions embedded in their products, and from 2026, they will have to pay the difference in the price of those emissions under the UK ETS compared to the EU scheme”. It estimated that “about 6 per cent of UK exports by value would be subject to the EU CBAM”.

- However, that “linking the UK and EU ETS regimes would likely see the UK exempted from the EU CBAM”.<sup>3</sup>
209. The British Chamber of Commerce also outlined its “significant concerns that areas within the scope of the CBAM, including the steel, iron, aluminium and other regulated goods sectors, could face severe effects if the emissions trading schemes between the EU and the UK are not linked”.<sup>7</sup>
210. The previous UK Government recently [consulted](#) on the introduction of a UK CBAM. UKICE highlighted that the current proposals for the UK CBAM “differ in coverage from the EU version”. It said this “would create similar new trade friction for EU exports to the UK, but guards against the risk of carbon intensive goods being dumped in the UK to avoid the EU CBAM.”<sup>36</sup>
211. The Labour Party said in its manifesto that it “supports the introduction of a carbon border adjustment mechanism” to “protect British industries as we decarbonise, prevent countries from dumping lower-quality goods into British markets, and support the UK to meet our climate objectives.”<sup>1</sup>
212. The Independent Commission on UK-EU Relations said that the “failure to align” the UK and EU CBAMs “risks UK companies being penalised by the CBAM, with financial transfers from the UK to the EU, potentially amounting to €1 billion”, given “the EU is the UK’s main trading partner in carbon-intensive goods”.<sup>28</sup> It also explained that even if the mechanisms were the same, “without a legally binding framework to merge the mechanisms”, UK exporters would “need to prove that they have paid CBAM costs adding further administration”.<sup>28</sup>
213. Some witnesses expressed frustration at the duplication of the UK and EU ETS and CBAM schemes, without any formal linkage as yet. NFUS said this “would have been relatively easy to adapt to if required, yet DEFRA in the UK—and, to a degree, the Scottish Government—are having to replicate something similar, but not quite the same.” It added that “it is frustrating that we are doing an awful lot of things that Europe is doing, in order to keep pace with Europe, but doing so seems to absorb an awful lot of resource, time and energy.”<sup>11</sup>
214. Referencing the ETS and CBAM schemes, the Independent Commission on UK-EU Relations said that “anything that is just a needless copy and paste that was done, in essence, performatively to make it look like we have regained sovereignty and are operating differently, but are actually just imposing costs on ourselves and our industries, should be undone in the short term.”<sup>5</sup>
215. The Committee heard from UKICE that the UK was formerly part of the EU ETS, and therefore the UK ETS “to a large degree, resembles the EU’s in relation to its scope and how it works”, and that “relative to most countries in the world, the UK is quite highly aligned.” It further commented that “over time, the schemes will diverge to a greater extent so, if we want to align, there is an incentive to do so sooner rather than later, before the differences become too significant.”<sup>24</sup>
216. UKICE explained that “there is more than one option for how to link the schemes”—

” “There could be full alignment, with the UK having to accept quite a large degree of EU autonomy over how our emissions trading scheme worked and what could be done with the revenues that were generated... Alternatively, there could be a partial linking, with distinct markets but fluidity of credit between the two. The schemes would be less interlinked so there might not be as many benefits, but it would perhaps be easier to conclude the discussion.”  
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217. The UK DAG called for “the UK Government to begin negotiations with the EU as soon as practicable to link the EU and UK ETS”, and said that alignment between the respective CBAMs should also “be pursued” alongside the ETS linkage “as envisaged in the TCA.”<sup>33</sup> Similarly, the EU DAG said it “would be good if we could align our systems and policies on how to address carbon leakage.”<sup>49</sup>
218. The Scottish Government said it is “keen to see the EU and UK pursue vigorously the commitments they both made in the TCA” on closer energy cooperation, including to “explore the potential of linking the UK and EU Emissions Trading Schemes to support the drive towards net zero.”<sup>22</sup> The new UK Government’s position on aligning the UK and EU ETS is not yet known.

**219. The Committee recognises that the failure to link the UK and EU emissions trading schemes will create additional trading costs for some Scottish businesses. Given that the TCA already commits both parties to giving serious consideration to linking their respective schemes, the Committee invites the UK Government and European Commission to seek to make significant progress in doing so through the TCA review, which would enable Scottish businesses to be exempted from the charges and administrative burdens of the EU CBAM. As above, the Committee recognises that the linking of the schemes may include regulatory alignment.**

## Improved governance of the existing TCA

220. The TCA’s governance arrangements establish a framework for the European Commission and the UK Government to manage the Agreement effectively. The implementation of the TCA is overseen at the highest level by a Partnership Council which is co-chaired by a Member of the European Commission and a representative of the UK Government. It can take binding decisions, including to amend some aspects of the TCA.
221. Below the Partnership Council sits the Specialised Committees which oversee specific elements of the TCA. The ten trade-focused Specialised Committees report to the Trade Partnership Committee as an intermediate step, which in turn reports to the Partnership Council. Working groups can also be established to assist these committees. These forums are attended by officials from the UK and EU. The Scottish Government engages with the Specialised Committee process via the UK Government’s delegation, and can attend the Partnership Council as observers.

222. Significant decisions about the operation of the TCA can therefore be made by political agreement between the European Commission and the UK Government through the Partnership Council, or through the Specialised Committees.

## Role of the Specialised Committees and Partnership Council

223. The Committee heard that both the ongoing implementation of the existing agreement, and the negotiation of adjustments to the TCA within these governance structures will be important in improving the operation of the agreement and the trading relationship.
224. On the implementation of the existing agreement, the Scottish Government explained that “as is common with [free trade agreements] – and is a particular feature of the TCA, given it was rapidly negotiated between the UK’s departure from the EU on 31 January 2020 and the end of the transition period on 31 December 2020 – there are multiple implementation issues still to be resolved that require ongoing dialogue (and in some cases negotiation) between the Parties.”<sup>22</sup>
225. Prosper considered that “many” of the challenges faced by exporters “were related not simply to the agreement itself but to implementation and differing interpretations across EU states and authorities.”<sup>7</sup> The Committee also heard from the Law Society of Scotland that “trade deals do not end when they are signed” and that “implementation will always be where the actual value is gained.”<sup>4</sup>
226. On the negotiation of adjustments to the TCA, the Scottish Government also highlighted that the “agreement on the UK’s association to the EU’s Horizon Europe and Copernicus programmes, and secondly extension of a rules of origin deadline affecting electric vehicles” were “both formally approved through the relevant TCA structures, though substantive negotiations had taken place outside of the formal SC process.” However, it noted that overall “only limited substantive progress” was made on the UK Government’s priorities during the last round of Specialised Committee meetings in Autumn 2023.<sup>22</sup>
227. The Independent Commission on UK-EU Relations explained that there is a lot of “flexibility” in the TCA—
- ” “For example, the chapter on rules of origin covers which goods are covered by the free trade agreement and which are not because they are considered third-country goods. Those rules can be amended by the so-called Partnership Council... The rules of origin on electric vehicles, which cover electric cars that have Chinese batteries in them, were amended within the ordinary procedures of the TCA. There are other areas where the agreement says that there shall be, or can be, negotiations about certain matters, so there are avenues built in there.”<sup>5</sup>
228. However, the Committee heard that these forums could be better utilised. This was something previously identified by the House of Lords European Affairs Committee, which recommended in April 2023 that “there should be a considerable increase in engagement within existing institutional structures, including the Partnership Council and the TCA Specialised Committees.”
229. The UK DAG highlighted that there are several “practical and technical solutions

that can be achieved without any political involvement or review of the TCA.” However, it said that “the full potential of the TCA has not been fulfilled” and “there must be much more co-operation between the UK and the EU” to find these solutions.<sup>49</sup>

230. The Scottish Government recognised that “the February 2023 Windsor Framework agreement created a new context for improved UK-EU relations and has provided opportunities to improve TCA implementation, after two years of standstill during the Northern Ireland Protocol dispute.”<sup>22</sup>
231. However, the UK DAG commented that “although the atmospherics and relations between the UK and the EU have improved since the conclusion of the Windsor Framework, that perhaps has not been mirrored in the plumbing of the TCA and the various specialised trade committees that have been set up”, which it said had been “underperforming”.<sup>49</sup>
232. In a similar vein, the EU DAG agreed that “there is a difference between what we are hearing at the highest political level on cooperation and the developments and progress on that.”<sup>49</sup>
233. Seventeen of the 18 Specialised Committees met only once during 2023.<sup>22</sup> The Independent Commission on UK-EU Relations considered that the Specialised Committees are not meeting “as often as they should”.<sup>5</sup> SAFE said they “are not working as well as they could be” and suggested that there should be “stricter governance” on the frequency of meetings.<sup>4</sup>
234. A Scottish Government official said that these structures “are starting to function properly” given “the UK-EU relationship has improved”. He explained that “the theory is that the Partnership Council tells the Specialised Committees what to do. If there is a particular area of focus for the Partnership Council, it would make sense for the relevant Specialised Committee to meet more often than some of the others.” Another official added that “it is really important for us that the forums in which we can be present are of high quality rather than quantity”.<sup>23</sup>
235. FSB considered that “there is room for full implementation” of existing structures within the TCA. It said that while the TCA makes provision for an SME committee, this had not yet been set up. It considered that such a committee “would provide a forum for small business concerns to be aired—and maybe resolved—between the UK Government and the European Commission”.<sup>7</sup> APBI similarly reported that the working group on medicinal products had “yet to meet formally” although this was “moving in the right direction”.<sup>4</sup>
236. Witnesses also raised the lack of discussion on key issues through the TCA governance structures. AIC noted that “unlike other EU Free Trade Agreements, there is no mandatory regular dialogue on SPS issues with the UK and where they are raised under SPS Committees or through the DAG, it is far too infrequent.” Moving forward, it called for “formal SPS and market access dialogue” to be included as part of the TCA “in order to better understand market access constraints”.<sup>12</sup>



## Civil society engagement under the TCA

237. The TCA also sets out a framework to engage with civil society on the implementation of the agreement. It establishes a UK Domestic Advisory Group, EU Domestic Advisory Group, and EU-UK Civil Society Forum.
238. The DAGs advise the UK Government and European Commission on matters relating to the implementation of the TCA. The Civil Society Forum also comprises civil society organisations from the UK and EU but has a narrower remit and advises on matters relating to Part 2 of the TCA (i.e., trade, transport, energy, fisheries, and social security coordination).
239. The UK DAG highlighted to the Committee the importance of engaging “better with civil society, business organisations and trade unions to help the specialised committees to function more effectively, through identifying where the solutions to problems and challenges might lie.”<sup>49</sup>
240. SWA commented that members of SAFE had “collectively raised a lot of issues through the DAG process, and some of those have found their way on to Specialised Committee agendas” but that there was a need to have a “rigorous follow-up check on the extent to which issues are being addressed.” It identified that there was “an opportunity to use the Specialised Committees to raise the issues, follow up with the relevant markets and see whether we can get some improvements.”<sup>4</sup> The UK DAG wanted to obtain agreement for its members to act as observers on Specialised Committees.<sup>33</sup>
241. SAFE said that “the more rigorous application of a governance structure around the engine room, sitting alongside the DAG and the Parliamentary Partnership Assembly, could give more rigour to how we resolve some of the issues without necessarily having to revise the TCA.”<sup>4</sup>
242. The Committee also heard from the respective DAGs on their bilateral co-operation. The UK DAG said it has “a very good working relationship with the EU DAG, which offers great possibilities going forward.”<sup>49</sup> Similarly, the EU DAG said it had been “co-operating with the UK DAG” and noted that “it is very important that there is co-operation between people in civil society, that there are exchanges on areas in which we have common interests and that we point out areas in which we see problems”.<sup>49</sup>

## Role of the Parliamentary Partnership Assembly

243. The TCA provides a limited role for the UK Parliament in partnership with the European Parliament to formally scrutinise its implementation, through the UK-EU Parliamentary Partnership Assembly (PPA). The PPA can request information from the Partnership Council and Specialised Committees, and can make recommendations, but does not have a role in approving decisions.
244. Both the UK DAG and the EU DAG have set out that they would like to see “closer working relations” between the respective DAGs and the PPA.<sup>33</sup> The EU DAG said that it will be “very important to have more co-operation” with the PPA “as the other

important body monitoring the overall trade agreement”. It noted that the DAGs and the PPA have “common objectives” and therefore “it is important that we strengthen our voice vis-à-vis the two Governments and together show ourselves in a more co-ordinated way.”<sup>49</sup>

245. The Convener and Deputy Convener of the Committee are invited on behalf of the Scottish Parliament to attend the biannual meetings of the PPA as observers and do not have full speaking and voting rights. It is the Committee’s view that the Scottish Parliament’s representatives should be full members of the PPA. The Scottish Government similarly “continues to call for the representatives of the Scottish Parliament to be afforded full membership of the UK delegation”.<sup>22</sup>

246. **Beyond the TCA review, the Committee considers that effective governance of the TCA can further support the trading relationship to be improved through the full implementation of the existing agreement, and the negotiation of adjustments to the TCA. There is a need for ongoing co-operation and collaboration to make continual improvements to the operation of the TCA, an agreement which is still in its infancy and has several unresolved implementation issues.**

247. **Furthermore, given significant decisions about the operation of the TCA can be made by political agreement between the European Commission and the UK Government through the Partnership Council, or through the Specialised Committees, the Committee’s view is that it is important for there to be a strong level of stakeholder input to, and scrutiny of, these decisions, as well as transparency regarding how decisions are made.**

248. **We therefore highlight the views of the UK DAG that improved engagement with civil society, business and trade unions through the DAGs and Civil Society Forum should support the Specialised Committees to function more effectively. The Committee also recognises the important role for the PPA in scrutinising the implementation of the TCA and the decisions of the Partnership Council and Specialised Committees. We reiterate our view that the Scottish Parliament’s representatives should be full members of the PPA, while recognising that this is a matter for the UK delegation.**

## Support for businesses

249. As discussed earlier, the Committee heard extensive evidence about the challenges that businesses have faced in managing the new administrative burden of importing or exporting goods between the UK and the EU, including keeping pace with changing EU regulations to ensure compliance. We have also considered the particular challenges for small businesses with fewer resources to manage this complexity.

250. The Committee heard a consistent view that there was a need for greater support to be provided to business to monitor changes in EU regulations and consequently regulatory divergence, in order for them to comply with EU regulations where necessary for trade.

251. AIC highlighted that “there has been no formal policy or mechanism established by the UK Government to monitor or track the emerging and increasing divergence” in policy or technical standards between the EU and UK”.<sup>12</sup> As such, it noted that “we have no idea about the total divergence that has taken place” and said that “trade bodies and businesses have been left to undertake this work themselves”.<sup>11</sup> NFUS agreed that the “monitoring of divergence” and understanding the “implications” of regulatory divergence were “absolutely critical”.<sup>11</sup>
252. In relation to support from the UK Government, AIC highlighted that “where market access issues have arisen to the EU or Northern Ireland, support from UK Government to address them with the EU have been limited. Trade Associations and individual businesses have largely had to attempt to navigate the new and often inconsistent import requirements of EU member states, often with the support of EU based associations”.<sup>12</sup>
253. Logistics UK highlighted that “one of the challenges that we have experienced throughout the process for the Windsor Framework and the Border Target Operating Model is that guidance, information and technical detail from Government have too often come too late. That is not good as it has not enabled businesses to plan, prepare, test, and implement.”<sup>9</sup>
254. A number of stakeholders also raised the need for additional guidance. AIC highlighted that its members considered export guidance from EU Member States to be “inadequate and inconsistent”.<sup>12</sup>
255. The Scottish Chambers of Commerce suggested that, as a short-term priority, there should be “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.” It said that “joint guidance should be produced which is clear, practical, and accessible for business in both the EU and UK” and “this must then be consistently applied across all 27 EU member states and in the UK.”<sup>6</sup>
256. Scotland Food and Drink agreed that there needed to be “simpler guidance including on customs and Rules of Origin, reducing trade friction, and avoiding divergence in standards.”<sup>50</sup>
257. The Committee also considered the support provided to businesses by the Scottish Government through its agency Scottish Development International and international offices.
258. When asked by the Committee how the Scottish Government is supporting Scottish businesses to navigate the new trading arrangements, the Cabinet Secretary said that “there is a constant effort to work out how we can ameliorate the challenges”, and that the Scottish Government and its agencies “will do everything that we can to ensure that unnecessary red tape or barriers to trade are removed.”<sup>23</sup>
259. SDI told the Committee that its “focus has been on supporting companies to operate after Brexit using the microsite to provide a Scottish entry point to appropriate UK-wide sources of funding and advice including information on VAT, taxes, customs, funding, logistics and labelling.”<sup>43</sup>

260. It explained that its support for businesses has included “engaging intensively with exporters on a one-to-one basis, to support them to understand new rules and regulations and to adapt to a new trading relationship with Europe, providing advice and guidance, gathering insights and exploring solutions where challenges exist.”<sup>43</sup>
261. SWA said that when it encounters issues such as “border delays and with requests for different documentation”, it has worked with “the embassy network in different EU markets, and with support from the Scottish Government and Scottish Development International to help with those issues.”<sup>4</sup>
262. IoD said that to encourage businesses to export to the EU, and other markets, “demystifying the process and procedure” and “making guidance and support as readily available as possible to those who are looking for it” would be beneficial.<sup>7</sup> Devro also suggested that the Scottish Government should provide support for smaller businesses to access information about exporting to other markets, such as the US.<sup>19</sup>

- 263. Recognising the significant difficulties that Scottish businesses are experiencing in navigating and complying with the customs and regulatory requirements of trading with the EU, the Committee’s view is that greater support and guidance is required from the UK Government and Scottish Government to manage the complexity of the new trading environment.**
- 264. The Committee invites the UK Government to explore, in collaboration with the Scottish Government and other devolved administrations, establishing a formal mechanism to monitor relevant changes to EU law and track the emerging and increasing divergence in policy or technical standards between the EU and the UK, including where the extent of divergence or alignment with the EU differs in Scotland from the rest of the UK. As noted above, this information should be made publicly available as a resource for industry so that this monitoring burden does not sit with individual businesses and business representative bodies.**
- 265. The Committee also heard that there is a need for simpler guidance to be developed for businesses in the UK and EU on customs procedures, rules of origin and other issues relating to UK-EU trade. The Committee invites the UK Government and European Commission to engage with businesses and representative bodies to develop clear guidance which meets their needs.**

# Conclusion

266. Overall, in the Committee's view, it is clear that the UK-EU trading relationship post-Brexit, under the terms of the TCA, has presented significant new challenges for Scottish businesses exporting to the EU.
267. The evidence we received from Scottish businesses, business representative bodies, and stakeholders was overwhelming that although there are zero tariffs and zero quotas on trade in goods between the UK and the EU under the terms of the TCA, the presence of considerable non-tariff barriers post-Brexit has meant that businesses are experiencing significant challenges in exporting goods to the EU.
268. Non-tariff barriers—primarily the requirements for all imports from the UK to meet EU standards and be subject to customs formalities, regulatory checks, and controls, as well as the application of rules of origin to qualify for preferential trade terms—have placed considerable administrative, resource and cost pressures on businesses, and harmed exports. These challenges have been particularly acute for UK exporters of agri-food products, which are required to meet the EU's SPS measures.
269. The Committee recognises that these challenges are both a consequence of leaving the EU and the type of Brexit which the TCA was intended to deliver.
270. While goods entering the EU from the UK were subject to full customs and regulatory checks immediately after the UK left the EU's legal order, border checks on goods entering the UK from the EU are only now being phased in. Stakeholders have identified this disparity as having created an uneven playing field for UK businesses and further deepened these challenges.
271. There is now therefore a need for the UK Government to negotiate improvements to the trading relationship to better facilitate UK-EU trade. The forthcoming review of the TCA in 2026 presents a prime opportunity to negotiate supplementary agreements or adjustments to the TCA. However, negotiations to improve the trading relationship need not be constrained to the confines of the formal review. Effective governance of the TCA will also be necessary to support improvements to the trading relationship through the ongoing implementation of the existing agreement, and negotiation of further adjustments to the TCA.
272. Overall, stakeholders identified that there is a need to seek closer regulatory alignment with the EU in order to address trade barriers. The Committee recognises that, should agreements be sought to remove or limit the impact of non-tariff barriers such as customs and regulatory checks, this would likely necessitate greater regulatory alignment for the UK with the EU. The reduction of such barriers will therefore depend on the extent of alignment the new UK Government is prepared to commit to in negotiations with the EU. While the Scottish Government has a policy commitment to align with EU law where appropriate, the impact this has

**had on businesses, including the extent to which it has facilitated improved trade with the EU, without such agreements with the EU in place, is unclear.**

- 273. The Committee considered key areas of possible alignment where the UK Government could seek to negotiate supplementary agreements or adjustments to the TCA. In particular, the Committee recommends that the UK Government should seek a veterinary agreement with the EU to significantly reduce border checks and the administrative burden on exports of agri-foods, given the significant impact it would have on reducing barriers to trade for many Scottish businesses.**
- 274. In a similar vein, the Committee recommends that the UK Government should seek to further reduce barriers to trade through agreeing a mutual recognition agreement with the EU on conformity assessments, and working with the European Commission to link the respective UK and EU emissions trading schemes.**
- 275. Finally, the Committee believes it is clear that greater support is required from the UK Government and Scottish Government for businesses to manage the complexity of the current trading environment, in particular with regards to monitoring divergence to allow for compliance with changing EU regulations, and navigating the customs and regulatory requirements of trading with the EU.**

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