

**WTI Global Economic  
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*The Trade in Goods Chapter of the new  
EU/UK Trade Deal*

*Back to the Past*

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# Background of the Brexit saga

- ❑ 2016 United Kingdom European Union membership referendum
- ❑ Art. 50 TUE for the first time activated
- ❑ Two treaties
  - Divorce deal
  - Treaty on the future trade relations
- ❑ Brexit withdrawal agreement (signed on 24 January 2020 and entered into force 1 February 2020)
  - Protocol on Ireland/Northern Ireland
- ❑ EU–UK Trade and Cooperation Agreement (TCA) signed 30 December 2020 and applied provisionally from 1 January 2021 until 30 April 2021, *“to allow sufficient time to complete its legal-linguistic revision in all 24 languages”*.
- ❑ TCA was concluded as an Association Agreement (Article 217 TFEU), both the Council and European Parliament must first approve the Agreement before it can fully enter into force.
  - No “mixity” EU-only Association Agreement
  - Council Decision (EU) 2020/2252 of 29 December 2020

# Trade in goods chapter of the TCA

- ❑ Trade in goods chapter is the core of the free trade agreement
- ❑ Provisions on trade in services and investment are almost inexistent
- ❑ TCA is similar to other preferential agreements concluded by the EU with other trade partners

BUT

- ❑ TCA is a peculiarity in the regulation of EU trade relations with a third country

# TCA and the CETA

- ❑ The “Canada-style” free trade “thin” deal marks the beginning of the new trade relations of the EU with the UK
- ❑ During the negotiations UK supported the idea that an acritical transposition of the same provisions negotiated by the EU and Canada was not only possible, but also beneficial for a State leaving the Union
- ❑ The EU partially accepted that  
BUT
- ❑ The formal similarity can be misleading

# Why TCA is different from any other FTA ?

- ❑ Exceptionally, Brexit is a reverse process intended to
  - terminate open and liberal trade relations rather than creating them
  - erect obstacles to trade rather than removing them
- ❑ According to Article OTH.3 of the TCA, the free trade area is established by the parties “in conformity with Article XXIV of GATT 1994 and Article V of GATS.”
- ❑ Article XXIV of GATT, para 4 reads as follow “The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be *to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.*”

# A reverse process

- ❑ The standing point of economic relations between the UK and the 27 EU Member States when the TCA entered into force was the single market and customs union
- ❑ Single market and Customs union are the deepest form of integration of national economies in the world.
- ❑ For the first time, provisions elaborated to maximize liberalization of trade are being used to establish and operate a less open regime.
- ❑ In which way the success of the TCA will be measured ? Trade flows as any other FTA ?
- ❑ In 2019, development of trade between the EU and its major preferential trading partners determined an EU trade surplus of €113 billion, a 12% increase of the previous year's surplus.
- ❑ The success of the TCA will be measured in a reverse way
  - its ability to avoid disruption and to limit the decline in the existing import-export exchanges between the parties.

# The new EU/UK free trade area

- ❑ Zero-tariff zero-quotas on goods
- ❑ The decision of the UK to prioritise its sovereignty and regulatory autonomy over access to the EU market has made leaving the customs union and opting for a free trade area inevitable.
- ❑ Global Britain
- ❑ In the traditional dichotomy customs union/free trade area (Article XXIV GATT) only customs unions in which the member States adopt a common external tariff eliminate the necessity of reciprocal border controls on the origin of goods.
- ❑ The preservation by the UK of its freedom to set its own tariff levels autonomously, typical of a classic free trade area, implies the burden of new procedural requirements on both sides

# The Irish border dilemma (I)

- ❑ Northern Ireland, is under a different trade in goods regime, regulated outside the TCA in the Withdrawal Agreement (WA) by the Protocol on Ireland/Northern Ireland
- ❑ The compromise reached by the UK and the EU in the WA keeps Northern Ireland in the EU's market for goods even if it is part of the UK single customs territory
- ❑ The consequence of this unusual solution is the application of two customs regimes in Northern Ireland



# The Irish border dilemma (II)

- ❑ goods that enter for home use in Northern Ireland are subjected to the UK tariff regime.
- ❑ good imported into Northern Ireland, including from Great Britain, that is 'at risk' of being then moved into the Republic of Ireland or into the rest of the EU must be subjected to EU tariff regime.
- ❑ In order to avoid border checks within the Island of Ireland, UK authorities are in charge of the application of post-Brexit customs rules for Northern Ireland for goods transported by sea between Northern Ireland and the rest of the UK,
- ❑ NO border between two sovereign States Ireland and UK/Northern Ireland

BUT

- ❑ a sea custom border within a sovereign State (UK)

# Does the Ireland/Northern Ireland Regime works ?

- ❑ NO
- ❑ The Protocol on Ireland and Northern Ireland, entered into force on 1 February 2020 but the majority of its substantive provisions only become applicable after the end of the transition period, on 1 January 2021
- ❑ The entry into force of the Protocol regime the same day of the TCA did not help
- ❑ the UK's announced earlier this month to unilaterally extend temporary rule exemptions intended to help companies adjust to new trading arrangements agreed in the Withdrawal Agreement.
- ❑ The answer of the EU was not long in coming
  - the European Commission last 15 March sent a letter of formal notice accusing the UK of “breaching the substantive provisions of the Protocol on Ireland and Northern Ireland, as well as the good faith obligation under the Withdrawal Agreement”
  - This is the beginning of a formal infringement process according to Article 258 of the Treaty on the Functioning of the European Union.

# Does the Ireland/Northern Ireland Regime works ?

- ❑ How is that possible ?
- ❑ Because, contrary to what is established by the TCA, the trade in goods regime regulated by the Protocol is under the supervisory and enforcement powers of the European Commission and the Court of Justice of the European Union.
- ❑ the TCA in principle does not produce direct effect, the WA in its entirety, including the Northern Ireland Protocol, is explicitly capable of direct effect ex Article 4.
- ❑ All the consequences in terms of dispute settlement
- ❑ <http://dcubrexitinstitute.eu/2021/03/welcome-to-the-magic-world-of-international-law/>

# TCA as a “work in progress” process

- ❑ the TCA left many details of the new EU/UK trading relationship to be further determined by the Partnership Council or by the various joint committees and working groups set up by the TCA.
- ❑ the EU/UK TCA contains a large number of provisions covering commitments to continuing negotiations
- ❑ Whether it will be cooperative or fractious will depend on the goodwill and interests of the parties.
- ❑ Committees and Working groups in charge of review and consultative procedures to keep the parties talking.
- ❑ This is quite common in trade agreements, but the TCA stands out for the massive use of this instrument.
- ❑ Only in the trade in goods chapter:
  - the Partnership Council and six trade in good thematic committees
  - the Trade Specialised Committee on Goods;
  - the Trade Specialised Committee on Customs Cooperation and Rules of Origin;
  - the Trade Specialised Committee on Sanitary and Phytosanitary Measures;
  - the Trade Specialised Committee on Technical Barriers to Trade;
  - the Trade Specialised Committee on Level Playing Field for Open and Fair Competition and Sustainable Development
  - the Trade Specialised Committee on Administrative Cooperation in VAT and Recovery of Taxes and Duties.

# The level playing field

- ❑ To ensure the continuation of tariff and quota free trade between the EU and UK the TCA introduced border controls, notably on the respect of standards, origin of products resulting from global supply chains, health checks, as operators have discovered at their costs immediately after 1st January 2021.
- ❑ These controls are necessitated by the absence of commitments by the UK to stick for the future to the EU regulation in many fields (State aid, competition, labor and social standards, environmental standards ...)
- ❑ An innovative mechanism has been devised to avoid divergences by the UK to the minimum standard accepted by EU to accept tariff and quota free trade: The Level Playing Field

**Thank you for your attention**