

Scottish Parliament—Constitution, Europe, External Affairs and Culture Committee

Evidence given to the Inquiry on the UK-EU Trade and Cooperation Agreement—UK and EU Reset (Trade relations in the context of the changing geopolitical situation)

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2. Introduction

Brexit represented an unprecedented event for both the United Kingdom and the EU and as such required a novel solution to the challenges it provoked. The Trade and Cooperation Agreement was negotiated and concluded with a view to addressing the implications of the UK's exit from the Union. The two polities were and still are deeply interconnected, due to their geographical proximity, their economic interdependence and the longstanding membership. The TCA was therefore deeply unique: negotiated in a relatively short time-frame, as opposed to, for instance, the timeline prescribed for membership or association or neighbourhood partnership arrangements, the agreement resulted in a new partnership which was “negotiated down” as opposed to “upwards”. In other words, the linkages of integration were loosened and weakened, as opposed to being deepened and strengthened. In addition, the EU members presented themselves as a united front vis-à-vis the UK. The British Government, on its part, was often driven by demands of internal politics and its Cabinet was on occasion divided on the trajectory of the negotiations.²³ The nature, scope and process leading to the TCA challenge the established approaches to external and trade policy that the Union has been holding throughout its existence. This is not surprising, given the above. However, it raises questions as to how the future directions of the UK and EU relations are likely to evolve. The purpose of this short submission is to consider how the EU's position as regards trade policy appears to be changing and how this change can affect the “reset” that the UK Government has pledged to pursue. A previous report of this Committee analysed the challenges and opportunity that the TCA's chapters on trade in goods present for UK and in particular Scottish businesses. Toward the end this submission will discuss some of the potential implications for the trade in services and e-commerce.

3. The TCA as a ‘sui generis’ international agreement—summary remarks and outlook

It is undoubted that the TCA represents a sui generis trade agreement in the context of the EU's approach to external commercial policy. As was anticipated, its nature

²³ See inter alia Wachowiak and Zuleeg, “Brexit and the Trade and Cooperation Agreement: implications for EU external and internal differentiation”, (2022) 57(1) Int'l Spectator 142, pp. 147-149.

was dictated by the extraordinary circumstances in which it was negotiated and by the objectives it sought to achieve. In the words of the European Commission the agreement sets out a “new economic and social partnership with the UK”, based on tariff- and quota-free trade in goods, subject to the compliance with the appropriate rules of origin, on a commitment to a “robust level-playing field” characterised by high levels of protection in a number of fields, such as environmental protection, labour rights and competition and new regulatory models in the areas of fisheries, energy and transport. The TCA is a “living agreement”: implementation and the commitment to pursuing regulatory alignment are ensured through a bespoke institutional and oversight framework, through which consultation can take place and disputes can be resolved at least in the first instance, amicably.²⁴

The 2nd Report produced by this Committee in the course of the inquiry on the UK-EU Trade and Cooperation Agreement, which dealt with trade in goods, examined the impact of the TCA's arrangements in this area, finding that, even in the absence of tariff- and quota- barriers, Scottish suppliers faced considerable obstacles when exporting to the Union, due to the absence of an agreement on non-tariff barriers and in that context, of common regulatory standards affecting goods.²⁵ As a result, firms are faced with additional costs of compliance with EU rules, with difficulties arising from the need to comply with customs and checks at border and with uncertainty as regards the current and future development of these standards.²⁶ To address these difficulties, the Committee made a number of proposals which should, in its view, lessen the burden of Scottish exporters: these included the stipulation of a veterinary agreement designed to reduce border checks, whether through the dynamic alignment between EU and UK standards or the recognition of equivalence of the respective sanitary and phytosanitary standards, an agreement ensuring the mutual recognition of conformity assessments and a commitment to enhancing support for UK and Scottish businesses, through clearer guidance and continuous monitoring of EU regulatory standards.²⁷

In light of the foregoing, it is submitted that the Report paints a complex picture of the impact of the TCA on trade in goods, even in a regime of zero tariffs and quotas. It is suggested that this picture is even more complex and to an extent, worrying, when it comes to trade in services and, in many aspects, to e-commerce and digital markets.²⁸ As is well-known, the exit of the UK from the EU brings to an end the applicability to UK service providers of the “Home Country Control” principle, which allowed for the mutual recognition of regulatory standards among member states and, consequently, for the borderless trade in services throughout the internal market. In addition, the Agreement limits the right of individual professionals to move

²⁴ See e.g. EU Commission, “The EU-UK cooperation agreement”, available at: https://commission.europa.eu/strategy-and-policy/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement_en#free-trade-agreement.

²⁵ Constitution, Europe, External Affairs and Culture Committee, Scottish Parliament, “UK-EU trade and cooperation agreement: barriers to trade in goods and opportunities to improve the EU-UK trading relationship”, 10 September 2024, SP Paper 639, Session 6, 2nd Report, available at: <https://bprcdn.parliament.scot/published/CEEAC/2024/9/10/b83e263f-a6be-4f34-a943-e8f1774f5346/CEEACS062024R02.pdf>, pp. 10-11.

²⁶ Id., see e.g. pp. 13; see also pp. 24-25.

²⁷ Id., see, respectively, e.g. pp. 30-31; pp. 37-39.

²⁸ Inter alia see Birkinshaw, “Brexit and the Trade and Cooperation Agreement: Endgame or prolegomenon?”, (2021) 27(2) European Public Law 229, pp. 239-240.

to or from the Union in order to provide services only to short stays.²⁹ One of the areas in which the end to so-called “passporting rights” has had a considerable impact is that of financial services.³⁰ However, other industries have been “hit hard” by the reintroduction of the ‘host country’ principle vis-à-vis UK-based service providers: audio-visual services, aviation and road transport have all felt the negative consequences of the loss of mutual recognition.³¹ In addition while, as anticipated, the TCA allows for short stays for the purpose of professional services’ provision, especially for highly skilled professionals, the absence of mutual recognition as regards qualifications hampers market access for UK professionals in the EU and vice versa.³²

The TCA is, however, more liberal when it comes to digital services and e-commerce.³³ The Agreement enshrines a no-tariff deal for electronic transmissions and common rules relating to the authentication of electronic contracts and transactions, as well as a mutual commitment to the free flow of data, subject to regulatory alignment. However, it also allows the parties to derogate from any of the aspects of this “more liberal” regime on the basis of public policy reasons, only subject to the obligation to avoid arbitrary discrimination.³⁴

Against this background, the commitment of the UK Government to a “reset” of the UK and EU relationship, so that the latter can benefit British people and the economy, is very welcome. It is suggested that many of the proposals made by this Committee in relation to the trade in goods would fit well within an agenda that aims to improve market access for UK and especially Scottish traders in the single market.³⁵ Furthermore, the call to the negotiation of rules on the mutual recognition of professional qualifications could go a significant way toward facilitating provision of cross-border services, especially in areas where there are skills’ shortages.³⁶

It is however undeniable that these discussions are taking place in a changing landscape where geopolitical equilibria are shifting. The war in Ukraine and ongoing tensions with Russia as well as China, the former manifesting itself in the context of energy supply and the latter as regards trade in goods, challenge both the EU and the UK’s ambitions and plans as regards external policy and trade. Is this reset likely to be feasible as well as successful? The remainder of this submission will examine in greater detail the EU’s approach to trade policy in light of this shifting scenario as well as of the internal challenges that the Union faces.

4. The European Union and trade policy—a changing scene

The remit of this submission does not permit an in-depth analysis of the EU’s approach to trade policy. However, a number of observations can be made. Since the inception of the Common Market, the establishment and pursuit of a “common

²⁹ See e.g. Borchert and Moriga-Jager, “Taking stock of the EU-UK Trade and Cooperation agreement: trade in services and digital trade”, Briefing Paper 53, UK Trade Policy Observatory, University of Sussex/Chatham House, available at: <https://blogs.sussex.ac.uk/uktpo/files/2021/01/BP53.pdf>, p. 2-3.

³⁰ *Id.*, p. 4.

³¹ *Id.*, p. 5.

³² *Ibid.*

³³ *Id.*, pp. 6-7.

³⁴ *Ibid.*

³⁵ See <https://www.politico.eu/article/britain-looks-to-reset-its-brexite-reset/>.

³⁶ See inter alia UKICE, Explainer: Agreement on mutual recognition of professional qualifications, 16 September 2024, available: <https://ukandeu.ac.uk/explainers/agreement-on-mutual-recognition-of-professional-qualifications-mrpgs/>.

commercial policy” was regarded as essential for the success of European integration. Initially linked to the overarching objectives of “deepening the economic cooperation between member states” it developed in a way that was co-extensive with the creation of a free trade area within the Community/Union.³⁷ The expansion of the Union’s areas of competence to less trade-related and more political areas, however, soon started to create a degree of tension between internal policies and the Union’s directions in the context of its external-facing action. It was noted in debate that it was unclear whether the goals of the common commercial policy “could be determined in isolation of its own logic based on the concept of gradual, progressive liberalisation (...)” or instead should take into account and thus reflect more closely other goals and concerns that were perhaps not as closely related to trade and market access.³⁸

The Treaty of Lisbon sought to systematise and clarify the scope and directions of the EU’s external action, in line with the ambition, pursued by the EU and the member states, to enhance the certainty and coherence of the system of competences of the Union more generally. The Treaty established a framework of values, principles and objectives that should guide the EU as it shapes its trade policy. Thus, Article 2 TEU sets out an “ethical vision” for the Union’s commercial policy, which should be guided by values of, *inter alia*, respect for human rights, democracy and the rule of law.³⁹ In relation to the ‘principles’, the Treaty states that the Union’s action in this area should be subject to uniform principles and pursue an “objective of liberalisation”: the Union should strive toward the “harmonious development of world trade”, by favouring the abolition of trade barriers and the elimination of customs and other duties affecting trade flows.⁴⁰ These ‘values’ and ‘principles’ are operationalised more concretely in a set of objectives. The latter retain a significant “ethical connotation”—for instance to the extent that they commit the EU to pursuing, through its external trade action, goals of “peace”, “security” and “eradication of poverty”.⁴¹ Other goals are more closely connected with trade liberalisation: Article 21 TEU commits the Union to adopting and pursuing “common policies and actions (...) [and] a high degree of cooperation” on the international plain to promote sustainable development and encourage the integration of all countries within world trade, through the abolition of trade barriers.⁴²

It has been suggested in commentary that the “ethical” approach to trade policy championed by the EU is especially visible in the EU’s “new generation” trade agreements, which, alongside more “traditional” clauses allowing for, *inter alia*, the lowering or elimination of tariffs or other barriers to trade and easier access to specific markets, clauses governing environmental protection or chapters concerning democracy and the rule of law.⁴³ A very apt example is offered by the Agreement

³⁷ See Horvathy, “The values-driven trade policy of the European Union”, EU Business Law Working Papers 3/2018, Centre for European Studies, Szechenyi Istvan University, available at: https://real.mtak.hu/90449/1/eublwp_wp_3_2018.pdf, p. 3-4.

³⁸ *Id.*, p. 5.

³⁹ *Id.*, p. 7-8.

⁴⁰ *Id.*, pp. 9-10.

⁴¹ *Id.*, p. 13-14. See TEU, Article 3(5).

⁴² TEU, Article 21. See Horvathy, *cit.* (fn. 16), p. 15-16.

⁴³ See *inter alia* Makarenko and Chernikova, “New generation EU Free trade agreements: a combination of traditional and innovative mechanisms”, in Kovalchuk (Ed), *Post-Industrial society*, 2020: Cham, Palgrave Mcmillan, p. 109, see e.g. pp. 116-117. See also Bzjikova et al., “New generation EU agreements—the basis for future world trade”, (2024) 14(1) *Juridical Tribune—Review of Comparative and International Law* 116, e.g. pp. 119 ff.

stipulated with the Andean States which not only aims to liberalise trade in goods and services in accordance with principles of non-discrimination on grounds of nationality and with the most-favoured-nation clause, but also sets out in Title IX a system to ensure “adherence to legal regulations in the area of the environment” and the commitment to respecting human rights, including labour protections.⁴⁴ At the same time, the EU has been playing a central position in the context of the WTO, acting as one of the “main promoters of effective international trade based on the rule of law” and of the attainment of goals of “fair market access abroad” for businesses, while at the same time supporting the growth of the economy, especially in less developed countries.⁴⁵

Against this background, it can be argued that the EU has relied on a combination of bilateral treaties and action within multilateral frameworks international trade relations as a means of realising objectives of trade liberalisation and greater market access on conditions of reciprocity, while at the same time seeking to achieve broader, more political objectives, in line with the directions of European integration more generally.⁴⁶

Sixteen years on from the Treaty of Lisbon, however, the approach of the Union to its trade policy appears to be changing once again. A more unstable geopolitical landscape and internal political and economical tensions appear to push the Union to a more “strategic” and perhaps more “inward-looking” view of its role and action on the international trade arena. In relation to the “external” drivers, it is clear that the WTO is not as effective as it used to be in the past in its role of promoter of free trade through multilateral negotiation.⁴⁷ The crisis of its dispute settlement mechanism, which started in 2016, with the US blocking the appointment of members of its Appellate Body is one of the symptoms of this crisis.⁴⁸ The inability of its members to agree on new rules on agricultural trade has evidenced significant tensions especially between developed and developing countries.⁴⁹

Strained trade relations between US and China have been threatening the integrity of the organisation as a whole.⁵⁰ In addition, the impact of economic recessions in a number of key partner countries has prompted once again a discussion as to whether and to what extent domestic industries should be “protected” by competition from foreign companies.⁵¹ Foreign policy has also become a source of instability: the war in Ukraine has had tangible effects on the EU economy and security, on the ground that it has brought to the fore the energy

⁴⁴ Id., p. 122-124. See also <https://trade.ec.europa.eu/access-to-markets/en/content/eu-colombia-peru-ecuador-trade-agreement>.

⁴⁵ See inter alia, European Parliament, “The European Union and the World Trade Organisation”, (2024), available at: <https://www.europarl.europa.eu/factsheets/en/sheet/161/the-european-union-and-the-world-trade-organization>.

⁴⁶ See inter alia Chernikova et al., cit. (fn. 21), p. 128.

⁴⁷ See ex multis House of Commons Library, “World Trade Organisation: challenges and opportunities”, research briefing, 25 March 2024, available at: <https://researchbriefings.files.parliament.uk/documents/CBP-9942/CBP-9942.pdf>, e.g. p. 6.

⁴⁸ Id., pp. 26-28.

⁴⁹ Id., pp. 32-33; see also p. 44.

⁵⁰ Id., pp. 31-32. See also, inter alia, mutatis mutandis, Leal-Arcas, “Challenges and opportunities in EU-China Trade relations”, in Kim (Ed), China and the Belt-and-road initiative, 2022: New York, Springer, p. 35, pp. 40 ff.

⁵¹ See e.g., ex multis, Zettlemeyer, “The return of economic nationalism in Germany”, Policy Brief 19-4, Pieterston Institute of International Economics, available at: <https://www.wita.org/wp-content/uploads/2019/03/German-Nationalism.pdf>.

dependency of many member states vis-à-vis Russia.⁵² The relation between the Union and China is also strained due to the impact of Chinese subsidies on the internal market in a number of industries, such as the that for the production of electric car batteries or wind turbines.⁵³

It is argued that the Union's "recalibration" of its stance vis-à-vis external trade policy should be seen as consequential to these factors. On this point, Steinbach suggested that a "rebalancing" is taking place "by shifting the EU's traditional default to market openness to a more restrictive stance" which follows more closely the "reciprocity" principle and promotes the goal of "strategic autonomy" across not only external trade action but also within its internal policies.⁵⁴ Although it must be recognised that no polity can be truly independent of other forces and that its "security and economic development (...) inherently remain reliant on other forces", given the global nature of the economy and of the threats to be it can be exposed, the Union has sought to address the vulnerabilities to which it is exposed.⁵⁵ It has done so, for instance, through the enactment of measures that can only be defined as "defensive" of its trade and economic interests, such as the 2021 Enforcement Regulation, whose function is, de facto, to replace the inactive multilateral dispute resolution for trade controversies which is at the moment paralysed within the WTO.⁵⁶ In addition, the Foreign Subsidies Regulation provides the EU with a tool to assess the impact on competition within the internal market of subsidies granted to non-EU countries by third party states.⁵⁷ If a subsidy is "liable to improve the competitive position of an undertaking in the internal market and where, in doing so, it actually or potentially negatively affects competition within the internal market" it will be prohibited and justify the adoption of redress measures by the European Commission.⁵⁸

The pursuit of this, albeit relative, independence, is also visible in internal policies. The 2024 Report on "EU Competitiveness—looking ahead", written by Mario Draghi, argued forcefully in favour of a strategic industrial policy aimed at enhancing the ability of EU companies to compete effectively on global markets.⁵⁹

⁵² Inter alia, mutatis mutandis, Casier, "The rise of energy at the top of the EU-Russia agenda: from interdependence to dependence?", (2011) 16 *Geopolitics* 536, pp. 541-542.

⁵³ See e.g. Bickenbach, Dohse, Langhammer, Liu, "EU concerns about Chinese subsidies: what the evidence suggests", (2024) 59(4) *Intereconomics* 214, pp. 216-219.

⁵⁴ Steinbach, "The EU's turn to "strategic autonomy": leeway for policy action and points of conflict", (2024) 34(4) *Eur J of Int'l L* 973, p. 976; see also pp. 983-984.

⁵⁵ *Id.*, p. 978.

⁵⁶ *Id.*, p. 988-989. Regulation (EU) of the European Parliament and the Council of 10 February 2021 concerning the exercise of Union rights for the application and the enforcement of international trade rules, 2021 OJ L49/1. For commentary, see e.g. Weiss and Furculita, "The EU in search of stronger enforcement rules", (2020) 23(4) *Journal of Int'l Econ L* 865.

⁵⁷ Regulation (EU) No 2022/2560 of the European Parliament and the Council of 14 December 2022 on foreign subsidies distorting the internal market, 2022 OJ L330/1. For commentary see inter alia Hornkohl, "Protecting the internal market from subsidization with the EU state aid regime and the Foreign Subsidies Regulation: two sides of the same coin?", (2023) 14(3) *Journal of Eur Comp L and Econ* 137; see p. 138.

⁵⁸ Hornkohl, *cit.* (fn. 34), p. 142-143.

⁵⁹ Mario Draghi, "The future of European competitiveness", September 2024, available at: https://commission.europa.eu/document/download/97e481fd-2dc3-412d-be4c-f152a8232961_en?filename=The%20future%20of%20European%20competitiveness%20%20A%20competitiveness%20strategy%20for%20Europe.pdf (part A); and Part B, https://commission.europa.eu/document/download/ec1409c1-d4b4-4882-8bdd-3519f86bbb92_en?filename=The%20future%20of%20European%20competitiveness%20In-depth%20analysis%20and%20recommendations_0.pdf.

At the core of this policy should be objectives of “sustainable competitiveness, economic security, open strategic autonomy and fair competition”.⁶⁰ This agenda has several facets: it ranges from the completion of the internal market to the adoption of policies aimed at the decarbonisation of the economy and at closing the innovation gap, with a view to enhancing the position of European undertakings on key markets, such as those for digital technologies.⁶¹ It calls for greater integration of capital markets and for a EU-wide use of state subsidies as a means of supporting innovation.⁶²

The Draghi’s prescription is also bold and pragmatic when it comes to trade policy. The Report takes stock of the changing nature of trade relations, of the weakening of multilateral fora as a framework for the agreement of liberalisation arrangements and of the economic challenges that the Union faces from other states, such as state-sponsored competition.⁶³ It therefore advocates for a pragmatic and strategic use of trade policy, which must be closely aligned with industrial policy goals and based on “careful case-by-case analysis rather than on generic stances toward trade”.⁶⁴ Trade measures should be “pragmatic” and aimed closely to the pursuit of greater productivity. To the extent that they appear necessary, countervailing measures should be only used on the basis of an “overriding geopolitical imperative”.⁶⁵ Trade policy actions must be consistent and take account consumer interests. It must also aim to differentiate what are “genuine innovations” that are produced abroad and imported in the internal market, to the benefit of European consumers and businesses, to cases of “state-sponsored competition”.⁶⁶

The Draghi Report also calls for a rethinking of the nature of the trade relation that the EU should pursue with third countries. For instance, when discussing trade policy as a means of achieving greater access to critical raw materials the Report proposes replacing multilateral, broad framework of negotiation with more restricted “alliances”, such as the “Club model”.⁶⁷ Importantly, it should be emphasised that these proposals have been endorsed by the European Council in its informal meeting in Budapest. The Budapest Declaration “seizes the wake up call” resonated in the Draghi Report and calls for an “ambitious, robust, open and sustainable trade policy, with the WTO at its core, which defends and promotes the EU’s interests, economic diversification and resilience” and delivers on objectives of “economic security while upholding an open economy and building international partnerships”.⁶⁸ As such, therefore, it can be suggested that the European Council confirms the commitment to policies contributing jointly to the creation of the “open strategic autonomy” which is regarded as fundamental for growth and competitiveness in Europe.⁶⁹

⁶⁰ See: https://commission.europa.eu/topics/strengthening-european-competitiveness/eu-competitiveness-looking-ahead_en#paragraph_47059.

⁶¹ Draghi, cit. (fn. 37), Part A, pp. 6-7.

⁶² Ibid.

⁶³ Id., part A, p. 15.

⁶⁴ Id., p. 20.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Id., Part B, pp. 60-61.

⁶⁸ European Council, Press release, 8 November 2024, available at: <https://www.consilium.europa.eu/en/press/press-releases/2024/11/08/the-budapest-declaration/>.

⁶⁹ See inter alia European Parliament, Competitiveness on the European Council agenda, post-European Council Briefing, November 2024, available at:

In light of the forgoing analysis, it can be concluded that the EU's position in the realm of international trade policy is changing, due to the combined impact of internal factors, such as its commitment to pursuing a domestic agenda oriented toward growth and enhancing competitiveness and independence vis-à-vis external dependencies—economic as well as political and normative—and of external drivers, namely the deteriorating geopolitical circumstances, the weakening of multilateral trade governance structures and the commercial tensions with other countries. As the Budapest Declaration and the Draghi Report indicate, the Union seems to adopt a much more strategic, evidence-based and pragmatic approach to trade policy. While the Union remains committed to the WTO, its efforts toward open strategic autonomy are very likely to lead to greater differentiation in the nature of international trade negotiations, with stronger emphasis on reciprocity and focus on ensuring that what is attained is functional to supporting industrial policy internally.

5. UK/EU relations in the “broader picture”—the “reset” in the context of the EU's changing attitude to trade policy

The previous sections tried to provide a summary analysis of the current trajectories of the EU's approach to trade policy and argued that, while the Union remains committed to multilateral trade frameworks and to an active, pro-trade role in these contexts, its position seems to be shifting from a more “strategic” position, where autonomy is central and a desire to use trade policy as a means to bolstering industrial policy is a leading factor.

It could be argued, not without merit, that the TCA provides a framework of bilateral relations, with its own implementation and oversight mechanisms and therefore its principles should guide the development of the UK/EU relations going forward, including the “reset” that the UK Government has pledged. However, it is submitted that it not possible to separate completely any development of the post-Brexit partnership. It is suggested that the same events and circumstances, especially geopolitical, that are influencing the shifting approach of the EU to trade policy are likely to be just as influential when it comes to any future development of the UK/EU relationship.

In addition, it should be observed that diversified approaches to trade policy and, internally, to cooperation between member states, are not new in the history of the Union. It was suggested in commentary that Brexit and the TCA provide a telling example of how integration or disintegration can be differentiated. Kuisma and Donoghue, for instance, noted that as the UK, ever the “awkward partner”, albeit at the same time a core member of the Single Market, expressed its intention to leave the EU, this had significant implications, by prompting member states to “cooperate in different ways... to agitate for different terms of membership” and more generally, by presenting an example of how the relation between member states and the Union can shift.⁷⁰ In addition, as the Union moves toward a more pragmatic use of trade policy, where bilateral deals co-exist, perhaps more markedly, with multilateral approaches to international economic relations, it is submitted that the Trade and

[https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/762875/EPRS_BRI\(2024\)762875_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/762875/EPRS_BRI(2024)762875_EN.pdf), especially pp. 3-4.

⁷⁰ Kuisma and Donoghue, “Brexit as a phenomenon: national solidarity as a tool against the European project?”, in Leruth, Ganze and Trondall, *The Routledge Handbook on Differentiation in the European Union*, 2022: Abingdon, Routledge, ch. 36, p. 6; see also p. 9.

Cooperation Agreement may emerge as one example of how the EU's strategy on the international plain is differentiated vis-à-vis other trade instruments.⁷¹

As was illustrated earlier the Agreement was a sui generis one, due to the nature of the preceding relation between the parties and the dynamics of the negotiation process. It also “negotiated down” the extant relationship from full membership to a form of partnership which was different from the one established by other treaties—for instance the agreement with the Andean community mentioned above.⁷² However, it is not a “finished agreement”: on this point, Schimmelfennig, among other commentators, observed that the TCA leaves many areas still open to negotiation in future. While the Agreement ends the “disintegration process” that, it could be argued, the UK had already put in motion (for instance by negotiating opt-outs in 2016, under the Cameron Government), it also sets out common goals and principles upon which to “rebuild rule-based cooperation” between the Union and the UK as a third state,⁷³ such as the commitment to dynamic alignment, to tariff-free trade in goods and to no-regression in, inter alia, environmental policy or the protection of competition.⁷⁴

However, it is also likely that geopolitical contingencies as well as changing attitudes within the EU, as detailed earlier, will impact this renegotiation. In a previous hearing before this Parliament, Prof Catherine Barnard pointed out that while it would in principle be mutually helpful to negotiate on sanitary and phytosanitary measures, the Union appears reluctant to start any talks until such time as the incoming US President takes office, on the ground that until then, it is not clear whether the UK might, for instance, seek to achieve market access concessions with the US which would likely require Britain to accept SPS obligations in line with US standards. In her view, as the latter diverge significantly from the Union's own requirements, this might lead to more checks being imposed on UK goods that are exported to the internal market. In the face of such uncertainty, therefore, it could be argued that the Union is understandably not keen to enter into talks with the British Government.⁷⁵ In light of the forgoing, it is argued that the “reset” that the UK Government has committed to can be regarded as a step in the development of the cooperation between the Union and Britain as non-member, as discussed earlier.

Nonetheless, it is suggested that the Union is likely to be influenced by the external and internal drivers that affect its trade policy more generally, as detailed above. It is undeniable that improving the relations between the EU and the UK is in the interest of both parties. Accordingly, it has been proposed in debate that any change in this relationship should be functional to achieving “mutual gains” and be shaped in a way that is conducive to “rebuilding mutual trust”. On this basis, Garcia-Bercero, among others, welcomed the proposal for the creation of a “ministerial trade on economic cooperation”, where UK ministers and highly ranking EU officials can discuss issues of common concern in areas of strategic importance, such as “foreign policy, security and global economic challenges”.⁷⁶ Similarly, an agreement on

⁷¹ Inter alia, mutatis mutandis,

⁷² See inter alia Schimmelfennig, “(Post) Brexit: negotiating differentiated disintegration in the European Union”, in Leruth et al., cit. (fn. 48), ch. 37, pp. 7-9.

⁷³ Id., p. 16.

⁷⁴ Id., pp. 9-12.

⁷⁵ Oral evidence given by Prof Catherine Barnard to CEEAC on 21 November 2024.

⁷⁶ Garcia-Bercero, “A trade policy framework for the EU-UK reset”, (2024) (November) Bruegel Policy brief, available at: <https://www.jstor.org/stable/resrep65127>, p. 2; see also pp. 4-5.

veterinary standards would allow the TCA to “fulfil its potential”, by addressing trade obstacles that this Committee highlighted on its Part 1 Report.⁷⁷ Also, enhancing cooperation on regulatory standards would contribute to achieving the goal of dynamic alignment for goods that the TCA enshrines.⁷⁸

As to the area of services more specifically, however, the picture appears to be comparably more complex. While the TCA envisages short term mobility for professionals, individual contractors and individuals working in the creative arts, in practice whether their performance or service provision can be remunerated in a EU state depends on each individual accessing these jurisdiction on the basis of a visa that entitles them to carry out remunerative work. This is not (or in any event not always, for it depends on the relevant domestic laws of the affected member states) the case when an individual enters an EU state by relying on a short-visit permit.⁷⁹ Accordingly, it remains unclear whether this might create conditions actually facilitating cross-border provision of services even present more favourable mutual recognition provisions.⁸⁰

And finally, there is the changing attitude to trade policy more generally that is likely to influence any negotiations between the Union and the UK. It was argued earlier that the EU’s competitiveness agenda views trade policy as functional to goals of strategic autonomy, economic resilience and security, especially in strategic sectors such as digital technology and energy.⁸¹ It is argued that as the Union seeks to protect the integrity of the internal market in a time of economic uncertainty and political instability, it might be relatively more cautious in the negotiation of any new, potentially more generous terms of access to it within the framework of the TCA.⁸²

In conclusion, there are cautious reasons to welcome the forthcoming discussions concerning the future of EU/UK cooperation, on the ground that engaging with this process can yield outcomes that serve the interests of both parties and rebuild mutual trust. However, it is not clear how much each of the parties might be ready to concede on key aspects of the proposed reset.

⁷⁷ Id., p. 8; see Part 1 Report, p. 26 ff.

⁷⁸ Garcia-Bercero, cit. (fn. 53), p. 12 ff.

⁷⁹ Ibid. See also, inter alia, mutatis mutandis, Panisson and Bisong, “On the move?”, (2024), Available at SSRN: <https://ssrn.com/abstract=4787909> or <http://dx.doi.org/10.2139/ssrn.4787909>.

⁸⁰ Inter alia, mutatis mutandis, Laffan and Telle, *The EU’s Response to Brexit*, 2023: London, Springer, p. 195-196.

⁸¹ See also, e.g. EU Commission and High representative for the CFSP, Joint communication: and EU approach to enhance economic security, 20 June 2023, Press release, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3358.

⁸² See mutatis mutandis Fontanelli, “The law of UK trade with the EU and the world after Brexit”, (2023) 3(1) King’s L J 1, pp. 19-20.