# The Institute for Government – Written evidence FUU0019

Much of the Institute for Government's Brexit work has focused on government and business readiness for the end of the transition period.[1] This submission focuses on the disruption to trade in goods seen since the entry into force of the Trade and Cooperation Agreement (TCA). It also highlights areas where additional disruption may emerge in future.

While this analysis is limited to the impact of the TCA and trade in goods between Great Britain and the EU, many of the difficulties identified have also affected trade between Great Britain – Northern Ireland under the terms of the Northern Ireland Protocol.

**Question 1: As opposed to other possible outcomes, what does the presence of an EU-UK free trade agreement mean for trade in goods?**

**Question 2: What is your assessment of the relevant provisions in the TCA and their impact on your business or policy area?**

**Questions 1 and 2:**

1. The Trade and Cooperation Agreement reflects the government's decision to prioritise sovereignty over market access in its negotiations with the EU. The UK's departure from the single market and customs union provides the government with greater scope to diverge from EU rules and avoids ECJ oversight, but also imposes major new frictions and costs for firms trading with the EU.

2. The most important feature of the TCA for trade in goods is the lack of tariffs or quotas on goods traded between the UK and EU (subject to compliance with rules of origin requirements). This is unprecedented in any EU free trade agreement (modern EU FTAs generally abolish tariffs on industrial goods, but leave many agri-food products subject to tariffs and/or quotas) and is a significant benefit compared to a no deal outcome. However, making sense of and complying with new rules of origin requirements poses a significant new burden on firms when trading with the EU.

3. Beyond tariffs, the TCA does not prevent the introduction of a range of extensive non-tariff barriers arising from Brexit. These add significant new costs and friction for businesses trading goods between Great Britain and the EU. They can be grouped into broadly three categories:

[1] Marshall J, Thimont Jack M, Sargeant J and Jones N, *Preparing Brexit: How ready is the UK?*, Institute for Government, November 2020, retrieved 7 February 2021 https://www.instituteforgovernment.org.uk/publications/preparing-brexit-how-ready-uk

a. *Customs requirements*
b. *Sanitary and phytosanitary (SPS) requirements* (applicable to agri-food goods)
c. *Technical barriers to trade* (so called 'behind the border' requirements, such as the need to comply with duplicate regimes on product standards and labelling).

4. The TCA contains provisions to reduce (but not prevent) non-tariff barriers in five specific areas, namely medical products, automotive goods, organics, chemicals and wine.

5. However, the TCA does little to minimise new SPS requirements. This means, for example, that agri-food products traded between Great Britain and the EU are subject to onerous new sanitary and phytosanitary paperwork and inspections, and that all live animals and 30% of certain meat, dairy and poultry products must be physically inspected (as are agri-food imports into the EU from almost every non-EU/EEA country).

6. The TCA was only agreed on 24 December, and published on the 26 December, just 6 days (3 working days) before it came into effect. This left little time for businesses to make sense of the provisions before they entered force. The late agreement of the TCA and publication of guidance made it much harder for firms to adapt to new trading rules. For instance, the government only published its revised Border Operating Model, outlining how the GB-EU border works, five hours before many of the changes came into effect.[2] Detailed guidance on rules of origin was only published on 29 December, two days before new rules took effect.[3]

7. Despite the challenges posed by the late clarity over the deal and last-minute publication of guidance, we have heard positive feedback for the government's day-to-day engagement with industry, such as the regular Border and Protocol Delivery Group stakeholder calls, which have provided a way to ensure stakeholders are kept abreast of emerging issues (and solutions) and have allowed firms to quickly raise questions and receive answers from government officials.

8. The Institute has produced a comprehensive explainer on the Trade and Cooperation Agreement, including comparisons to the UK and EU negotiating mandates.[4]

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[2] Border Delivery and Protocol Group, *The Border with the European Union, Importing and Exporting Goods,* December 2020, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/949579/December_BordersOPModel__2_.pdf
[3] HM Revenue and Customs, *Rules of origin for goods moving between the UK and EU,* 29 December 2020, retrieved 7 February 2021, https://www.gov.uk/government/publications/rules-of-origin-for-goods-moving-between-the-uk-and-eu
[4] Institute for Government, *UK-EU Future Relationship: the deal,* Explainer, December 2020, retrieved 7 February 2021,

**Question 3: What do those provisions achieve?**

**Question 4: What, if any, challenges arise because of those provisions? How should these challenges be addressed and what support is needed, if any?**

9. The end of the transition period has caused widespread disruption to the trade in goods between Great Britain and the EU. However, the challenges posed by the introduction of the TCA have been complex and not always immediately visible. In some cases, it is hard to reach definitive conclusions about the causes and longevity of disruption at this stage, with the picture likely to become clearer over the coming weeks and months.

**There has not been generalised disruption at the border**

10. So far, there has not been the kind of generalised traffic disruption at the key channel ports envisaged in the government's reasonable worst-case scenario published in September 2020, which suggested that 30-50% of trucks arriving at Dover and Eurotunnel may be unprepared for border checks, reducing flow to between 60-80% of normal and causing queues of around 7000 lorries in Kent.[5]

11. In fact, figures provided by the government to the House of Commons Public Accounts Committee on 21 January suggest that only between 3 and 8% of lorries have been turned away from the short strait ports, with around half of those turn backs associated with a failure to comply with Brexit border requitements, and the other half due to a lack of a negative Covid test (needed to enter France).[6] However, initial disruption was much higher at Holyhead (serving the Republic of Ireland), where turnback rates at the start of January were around 20% (but have subsequently fallen to around 5%), according to figures provided by the Border Delivery and Protocol Group.

12. Traffic flows between Great Britain and the EU have been much lower than normal since the start of year. In the first week of January, traffic levels were just 40% of normal.[7] Levels have since increased each week, with traffic levels in the last week of January estimated

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https://www.instituteforgovernment.org.uk/publication/future-relationship-trade-deal

[5] Cabinet Office, Reasonable worst case scenario for borders at the end of the transition period on 31 December 2021, 23 September 2020, retrieved 8 February 2021, www.gov.uk/government/publications/reasonable-worst-case-scenario-for-borders-at-the-end-of-the-transition-period-on-31-december-2020

[6] Public Accounts Committee, *Oral evidence: UK border 2021: update,* 21 January 2021, https://committees.parliament.uk/oralevidence/1585/default/

[7] Cabinet Office and The Rt Hon Michael Gove MP, *Traders must act now with order traffic expected to increase next week,* press release, 8 January 2021, www.gov.uk/government/news/traders-must-act-now-with-border-traffic-expected-to-increase-next-week

reaching 70-80% of normal in the last week of January – similar to the flow experienced during the first Covid lockdown.

13. There are several reasons for the low levels of traffic. High levels of stockpiling ahead of the end of the transition period meant that many traders were able to avoid shipping goods, or ship reduced levels of goods, in the initial weeks of 2021. The Society of Motor Manufacturers and Traders reported that 60% of its members had stockpiled – with supply levels varying from a few days to a few weeks' worth of parts.[8] As these stockpiles have wound down and trade flows have increased, there has been a constant stream of new border users having to comply with new customs and regulatory requirements for the first time.

14. However, there is evidence that stockpiles remain high in some sectors. At the end of January, the Cold Chain Federation reported that warehouses are still 85% full, down from 100% full before Christmas, but still considerably higher than the 60% that would be normal for this time of year.[9] This suggests that there is still scope for traffic flows to increase further as stockpiles are reduced, with an associated risk of disruption.

15. While accompanied traffic has largely continued to flow between GB and the EU, there have been delays and congestion for unaccompanied freight. This has been caused in part by non-Brexit issues such as staff shortages and delays in shipments being collected from ports[10], although the additional complexity of customs paperwork has also contributed to delays.[11]

### There have been small scale issues with border IT systems

16. Generally, government IT systems at the border have worked well, despite the fact that key systems or services, including the Goods and Vehicle Movement Service (currently being used for GB-EU traffic moving under the Common Transit Convention) and the Check an HGV service, were only fully operational in December 2020. However, as the Institute highlighted last year, the fact IT systems were delivered or updated so close to the end of the transition period left private sector software developers little time to adapt their products to work with government IT systems. Since the New Year, we have heard

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[8] Business, Energy and Industrial Strategy Committee, *Oral evidence: Businesses and Brexit preparedness, 8 December 2020,* https://committees.parliament.uk/oralevidence/1367/html/

[9] O'Carroll L, Brexit 'teething problems' endemic and could ruin us, say UK businesses, *The Guardian,* 31 January 2021, retrieved 7 February 2021, www.theguardian.com/politics/2021/jan/31/brexit-trade-troubles-teething-problems-endemic-disruption

[10] Tovey A, Ports sounding warnings over fresh freight delays, *The Telegraph,* 26 January 2021, retrieved 7 February 2021, www.telegraph.co.uk/business/2021/01/26/ports-sound-warning-fresh-freight-delays/

[11] Andrew Byrne, interview with Sky News, 5 February 2020, https://twitter.com/pmdfoster/status/1357668646450044929

reports that some traders have encountered delays due to problems in how private sector software interacts with government IT systems.

17. There have been some narrow issues relating to UK and EU border IT systems. During the first weeks of January, an issue arose with the New Computerised Transit System (NCTS) used for goods moving under the Common Transit Convention – partly caused by confusion among traders over what information needed to be submitted. This resulted in some lorries being 'orange laned' and subject to additional checks at Calais and Dunkirk, causing delays. This was a particular problem for seafood exporters, as lorries carrying some seafood products must move under transit from Calais or Dunkirk to Boulogne, where the relevant border control post is located. The government has since worked with the French authorities to provide a temporary solution to the problem. This is a positive example of practical cooperation between UK and EU member state authorities.

18. There have been other issues related to transit traffic – with reports in January of businesses facing delays in setting up the relevant guarantees with HMRC to support their transit movements, and facing delays in having transit paperwork approved at inland border facilities.[12] Although the government believes it has addressed these issues. Hauliers heading to the border can use a new HMRC app ('Attend Inland Border Facility') to check how busy government Inland Border Facility sites are and give sites prior warning of their arrival.

**Most disruption to the trade in goods has occurred away from the border**

19. Most disruption to trade has occurred away from the border, as firms have adapted to new trading conditions. Several widely reported trends since the end of the transition period are indicative of this disruption:

  a. **Suspension of deliveries/GB-EU trade**: Initially, some firms decided to suspend trading between Great Britain and the EU in order to make sense of new trading requirements and ensure they could comply with new rules. Several logistics firms (including DPD and DB Schenker) also temporarily suspended shipments to the EU due to concerns about that their customers were not complying with new requirements.
  b. **Disruption to groupage (mixed) loads:** In the weeks following the end of the transition period, there were reports of logistics firms withdrawing groupage services (when consignments from

[12] Mayes J, Brexit border trouble grows as key customs system hits limit, *Bloomberg*, 19 January 2021, retrieved 7 February 2021, [www.bloomberg.com/news/articles/2021-01-19/brexit-border-trouble-deepens-as-key-customs-system-is-maxed-out](www.bloomberg.com/news/articles/2021-01-19/brexit-border-trouble-deepens-as-key-customs-system-is-maxed-out)

different customers are carried on one lorry), in order to reduce the amount of paperwork each lorry had to carry and minimise the risk of trucks being stopped at the border.[13] Even as groupage services were restored, the Food and Drink Federation reported that some of its members have faced delays caused by other consignments on the lorry lacking the required paperwork.[14] The disruption to groupage services has had a disproportionate impact on small firms (especially in the Scottish seafood sector), that often have few economically viable alternatives to ship their goods. Issues around groupage loads have also affected GB-NI trade, although the government has published new guidance it hopes will resolve these problems.[15]

c. **High volumes of empty lorries:** There have been reports that a higher percentage of lorries than usual have been travelling empty from Great Britain to EU– suggesting suppressed levels of exports. In some cases, it has been reported that firms reliant on parts or products imported from the EU are paying for lorries to return to the EU empty (and thereby avoiding the need to comply with most border formalities), in order to reduce the risk of them being delayed in returning to the EU to collect future deliveries.[16] There do not appear to be agreed figures on the number of empty lorries. The Road Haulage Association has said that between 40-50% of lorries crossing the short straits between Great Britain and the EU are empty (compared to the normal 15-18%)[17], while figures from the Prefecture Hauts-de-France et du Nord for the week ending 24 January indicated 65% of lorries arriving from Great Britain into the ports of Calais and Dunkirk were empty.[18] However, these figures seem to be disputed by the UK government. Emma Churchill, Director General of the Border and Protocol Delivery, told the Public Accounts Committee on 21 January that the level of empty lorries was only slightly above 30%, as anticipated.[19] Alex Veitch, General Manager of Public Policy for Logistics UK, quoted government figures suggesting

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[13] Holmes H, Logistics companies halt EU exports due to post-Brexit red tape, *The Grocer,* 13 January 2021, www.thegrocer.co.uk/brexit/logistics-companies-halt-eu-exports-due-to-post-brexit-red-tape/652022.article

[14] House of Lords Select Committee on the European Union: Goods Sub-Committee, Uncorrected oral evidence: future of UK-EU relations: trade in goods, 25 January 2021, https://committees.parliament.uk/oralevidence/1591/pdf/

[15] Department of Agriculture, Environment and Rural Affairs, NI Executive, *Collecting and transporting groupage consignments,* 29 January 2021, retrieved 7 February 2021 www.daera-ni.gov.uk/articles/collecting-and-transporting-groupage-consignments

[16] Tovey A, Half of trucks 'carrying only fresh air' as Brexit and Covid hit exports, *The Telegraph,* 24 January 2021, retrieved 7 February 2021, www.telegraph.co.uk/business/2021/01/24/half-trucks-carrying-fresh-air-brexit-covid-hit-exports/

[17] Clarke S, Road freight between Britain and the EU is down by a third, data shows, *The Guardian,* 31 January 2021, retrieved 7 February 2021, www.theguardian.com/politics/2021/jan/31/road-freight-britain-eu-down-third-data-shows-brexit

[18] Hills J, Majority of lorries crossing channel to France are empty as Brexit trade hits, *ITV*, 28 January 2021, retrieved 7 February 2021, www.itv.com/news/2021-01-28/majority-of-lorries-crossing-channel-to-france-are-empty-as-brexit-hits-trade

[19] Public Accounts Committee, *Oral evidence: UK border 2021: update, Op Cit.*

empty lorries were running at around 50%, above the pre-Brexit norm of 30%.[20]

It will take time before it becomes clear to what extent the issues raised above have affected the balance of trade between GB and the EU.

**Some causes of disruption are likely to be short-lived**

20. Some disruption has been caused by genuine short-term problems, which are likely to dissipate as firms adjust to new requirements and staffing levels increase.

   a. **Poor trader readiness for new requirements and processes:** Some of the challenges experienced since the end of the transition period are likely to dissipate as traders adapt to new requirements and new IT systems bed in. Many of the issues the Road Haulage Association identified in the first week of January fall into this category, including businesses failing to pre-notify agri-food shipments, drivers not carrying the original paper copy of export health certificates and firms failing to have a designated agent in the port of arrival to handle SPS paperwork.[21]
   b. **Insufficient numbers of customs agents and official veterinarians:** Most businesses trading between GB and the EU will use the services of a private sector customs agent to help them complete customs formalities. There have long been concerns that the sector's capacity had not increased sufficiently to meet demand. While the government maintains that the sector as a whole has sufficient capacity[22], there have been widespread reports of firms struggling to find agents suited to their needs, finding the financial cost of securing agent capacity prohibitive, or facing delays due to the high demand on agents and pressures of training new staff.[23] If these issues persist and the market fails to meet demand, the government may have to consider providing additional, targeted funding to support the sector.
   Firms exporting many agri-food goods must have their products certified by an official veterinarian or other certifying officer. Despite the government maintaining that there are a sufficient number of these professionals, the British Veterinary Association has indicated that capacity remains a concern.[24]

[20] House of Lords EU Committee: EU Goods Sub-Committee, Oral evidence session, 8 February 2020, retrieved 8 February 2020, https://www.parliamentlive.tv/Event/Index/c90f9f22-c672-41ed-939d-7e295d1652fe
[21] Road Haulage Association, *Crossing the border into France – problems and solutions,* 8 January 2020, www.rha.uk.net/getmedia/f06af673-a3dc-4000-b4eb-a29d78e5042d/210108-5-key-things-v3.pdf.aspx
[22] Public Accounts Committee, *Oral evidence: UK border 2021: update, Op Cit.*
[23] Andrew Byrne, interview with Sky News, 5 February 2020, *Op cit.*
[24] Holmes H, Ornua sounds the alarm over vet capacity ahead of April border deadline, *The Grocer,* 20 January 2021,

c. **Insufficient time to prove origin requirements:** To benefit from zero tariffs under the terms of the TCA, traders must comply with the 'rules of origin' requirements laid out in the agreement, which determine how much of a good can originate outside the UK or EU. These rules are complex and detailed guidance was only published on 29 December 2020[25], just two days before the rules took effect. Many firms with complex supply chains have not yet been able to assess whether their goods comply with rules of origin requirements in the TCA. Last year, the Society of Motor Manufacturers and Traders indicated that this process could take several months.[26] In practice, this may mean some firms are currently unable to make use of zero tariff trade. Although, the ability to defer customs declarations (and therefore also defer claims of origin), and to self-declare origin until the end of 2021 (rather than having to rely on supplier certification) will help some firms bridge this gap. Some firms may ultimately decide that the cost of complying with rules of origin is too high, and instead choose to pay the tariff where this makes greater economic sense. Although, firms within a supply chain may be unable to avoid rules of origin, as their customers may need them to prove the origin of their goods.

21. **Disruption has varied significantly between sectors.** The agri-food sector has been hit particularly hard by the introduction of new non-tariff barriers. Two factors explain this. First, the perishable nature of many agri-food goods prevented firms from stockpiling or shipping additional quantities of goods to their customers before the end of the transition period. The short shelf life of many agri-food goods – such as fresh seafood – also leaves them acutely vulnerable to delivery delays. Second, a high proportion of businesses in the agri-food sector are small or microbusinesses – that have generally found it more difficult to prepare for Brexit and for whom new (ongoing) compliance costs are likely to have a larger effect on profitability.

22. In contrast, initial reports suggested that firms in the automotive sector – which had stockpiled extensively – had been able to restart production after Christmas shutdowns despite new trading rules. However, it has since been reported that one UK manufacturer has thousands of cars partially built due to delays in receiving parts[27] and that supplier delivery times in January were among the longest in 30 years.[28]

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retrieved 8 February 2021, www.thegrocer.co.uk/brexit/ornua-sounds-alarm-over-vet-capacity-ahead-of-april-border-deadline/652273.article

[25] HM Revenue and Customs, *Rules of origin for goods moving between the UK and EU, Op Cit.*

[26] Business, Energy and Industrial Strategy Committee, *Oral evidence: Businesses and Brexit preparedness, Op. Cit.*

[27] O'Carroll L, Brexit 'teething problems' endemic and could ruin us, *Op. Cit,*

[28] Romei V, UK manufacturing close to stalling as Brexit and Covid hit supplies, *The Financial Times,* 1 February 2021,

23. **Disruption has varied significantly between firms.** Even within severely affected sectors, the impact of the TCA varies widely between companies, depending on factors such as the nature of their supply chains, their previous experience of international trade outside the EU and their level of preparedness. Even firms that felt well prepared for Brexit are encountering problems, with a recent Make UK survey showing 60% of respondents said they were ready for the end of the transition period, but are now facing disruption.[29]

24. If short term issues can be resolved, the rules and processes around the trade in goods should become more predictable for business – reducing some disruption to supply chains.

**Other changes arising from the TCA pose structural challenges to pre-Brexit business models**

25. Some changes to trading conditions created by the TCA pose structural issues, meaning that some pre-Brexit business models and supply chains may simply be unviable.

26. One reason for this is the additional costs imposed by new non-tariff barriers or difficulties in complying with rules of origin requirements, which could make existing business models unviable. These concerns are reflected in comments made by James Withers, Chief Executive of the Scottish Food and Drinks Federation, to the Commons Scottish Affairs Select Committee, who said 'enormous non-tariff barriers…have ended up with a trading regime which is complex, costly, slow, prone to break down at its best'.[30]

27. As well as the additional costs of non-tariff barriers, in some instances, regulatory barriers prevent certain trade taking place at all.

28. These changes mean that many businesses must adapt how they do business or may be unable to trade with the EU as before. As the Food and Drinks Federation told the Commons Future Relationship with the EU committee 'we're going to see the re-engineering of almost all the EU-UK (and GB-NI) supply chains over the next 6-9 months'.[31]

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retrieved 8 February 2021, www.ft.com/content/2ed34037-af26-497c-9341-84fc635731a2

[29] Make UK, Government urged to address border delays and red tape as survey shows widespread disruption, press release, 1 February 2021, retrieved 8 February 2021, www.makeuk.org/news-and-events/news/govt-urged-to-address-border-delays-and-red-tape

[30] Scottish Affairs Select Committee, Oral evidence session, 4 February 2021, retrieved 8 February 2021, https://parliamentlive.tv/Event/Index/c01054de-156e-4c47-b7b2-6c8248c3b0da

[31] Committee on the Future Relationship with the EU, Oral evidence: Progress on the negotiations on the UK's future relationship with the EU, 13 January 2021, retrieved 8 February 2021, https://committees.parliament.uk/oralevidence/1492/pdf/

29. The examples below are illustrative of the sorts of changes caused by Brexit which may require businesses to change how they operate.

a. **Rules of origin requirements, using Great Britain as a distribution hub for the EU:** The rules of origin requirements in the TCA may mean that it is no longer viable for some firms to use Great Britain as a distribution hub for the EU. This arises from the rules on 'reimportation'. Goods imported from the EU to a GB distribution centre and then reshipped to another part of the EU often do not meet rules of origin requirements. They will 'lose' their EU origin by making a stop in the UK, but don't undergo sufficient processing in the UK to count as originating in the UK for the purposes of the TCA. This means they face tariffs when sent back to Europe – adding significant new costs that may make using Great Britain as a distribution hub unviable. (Goods imported to the UK from outside the EU and then distributed to the EU may also face tariffs).

   While the reimportation issue was foreseen by many trade experts, it clearly came as a surprise to many – even large – businesses. As an initial measure, some firms withdrew affected products from sale. For instance, Marks and Spencer's withdrew its Percy Pig sweets (produced in Germany but distributed from Great Britain) from sale in the Republic of Ireland.[32]

   It is possible to use customs processes, such as returned goods relief or transit procedures, to mitigate this issue, although these are burdensome and may not be a viable option for many firms. In the long term, firms are likely to shift their EU distribution operations to an EU member state.

   The TCA could have included rules on reimportation – which are included in the EU's trade agreement with Canada. It is possible that the EU was opposed to such provisions in the TCA to avoid a non-member state acting as a distribution hub for the bloc.

b. **Prohibitions on some trade:** EU law prohibits the import of some goods from outside the bloc entirely – for example, chilled raw minced meat. In other cases, it imposes severe restrictions, for instance live shellfish can only be imported into the EU if they either come from entirely unpolluted waters or have been 'purified'. Before the end of the transition period, most British shellfish imported into the EU were not 'purified', since the purification process reduces the shelf life of the product and so it

[32] Marshall J and Sargeant J, The painful Percy Pig experience is just the start of Brexit border frictions, *Institute for Government,* 15 January 2021, retrieved 8 February 2021, https://www.instituteforgovernment.org.uk/blog/percy-pig-brexit-border-frictions

is preferable to perform it as close as possible to the point of final consumption. This means that most producers currently lack the facilities needed to purify their products and are subsequently unable to trade. Environment Secretary George Eustice has written to the European Commission seeking to resolve this issue and arguing that the EU had provided assurances that this trade would be able to continue.[33] However, if no resolution is forthcoming, some businesses may need to adapt their business models to meet these requirements – incurring significant costs – while others may simply not be able to comply.

These prohibitions and restrictions also apply to GB-NI trade, although the UK and EU have agreed a 6-month 'grace-period' for certain prohibited meat products, including sausages and chilled meat. If this is not extended or replaced, it will prevent GB businesses from supplying Northern Ireland with those products.

c. **Limited cabotage rights:** The TCA provides road hauliers with more limited cabotage rights than they enjoyed under EU rules; UK haulage firms can now only make two drops offs in the EU before having to return to the UK. These provisions have had a particularly adverse effect on the music and arts touring. Many firms are unable to continue providing multi-country tours in the way they did before, although the full impact of these provisions had yet to be felt on the ground due to Covid restrictions on travel and mass gatherings.

d. **New regulatory requirements:** Firms operating in both the UK and EU markets may now be subject to duplicate regulatory regimes in areas like product standards and chemicals regulation. Complying with these requirements can impose significant additional costs on firms. Last year, the Chemical Industries Association estimated that unless the TCA included provisions for the EU to share data held in the EU's REACH database, the chemicals industry faced more than £1 billion in costs to duplicate existing EU registrations in a new UK system.[34] This is because firms must pay for 'letters of access' to secure EU chemicals data that they need to support new UK registrations. However, the TCA only includes provisions on the exchange of non-confidential information and falls short of comprehensive data sharing on chemicals. Ultimately, the costs of complying with dual regulatory regimes could prove prohibitive for firms, potentially leading

[33] Letter from George Eustice to Stella Kyriakides, 8 February 2021, https://twitter.com/adampayne26/status/1358792352907882498/photo/1
[34] Foster P, 'UK chemical industry wars of £1bn cost to duplicate EU regime', *Financial Times,* 3 August 2020, retrieved 3 August 2020, www.ft.com/content/a1c4a5dc-f627-4689-97ae-909d4aaf6162

businesses to exit or limit their operations in the UK or EU markets.

**30.** It is not always easy to distinguish between short term problems and structural issues. For instance, GB firms that have temporarily suspended trading with the EU in order to make sense of new rules may find that their EU customers have since found alternative EU based suppliers that are not subject to the costs or possible disruption associated with new GB-EU trading rules.

**There is potential for further disruption later this year**

a. **Additional border infrastructure still needs to be built by July.** Under the phased approach outlined in the government's Border Operating Model, full import checks – including full SPS inspections – will only be introduced in July. To facilitate the introduction of full controls, new Border Control Posts need to be constructed – either at privately run ports, or – where space does not allow for this – at government run Inland Border Facilities. The government's revised Border Operating Model identifies two sites expected to serve as Inland Border Facilities for the short strait ports (Sevington to serve Eurotunnel, and Dover White Cliffs to serve Dover). It also states that the government is working with the Welsh and Scottish governments to identify sites for additional Inland Border Facilities – including facilities to support the ports at Holyhead and in South Wales.[35] However, little additional detail has been forthcoming, and time is tight to deliver these sites before July.

   To support construction work at private ports, the government has provided a £200 million Port Infrastructure Fund. However, the allocations from this fund were only announced on 17 December[36], and the fund was significantly oversubscribed – leaving some ports with significantly less money than they expected. The shortfall has led some ports – such as Portsmouth (which faces a £5 million shortfall)[37] – to scale back their plans[38], including reducing the range of goods (such as live animals) their new border control posts will be able to handle.[39]

   There is a risk that port infrastructure will not be ready in time. The government has said that the decisions about what infrastructure

[35] Border Delivery and Protocol Group, *The Border with the European Union, Importing and Exporting Goods*, *Op. Cit.*
[36] Department for Transport, *Port Infrastructure Fund: allocations,* 17 December 2020, retrieved 8 February 2021, www.gov.uk/government/publications/port-infrastructure-fund-allocations
[37] BBC Sounds, Farming Today, 3 February 2021, retrieved 8 February 2021, www.bbc.co.uk/sounds/play/m000rw4k
[38] Public Accounts Committee, *Oral evidence: UK border 2021: update, Op Cit.*
[39] Foster P, Building of Brexit border posts face delays, *The Financial Times,* 25 January 2021, retrieved 8 February 2021, www.ft.com/content/82dab12c-380a-450b-b7f7-c47a56102c66

to build and services to offer are ultimately commercial matters for the ports.[40] While this is true to an extent, the government does have a role in ensuring there is suitable infrastructure in place to allow trade to continue. It must take responsibility for delays caused by the late provision of funds, and may need to consider providing additional money if it becomes clear the Port Infrastructure Fund allocations will be insufficient to ensure the necessary infrastructure is delivered.

If the necessary border infrastructure will not be in place, the government may have to consider further delaying the introduction of full import controls. This will have fiscal implications and further delay the introduction safety and security declarations on most imports from the EU to GB – something the government argues will be beneficial in tackling cross-border organised crime.[41]

b. **Businesses may be building up customs liabilities without realising – storing up problems for the future.** The UK government is allowing firms importing most goods into Great Britain from the EU to defer submitting a customs declaration for up to 6 months from the point of import. In practice, this also means firms are able to defer payment any applicable customs duties and declaring that their goods comply with rules of origin requirements needed to be eligible for zero tariffs under the terms of the Trade and Cooperation Agreement. However, firms taking advantage of this option to defer customs declarations are still required to keep detailed records of their imports and comply with rules of origin requirements if they want to avoid customs duties.

   There are concerns that many firms are deferring customs declarations without keeping the records necessary to submit their deferred declaration in future. Similarly, we have heard that firms are importing goods in the belief that they comply with rules of origin requirements – and are therefore not subject to tariffs – when in practice the goods do not comply, and duties are payable (an issue exacerbated by the complicated nature of rules of origin requirements and the limited time firms have had to make sense of new rules). Both issues pose a risk of firms building up administrative and financial liabilities that they later find hard to discharge. The Office of Budget Responsibility identified this risk in its Economic and Fiscal Outlook, forecasting that customs duty would be £200 million lower in 2021-22 as a result of non-compliance.[42]

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[40] Public Accounts Committee, *Oral evidence: UK border 2021: update, Op Cit.*

[41] *Ibid.*

[42] Office for Budget Responsibility, *Economic and Fiscal Outlook*, November 2020, http://cdn.obr.uk/CCS1020397650-001_OBR-November2020-EFO-v2-Web-accessible.pdf

c. **Some changes to regulatory regimes have not yet taken effect.** As the Institute has highlighted, the UK government has decided to the delay the full introduction of new regulatory requirements in areas like product standards and chemicals regulation, in order to allow businesses more time to adapt to new rules. This creates a complex patchwork timeframe of further Brexit changes that businesses must continue to prepare for well into 2021 and beyond. The government will need to ensure it clearly communicates these deadlines and drives businesses to prepare.[43]

**Question 5: What do you identify as the most important issues that the TCA leaves for further negotiation? What would represent a best-case resolution of these issues?**

**Question 6: Within the parameters of the TCA, what should the UK seek to accomplish with the EU in relation to your industry or policy area in the short, medium and long term?**

31. Most of the changes in trading conditions and resulting disruption outlined above are a consequence of the UK's departure from the single market and customs union. After years of intense negotiations, there are likely to be major political obstacles to any attempts to significantly change the trading conditions established by the TCA.

32. The rules of origin requirements outlined in the agreement were subject to extensive negotiation, are comparatively quite generous in many sectors (including in relation to electric vehicles) and in line with those agreed in other EU free trade agreements (such as the pan-Euro-Mediterranean convention).

33. Sanitary and Phytosanitary requirements are a fundamental basis of the international system for trade in animal and plant products. It is possible that some issues – such as limits on minced meat products – could be addressed through separate bilateral UK-EU negotiations on health certification. However, there is likely to be considerable reluctance from the EU to consider such measures while the UK keeps open the option of regulatory divergence on food standards.

34. More generally, the TCA establishes a complex governance structure to oversee the operation of the agreement, including mechanisms to amend or review the agreement. More information can be found in our recent paper: *Managing the UK's relationship with the EU.*[44]

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[43] Marshall J, The new year does not mean that Brexit is old news, *Institute for Government,* 30 December 2020, retrieved 8 February 2021, www.instituteforgovernment.org.uk/blog/new-year-does-not-mean-brexit-old-news

[44] Thimont Jack M and Rutter J, Managing the UK's relationship with the European Union, *Institute for Government,* February 2021, www.instituteforgovernment.org.uk/sites/default/files/publications/managing-uk-relationship-eu.pdf

35. Going forward, the government will need to consider how it approaches its new ability to diverge from EU rules. The TCA impose constraints on how this freedom may be exercised – with some regulatory changes opening the possibility of disputes under the TCA and the EU potentially limiting the UK’s access to its markets. Significant divergence from EU rules is also likely to impose additional costs for firms operating in both markets, which would have to comply with dual regulatory regimes. The government will need to strike a balance between the benefits of divergence and the impact on businesses.