



T: 0300 244 4000
E: scottish.ministers@gov.scot

Clare Adamson MSP
Convener, Constitution, Europe, External Affairs
and Culture Committee
The Scottish Parliament
Edinburgh
EH99 1SP
ceeac.committee@parliament.scot

10th June 2024

Dear Clare,

I am very much looking forward to appearing before your Committee on 20 June, in order to assist with the Committee's enquiry into the implementation of the UK-EU Trade and Cooperation Agreement (TCA).

As you know, the Scottish Government has been working intensively to bring about improvements to the functioning of the TCA, that will benefit the many trade and business sectors, and other sections of society in Scotland who have seen their interests damaged by this agreement, which we believe could, and should have been much better than it is.

The primary opportunity for us to influence the implementation of the TCA is through the Specialised Committees (SCs) the TCA has set up, which deal with different areas of trade, economic and other interests. I am pleased to attach a report on our activity in this area over the period from June to December 2023. This follows the verbal briefing my officials provided in January. In addition, I wrote to you separately on 28 May in regard to the recent meeting of the Trade and Cooperation Agreement Partnership Council.

I hope Committee members will find the attached report helpful, and look forward to discussing it in detail on 20 June, as well as the outlook for progress on these issues in the coming period, and any other matters members wish to raise.

Yours sincerely,

ANGUS ROBERTSON

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St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot



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TRADE AND COOPERATION AGREEMENT
SPECIALISED COMMITTEES: JUNE - DECEMBER 2023

SUMMARY REPORT

Purpose

1. This paper summarises Trade and Cooperation Agreement (TCA) Specialised Committee meetings from June to December last year, encompassing:
 - Background information;
 - Scottish Government (SG) priorities;
 - SG engagement in TCA Specialised Committee (SC) preparations; and
 - Overview of outcomes.
2. This report fulfils SG's commitment to update the Scottish Parliament's Constitution, Europe, External Affairs and Culture (CEEAC) committee on the work of the TCA SCs on a regular basis. The SCs in question met between June and December 2023 – the last minutes were published in May 2024, which is the reason for the delay in sharing this report with the committee.

Background

3. The core provisions of the TCA – i.e. quota and tariff free market access – have effectively been in force since January 2021. However, as is common with FTAs – and is a particular feature of the TCA, given it was rapidly negotiated between the UK's departure from the EU on 31 January 2020 and the end of the transition period on 31 December 2020 – there are multiple implementation issues still to be resolved that require ongoing dialogue (and in some cases negotiation) between the Parties. Discussions are progressed at official level via 18 thematic SCs, which ultimately report to a Partnership Council chaired by a UK Government Minister and a European Commissioner. The 10 trade-focused SCs report initially to the Trade Partnership Committee as an intermediate step, which then reports up to the Partnership Council¹.
4. 17 of the 18 SCs met once in 2023; the Fisheries SC met twice. Four meetings took place in June (the 'spring round'), with the remaining 15 convening between late September and early December (the 'autumn round'). A full list of SCs, with associated 2023 meeting dates and links to published minutes, is at **Annex A**.
5. Many of the SCs have a relatively broad remit. It is not therefore possible to determine categorically in advance which SCs will consider issues of devolved competence, particularly given the likelihood that SC business will evolve over a number of years.

¹ CEEAC members should be aware that the Partnership Council did not meet in the period covered by this report, though subsequently met in May 2024. We have reported on that by separate letter, as previously agreed.

6. The UK-EU relationship is now framed by the Withdrawal Agreement and the TCA. The view of the Scottish Government is that the new framework will never replace the benefits lost because of Brexit. However, the February 2023 Windsor Framework agreement created a new context for improved UK-EU relations and has provided opportunities to improve TCA implementation, after two years of standstill during the Northern Ireland Protocol dispute. SG therefore re-enforced its efforts on TCA work during 2023, putting in place systems and structures that enabled us to engage in all 18 SCs, whilst focusing most resource on those that are clearly remitted to consider our priority issues and/or devolved matters more broadly – for example, Services, Investment and Digital Trade; Sanitary and Phytosanitary (SPS); Technical Barriers to Trade (TBT); and Level Playing Field (LPF).

Scottish Government priorities

7. It is the view of Scottish Ministers that the TCA represents a significant step backwards in our trading relationship with the EU, when compared with the benefits the UK enjoyed as a member state. Modelling by the National Institute of Economic and Social Research shows the UK economy is now 2.5% smaller than it would have been in the EU, a gap which could increase to 5.7% by 2035. In Scotland, this equates to a cut in public revenues of around £2.3 billion in 2023.
8. SG firmly believes that the TCA could and should have gone further in protecting Scottish interests. Many of its limitations are a consequence of policy decisions made by UKG, including minimal mobility provisions and the UK's withdrawal from the Erasmus+ programme. UKG has chosen a more distant relationship overall with the EU than SG (and many others) would have chosen.
9. SG's longer term priorities for improving the TCA are summarised at **Annex B**. However, we were conscious that – with European Parliament and UK Parliament elections in 2024 – the autumn 2023 round of SC meetings represented the last opportunity to make discernible progress on key issues before 2025. Consequently, we sought to use our engagement with the SC process during autumn 2023 to pursue a discrete **set of short-term objectives**, agreed in consultation with stakeholders and relevant policy colleagues. These were as follows:
 - **Secure UK (and therefore Scottish) association to the Horizon Europe research programme**, and to maximise opportunities arising for Scotland. This objective was successfully delivered.
 - **Secure an in-principle agreement that could reopen EU markets to Scotland's seed potato exporters**. Post-Brexit, it is no longer possible to import seed potato imports from Great Britain (GB) into the EU, which UKG has contested. Resolving this situation could reopen a market that pre-Brexit accounted for 20,000 tonnes of Scottish seed potato exports each year. Agreement here would also be in the interests of growers in a number of member states seeking access to Scottish/GB seed.

- **Secure a commitment to open negotiations on linking the UK and EU Emissions Trading Schemes.** These negotiations are likely to be long and complex. SG argued that UKG should be proactive in raising this issue with the EU and setting a firm timetable for, at the very least, preliminary discussions.
- **Ensure Technical Barriers to Trade Working Groups (WGs) are established as quickly as possible, with appropriate SG representation.** The TCA provides for these groups as a means of organising negotiations in the TBT space, which is wide ranging. The Parties agreed in March 2023 to establish the WGs, but none had met before the start of the autumn round.
- **Convince UKG to make a strong case to the EU for touring creative professionals to be included in existing visa exemption arrangements.** Simplifying visa restrictions would make touring the EU more affordable and straightforward for creative professionals such as musicians and visual artists. SG believes that the case for change would be significantly strengthened by a reciprocal offer to review the UKG visa regime as it relates to EU-based creative professionals. There would also be benefit in exploring the possibility of removing or relaxing other barriers to creative professionals carrying out short-term work in the EU, such as customs requirements. Progress on this issue, if appropriately framed, therefore has potential to benefit both Parties.
- **Ensure Devolved Governments, Scottish civil society and parliamentary interests are appropriately represented in TCA governance structures – including ad hoc arrangements and technical discussions.** At present the UK Domestic Advisory Group is not proportionately representative of the UK's nations and regions, and membership is weighted in favour of business groups. More needs to be done to ensure representation is fair and reflective of devolved areas of policy and regulation. It is crucial that UKG does not represent the England or England and Wales position as the UK position in areas of devolved policy or regulation. In addition, we want to see a fuller role for MSPs attending the Parliamentary Partnership Assembly.

SG engagement in SC preparations and formal meetings

10. SG engages with the SC process via the UKG's delegations. Each SC has a lead Whitehall department, and is Co-Chaired by a relevant senior official. Within SG, policy teams engage with individual SCs as is relevant to their interests, coordinated by the Scotland-based EU Secretariat (EUS), and with input throughout from the Brussels-based EU Directorate (EUD).
11. Officials across SG have put sustained significant effort into building effective and functional SG-UKG relationships on TCA-related issues. As a result, engagement with UKG during 2023 on the whole was constructive. Lead departments shared agendas in advance, offered pre-meets with Devolved Governments (DGs), and enabled two representatives per DG to observe SC meetings.

12. In addition – following sustained pressure from SG and the Welsh Government – UKG’s Minister for Europe agreed to convene the UK-EU Relations Interministerial Group (IMG) in advance of the autumn round of SC meetings. This in turn created an opportunity for SG’s Cabinet Secretary for Constitution, External Affairs and Culture to press the UKG Minister for commitments to seek progress on the key Scottish concerns described at paragraph 8 above.
13. SG also significantly increased external stakeholder engagement activity during 2023, which further deepened our understanding of the impact that TCA implementation is having on Scottish civil society. SG has welcomed the establishment of the Scottish Advisory Forum on Europe (SAFE). The group’s primary aim is ensuring Scottish interests are accurately represented in discussions about the TCA, and the UK’s future relationship with Europe more generally. SAFE is independent of government but SG officials engage regularly with its Chair, Irene Oldfather, and have been invited to attend SAFE meetings. SG also supported a successful visit by a delegation from the European Economic and Social Committee (EESC), which included the signing of a Memorandum of Understanding with SAFE on future cooperation – the first time the EESC has agreed an MoU with a subnational entity.
14. In addition, SG supported Irene Oldfather – in her role as Vice Chair of the UK Domestic Advisory Group (DAG) – in her successful efforts to establish a Nations and Regions DAG subgroup. This should create future opportunities to raise the profile of TCA implementation issues affecting Scotland in particular.
15. Finally, SG officials have continued to provide briefing support to the Convenor and Deputy Convenor of the CEEAC Committee prior to their attendance at twice-yearly Parliamentary Partnership Assembly (PPA) meetings, with the aim of helping to enable the Convenor and Deputy Convenor to play an active role in PPA discussions on issues of particular interest to Scotland.

Overview of outcomes

16. Last year’s SCs did create opportunities for both Parties to air concerns, and in some instances to agree to further technical discussions (for example, on the Level Playing Field). However, only limited substantive progress was made on UKG’s priorities. There were two very notable exceptions – agreement on the UK’s association to the EU’s Horizon Europe and Copernicus programmes, and secondly extension of a rules of origin (RoO) deadline affecting electric vehicles. These were both formally approved through the relevant TCA structures, though substantive negotiations had taken place outside of the formal SC process.
17. The specific SG priorities set out at paragraph 8 also remain a work in progress. Nonetheless, a considerable step forward was made last year in UKG-SG engagement during the SC cycle. SG plans to continue building on this work over the coming period as we prepare for 2024 meetings.
18. A summary of developments across SG’s key objectives is provided below.

Objective	Update
<p>Maximise opportunities arising for Scotland from UK association to the Horizon Europe research programme.</p>	<p>The formal association agreement was signed at the Union Programmes SC on 4 December, and as of 1 January 2024 the UK is formally associated to the Horizon Europe programme. The Scottish Government has been working closely with the research and innovation sector to identify barriers and support needed to boost Scottish participation in the programme. SG is also working with Scottish Enterprise and UK Government to deliver a Horizon Europe Roadshow event in Scotland in June 2024, which will provide information to Scottish stakeholders on support available to access and succeed under the programme. In addition, the SG Minister for Higher and Further Education met with the European Commissioner for R&I, Iliana Ivanova, in February 2024 to reiterate the valuable importance of the programme to Scotland and offer support for future campaigns in Europe to promote the UK's participation.</p>
<p>Secure an in-principle agreement that could reopen EU markets to Scotland's seed potato exporters.</p>	<p>The UK raised seed potatoes again at the SPS SC. Discussions are continuing, and the latest position is that the EU have proposed to carry out an audit of the UK sector, to aid consideration of whether trade can be resumed.</p>
<p>Secure a commitment to open negotiations on linking the UK and EU Emissions Trading Schemes (ETS).</p>	<p>Despite SG pressing, UKG has so far refused to raise this issue with the EU. We understand UKG do not consider it a priority, despite the introduction of the EU's Carbon Border Adjustment Mechanism (CBAM), which could create a new tax liability for some UK exporters.</p>
<p>Ensure Technical Barriers to Trade (TBT) Working Groups (WGs) are established as quickly as possible, with appropriate SG representation.</p>	<p>The 2023 TBT SC formally agreed to establish WGs on organic products, medicinal products, and motor vehicles. SG officials have since secured a commitment from UKG to fully involve DGs in WG preparations and (at a minimum) to offer DG representatives observer status at WG meetings. Terms of reference have been agreed, with initial meetings of each WG scheduled to take place in the first half of 2024.</p>

<p>Convince UKG to make a strong case to the EU for touring creative professionals to be included in existing visa exemption arrangements.</p>	<p>The UK raised visa and other challenges facing touring artists at the Services, Investment, and Digital Trade SC. In addition, the UK-EU Civil Society Forum (CSF), the UK DAG and the Parliamentary Partnership Assembly (PPA) have submitted recommendations to the Parties to take action to resolve the difficulties facing creative professionals. However, the EU has consistently argued that the issue is out of scope, as a result of UKG’s refusal to include mobility provisions within the TCA.</p>
<p>Ensure Devolved Governments, Scottish civil society and parliamentary interests are appropriately represented in TCA governance structures.</p>	<p>As discussed above, UKG engagement with DGs in SC processes was generally positive last year.</p> <p>The establishment of SAFE – and the significant and growing interest it has generated across Scottish civil society –also created new opportunities for Scotland’s TCA priorities to be heard at both a UK and an EU level.</p> <p>However, whilst SG was pleased to see the DAG’s Nations and Regions subgroup established earlier this year, we are nevertheless disappointed that UKG continues to refuse the Law Society of Scotland a seat on the DAG – despite Scotland’s separate legal system making it wholly inappropriate for the Law Society of England and Wales and the Bar Council, which are DAG members, to represent Scottish interests.</p> <p>Finally, SG welcomed the invitations extended to the Convenor and Deputy Convenor of the CEEAC Committee to attend the Parliamentary Partnership Assembly meetings that took place in June and December. SG continues to call for the representatives of the Scottish Parliament to be afforded full membership of the UK delegation, and was disappointed to see that the March 2024 PPA meeting was cancelled.</p>

ANNEX A

SPECIALISED COMMITTEE MEETING DATES AND MINUTES

Specialised Committee	2023 meeting date(s)	Published minute
Air Transport	1 June	Minutes of the Third Meeting of the Specialised Committee on Air Transport (SCAT) established by the UK-EU Trade and Cooperation Agreement (TCA): Brussels and online, 1 June 2023 (publishing.service.gov.uk)
Law Enforcement and Judicial Cooperation	19 June	Third meeting minutes: Specialised Committee on Law Enforcement and Judicial Cooperation, 19 June 2023 - GOV.UK (www.gov.uk)
Social Security Coordination	23 June	Third meeting of the Specialised Committee on Social Security Coordination (publishing.service.gov.uk)
Fisheries	27 June and 22 September	Sixth meeting of the Specialised Committee on Fisheries minutes (publishing.service.gov.uk) Seventh meeting of the Specialised Committee on Fisheries on Friday 22 September 2023 - minutes - GOV.UK (www.gov.uk)
Customs Cooperation and Rules of Origin	27 September	Third Trade Specialised Committee on Customs Cooperation and Rules of Origin Minutes - GOV.UK (www.gov.uk)
Level Playing Field for Open and Fair Competition and Sustainable Development	4 October	Minutes: Trade Specialised Committee on Level Playing Field for Open and Fair Competition and Sustainable Development under the EU-UK Trade and Cooperation Agreement: third meeting, 4 October 2023 - GOV.UK (www.gov.uk)
Services, Investment and Digital Trade	9 October	09102023-minutes-of-the-services-investment-and-digital-trade-specialised-committee (publishing.service.gov.uk)
Sanitary and Phytosanitary Measures	11 October	Third meeting of the Trade Specialised Committee on Sanitary and Phytosanitary Measures under the EU-UK Trade and Cooperation Agreement, 11 October 2023: minutes - GOV.UK (www.gov.uk)
Technical Barriers to Trade	18 October	Minutes of the third Trade Specialised Committee on Technical Barriers to Trade, 18 October 2023 (publishing.service.gov.uk)

Administrative Cooperation in VAT and Recovery of Taxes	19 October	Joint minutes: third meeting of the Trade Specialised Committee on VAT Administrative Co-operation and Recovery of Taxes under the EU UK Trade and Co-operation Agreement - GOV.UK (www.gov.uk)
Intellectual Property	23 October	3rd Trade Specialised Committee on Intellectual Property under the EU-UK Trade and Cooperation Agreement (publishing.service.gov.uk)
Regulatory Cooperation	6 November	Specialised Committee on Regulatory Cooperation meeting minutes_6 November 2023.pdf (publishing.service.gov.uk)
Goods	8 November	Third meeting of the Trade Specialised Committee on Goods on 8 November 2023: Minutes - GOV.UK (www.gov.uk)
Energy	9 November	Specialised Committee on Energy: minutes of meeting, 9 November 2023 (publishing.service.gov.uk)
Public Procurement	16 November	Trade Specialised Committee on Public Procurement - GOV.UK (www.gov.uk)
Road Transport	23 November	Minutes: Specialised Committee on Road Transport (publishing.service.gov.uk)
Aviation Safety	30 November	Third Meeting of the Specialised Committee on Aviation Safety established by EU-UK (publishing.service.gov.uk)
Union Programmes	4 December	Specialised Committee on Participation in Union Programmes Minutes: 4 December 2023 - GOV.UK (www.gov.uk)

ANNEX B

SCOTTISH GOVERNMENT TCA PRIORITIES

BEYOND SPRING 2024

SG believes that UKG should be more ambitious for the TCA over the longer term, which could deliver significant benefits to both Scotland and the rest of the UK.

In this context, SG's longer-term priorities for improving the TCA are as follows:

- 1. A comprehensive SPS agreement, to revitalise critical trade in agrifood exports.** UKG's refusal to align with EU SPS rules has generated new bureaucratic hurdles for some exporters of plant and animal products, whilst others have lost access to EU markets completely. An SPS agreement that enabled mutual recognition of standards could remove much of the red tape that has contributed to a slump in agrifood trade since the TCA came into force.
- 2. Full participation in relevant EU programmes – including Erasmus+, Creative Europe, and European Territorial Cooperation.** These schemes have broadened horizons and enabled generations of young people to study and train on the continent. The TCA does not preclude the UK's ongoing participation in any of these programmes; our exclusion is the consequence of the UKG's decision-making. UKG's replacement initiatives, including the Turing Scheme, are poor substitutes and cannot hope to replicate the breadth and scale of the EU's well-established initiatives.
- 3. Restored opportunities for professional mobility in sectors across the economy, including improved arrangements for creative professionals and mutual recognition of professional qualifications (MRPQ).** SG has consistently opposed the ending of free movement between the UK and the EU. Whilst we recognise complete freedom to live, work and travel in the bloc will not be restored whilst Scotland is outside the EU, the TCA contains provisions that enable work permit exemptions for certain short-term activities, and these provisions can and should be expanded. For example, they do not currently cover creative professionals, severely restricting the ability of new talent in particular to tour the continent. The TCA also permits the UK and EU to recognise equivalent professional qualifications, for example for architects or lawyers. To date, little has been done to take advantage of these provisions, to the detriment of Scotland's EU-facing professional sectors.
- 4. Maximised opportunities for young people to live, work, study and learn in the EU.** Brexit denied a generation of young people the chance to engage fully and freely in the benefits of EU membership. A holistic approach is needed to recognise that loss and seek to restore opportunities wherever possible, for example through participation in EU educational and training programmes, reciprocal youth mobility schemes, and other cooperative measures. We very much welcome the EU Commission's proposals for a youth mobility scheme with the UK. The UKG's refusal to engage in discussions is disappointing.

- 5. Greater cooperation on security and law enforcement.** The second-generation Schengen Information System (SIS2) is the EU's real-time alerts, notice and intelligence sharing platform, allowing police forces across the EU and Schengen zone to share data on wanted and missing persons, security and border management. The UK lost access to SIS2 as a consequence of Brexit; a significant loss to law enforcement. It is urgent, and in the public interest, that an alternative means be found to exchange vital information with the EU and its member states on these issues that keeps the people of Scotland – and indeed the rest of the UK and the EU – safe, while acknowledging that direct and full participation in SIS2 may not be possible for non-EU members.
- 6. Closer energy cooperation, to support shared priorities on energy security and the transition to net zero.** Brexit created a more distant energy relationship between the UK and the EU – but in light of the shared challenges we face today, closer energy cooperation between Scotland, the UK and our European partners is more vital now than ever. The TCA's Energy Chapter offers the potential to rebuild strong EU-UK cooperation on energy, but progress to date has been disappointing. SG is keen to see the EU and UK pursue vigorously the commitments they both made in the TCA to: cooperate on the development of offshore renewable energy capacity, with Scotland enabled to play a full role; cooperate on security of supply, in light of recent geopolitical shifts; implement more efficient UK-EU electricity trading arrangements to protect consumers and improve resilience; and explore the potential of linking the UK and EU Emissions Trading Schemes to support the drive towards net zero.
- 7. Minimised technical barriers to trade.** The Scottish Government opposed leaving the Single Market and Customs Union, and our position remains that we should rejoin at the earliest opportunity. Whilst the TCA negated the risk of tariffs being imposed on goods moving between the UK and EU, businesses face many more bureaucratic checks than was the case when the UK was a member of the Single Market. As a result, in Scotland's seafood sector alone costs have significantly increased across packaging, certification, and transport. We urge the UK Government to prioritise cooperating with the EU to remove unnecessary Brexit red tape and technical barriers to trade, including: seeking a Mutual Recognition Agreement on Conformity Assessment with the EU; making better use of the mechanisms within the TCA for regulatory cooperation; addressing the inconsistent application of customs processes for traders; and cooperating to improve the international interoperability of digital tools and systems to support trade. These steps could provide benefits to all parties.