Centre for Inclusive Trade Policy – Written Evidence (UKE0066)

Evidence submitted House of Lords European Affairs Committee inquiry: The Future of the UK-EU relationship

Evidence submitted by the Centre for Inclusive Trade Policy

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About The Centre for Inclusive Trade Policy

The Centre for Inclusive Trade Policy, a centre of excellence for innovative trade policy research, is the first Centre dedicated to trade policy to be funded by the Economic and Social Research Council. The Centre is built on the precept that trade policy should be inclusive in both policy formulation and outcome. Our aim is to build permanent capacity by developing a community of scholars and practitioners with the knowledge, skills and mutual understanding to develop robust trade policy in a changing world.

Led by led by the University of Sussex, the Centre is comprised of universities from across the whole of the UK - including from the University of Nottingham, the University of Strathclyde, Queen's University Belfast, Cardiff University and the University of Cambridge - and beyond, along with non-academic partners working on trade.

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The Centre for Inclusive Trade Policy welcomes the opportunity to submit evidence to the House of Lords European Affairs Committee on the important

issue of the future of the UK-EU relationship. Our evidence below responds to a subset of the questions raised by the Committee based on the relevance of our experts' background and knowledge. The focus of our evidence is on the following areas:

- The institutional arrangements underpinning the Northern Ireland Protocol and the Trace and Cooperation Agreement, and the scheduled 5-year review
- Environment and climate change
- Culture education and mobility

RECOMMENDATIONS

1. The UK should seek to improve the terms of the TCA both by working proactively within the existing institutional structures, and also as part of the built-in 5 year review. The areas we would recommend focussing on include: regulatory cooperation and equivalence, rules of origin, mutual recognition of professional qualifications, and the further liberalisation of services.
2. In addition, the UK should seek to negotiate an SPS/Veterinary agreement with the EU, and improved access with regard to financial services. It should be recognised however that success in improving trading relationships with the EU will depend on the degree of trust and cooperation between the UK and the EU, and also on the EU's strategic objectives.
3. To support long term investment in the UK car sector, the UK could use the mechanisms of the TCA to bindingly commit itself not to diverge from UNECE standards.
4. A public debate on the preceding points is needed and Parliament and its Committees can play a vital role in informing the electorate.
5. Further consideration should be given to the establishment of institutional frameworks that would allow UK/Northern Ireland to have a role in the decision-making processes that underpin the adoption of EU laws in Northern Ireland. This could be based on similar principles to the "observer status" granted to European Economic Area countries (Iceland, Norway, Liechtenstein) who can attend the deliberation of working groups of comitology committees that assist the European Commission in the development of new legislation.
6. With regard to emergency measures undertaken by the UK and EU governments in the context of the environment and food standards we recommend improved communication and notification of these by the UK to the EU.
7. With regard to the UK's ETS scheme, a formal assessment of the administrative costs to the Government and to firms from operating a separate scheme to that of the EU's must be undertaken and published.

8. We strongly recommend the full alignment of the UK ETS/CBAM with the EU's. Doing so would entail no need for border adjustments on UK-EU trade. Trade in either direction would merely bypass the CBAM altogether and a major potential source of friction would be obviated. While forgoing discretion in its own CBAM, this disadvantage would be dwarfed by the advantages of reducing the frictions on UK-EU trade (in both directions).
9. There is a disconnect between the UK Government legislative approach to delivering Brexit (REUL Bill), the UK Government's environmental agenda, its cooperation with the EU and its cooperation with devolved administrations. This leads to lack of coherence which is detrimental to addressing joint climate and environmental challenges. We recommend that clearer alignment, ideally toward greater ambition on the environment, between REUL Bill, environmental policy and relations with devolved administrations would open the door to smoother and more useful cooperation with the EU in areas of UK interest.
10. The TCA is the only trade agreement in which climate change is acknowledged as an essential element of a trade treaty. Nevertheless, the TCA ascribes greater importance to trade liberalisation than environmental protection, including climate change. In reviewing the TCA with the EU we would recommend that UK gives higher priority to environmental and climate concerns by:
    a. *Enhancing the implementation of the precautionary "principle"*.
    b. *Lowering the threshold of evidence to implement rebalancing measures.*
    c. *Re-designing the legal mechanisms enabling substantial enforcement of environmental provisions.*
11. The UK should focus on greater clarity for short-term business visits and include a detailed list of prohibited and permitted activities when negotiating trade agreements. This will provide UK businesses increased certainty when sending British employees on business visits into EU countries.
12. Future trade agreements should also include a detailed outline on how commitments will be implemented. This will minimise implementation blocks frustrating the purpose of the commitment leading to trade distortions. Simplified and more consistent immigration routes for service suppliers will reduce friction associated with delivering and receiving cross-border services.
13. The UK should also look at implementing a hybrid immigration route that sits somewhere in between the sponsored work visas and the visitor routes due to the high level of costs, timeframes and administration associated with applying for a work visa.
14. The Government should also agree reciprocal youth mobility arrangements with all trade partners, but particularly the EU.
15. The lack of access to the Horizon Europe programme is likely to seriously impact on UK research via the overall levels of funding, collaboration and joint research with researchers in Europe, and in the ability to hire

researchers in the UK from the EU. We strongly recommend that the UK negotiates with the EU continued access to Horizon Europe.

16. Lastly, the UK should offer a reciprocal bespoke Intra-Company Transferee (ICT) route for nationals of trade partners.

SUMMARY AND KEY POINTS:

1. Economic relations between the UK and the EU are poor and in good part this seems to be driven by the ongoing differences with regard to the Northern Ireland Protocol, but is also a consequence of the drawn-out and fraught negotiations between the UK and the EU following the referendum.
2. In terms of the impact on UK-EU trade following the introduction of the TCA UK exports and import of goods and services have been negatively affected. In addition about 25% of UK exports now pay tariffs on exports to the EU.
3. The TCA is functioning largely as foreseen. Both the existing institutional framework and the wholesale review of the TCA allow for modification of the arrangements between the UK and the EU. However, the built-in possibilities for enhanced cooperation or for amendments / improvements are not currently taking place.
4. In the longer-term, relations between the UK and the EU will depend both on the resolution of the Northern Ireland Protocol (NIP), and improved cooperation over the TCA, but also on legislative and regulatory changes in both the UK and the EU. This can be seen, for example, in the potential implications on the EU side of the proposed CBAM, the Foreign Subsidies Regulation, or the CHIPS act, and on the UK side, for example, on whether or not the Northern Ireland bill, and/or the EU Retained EU bill gets passed.
5. There is scope for improving the terms of the TCA under the five year review. However, the TCA does not cover decisions relating to equivalences for financial services, the adequacy of the UK data protection regime, or the assessment of the UK's sanitary and phytosanitary regime for the purpose of listing it as a third country allowed to export food products to the EU. In principle, these are unilateral decisions of the EU.
6. The NIP is a dynamic international legal instrument whose content and scope will vary over time. Not only does the Protocol require the UK, in relation to Northern Ireland, to comply with EU law listed in the annexes, it also establishes processes whereby European Union (EU) law falling within the scope of Protocol can be amended or added to those annexes. The EU's proposed CBAM regulation is the type of measure that may fall under the scope of Article 13(4) of the NIP.
7. The more EU and UK rules diverge from each other, the more Northern Ireland is placed in a position where trade with the rest of the UK is rendered more difficult.
8. There are also questions surrounding a system that requires the UK, in relation to Northern Ireland, to comply with EU rules without having an input in the decision-making process. Recent proposals from the UK and the EU to give a greater role and involvement of Northern Ireland stakeholders in the Protocol committees is welcome.
9. The EU and UK share common interests, such as global health and environmental protection, and to cooperate to address urgent challenges posed by climate change. However, the possibilities of frictions exist

concerning environmental law and climate policy arising from the lack of 'dynamic alignment' of regulations, as well as, for example, different authorisation and notification policies on issues such as insecticides. Nevertheless, neither the environment chapter of the TCA, nor the sustainable development chapter are part of the dispute settlement mechanism.

10. However, the official avenues for cooperation on climate change and the environment within the TCA have further been used very sparingly, and existing discussions have failed to include devolved policy developments, nor of the UK's Retained EU Law (Revocation and Reform) Bill which upend the very basis of this cooperation. The current state of UK-EU cooperation on environmental matters is likely to worsen considerably.

11. The UK's ETS is a direct descendent of the EU's ETS and the TCA commits the parties to 'give serious consideration to linking their respective carbon pricing systems'. Four factors should be borne in mind: (a) the costs of extra resources needed to administer a separate scheme; (b) the additional implementation costs for firms of a separate scheme; (c) the potential stresses and incentives for firms if the UK and EU prices of permits diverge significantly; (d) the application of the EU's proposed CBAM to the UK in the presence of a separate scheme.

12. The CBAM is the natural extension of the EU ETS to try to ensure that the domestic charge for emissions that EU firms face in order to produce in the EU is also faced by firms outside the EU if they supply the EU market. An EU CBAM would level a tax on EU imports of covered goods from the UK. Thus, the introduction of a CBAM could reduce some UK sales in the EU. Firms losing sales would have some incentive to use 'cleaner' production methods and/or shift their focus to 'cleaner' goods. While there would be some losses/inconvenience for UK industry, the overall outcome would be consistent with UK climate objectives – that is, reducing emissions.

13. The administrative burden of EU CBAM on UK firms in covered sectors exporting to the EU will be considerable. It involves registering with an authority, supplying documentation stating the carbon emissions from their products, and receiving third-party certification. These requirements are likely to be very costly for firms in terms of information collection and audit and for bureaucracies to verify.

14. These factors, taken together, mean that despite the UK's similar policy orientation and the lack of significant direct charges, the introduction of EU CBAM will likely lead to significant pressure from UK firms for the UK to take policy action to offset negative impacts of CBAM.

15. There are also complications with regard to Northern Ireland where, under the Withdrawal Agreement, electricity generators located in Northern Ireland are required to participate in the EU ETS. Linking the UK's ETS/CBAM to the EU's ETS/CBAM system is the simplest way of ensuring both that CBAM fees on goods traded between Northern Ireland and the Republic of Ireland are not required, but also that the CBAM is not applied on the UK by the EU.

16. From the 2021/22 academic year onwards, EU citizens can no longer claim home-fee status or access tuition fee loans in the UK. They must now also

comply with visa and immigration regulations. This has directly impacted EU applications to UK universities and according to UCAS, EU citizen applications to UK universities fell by 40% in 2021, and a further 19% in 2022. There has also been a drop in EU academic staff.

17. Since the UK left the EU, UK students can only go on short periods of study abroad or apply for visas. The administrative burden has increased for students who must now consider immigration requirements and any applicable qualifying criteria (e.g. language testing). Many higher education institutions in the UK had long-lasting partnerships with Erasmus+ partner universities and institutions, which had to be ended after Brexit.

18. Currently the EU is not granting access to Horizon Europe, which is the EU's central programme for the funding of research an innovation. UK universities have established deep and successful partnerships with many European Universities over the years. The lack of access to this programme is likely to seriously impact not just on the levels of funding that UK university research programmes may get, but to collaboration and joint research with researchers in Europe, and also in the ability to hire researchers in the UK from the EU.

19. The UK Government introduced the Turing Scheme to operate instead of Erasmus. Under the latter, approximately 18,000 students would go abroad. The Turing Scheme allowed for 38,700 students to study or work abroad in the 2022/23 academic year. Where Erasmus was an exchange programme with around 34 countries, with approximately 30,000 EU students coming to the EU each year, the Turing Scheme is one-way with up to 160 possible destinations. Similarly in terms of school visits where Erasmus was two way and thus promoted greater cultural exchange, the Turing Scheme is one-way. The number of overseas visits in 2019 was 13,058 for 522,320 students. In contrast between January and August 2022, the number of visits was 2,527, with only 101,080 pupils.

20. With regard to labour mobility, there are now much greater restrictions for UK nationals working in the EU. While there is some allowance for the temporary stay of workers for business purposes there are restrictions and increased administrative requirements making it more difficult. Some sectors such as the cultural sector including musicians appear to have been particularly affected. In addition to the loss of access to funds such as Erasmus+, Europe for Citizens, and the European Structural & Investment Funds has also impacted on the arts and cultural sectors meaning that there are less opportunities for individuals.

21. The automatic recognition of professional qualifications for UK nationals in the EU has ended. Businesses whose services require their employees to possess professional qualifications (e.g., engineers, architects and lawyers) need to consider whether the qualifications meet the required standards separately in each Member State; and meeting these requirements may mean registering with an EU approved professional regulator or re-qualifying in the countries concerned.

22. With increased barriers for EU nationals to visit the UK, there has been a reduction in short term travel to the UK. According to the ONS, there were an estimated 69.5 million travellers arriving from outside the Common

Travel area in the year ending June 2022. This is compared to 146.3 million in 2019. Some of this reduction may be related to other factors such as Covid.

23. With regard to business mobility there are several changes the UK Government should pursue and which will require negotiation either with the EU or bilaterally with Member States. Employers are concerned about the process, the cost and qualifying criteria when it comes to business travel or mobility. Currently, the system is dominated by high levels of administration, high costs, and lengthy timeframes. With the end of freedom of movement, the UK now relies on a demand-led immigration system - and given the high costs and administrative burden, it is making it increasingly difficult for UK businesses to attract / retain international talent.

DETAILED RESPONSE:

The overall UK-EU political, diplomatic, and institutional relationship
How would you describe the current state of the UK-EU relations? Has this changed since the end of the transition period and, if so, how and why?

1. The current state of the UK-EU relationship with regard to the on-going economic relationship is poor. While the TCA is functioning more or less as intended there is little evidence of flexibility or improvements in the relationship arising from the operations of the institutional structure. Much of this appears to be driven by the UK government's position on the Northern Ireland Protocol, and in particular on the Northern Ireland Protocol Bill. This is seen by the EU as the UK acting in bad faith and in (potential) contravention of an international agreement the UK signed up to. While it is difficult to find hard evidence this does seem to have impacted on particular areas of cooperation ranging from the UK access to the EU's Horizon 2020 programme, to the lack of equivalence decisions on financial services.
2. Work undertaken by the UKTPO highlights the impact of the TCA on trade in goods and services between the UK and the EU.
   a. Exports:
      i. UK exports of goods to the EU relative to the rest of the world declined dramatically when the agreement with the EU (the TCA) started at the beginning of 2021 but since then in aggregate have recovered. However, this is not true of all sectors and some have seen a persistent large decline. For example exports of vegetables are down by 35%, Fats & oils - 57%, Food, beverages & tobacco - 15%, Textiles - 59%, Footwear - 72% and Miscellaneous manufacturing - 20%. The negative effects seem larger for smaller firms.
      ii. Taking all those goods where the EU has a positive external tariff, about 25% of UK exports pay tariffs on their exports to the EU even though it is a duty free deal;
      iii. UK exports of services to the EU appear to have declined by around 10.8%
   b. Imports:
      i. In contrast, import of goods from the EU across most sectors have declined by about 25% in the year following the introduction of the TCA
      ii. Imports of service have declined by over 30%

Are there any future developments in the EU or the UK that you would identify as having a significant impact on the UK-EU relationship?

3. Once again, we focus our answer on economic 'developments.' where we would highlight that there is an increased move by the EU (and other

countries) to introduce policies / regulations designed to protect the EU economy from the perceived actions of other states deemed to threaten their economic security / competitiveness. Several examples, inter alia, can be given: (a) the proposed carbon border adjustment mechanism (CBAM), (b) the Foreign Subsidies Regulation, (c) the Anti-Coercion Instrument, as well as (d) the European Chips Act. It is hard to know how these will be used in practice but each of these demonstrate the EU's increased desire to introduce policies that impact on trade; and each of these (except perhaps (c)) may well impact on the future UK-EU economic relationship.

Are the institutional architectures of the Withdrawal Agreement (WA) and the Trade and Cooperation Agreement (TCA) functioning as intended? If not, how could their functioning be improved within the existing framework? Is the UK-EU institutional framework fit for purpose? If not, what changes could or should be made

THE TRADE AND COOPERATION AGREEMENT:

4. This section of the response to Q3 focusses on the impact of the operations of the TCA in the area of trade. The Northern Ireland Protocol is a matter for the Withdrawal Agreement and would require separate analysis. The essence of the response is that the TCA contains considerable flexibility which is however currently not being used. It provides avenues for future institutional evolution. This contrasts with issues covered by the Withdrawal Agreement which are more firmly set by the terms of the core agreement.
5. Our analysis is premised on the assumption that the UK would like to be able to use the institutional architecture of the TCA to facilitate trade and to facilitate the achievement of UK interests in this respect. One would approach the issue differently if the purpose of the TCA is deemed to be to ensure that the UK is able to diverge and to minimise institutional engagement.
6. The TCA provides scope for deeper cooperation to take place within the existing framework. However, this does not appear to be taking place, which is due to political tensions not institutional obstacles. In addition, the TCA offers scope for wholesale review after 5 years in force. Hence both the existing framework and the wholesale review allow for modification of the arrangements between the UK and the EU, the rules governing trade between the EU and the UK, and the regime for setting them. Most such changes can be made within the terms of the TCA itself; negotiations on Financial Services would however require a change in the TCA.
7. The TCA contains explicit provisions for the managing of the EU-UK relationship via the Partnership Council and the twenty specialised committees under it. The Partnership Council can make amendments to the TCA and to any supplementing agreements in the '*cases provided for*' in the agreement (Article 7; 4c). With regard to the cases which are provided for in the TCA these are somewhat limited, but also quite varied.
    a. Hence, there is the possibility of the Trade Specialised Committee on Technical Barriers to trade reviewing the list of covered medicinal products (Annex 12, Article 12);

b. For the Trade Partnership Committee to review the product specific rules of origin on vehicle batteries, or the quotas for aluminium;

c. For the Committee on Customs Cooperation and Rules of Origin to review the duty drawback and inward processing schemes;

d. For the Partnership Council to amend the list of energy goods (Article 329).

e. Perhaps the widest scope for amendment is with regard to Chapter 2 of Title 1 (Trade in Goods), which is the chapter on rules of origin where the Partnership Council can amend all of this Chapter and its Annexes.

Hence there is some scope for amending the agreement within the existing institutional structures.

8. The TCA does provide a mechanism for sectoral regulatory cooperation within the existing TCA (Title X). It is strictly voluntary but is open-ended:

Each Party may propose a regulatory cooperation activity to the other Party. It shall present its proposal via the contact point designated in accordance with Article GRP.14 [Contact points]. The other Party shall review that proposal within a reasonable period and shall inform the party. Art. 351

9. Despite few substantive commitments on standards or testing and certification, there are a small number of areas where the TCA creates substantive obligations with respect to standards and regulations. For motor vehicles, under TCA Annexe 11 both parties commit to following the UNECE system for standards on cars. As long as they do so each party recognises the other's testing and certification requirements for Type Approval Certification. However, if either party were to depart from the UNECE rules this conditional mutual recognition would stop. To support long term investment in the UK car sector the UK could use the mechanisms of the TCA to bindingly commit itself not to diverge from UNECE standards. The UK appears to have also decided to adopt regulations in line EU's General Safety Regulation for cars after initial doubts in a recent case.[1]

10. There are also limited commitments to maintain the same rules in areas of Pharmaceuticals and Aerospace. The core of the section of the TCA on Aviation Safety says[2] *"Each Party shall accept findings of compliance made and certificates issued by the other Party's competent authorities or approved organisations."* The rules of the aerospace agency EASA allow for some participation of non-EU states. The UK did not request membership, but the TCA does not rule out that option.

11. The TCA has institutional arrangements built in for managing existing arrangements, not unlike those in other EU association Agreements.[3] It is impossible for an observer to know how well these institutional arrangements are functioning, using the minutes of the meetings. However, the May 2022 NAO report on Regulation after Brexit[4] suggests that the superficial

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[1] https://www.horiba-mira.com/certification-homologation/general-safety-regulation-2-gsr2/

[2] ANNEX AVSAF-1: AIRWORTHINESS AND ENVIRONMENT CERTIFICATION

[3]Details of the committees and their agendas and recorded decisions are available at https://www.gov.uk/government/collections/trade-and-cooperation-agreement-governance

[4] https://www.nao.org.uk/wp-content/uploads/2022/05/Regulating-after-EU-Exit.pdf

impression given by a reading of the minutes strongly supports the conclusion that the regulatory cooperation provisions of the TCA are not being used and that this is not because the actual regulators do not wish to engage.

"*There has been limited progress on regulatory cooperation with the EU following EU Exit. The Trade and Cooperation Agreement provides for voluntary regulatory cooperation, such as exchange of information on good regulatory practices. While the regulators and policy-makers we spoke to all expressed their willingness to put this into action, they have not been able to make much progress. The EU–UK committee on regulatory cooperation has met once, in October 2021, and agreed to meet annually in future. While the UK has stated its readiness to progress specific cooperation on both chemicals regulation and competition enforcement, as set out in the Trade and Cooperation Agreement, discussions have not yet begun with the EU.*" *(para 15 p.9)*[5]

12. The published minutes show regular but relatively infrequent meetings of the Partnership Council and associated committees. Little of substance is on record as being decided. The Partnership Council minutes to date record only three decisions, two about the date when the TCA's provisional application becomes permanent and one about deletion of passenger travel records.

13. The NAO record that in Food Safety the FSA has sought a cooperation agreement with the EFSA and continued to be part of the Heads of Food Safety Agencies Group until Feb 2022. (NAO para 2.21) before being asked to leave. The TCA does not prevent such cooperation but political relations appear to have made their continuation unviable. The NAO also note that in the Chemical sector where the industry in the UK has reported concerns with the planned creation of a separate UK REACH regime, the TCA is in effect not being used:

    "*The UK government would like to establish a memorandum of understanding with the European Chemicals Agency (ECHA) to take forward cooperation on scientific and technical matters. However, as at March 2022, engagement between HSE and ECHA has been limited to issues related to HSE's role in chemicals regulation in Northern Ireland and implementation of the Protocol*.

14. The UK's membership of the European standards bodies CEN and CENELEC was reaffirmed in 2021. A new set of rules were adopted to allow the British Standards Institute to stay as a "non-EEA" member. The new status is noticed by the BSI to be consistent with the TCA. It implies that if a new European standard is agreed by a weighted majority among members it is binding on all members including the BSI. Nevertheless, the UK government can legislate separately with regard to regulations based on standards as well as conformity assessment.[6]

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[5] https://www.nao.org.uk/wp-content/uploads/2022/05/Regulating-after-EU-Exit.pdf

[6] https://www.bsigroup.com/en-GB/about-bsi/uk-national-standards-body/standards-and-eu-exit/

15. There are relatively loose institutional commitments for subsidy control and less than might have been foreseen from a reading of the non-binding Political declaration (Chapter XIV)[7]. Clearly the lower the institutional commitments, the greater the flexibility for countervailing action. For example, in addition to the general balancing measures provided for in the TCA, there are provisions for a review of duty drawback and inward-processing schemes of the two parties after 2 years of the TCA coming into force. (TCA Article 53). This may impact on the benefits of Freeports for UK firms.

PEROIODIC REVIEW OF THE TCA 2025

16. In addition to all the specific arrangements noted above Article 776 states: *"The Parties 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."*[8] If implementation came mid-2021, preparations would have to begin in 2025. A public debate is needed now and the Committee can play a vital role in informing the electorate. However, the full substance of what could be negotiated is beyond the scope of this note[9].
17. If the UK wishes to improve economic relations with the EU through the review negotiations this would likely entail the option of binding the UK to closer alignment with the EU in exchange for more certainty of market access and improved market access. Such an approach could also create regulatory predictability within the UK, which is reportedly sought by UK business groups.[10] Implementing the Retained EU Law (Revocation and Reform) Bill would clearly take the UK in the opposite direction.
18. The Trade and Cooperation Agreement does not cover any decisions relating to equivalences for financial services, the adequacy of the UK data protection regime, or the assessment of the UK's sanitary and phytosanitary regime for the purpose of listing it as a third country allowed to export food products to the EU. Indeed, these are unilateral decisions of the EU and are not subject to renegotiation of the TCA itself.[11] In the renegotiations the UK could hope to negotiate an agreement on Sanitary and Phytosanitary (SPS) products (indeed the EU has reportedly offered the UK a veterinary agreement similar

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[7] LEVEL PLAYING FIELD FOR OPEN AND FAIR COMPETITION, (Political Declaration p.14), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840656/Political_Declaration_setting_out_the_framework_for_the_future_relationship_between_the_European_Union_and_the_United_Kingdom.pdf

[8] Trade and Cooperation Agreement (December 2020), Final Provisions, Article 6. At: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22020A1231(01)
As a point of detail, there is some question over whether the review would be in 2025 or 2026. The TCA agreement was signed on Dec 24th 2020 and provisionally applied from Jan 1 2021 but the EU website states that it formally came into effect on May 1st 2021.

[9] But see for example https://progressiveeconomyforum.com/publications/reviewing-the-tca-how-to-salvage-something-from-the-wreckage-of-brexit/ and https://institute.global/policy/moving-how-british-public-views-brexit-and-what-it-wants-future-relationship-european-union

[10] https://www.ft.com/content/d6846882-1122-46f1-9fd3-e789e80ab145

[11] https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement_en#freetradeagreement.

to that with Switzerland[12]), or even possibly the free movement of some categories of workers including musicians without signing up to the entirety of the EU acquis.

19. Another area where one might expect a revision would be in the area of services. Article 126 (Review) provides that the parties "shall" review the legal framework relating to services and investment, including this agreement, in accordance with Article 776. This could be an opportunity to consider the further liberalisation of services, and also the role of movement of workers.
20. The UK has an opportunity to evaluate the experience and the reactions of business since the implementation of the TCA to negotiate an approach which could contain a different balance of institutionalised commitments and market access gains vs limits on autonomy from what it has experimented with so far.

THE NORTHERN IRELAND PROTOCOL

21. The Ireland/Northern Ireland Protocol (Protocol) is a dynamic international legal instrument whose content and scope will vary over time. Not only does the Protocol require the UK, in relation to Northern Ireland, to comply with EU law listed in the annexes of the Protocol, it also establishes processes whereby European Union (EU) law falling within the scope of Protocol can be amended or added to those annexes.
22. Firstly, under Article 13(3) of the Protocol, the Protocol must be updated to reflect any amendment or replacement of an EU act listed in the Protocol's annexes. This means that if an EU act listed in the Protocol is either amended, replaced or deleted, this will also automatically apply to the Protocol. The United Kingdom does not have the power to object or reject such changes. A recent survey found that 51 of the EU acts originally listed in the Protocol had been repealed as of 1 July 2022[13]. Whilst some have not been directly replaced, many of the repealed acts have been replaced and consolidated in new EU legislation.
23. Secondly, under Article 13(4) of the Protocol, new EU laws may be added to the Protocol if they are considered to fall within the scope of the Protocol. However, the addition of new EU acts in the Protocol is subject to a joint decision from the EU and United Kingdom in the framework of the EU-UK Joint Committee. To date, the EU and the United Kingdom have agreed to add 8 new EU acts to Annex 2 of the Protocol. These include, for example, legislation on marketing of fodder plant seed, marketing of propagating material of ornamental plants, bilateral safeguard clauses for the temporary withdrawal of preferences in EU trade agreements, measures to reduce the impact of certain plastic products on the environment and measures to control the introduction of cultural goods.

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[12] https://www.reuters.com/world/uk/eu-says-will-step-up-legal-action-if-uk-does-not-respect-agreement-2021-07-06/

[13] L C Whitten, Dynamic Regulatory Alignment and The Protocol On Ireland / Northern Ireland - Eighteen Months, Post-Brexit Governance NI Explainer, July 2022.

24. The EU's proposed Carbon Border Adjustment Mechanism (CBAM) regulation is the type of measure that may fall under the scope of Article 13(4) of the Protocol. Although the topic has been discussed by the EU and the UK, a decision has not yet been made whether the proposed EU CBAM regulatory regime will be added to the Protocol.
25. The content of the Protocol has changed significantly since its entry into force and is likely to continue changing in the future in line with the evolution of relevant EU rules. These changes are likely to present challenges for the United Kingdom and, more specifically, Northern Ireland. Firstly, the more EU and United Kingdom rules diverge from each other, the more Northern Ireland is placed in a position where trade with the rest of the United Kingdom is rendered more difficult. On this, it is worth nothing that under Article 6(2) of the Protocol the EU and the United Kingdom have an obligation to "use their best endeavours to facilitate the trade between Northern Ireland and other parts of the United Kingdom". Secondly, there are also questions surrounding a system that requires the UK, in relation to Northern Ireland, to comply with EU rules without having an input in the decision-making process. Recent proposals from the United Kingdom [14] and the EU[15] to give a greater role and involvement of Northern Ireland stakeholders in the Protocol committees is a welcome and much needed development, although it is not presently clear whether and how these mechanisms will operate in practice.
26. Further consideration must be given to the establishment of institutional frameworks that would allow UK/Northern Ireland to have a role in the decision-making processes that underpin the adoption of EU laws. Inspiration could be taken from the "observer status" granted to European Economic Area countries (Iceland, Norway, Liechtenstein) who can attend the deliberation of working groups of comitology committees that assist the European Commission in the development of new legislation [16]. Such access to the law-making process would provide an opportunity to flag potential linkages between proposed EU legislation and the Protocol and, in doing so, shape the development of EU law. This would also enhance the legitimacy and efficiency of EU legislation applicable in Northern Ireland by allowing NI/UK to have some input in the decision-making process and improving the mutual understanding of the parties of the potential implications of EU law for the operation of the Protocol.

The UK-EU relationship on environment and climate change matters

How would you assess the current state of UK-EU cooperation on environment and climate change matters?

To what extent are the UK and the EU aligned in their overall aims in this area?

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[14] HM Government, Northern Ireland: The Way Forward, July 2021.

[15] Protocol on Ireland/Northern Ireland Non Paper, Engagement with Northern Ireland Stakeholders and Authorities, 13 October 2021.

[16] European Parliament Briefing Paper, 'Internal Market beyond the EU: EEA and Switzerland', January 2010.

27. With the Trade and Cooperation Agreement (TCA), the EU and UK continue to share common interests, such as global health and environmental protection, and to cooperate to address urgent challenges posed by climate change. Nevertheless, an evident friction looms over British-EU relations concerning environmental law and climate policy. The reasons are manifold.
28. Some discrepancies between EU and UK environmental laws started to creep in during the Brexit negotiations when the UK decided to keep European environmental standards through a "level playing field" rather than a "dynamic alignment" as, instead, proposed by the EU.[17] Although adopting a "level playing field" does not necessarily imply a lack of compliance with European environmental standards, it does not favour full harmonisation between the UK and EU environmental policies either.
29. Another reason for tension between the UK and EU environmental policies lies in the different authorisation processes to introduce insecticide approved for sugar beets. Since 2018, thiamethoxam, which is a type of insecticide similar to nicotine, has been banned for outdoor use in the EU because of its harmful effects on honeybees and other pollinators. In January 2021, the UK Government departed from this EU ban and issued an emergency authorisation for a product containing thiamethoxam. Nonetheless, the UK's authorisation does not really represent a divergence from EU environmental standards, if only because the EU Members often issue similar emergency authorisations. Instead, the real discrepancy lies in the legal procedure that the UK adopts to review emergency authorisations after Brexit. Specifically, the EU Member States and the European Commission are no longer informed about the adoption of such measures. However, keeping the EU Member States and (or) the European Commission informed about the adoption of emergency measures would facilitate closer cooperation with the EU and, as such, it would also mitigate the current friction between them.
30. The UK's freedom to depart from EU environmental regulation is curtailed by some restrictions in the TCA. The inclusion of countermeasures, [18] the UK's commitment to continue to apply some general EU environmental law principles, such as the precautionary principle and the polluter pays principle,[19] and the general commitment to strive to increase environmental levels of protection[20] are key examples.
31. The inclusion of restrictive conditions in the TCA confirms that both the EU and UK are "determined to maintain and improve their respective high standards",[21] which reaffirms their ambition to achieve economy-wide climate neutrality by 2050.
32. The TCA provides for much more extensive public avenues for UK-EU cooperation on climate change and the environment that is usual in EU trade agreements but it remains much less expansive that the levels of official UK-EU cooperation on these matters before Brexit. The official avenues for

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[17] Article 1.1 of Chapter 1, Title XI of Heading One of Part Two, TCA.
[18] Article 9.4 of Chapter 9, Title XI of Heading One of Part Two, TCA.
[19] Article 7.4 of Chapter 7, Title XI of Heading One of Part Two, TCA.
[20] Article 7.2 of Chapter 7, Title XI of Heading One of Part Two, TCA.
[21] Article 1.1.4 of Chapter 1, Title XI of Heading One of Part Two, TCA.

cooperation within the TCA have further been used very sparingly. On 12 October the UK and EU met as part of the Trade Specialised Committee on Level Playing Field for Open and Fair Competition and Sustainable Development under the EU-UK Trade and Cooperation Agreement – their second ever meeting in this capacity. Critical environmental developments from both sides were on the agenda– e.g. for the UK, Environmental Impact Assessments, for the EU the new Nature Restoration Law, from both sides ETS and wastewater treatment.

33. But we can note some glaring omissions from the agenda which reveal the limited scope of such efforts. First, there is no mention in the agenda of devolved policy developments even though the UK-EU level playing field may be affected by them. Second, there is no mention of the biggest legislative development on the UK side, the Retained EU Law (Revocation and Reform) Bill which upends the very basis of this cooperation – that until now, UK and EU environmental policies are highly similar and offer a common baseline. As such the current state of UK-EU cooperation on environmental matters is likely to worsen considerably.

Should the UK seek to link its Emissions Trading Scheme (ETS) with that of the EU?

34. The UK's ETS is a direct descendent of the EU's ETS, which, applied in the UK until April 2021. Indeed, the TCA commits the parties to 'give serious consideration to linking their respective carbon pricing systems in a way that preserves the integrity of these systems and provides for the possibility to increase their effectiveness'.

35. While the EU offered the UK the chance to remain linked to the EU scheme from the start, the UK preferred to develop its own scheme on the grounds that separation allowed it to pursue more aggressive net-zero policies in the run up to COP26 – Reland and Overton (2021). The UK reduced its cap for 2021 relative to what the EU ETS would have implied (by 5%), and it varied the rules for capping prices (The Cost Containment Mechanism) and for putting a floor under them (The Auction Reserve Price). These are minor tweaks, which have not caused any major divergence between the UK and EU – see Figure 1, which plots the EU and UK prices of emission permits in comparable terms.

36. At least four factors should enter the decision of whether to formally link the UK to the EU ETS. First, if administering a separate scheme requires extra resources relative to linking, the government needs a hard-headed view of the extra cost. It does not seem as if there are significant extra costs at present, but the Committee would be well advised to ask for a formal assessment, which can be repeated, say, every year.
37. Second, the ETS imposes implementation costs on firms. Recalling that many firms still operate within both the EU and the UK, any serious divergence in terms of how emissions are measured, verified and reported would impose extra costs on them. As the larger market, one would expect that the EU approach to these things would become the norm and that meeting the UK requirements would be seen as additional burden. Such costs would presumably affect the costs of operating in the UK (a competitive disadvantage), possibly even to the extent that some firms would merely cease to operate in the UK.
38. The third factor is the potential stresses created if the UK and EU prices of permits diverge significantly. The ETS is ostensibly a domestic policy and so parity with trading partners would seem not to matter much, but international trade is an unavoidable complication. First, if a firm can supply third markets from either the UK or the EU, the sourcing of its exports to such markets could be affected by relative emissions prices.
39. Also, trade between the EU and the UK could be affected by emissions prices. Managing this is the subject of the Carbon Border Adjustment Mechanism – see answer to question 12 below.
40. Fourth, and perhaps most important, linking ETS schemes is the only way that the Commission has identified for the UK to be exempted from EU CBAM charges on a country-level. Even if ETS prices remain identical, the EU CBAM will impose significant administrative costs on UK exporters, and also creates specific difficulties in Northern Ireland. We set out these issues below under Q. 12.

A proposed EU Regulation on a Carbon Border Adjustment Mechanism (CBAM) potentially applies to Northern Ireland under the terms of the Protocol. Focusing on its wider policy implications, what impact would the EU CBAM have on policy in Great Britain?

General policy- and firm-level impacts

41. The details of the EU CBAM are not yet fully determined. However, the broad parameters are fairly clear, and this discussion is based on our understanding of these. The analysis draws heavily on Lydgate et al (2022, Section D).[22]
42. The CBAM is the natural extension of the EU ETS to try to ensure that the domestic charge for emissions that EU firms face in order to produce in the EU is also faced by firms outside the EU if they supply the EU market. It is best viewed as an attempt to ensure that for covered products, a difference

[22] Trade policies and emissions reduction: establishing and assessing options (2022) Lydgate et al: https://www.theccc.org.uk/publication/trade-policies-and-emissions-reduction-establishing-and-assessing-options-uk-trade-policy-observatory/

in the 'tax' faced by different suppliers to the same market does not distort trade. 'Tax' is put in quotes because the ETS is not strictly a tax, although to all intents and purposes it behaves like one for the firms that face it. The case for the CBAM is more commonly expressed in terms of avoiding the 'carbon leakage' that might arise if EU suppliers, facing an emissions tax, lost sales to more polluting overseas suppliers who did not - that is, as an approach to avoiding competitive disadvantages arising from EU domestic policy. [EU suppliers may also lose out to untaxed suppliers in third markets, but that is not a problem that a pure CBAM can solve.]

43. An EU CBAM would level a tax on EU imports of covered goods from the UK. If it were perfectly administered to all sources of imports at the same rate as the ETS taxed emissions from EU producers, its effect would be to shift EU demand for covered products from more carbon-intensive to less carbon-intensive suppliers. [And if all suppliers had the same carbon-intensity, its effect on market shares would be slight, because the prices of all suppliers would go up by the same amount.] In addition, because the price of covered product would rise relative to those not covered, it may cut the demand for the former products.

44. Thus, the introduction of a CBAM could reduce some UK sales in the EU. Firms losing sales would have some incentive to use 'cleaner' production methods and/or shift their focus to 'cleaner' goods. While there would be some losses/inconvenience for UK industry, the overall outcome would be consistent with UK climate objectives – that is, reducing emissions.

45. As documented above, the ETS price between the UK and EU is similar, and the CBAM proposal allows exporters to deduct carbon prices paid domestically from what is owed to the EU. However, the administrative burden on UK firms in covered sectors exporting to the EU will be considerable. It involves registering with an authority, supplying documentation stating the carbon emissions from their products, and receiving third-party certification. These requirements also entail considerable expense.

46. Also, the EU CBAM will not be administered perfectly and so there are likely to be larger shocks in specific cases. This is not to accuse the EU of planning a biased policy. Indeed, it is evident from all the European Commission's writings that it is going out of its way to make the policy even-handed – e.g. European Commission (2021).

47. The problem is that the CBAM is monumentally complex to administer, and, as Lydgate et al argue, this creates a trilemma for which there is no perfect solution: ideally we aim for an environmentally ambitious scheme, that is non-discriminatory (and possibly offers some concessions to poorer countries) and which is cheap and easy to apply in practice. The result is that any actual CBAM will be partial in coverage in terms of sectors, scope of emissions, industrial processes included in the calculation of emissions and yet is still likely to be very costly for firms in terms of information collection and audit and for bureaucracies to verify. For example, whereas the EU ETS covers approximately 11 thousand firms/plants which have to collect and present evidence of emissions, the CBAM is administered on the border by customs officials, using a product classification with 10 to 12 thousand product headings potentially supplied by up to 200 foreign countries (and presumably many more firms) each of which ideally would be able to make

the case that its product was less carbon-intensive than the norm. The scope for lacunae, information distortions, etc is massive and with these will come arguments for exceptions and about unfair discrimination all of which will create friction and, probably, policy response.[23]

48. The introduction of EU CBAM might lead to trade diversion, when firms who normally export to the EU seek alternate regional markets that don't impose the same pricing and regulatory burden.

49. These factors, taken together, mean that despite the UK's similar policy orientation and the lack of significant direct charges, the introduction of EU CBAM will likely lead to significant pressure from UK firms for the UK to take policy action to offset negative impacts of CBAM through for example introducing UK Border Carbon Adjustment taxes and negotiating with the EU to try to lessen the administrative burden of CBAM on UK exporters.

The significance of ETS-linking, and applicability to Northern Ireland

50. As Lydgate et al (2022) wrote (p. 72)
"The EU Commission, in its CBAM proposal, requires countries to link to its ETS for exemption [from the CBAM] on a country-basis. Switzerland is the only country that has successfully linked an Emissions Trading Scheme with the EU, a process which notoriously took ten years (though this was the first linkage negotiation and the timeline is not necessarily indicative). The difficulties of merging national carbon pricing mechanisms stem from a number of sources, including the EU's need for a high degree of confidence in the institutional and regulatory basis of the ETS."

51. The UK seems ideally positioned to avoid some of these difficulties due to the common starting points of the EU and UK ETS, though linking sooner rather than later, when more divergence may have occurred, will be easier. More significantly, it requires that there is interest in cooperation on both sides.

52. In its Joint Committee meeting of the TCA on 8 October 2021, the EU affirmed that 'decarbonisation efforts of third countries would be taken into account by the EU CBAM', which suggests there may be some openness to waiving charges based on something other than ETS linking, though this remains highly speculative at this point.

53. Under Article 9 and Annex 4 of the Ireland/Northern Ireland Protocol electricity generators located in Northern Ireland are required to participate in the EU ETS. The aim of this requirement is to ensure the continued operation of the single wholesale electricity market in the island of Ireland. The upshot is that with regard to electricity Northern Ireland is subject to a separate ETS regime compared to the rest of the United Kingdom. In other sectors the domestic carbon price for CBAM goods in NI is set by the UK ETS. The EU's CBAM proposal does not exempt the Northern Ireland from the application of CBAM rates meaning that the EU CBAM fee would apply to

[23] Some commentators – e.g. Martin (2022) - argue that in the face of these complications the only solution is to give up on the CBAM and instead look to a comprehensive regulatory regime to manage emissions both domestically and in international trade. Lydgate et al argue, on the other hand, that regulation would be even more complex and less efficient and that what is required is intensive, international, analysis to overcome some complications and reach acceptable compromises on the remainder.

imports into the EU originating from the UK, including NI. This would run counter to one of the central aims of the Protocol which is to avoid checks on North-South trade in the island of Ireland.[24] This would run counter to one of the central aims of the Protocol which is to avoid checks on North-South trade in the island of Ireland.

54. Linking the United Kingdom ETS to the EU ETS system is the simplest way of ensuring that CBAM fees on goods traded between Northern Ireland and the Republic of Ireland are not required. It is also a solution that is contemplated under Article 392(6) of the EU-UK Trade and Cooperation Agreement which, as set out above, provides that parties "shall give serious consideration to linking their respective carbon pricing systems in a way that preserves the integrity of these systems and provides for the possibility to increase their effectiveness".

The UK Government is currently consulting on introducing its own CBAM. If it did so, what would be the implications of this for the relationship with the EU?

55. The UK needs to worry that firms that feel obliged to meet EU bureaucratic requirements just may not be bothered to repeat the extremely complex administrative exercise outlined above for a far smaller economy.

56. The obvious answer is to seek to operate common systems with the EU. This might be informal – the UK merely adopting EU norms and reporting systems, but there would still have to be parallel administration systems in the UK and, as the UK has discovered with other border measures such as sanitary and phytosanitary regulations, the EU will offer no concessions for mere de facto alignment. UK exporters to the EU will face the 'full force' of the CBAM.

57. A far more efficient solution would be to seek a genuinely joint system, whereby the UK and EU would mutually recognise each other's data, processes, reporting, etc. As well as ETS-linking, addressed under Q 12 above, this would probably involve the UK de facto adopting EU norms. However, even this would offer only administrative benefits: if the UK and EU differed in the coverage of their ETSs and/or significantly in the carbon prices they charged, the logic of the CBAM is such that border adjustments (i.e. fees charged on imports) would still need to be applied.

58. This takes us to the ultimate efficiency for firms and for administrations. The full alignment – integration – of the UK ETS/CBAM with the EU's. The logic of the CBAM is to ensure that imports of products in the sectors covered by the ETS pay the same price for emissions as do domestic producers (via the ETS). If the two ETSs/CBAMs were perfectly aligned, and formally recognised as being so, there would be no need for border adjustments on UK-EU trade. Trade in either direction would merely bypass the CBAM altogether and a major potential source of friction would be obviated.

59. As well as surrendering discretion in its own CBAM, the UK would still need to invest strongly in the CBAM-related UK-EU relationship and would still incur

[24] Article 1.3 NI Protocol

some administration costs. The loss of discretion would mean that the ETS/CBAM was not perfectly tailored to the UK economy, but our recommendation is that such disadvantages would be dwarfed by the advantages of reducing the frictions on UK-EU trade (in both directions).

Are there any changes you would like to see the Government pursue as far as the UK-EU relationship on environment and climate change is concerned?
To what extent would these require negotiation with the EU?

60. There appears to be a disconnect between the UK Government general legislative approach to delivering Brexit (REUL Bill), the UK Government's environmental agenda, its cooperation with the EU and its cooperation with devolved administrations. This leads to lack of coherence detrimental to addressing joint climate and environmental challenges. Clearer alignment, ideally toward greater ambition on the environment, between REUL Bill, environmental policy and relations with devolved administrations is up to the UK Government – and would open the door to smoother and more useful cooperation with the EU in areas of UK interest.
61. The TCA is the only trade agreement in which climate change is acknowledged as an essential element of a trade treaty. Nevertheless, in line with almost all trade agreements, there is a (far too) strong emphasis on trade-related aspects of the environment and climate change. For instance, non-regression clauses prevent either party from weakening their environmental or climate protection "in a manner affecting trade or investment".[25] In this regard, a thorough analysis of several WTO Agreements shows that this trade-first approach originates from an implicit prima facie pre-eminence of free trade under the WTO. This is in spite of the fact that the Preamble of the WTO Agreement lists numerous overriding and paramount objectives, including sustainable development and environmental preservation. Free trade is in fact neither the only nor the overriding WTO purpose. And yet, the TCA seems to ascribe greater importance to trade liberalisation than environmental protection, including climate change.
62. Given that neither WTO law nor the EU provides criteria to solve the implicit prima facie pre-eminence of free trade under WTO Agreements, including the TCA, The UK might show its capacity to be a leader on environmental matters and suggest the following key changes.
    i. ***Enhancing the implementation of the precautionary "principle"***: The COVID-19 pandemic demonstrates the importance of taking precautionary actions to reduce further risk to humans, even when uncertainties remain about, in this case, the transmission and precise effects of the virus. The precautionary principle embodies the idea to adopt a pro-active (rather than *reactive*) approach to environmental issues and, to some extent, lowers the evidentiary threshold. Although its formulation and interpretation are still debated, the precautionary principle is a well-established international environmental law principle, which was sealed with its incorporation in the 1992 Rio Declaration.

[25] Article 7.2 of Chapter 7, Title XI of Heading One of Part Two, TCA.

This principle, which calls for actions at an early stage, even when uncertainty as to the harmfulness of a given product or procedure remains, is deemed to be "a central plank of community policy".[26] And yet, the UK was reluctant in referring to the precautionary principle in the TCA that, instead, heavily mentions the need to adopt a precautionary "approach". The reason surely does not lie in the fact that the precautionary "principle" is considered too European-flavoured. Rather, in line with other states, such as the US, it is reasonable that the UK considers the term "approach" more flexible than "principle", which would arguably entail a legally binding nature. Said that, in note 1 of Article 356 of the TCA, the EU assures that "[f]or greater certainty, in relation to the implementation of this Agreement in the territory of the Union, the precautionary approach refers to the precautionary principle".[27]

Even if the debate over the terminology (i.e., principle *vs* approach) is sometimes seen as a semantic squabble, agreeing on stronger inclusion of the precautionary principle would have favoured full alignment between the UK and EU environmental standards. At this point, the UK Government might consider taking a first step towards closer cooperation with the EU in environmental matters by enhancing the adoption of precautionary actions, which remains a great challenge. In this regard, a study conducted in 2019 by the European Environment Agency (EEA) on 88 international cases underlines a trend to overlook warnings about the harmfulness of some products or activities to human health or the environment.[28] This echoes a tendency to perceive cases involving precautionary measures as *false positives*. However, the EEA study concludes by showing that only four cases fulfilled the definition of a regulatory *false positive*, which can be described as a case in which regulatory authorities suspect that an activity poses a risk and act upon this suspected risk by implementing measures based on precaution, but these later turn out to be unnecessary.[29] Against this background, an effective adoption of precautionary measures in the future might further strengthen the UK-EU cooperation and improve their alignment in the shared aims to safeguard the environment and address climate change issues through the adoption of precautionary actions.

ii. ***Lowering the threshold of evidence to implement rebalancing measures*:** According to Article 9.4.2 of the TCA, "[i]f *material* impacts on trade or investment between the Parties are arising as a result of significant divergences between the Parties [...], either Party may take appropriate rebalancing measures to address the situation. Such measures shall be restricted with respect to their scope and duration to what is strictly necessary and proportionate in order to remedy the

[26] Commission (EU), Communication from the Commission on the Precautionary Principle (Communication), COM(2000) 1, 12.

[27] Article 356, note No 1, of Chapter 1, Title XI of Heading One of Part Two, TCA.

[28] European Environment Agency, Report No 1 (2019) Late Lessons from Early Warnings: Science, Precaution, Innovation.

[29] Ibid.

situation".[30] Whilst it is welcome that the TCA includes a rebalancing process allowing parties to implement countervailing measures where the above-mentioned conditions are met, the requirement of material impacts sets a quite high evidentiary threshold. Accordingly, it is unlikely that future divergence will qualify for rebalancing measures. Lowering the evidentiary threshold would, in turn, enhance an effective implementation of rebalancing measures and, simultaneously, support the adoption of a precautionary approach, which features heavily in the TCA and, as mentioned above, can lower the evidentiary threshold.

iii. ***Re-designing legal mechanisms to enable substantial enforcement of environmental provisions:*** The provision of well-structured enforcement mechanisms is crucial to supporting a real impact of environmental provisions. Although the TCA requires cooperation between the European Commission and the supervisory bodies of the UK on "the effective monitoring and enforcement of the law with regard to environment and climate",[31] the dispute settlement mechanism contained in Title 1 neither applies to *the environment chapter 7* nor *the trade and sustainable development chapter 8.* In these cases, the TCA provides mechanisms of consultations between parties as well as with a panel of experts.[32] This is a weak and, to some extent, uncertain mechanism of enforcement, not least because Article 9.2.18 is unclear on how to solve a situation where a panel of experts establishes that one party has not implemented recommended measures to address a non-conformity which does not impact on trade. Accordingly, re-designing mechanisms to enable substantial enforcement of environmental measures might be conceived as a necessary step to provide environmental-related provisions with a real impact and, as a result, to strengthen the UK-EU relationship on the environment and climate change.

63. In suggesting these changes, the UK might conduct pioneering work and show the world that keeping high environmental standards remains a British priority - in spite of Brexit. This, in turn, would improve the UK-EU relationship on the environment and climate change matters and, at the same time, it would prove that the UK can be a World leader in fighting the climate crisis.

64. All potential amendments to the TCA would require a negotiation with the EU.

How important are cultural and educational links to the overall UK-EU relationship and the UK's soft power?

The UK Government opted not to participate in the EU's Erasmus + programme for student exchanges. What has been the impact of this decision on universities and students?

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[30] Article 9.4.2 of Chapter 9, Title XI of Heading One of Part Two, TCA (emphasis added).

[31] Article 7.6 of Chapter 7, Title XI of Heading One of Part Two, TCA.

[32] Chapters 7 and 8, Title XI of Heading One of Part Two, TCA.

65. From the 2021/22 academic year onwards, EU citizens can no longer claim home-fee status or access tuition fee loans in the UK. They must now also comply with visa and immigration regulations. This has directly impacted EU applications to UK universities and according to UCAS, EU citizen applications to UK universities fell by 40% in 2021 compared to the previous year. Recent data for the 2022 application cycle shows a further 19% drop from 2021. As an example, the University of East Anglia confirmed that EU student numbers dropped by 50% in 2021, which was the picture 'across the sector nationally'. The decrease in EU applications has been backfilled by an increasing number of applications from prospective students in other parts of the world, such as the USA. Applications from outside the EU increased by over 12%, to reach a record high of over 111,000.

66. It is important to note that the drop of EU citizens at UK universities is not only across the student population but also across the academic staff.

67. Prior to Brexit, there were approximately 18,000 UK students who went to study or work abroad each year through the Erasmus+ programme. The programme was perceived by many universities as highly beneficial. For example, Dr Geoffrey Kantaris from the University of Cambridge highlights that 'Erasmus was the backbone of our Year Abroad, enabling wide participation in a range of approved activities, principally University study and work placements. The benefits are not just linguistic, but also help students to expand their horizons culturally'.

68. After Brexit, UK students must now go on shorter periods abroad (e.g. up to 90 days for every 180 days) or apply for visas. The administrative burden has increased for students who must now consider immigration requirements and any applicable qualifying criteria (e.g. language testing). Many higher education institutions in the UK had long-lasting partnerships with Erasmus+ partner universities and institutions, which had to be ended after Brexit. These aspects raise concern with universities. As highlighted by Professor Johanna Waters from University College London, while exiting from the Erasmus programme and registering for the Turing Scheme 'organisations are expected to bid for funding to carry out the scheme. The administrative burden on individual institutions to set up exchange arrangements to replace Erasmus is likely to be huge'. There are also many concerns about long-term impact of not participating in Erasmus. As mentioned by Professor Paul James Cardwell and Erasmus coordinator at the University of Strathclyde in Scotland: 'My fear is that in coming out of Erasmus, those students are in the long term not going to have similar opportunities'.

69. In terms of student exchange numbers, as a part of the Erasmus programme there were approximately 30,000 EU students coming to the UK each year. As highlighted by experts, after Brexit these students not only no longer have an opportunity to travel to the UK as a part of the scheme, but also if they are offered study abroad opportunities outside Erasmus, they often decide to opt for other destinations, including the USA, Germany and Spain, among others. Additionally, as highlighted in the news, UK universities will also lose further education EU students, who decided to continue their studies in the UK after visiting the country during Erasmus.

70. Currently the EU is not granting access to Horizon Europe, which is the EU's central programme for the funding of research an innovation. UK universities

have established deep and successful partnerships with many European Universities over the years. The lack of access to this programme is likely to seriously impact not just on the levels of funding that UK university research programmes may get, but to collaboration and joint research with researchers in Europe, and also in the ability to hire researchers in the UK from the EU. We strongly recommend that the UK negotiates with the EU continued access to Horizon Europe.

Main sources:

UK universities hit by 40% fall in EU students since Brexit | The Independent
Thousands of British students in limbo with post-Brexit visa chaos | Students | The Guardian

Turing versus Erasmus: What's the difference? | eu+me (euandme.com)

Universities see EU students halve post-Brexit as non-EU numbers rise - BBC News

Opinion: What the Turing scheme must do to ensure UK students don't miss out | UCL News - UCL – University College London

Cambridge responds to UK's exit from Erasmus Programme | Varsity

The UK Government opted not to participate in the EU's Erasmus + programme for student exchanges. What has been the impact of this decision on universities and students?

71. The Turing Scheme, often referred to as an 'Erasmus replacement' post Brexit, is a UK global programme for studying, working, and living abroad. For the academic year 2022-23, the Turing Scheme provided £106m in funding, which is relatively similar to the UK Erasmus+ grants (€144m) in the pre-pandemic 2018-2019 academic year. In terms of individual students' funding, monthly grants are relatively similar, with both programmes giving additional grants to students from underprivileged backgrounds. Also, both schemes focus on Education and Training, Higher Education and Schools.
72. In terms of the number of students, Erasmus+ enabled approximately 18,000 students to go abroad. The Turing Scheme performance is more prominent on these metrics, allowing 38,700 UK students to study or work abroad in the 2022/23 academic year. However, the main difference between the programmes is that Erasmus + was an exchange programme, Turing Scheme is a one-way programme. In other words, on Erasmus+ there were approximately 30,000 EU students who came to the UK each year, whereas on the Turning Scheme there will not be any EU students hosted in the UK as a part of the programme. Such a decision can have a significant impact on cultural exchange and raise a question about the long-term sustainability of the Turing Scheme. Additionally, it is worth mentioning that both programmes are open to all students, however, the Turing Scheme focuses more on allowing the most disadvantaged students to go abroad. As for the 2022/23 academic year, 20,000 (52%) placements approved for funding in the UK-based scheme were participants from disadvantaged backgrounds. This is a positive move.

73. Another main difference between the schemes is that Erasmus+ was based on an exchange to approximately 34 countries, a great majority of them being EU countries. The Turing Scheme, however, gathers nearly 160 countries across the world, with US, Spain, Germany, Canada and Australia being the most popular destinations for higher education students (based on the number of students travelling there). It is crucial to note that because of the more distanced destinations on the Turing Scheme, students may be expected to spend more on travelling and other expenses. Moreover, unlike the Erasmus+ programme before Brexit, UK students travelling abroad on the Turing programme, need to deal with immigration regulations in the EU. For instance, since Brexit, UK nationals are only able to stay in an EU country for 90 days out of every 180 days without a visa. Given this, the government published guidance for UK citizens who aim to study abroad and urges students to consider issues such as health and insurance before their placements.

	ERASMUS+	**TURING SCHEME**
Grants	€144m as of academic year 2018/19	£106m as of academic year 2022-22
Programme status	Exchange	One-way programme
Approximate number of UK students going abroad per year	18,300	38,700
Approximate number of EU students coming to the UK per year	30,500	Not Applicable
Number of travel destination countries	34	160
Scope of travel destinations	Europe, including just a few non-EU countries such as Norway and Iceland	Global
Students' profile	All students	All students, particularly the most disadvantaged (around 50% of all students on the scheme)
Monthly grant per student	Similar (approximately £350-£500)	Similar (approximately £350-£500)
Additional grants per student from underprivileged	Yes, additional €120 per	Yes, additional £110 per

background	month	month
Tuition fees	Waived	Waived
Travelling Costs	Students with several disabilities or exceptional special needs may be entitled to extra funding to cover associated costs on the Erasmus+ placement	Funding for travel costs for disadvantaged higher education students
Immigration Implications for UK nationals	In most cases, not applicable	In most cases, crucial to consider visa and immigration implications

Main sources:

What's the difference between the new Turing Scheme and Erasmus? - The Education Hub (blog.gov.uk)
Turing versus Erasmus: What's the difference? | eu+me (euandme.com)
Turing Scheme: What is the Erasmus replacement? - BBC News

How has Brexit impacted school visits between the UK and the EU?

74. In terms of school visits, during the Erasmus+ programme, in the 2018/19 academic year, 3,417 school students were benefiting from the programme. With the Turning Scheme, there is a promising opportunity for approximately 5,000 UK nationals to go abroad. Most popular destinations include France, Spain, the USA, China and Japan. However, as above, it is crucial to note that the Turing Scheme is just a one-way programme, which prevents UK students to share their culture with EU peers.

75. According to a recent House of Commons publication, people who organise school trips to and from the European Union say it has become more difficult since Brexit. Before Brexit, children travelling on a school trip between EU countries could travel without visa or passport, no matter their nationality.

76. In addition, after post-Brexit changes to immigration rules, EU schoolchildren cannot travel anymore on group passports. In addition, non-EU citizens who would like to participate in such trips, require a visa, after the government has withdrawn the non-EEA school children guidance, which allowed such citizens to attend a group trip without visa requirements. Research shows that due to the following immigration complexity and uncertainty, many EU schools decide to go to other destinations including Malta, Spain, Germany or France. As highlighted by Edward Hisbergues, the sales manager of a leading French operator PG Trips, a company which helps to organise school trips – 'We've already seen a big fall-off in interest. My business was 90% UK, 10%

Ireland; now it's all about Ireland. Schools are inquiring about visits to the Netherlands or Malta.' Also, research highlights that post-Brexit due to increasing immigration costs, school student exchanges would benefit children from more privileged families, who can afford additional expenses related to such expenditures.

77. Looking at the actual numbers for overseas visits by state and academy schools in England, in 2019 there were 13,058 school visits with a total number of 522,320. Between January and August 2022, the number of visits fell significantly to 2,527, with only 101,080 pupils visiting the UK.

Main sources:

What's the difference between the new Turing Scheme and Erasmus? - The Education Hub (blog.gov.uk)
Turing versus Erasmus: What's the difference? | eu+me (euandme.com)

Post-Brexit immigration rules lead to collapse in EU school trips to UK | Financial Times (ft.com)

How does Brexit affect EU school trips? (parliament.uk)

What has been the impact of the TCA's mobility provisions on UK businesses and individuals, and particularly on young people?

Individual impacts:

78. Young people no longer automatically have the right to work and move freely into the EU. They must enter complex immigration systems where they will often need to meet key qualifying criteria around language, education, salary, and other qualifying criteria to be eligible for work. These are not usually designed for them, but rather skilled workers entering into labour markets with previous experience.
79. They face something of a double whammy, in that it is difficult for them to enter some countries in the EU with the purpose of looking at career opportunities. They face more restrictive immigration and travel systems and are now subject to scrutiny as to the purpose of their trip. If a border officer considers that they are travelling for a reason not permitted as a business visitor, they can refuse entry.
80. UK nationals must also be mindful of the number of days they are spending in Member States for both business and personal reasons. The need to track days accurately will become increasingly important once the Schengen countries introduce the European Travel Information and Authorisation System (due to launch in November 2023). This is because the more robust control of Schengen borders under the ETIAS will mean that day count is more rigorously enforced around the 90 in 180 day rule.
81. If a UK national frequently travels to an EU country for business purposes, the authorities may deem that the individual is working in the country without correct authorisation/contract and this could result in fines or penalties or in severe cases, the individual might be asked to leave the country and could be barred from re-entering or obtaining any future work

authorities. Breaches of immigration rules are taken seriously, and while they can often go undetected, where discovered can lead to the action detailed above.

Recognition of professional qualifications:

82. The automatic recognition of professional qualifications for UK nationals in the EU has ended. Businesses whose services require their employees to possess professional qualifications (e.g., engineers, architects and lawyers) will need to consider the status of their professional qualifications and whether their qualification meet the required standards separately in each Member State. Meeting these requirements may mean registering with an EU approved professional regulator or re-qualifying. The silver-lining is that the Agreement did agree a framework where the regulators and professional bodies are able to come together to negotiate mutual recognition agreements in the future, which might hopefully improve over the coming years.

Business impact:

83. Employers must understand and comply with complex immigration systems and business visitor regulation which differ across the Member States. There are time and cost considerations that need to be accounted for. Pre-Brexit, UK nationals could enter the EU member states and perform productive work. Now, this isn't possible, either the UK national must restrict their activities and time spent or a work permit/authorisation needs to be obtained. In a survey undertaken in early 41% of firms responded that they would be highly affected by the new rules for business visitor visas, while another 21% assume they will be moderately affected by the changes (https://www.businessldn.co.uk/sites/default/files/documents/2021-04/Beyond-the-headlines.pdf).
84. If UK nationals are on a business trip and linked to the local entity, the authorities may deem that these individuals are working without authorisation. This may result in fines are in severe cases, the authorities may bar the company from sponsoring foreign nationals in the future. This may also lead to reputational damage in case the company is deemed to be adversely following immigration rules and regulations.
85. The TCA included the ability of companies located in the UK or the EU to transfer certain employees to work in the host country as an intra corporate transferee. The maximum duration of the transfers from the UK to the EU is capped at three years and from the EU to the UK is capped at five years. However, each Member State can decide whether there is a need for a formal visa.
86. There are certain requirements that must be fulfilled in order to qualify as intra-corporate transferees. For example, senior managers, experienced specialists or paid trainees. The qualifications are assessed by taking into account knowledge, experience and professional qualifications.
87. The TCA aims to facilitate the movement of ICT's by exempting them from quotas and labour market tests. However, work permit/authorisation is still needed.

Cultural sector

88. Some EU Member States allow a visa exemption for performers, for example Austria, Belgium, France and the Netherlands, but this is only for a limited number of days. However, countries like Bulgaria, Czech Republic, Portugal and Spain do not allow a visa exemption for UK nationals. This now means there is a cost associated with UK nationals wanting to move around the EU. A survey conducted by the House of Commons showed that 81% of musicians showed concerned that touring around Europe is now not financially viable and 60% considered leaving the profession.
89. In order to obtain a work permit/authorisation to work in the EU, it is often a requirement to show professional qualifications, skills and a monthly minimum salary. However, in the cultural sector, it is often difficult to prove skills and qualifications to the immigration authorities. In most cases, individuals from the cultural sector would be seen as a low skilled worker with a low salary. Research shows that the density of skills shortage vacancies (defined as % of vacancies that cannot be filled due to a alack of the available skills in a given region, company or sector) in the UK within the culture sector is at 25% compared to the financial services sector which is at 3%.
90. Pre-Brexit, creative businesses used the EU labour market to access skills and talent that was not available in the UK. The Migration and Skills Statistics sub-group of the Creative Industries Council's conducted a survey which revealed that in January 2018, 22% of employers in the creative sector hired at least one foreign national. In addition, the research also found that this statistic was higher for larger organisations, with 79% hiring foreign nationals.
91. In addition to the above, loss of access to other funds such as Erasmus+, Europe for Citizens, and the European Structural & Investment Funds has also impacted the arts and cultural sectors meaning that there are less opportunities for individuals.

To what extent is it possible to distinguish between the impact of Brexit-related restrictions to business mobility on the one hand, and Covid-related travel restrictions and working patterns on the other?

92. Both Brexit and Covid have made business travel increasingly complex and as a result has led to a reduction in business travel globally.
93. However, there are some key differences on the impact that Brexit and Covid have had on business mobility. For example, since travel restrictions around the world have begun to lift, we have seen an increase in business travel (although not to pre-pandemic levels) as business leaders realise the value of face-to-face interaction.
94. With regards to Brexit, individuals are restricted by two factors, activity-based restrictions and time-based restrictions
    - Activity-based restrictions: the scope of activities an individual can undertake when entering a country will vary depending on the country

they are entering, but generally a business visitor is not permitted to undertake 'productive' or 'hands on' activities as a business visitor
- Time-based restrictions: a business visitor should be entering a country with temporary and non-immigrant intent. In many jurisdictions, there are now limitations to the amount of time an individual can remain in the country as a business visitor

95. Covid related restrictions are not related to activity or time. The restrictions imposed were due to a number of reasons, for example, where the individual was travelling from (was there a high rate of infections). These restrictions resulted in heightened admission criteria, mandatory stay home notices and quarantine orders for incoming travellers and temporary suspension of existing visas. Although these restrictions affected global mobility at the time and the future of global mobility, the restrictions were only temporary.

Have Brexit-related restrictions to mobility become more apparent as international travel has resumed?

96. As travel restrictions have lifted, employers are becoming more aware of the Brexit related restrictions. UK nationals travelling to the EU on a business trip must ensure their activities fall within the local business visitor rules – if they don't, then a work permit may be required before they can enter and work in the country. Employers will have to adjust their budgets and timelines to account for potential work authorisation processing times and costs.
97. For most types of travel and immigration, employers must understand and comply with complex rules which differ by each Member State. Overstaying the 90-day rule and/or performing non-permitted business visitor activities may result in fines/penalties, reputational damage and being banned from the country. As a result, employers will need to monitor and track business travellers going into the EU and ensure that they are aware of the limitations of what they can do and how many days they can spend in an EU country.
98. Now that there are added barriers for EU nationals to visit the UK, there has been a reduction in short term travel to the UK. According to the ONS, there were an estimated 69.5 million travellers arriving from outside the Common Travel area in the year ending June 2022. This is compared to 146.3 million in 2019. Unfortunately it is difficult to access passenger travel data on EU v non-EU nationality after 2019 with the removal of landing cards and the introduction of e-gates.
99. Skilled migration data shows that there are more visas being granted to highly skilled workers. Worker visas accounted for 67% of all work-related visas granted (total of 216,450 granted). This is a 96% increase when compared to equivalent routes in 2019, with the growth driven by the introduction of the 'skilled worker' visa in 2020. These increases can in part be attributed to the requirement for EEA and Swiss nationals to apply for entry clearance. In the year ending June 2022, there were 32,413 work related visas granted to EEA and Swiss nationals coming to the UK (representing 10% of all work related visas). The work route with the largest number of EEA grants was the skilled worker visa with 13,624 grants. https://www.gov.uk/government/statistics/immigration-statistics-year-ending-june-2022/why-do-people-come-to-the-uk-to-work

100.

Impact of the war in Ukraine:

101. As of 30 June 2022, a total of 151,482 applications were received, with 133,854 visas being granted across both Ukraine visa schemes in the UK

- The Ukraine Family Scheme had 47,378 applications by 31 March. Of these, 43,325 applications had been granted.
- The Ukraine Sponsorship Scheme had 104,104 applications and 90,529 grants.
- There were also 14,098 extensions granted, 6,436 under the Ukraine Family Scheme and 7,662 under the Ukraine Extension Scheme.

102. UKVI received a significantly high volume of visa applications for Ukraine nationals since the invasion which has resulted in longer processing times for visa application to be approved. They prioritised the processing of visa applications from Ukraine nationals which resulted in delays for individuals and businesses globally at a time of acute talent challenges. All priority services for entry clearance applications were temporarily suspended from march to the 12 August 2022 so that resources could prioritise applications from Ukraine nationals. Whilst this was appropriate, it led to applications taking many months and UK employers unable to maximise their productivity and growth.

Are there any changes you would like to see the Government pursue as far as UK-EU mobility is concerned?

To what extent would these changes require negotiation, either with the EU or bilaterally with Member States?

103. There are several changes the Government should pursue and all will require negotiation either with the EU or bilaterally with Member States. Employers are concerned about the process, the cost and qualifying criteria when it comes to business travel or mobility. Currently, the system is dominated by high levels of administration, high costs, and lengthy timeframes. With the end of freedom of movement, the UK now relies on a demand-led immigration system - and given the high costs and administrative burden, it is making it increasingly difficult for UK businesses to attract / retain international talent.

104. A practical implementation of commitments made in trade agreements that help to simplify the processes and make the UK an attractive talent destination would be welcomed. **Key recommendations** (provided in the following papers written in partnership with TheCityUK: International Trade Agreements and UK Immigration Policy: A Practical Blueprint for Evolution, and with the City of London Corporation: Building an immigration system for the future of work) are summarised below.

- The UK should focus on clarity for short-term business visits and include a detailed list of prohibited and permitted activities when negotiating trade agreements. This will provide UK businesses increased certainty when sending British employees on business visits into EU countries. UK business travellers are not used to time-based, nor activity-based restrictions when it comes to business travel into the EU, therefore, increased education and clarity is required for this population.
- Future trade agreements should also include a detailed outline on how commitments will be implemented. This will minimise implementation blocks frustrating the purpose of the commitment leading to trade distortion. Simplified and more consistent immigration routes for service suppliers will reduce friction associated with delivering and receiving cross-border services.

- The UK should also look at implementing a hybrid immigration route that sits somewhere in between the sponsored work visas and the visitor routes due to the high level of costs, timeframes and administration associated with applying for a work visa. This can, but does not have to be negotiated on a mutually agreed basis as part of trade agreements. Applicants would receive a Certificate of Sponsorship by their UK sponsor, which would enable them to perform productive work for up to six months.
- The Government should also agree reciprocal youth mobility arrangements with all trade partners, but particularly the EU. The UK Youth Mobility scheme (YMS) provides a popular alternative to the sponsored worker system, which involves an administrative and costly process for employers. Agreeing similar arrangements with the EU can help mitigate some of the over-reliance on this system that the end of the free movement has resulted in. As Youth Mobility visa holders can proactively move to the UK, widening the scope of the route would help support a significant pool of UK-based international talent, leading to a lowering of the overall burden on UK employers. It would also help UK employers fill the skills gaps, at all skill levels, that we are currently experiencing. This measure would go furthest to address the particular gaps covered in this paper. It was raised in the original White Paper on post-Brexit immigration but was never implemented. Hence, the negotiation of reciprocal youth mobility schemes with trading partners where such a scheme is not in place should be a priority for the Government. Of these trade partners, the EU and the US are the most important candidates, with the EU being the most practical. Such a move is also likely to receive higher levels of support than other solutions for providing EU citizens access to the UK labour market due to the substantial 'value-add' associated with youth mobility. Additionally, schemes have previously been implemented from informal agreements or memoranda of understanding, therefore, agreeing such schemes does not have to take the form of a provision in a free trade agreement. If there is political will in both countries, agreeing an expansion of reciprocal YMS should be relatively straightforward.

- Lastly, the UK should offer a reciprocal bespoke Intra-Company Transferee (ICT) route for nationals of trade partners. Currently under the ICT scheme, for short-term assignments to the UK between six months and two years there is the additional cost of the Immigration Skills Charge (ISC) to consider. For UK employers with branches overseas, this cost complicates short-term assignments and reduces flexibility. As a result, we suggest a two-year exemption from the ISC or a lower charge for trade partners. This would also broaden the UK's ability to negotiate mutually agreed outbound arrangements.

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