

Christophe Bondy – Written evidence FUU0018

In follow-up to the testimony on 18 January, the Committee requested written thoughts on the following issue:

Which areas of the agreement pose the biggest challenges (including legal compliance challenges) for trade in goods, and why? What support or guidance do you think would be beneficial for businesses?

The elements of the EU-UK Trade and Cooperation Agreement (**TCA**) relating to goods are primarily set out in Part Two : Trade, Transport, Fisheries and Other Arrangements, Heading One: Trade, Title One: Trade in Goods, including Chapter One (Nation Treatment and Market Access for Goods, including Trade Remedies); Chapter Two (Rules of Origin); Chapter Three (Sanitary and Phytosanitary Measures); Chapter Four (Technical Barriers to Trade); and Chapter Five (Customs and Trade Facilitation). Other sections relevant to trade in goods include Procurement (Title VI); Energy Goods (Title VIII: Energy, Chapter Four); Title XI (Level Playing Field for Open and Fair Competition and Sustainable Development, which includes provisions relating to regulation of labour, environmental and taxation provisions as well as State subsidies); Heading Three (Road Transport); and Heading Five (Fisheries).

At the highest level, the impact of the TCA on trade in goods between the UK and the EU-27 can be summarised by the transition this necessarily implies from trading into the EU-27 from another member of the EU Single Market, and trading into the EU-27 from a Third Party State.

The provisions of the TCA to some extent mitigate this transition by removing tariffs on qualifying goods in transit between the EU and the UK. Despite this, trade between the UK and the EU-27 henceforth will face all of the constraints typical of trade in goods between distinct regulatory and customs territories, notably:

- the requirement to comply with specific (and typically complex) rules of origin provisions in order to benefit from tariff-free entry;
- for plant and animal based products, the need to demonstrate compliance with applicable sanitary and phytosanitary rules;
- for manufactured goods, the need to demonstrate compliance with technical standards in the country of import; and
- the need to address VAT.

These together form a dense network of “legal compliance challenges” for cross-border trade in goods between the UK and the EU.

Moreover, the above are not only requirements to fill out the relevant forms, but also to comply in substance with the underlying regulatory standards that are the condition precedent to sales into a particular market – particularly into a highly-regulated market such as the EU. UK based manufacturers wishing to continue to sell into the EU (which I understand to date has been their primary market) will need to comply on a dynamic basis with EU regulatory frameworks going forward. This also will pose legal compliance challenges as UK-based manufacturers will need to remain mindful of the evolving regulatory environment in the EU, over which they will have no formal control.

In light of the specific “safeguard” provisions of the TCA, UK-based manufacturers will face further potential challenges to trade, depending upon the direction of travel of domestic UK regulatory policy. Simply put, the more the UK is perceived as undercutting EU-based producers in favour of UK competitors on the basis of regulatory arbitrage on “level play field” issues, the greater risk such UK-based businesses will face retaliatory EU market access measures.

Restrictions on the supply of transport services, notably limitations on the ability of UK-based transporters to function within the EU-27, constitute another basic barrier to trade in goods from the UK across the EU-27, at least if UK land transport services are employed.

Leading UK newspapers such as the Financial Times have been tracking the specific issues UK-based manufacturers and traders in goods have already been facing in their EU-directed trade under the TCA regime. Such early signals provide a map for the challenges faced by UK-based manufacturers and traders in goods in the new TCA environment. These issues likely will be compounded, as the UK ramps up full application of border verifications in the first half of 2021.

In terms of UK Government support, to the extent UK border management capacity currently is deficient (as described in public reporting), that obviously should be addressed as a matter of urgency. Beyond this, in both the shorter and longer run, the UK actively should pursue beyond-the-border measures and other forms of regulatory cooperation with the EU, aimed at facilitating confirmation of regulatory compliance with EU standards. Such issue management is endemic in deep economic relationships such as that of Canada and the US under the USMCA (formerly NAFTA), reflected in sustained engagement between regulators and trade officials on both sides of the border. However, this too will have its limits : the EU historically has been reluctant to engage in deep mutual recognition of regulatory standards, outside of the overall ecology of the Single Market.

As for guidance to industry, in general, the ideal would be an industry-by-industry approach, with bespoke direction provided by designated UK officials through targeted outreach to specific sectors, rather than through a general website.

There is no doubt that transition to Third Party status will lead to the upending of many current UK business models and markets. The swift drop in export volumes, difficulties in deliveries of live animals and of time-sensitive foodstuffs, and Rules of Origin impediments to the UK acting as a distribution centre to the EU-27 are among the early signs of such disruption. Whether or not greater familiarity with new customs procedures and greater investment in port and customs facilities will be sufficient to offset these impacts remains to be seen.