

Constitution, Europe, External Affairs and Culture Committee
Thursday 16 January 2024
2nd Meeting, 2025 (Session 6)

Review of the UK-EU Trade and Cooperation Agreement Inquiry: Part 2

1. The Committee published the [UK-EU Trade and Cooperation Agreement: Barriers to trade in goods and opportunities to improve the UK-EU trading relationship](#) report on 10 September 2024, following the first part of our [Review of the EU-UK Trade and Cooperation Agreement](#) inquiry.
2. That piece of work focused on trade in goods between the UK and the EU. The second part of the inquiry is looking at trade in services and will also cover youth mobility and touring artists.
3. The Cabinet Secretary's [response to CEEACC TCA Report Part I](#) set out the Scottish Government priorities for improving UK EU relations, including its aim to—
 - Seek full participation in relevant EU programmes, with specific priority to request a commitment to open negotiations with the EU Council to discuss options for partial or full association with Erasmus+ and Creative Europe
 - Seek restored opportunities for professionals in sectors across our economy to work in the EU
4. We began the second part of the inquiry on 31 October with [a panel representing the legal profession](#), continued on 21 November with [a panel of academics and think tanks](#), and heard on 12 December from [British Chambers of Commerce and Energy UK](#).
5. This week provides an opportunity to consider how the nature of the UK's trading relationship with the EU will be influenced by wider geopolitical considerations and we are hearing from—
 - Peter Holmes, Emeritus Fellow, the UK Trade Policy Observatory, the University of Sussex
 - Emily Fry, Senior Economist, the Resolution Foundation
 - Dr Arianna Andreangeli, Professor of Competition Law, the University of Edinburgh
 - David Henig, Director, the UK Trade Policy Project, the European Centre for International Political Economy

6. A SPICe briefing is provided at **Annexe A**, including links to various papers and blogs by the witnesses or their organisations, and other written submissions are provided at **Annexe B**.

Clerks to the Committee
January 2025



Constitution, Europe, External Affairs and Culture Committee

2nd Meeting, 2025 (Session 6), Thursday, 16 January

Inquiry into the review of the EU-UK Trade and Cooperation Agreement – geopolitical influences

Background

As part of the committee's consideration of the UK-EU relationship ahead of the TCA review, this evidence session will provide Members with an opportunity to consider how the nature of the UK's trading relationship with the EU will be influenced by wider geopolitical considerations.

Context

Following the UK's departure from the EU at the end of January 2020 and the negotiation of the Trade and Cooperation Agreement at the end of 2020, a number of geopolitical events have taken place which may influence the nature of the EU-UK relationship and the TCA review which looks set to take place over the next twelve to eighteen months.

From a trading perspective, the key development is arguably the return of Donald Trump to the White House. During the presidential election campaign and since his re-election Donald Trump has promised to impose tariffs on imports to the United States as part of his approach to supporting American businesses and also as a foreign policy tool in an attempt to influence other countries domestic and foreign policy decisions. For example, President Trump has pledged to [impose increased tariffs on goods coming from Mexico, Canada and China starting on the first day of his administration.](#)

From a UK and EU perspective, the President's threat of a blanket increase in tariffs would be a costly impact on their economies [as the University of Sussex's Centre for Inclusive Trade Policy has previously highlighted](#). What the President would be expecting from both the EU and the UK in exchange for tariffs not being raised isn't entirely clear but Donald Trump's transactional approach to politics suggest he'd be looking for something of benefit to the US [as the BBC's Economics Editor Faisal Islam has highlighted](#):

“Importantly, the rationale for these moves is not mainly or even much about trade or economic policy. These tariffs are about getting Mexico, Canada and China to alter their policies on crackdowns over migration and illicit drugs.

Trump is using tariffs as a weapon of diplomacy, even coercion, on topics entirely unrelated to global trade.”¹

An indication of the developing UK-EU relationship following the election of a new UK Government came last October when the Foreign Secretary David Lammy [attended the EU Foreign Affairs Council meeting](#). How the UK and the EU take forward their relationship, in particular on trade related issues is likely to be influenced by external factors such as President Trump's approach to trade policy going forward.

The international trading environment

Peter Holmes from the UK Trade Policy Observatory has written about the World Trade Organisation (WTO) and the world trade environment that the world faces at the start of 2025. In his blog [Is the WTO really a Dead Parrot?](#) he wrote about member states attendance at the WTO Public Forum in September 2024 highlighting the limited engagement from both India and the United States at the Forum. On the role of the WTO and the prospects for it as an enforcement and appellate body, he wrote:

“The WTO Secretariat as a body is seeking to do more than just service the wishes of the Member States. It is seeking to act as a facilitator, convenor and broker, in the absence of, and perhaps to recreate, the missing consensus. Inclusivity and sustainability were being pushed in sessions organised by the Secretariat. The message was that we cannot assume globalisation will benefit everyone without action being taken. This was the underlying theme: the Forum offered Public Diplomacy on behalf of the organisation. Was it just bland PR? One senior legal official told Sunayana and me that the WTO did seem to have found a way to create a new role and a new narrative for itself. The WTO had been very closely involved in the efforts to keep vaccine supply chains and some border crossings open during Covid, at the request of concerned parties and had brokered important agreements. It was “more important than ever”. The Secretariat is beginning to be more proactive and encouraging global dialogue.

¹ <https://www.bbc.co.uk/news/articles/c0k808xdp18o>

Following these conversations, many of the observers we spoke to were somewhat sceptical, but not all. One of the UK's leading trade specialists thought that this message of pro-active broader engagement was real and had been effective during the COVID period. Dr Ngozi has called for action on carbon pricing in an FT interview. If it could work, seeking to mobilise soft power rather than being the home of rulemaking and rule enforcement would be an excellent strategy. But there are pitfalls. Would it be too controversial in the face of division among members? Is there a risk that the Secretariat could be seen as overreaching its legitimacy in the same way as the Appellate Body? Can the WTO really survive without its key rulemaking and enforcing role? And what if Trump wins?"²

In an blog [Is comparative advantage valid in a geopolitical world?](#), Professor Richard Baldwin of the Massachusetts Institute of Technology wrote about how geopolitical instability has affected the global trading system:

“Geopolitics has undeniably introduced a higher degree of uncertainty into the global trading system. The weaponization of interdependence has fundamentally altered the realities on the ground. No longer can nations take for granted the stability and predictability of international trade relations. Geopolitical manoeuvring and the political leveraging of trade interdependencies mean that in many cases, strategic considerations must overrule efficiency considerations.

In this context, the traditional doctrine of comparative advantage necessitates a nuanced re-evaluation. While efficiency remains a critical metric, policy makers must now weigh this against the risks associated with over-reliance on potentially adversarial trading partners.”

Professor Baldwin set out how the world has changed in recent years:

“For the decades between the fall of the Berlin Wall and 2008, G7 countries acted as if efficiency should be the key consideration for choosing trade policy in most sectors. For example, it was just fine that the US had no producer of 5G wireless equipment, and no producer of the most advanced semiconductors. China was a huggable Panda, Taiwan was safe and open to trade, and Russia was on its way to joining the West. Indeed, as the thinking went, free trade was speeding the emergence to this new world order. It was leading to a convergence of all nations to market economics and representative democracy. Russia joined the G7 in 1998 and WTO in 2012. China joined the WTO in 2001. This, as some famously and foolishly put it, was the End of History...

...A key point is that there were always sectors that were excluded from the free-trade logic—the biggest being farms and arms. In those sectors, almost no government trusted the market to do the right thing for their citizens. In these sectors, premises number 2 and 3 were rejected. It was too risky to

² <https://blogs.sussex.ac.uk/uktpo/2024/10/04/is-the-wto-really-a-dead-parrot/>

leave the location of food and arms production to the market. Countries embraced expensive, extensive, and intrusive economic policies to make sure that some food and arms were made at home. These policies were viewed as wasteful in a narrow sense, but wise in a broader sense.

One way to think about the impact of geopolitics on trade policy is to say that in this new conflictual, risky world that we live in, the list of sectors that governments are willing to leave to the market has shrunk. The US, for example, started spending very large sums trying to move the production of green energy goods and semiconductors onto US territory. The EU and Japan followed suit.

Of course, emerging economies (especially India, China, and Korea) never thought it wise to leave the location of manufacturing to market forces. They have for decades had wide-ranging industrial policies aimed at boosting local production of manufactured goods.

The big change came when Brexit and Donald Trump roused G7 private and public establishments from their 'End of History' reverie. Quite suddenly, they found themselves in a long and dangerous night of geopolitically motivated trade disruptions.”

In essence, Professor Baldwin’s argument is that until recently, world trade policy was driven by economic considerations, geopolitical changes mean that trade policy considerations are now also driven by individual countries security considerations.

UK international trade approach

In a book chapter published with Minako Morita Jaeger in 2023, Peter Holmes set out how UK trade policy has evolved over the last decade and a half as a result of geopolitical events:

“Ten years ago, one would have been able to point to the UK’s good relations with China as offering a unique basis for trade and investment relations. UK energy and telecoms infrastructure was subcontracted to China. And the UK seemed to offer a bridge between China and the EU as it had been for the US. No longer though. Brexit seemed to offer an opportunity for a radical realignment with the US, and when the direct attraction of that faded, alignment with the Indo-Pacific region including the US came in. Perhaps distance might matter less. But politics, Covid-19 and Russia’s war in Ukraine have disrupted the landscape totally. History and Geography are returning to the stage even if they are wearing different clothes.”³

[David Henig has written that 2025 will be “a year when the UK government must make trade policy decisions”](#). The context for these decisions will be the reset in relations with the EU and the start of President Donald Trump’s second term. On the UK-EU relationship, David Henig wrote:

³ The EU-US-UK Relationship in a Global Context introduction & postscript (August 2023)
Peter Holmes and Minako Morita Jaeger, UKTPO University of Sussex

“Virtually all UK Ministers, Labour MPs, and businesses would prioritise the EU relationship above others. Despite warm words there has so far been only stumbling progress as the [two sides revert to ingrained habits](#), of suspicion on the EU side and secrecy from the UK. There is a rough agenda taking shape that starts with a defence and security agreement that includes economic security cooperation, and then develops further into the trade space with talks over a veterinary agreement, youth mobility, linkage of Emission Trading Schemes, and various cooperation.

These should be taken forward in a summit during the first half of 2025, but there is going to need to be some very heavy lifting all round for significant progress to be made. In particular the biggest problems of the UK approach to youth mobility and EU to SPS lie within their own administrations. Against such difficulties talk of changing UK red lines on customs union or single market can only be a distraction, since there’s no way either the UK or EU will be ready to take the relationship further if it can’t first be normalised.”⁴

A choice between the EU and the USA?

On how the United States under President Trump might try to influence the UK, David Henig wrote:

“President Trump’s second term will increase nervousness in the UK-EU relationship. While US interest in using Brexit as an opportunity for a regulatory competition has waned there are bound to be threats of tariffs, hostility in other areas such as with regard to Carbon Border Adjustment Mechanism charges, and suggestions of special deals. In London Labour will come under pressure from opposition parties for a traditional trade deal with the US notwithstanding the limited gains and well-known problem areas.

US pressure on the UK is probably likelier with regard to trade ties with China, not least given an early planned visit by the UK Chancellor to Beijing. There have been long-running tensions within the UK government over China policy which a proposed ‘audit’ won’t resolve, between those prioritising security against economics. In such circumstances managing the UK’s external relations is likely to require the skilled direction and judgement that has rarely been in evidence since 2016.”⁵

The UK Government’s attempts to balance the relationship with the EU with the demands from the new Trump Presidency are likely to be a challenge during 2025. On this David Henig has suggested that the UK Government’s clear message that it will not be risking EU relations for a US trade deal has gone down well in Brussels.⁶ Previously David Henig has written about the challenge for the UK in balancing its trading relationships with the EU, the USA and more widely:

⁴ <https://ecipe.org/blog/decision-time-2025-uk-trade-policy-stocktake/>

⁵ <https://ecipe.org/blog/decision-time-2025-uk-trade-policy-stocktake/>

⁶ <https://www.tradeandbusiness.uk/news/uk-trade-and-business-commission-faqs-2024-c46hh>

“Around two-thirds of UK trade takes place with the US or EU, and these relationships are up for grabs. They are also interrelated in what we could call a new ‘great game’ between those two and the other major powers of world trade: China certainly, and India arguably. This is the geopolitics which the middle powers including the UK, Canada, Japan, and Mexico will need to navigate.”⁷

On the choice between the EU and the US, David Henig has written the UK should look towards the EU:

“What should be the principle here is to follow the money, or rather the main trade flows. With around half our trade, the EU relationship is far more important than that with the US. That’s even been recognised by Robert Lighthizer – USTR under the first Trump term and still close to the President.

Such a commitment isn’t absolute, where the UK can be a rule setter as in financial services, we should do so. For goods, if we have to be followers, the EU is the better model. This makes more economic sense, similarly on climate change measures where we have broad political agreement. There’s no doubt that it is in the UK’s economic interests to seek smoother trade with the EU, but ideally, that shouldn’t come at the expense of wider trade to which we remain committed.”⁸

A report for the Resolution Foundation ([Trading blows - How should Britain buy and sell in a turbulent world?](#)) highlighted the geographic importance of the EU market for UK goods and suggested that the UK’s best approach to the imposition of tariffs by the United States might be to live with the tariffs:

“If goods were the only issue, the over-riding strategy would be relatively clear: stay as open as possible as is consistent with holding your biggest trading partner close. That partner is still, overwhelmingly, the EU, from which we buy over half all our goods imports (£318 billion) and sell only a little less than half of our goods exports (£186 billion). The UK would obviously need to be pragmatic and grab any sector-specific deals the US and others may offer, so long as they could be had without jeopardising that crucial cross-Channel relationship. But from a goods perspective, it makes sense to hold fast to EU standards, even if this could complicate or even reduce the (already low) chances of an attractive general US-UK Free Trade Agreement.

The same logic could condition Britain’s response to the Trump tariffs in goods trade. For the UK in isolation, the least-bad option might be living with tariffs, while being measured and selective about any retaliation, so that Britain’s businesses and consumers continue to benefit from £58 billion of annual imports from the US. In a world of rising trade tension, however, such unilateral openness could be hard to sustain if the EU became anxious about the UK being a backdoor for goods from the US and beyond. The UK has already taken a very different stance towards China’s electric vehicles than

⁷ <https://blogs.sussex.ac.uk/uktpo/2024/11/08/how-trump-affects-uk-trade-policy/>

⁸ <https://blogs.sussex.ac.uk/uktpo/2024/11/08/how-trump-affects-uk-trade-policy/>

either the US or the EU, by continuing to allow them in with its (relatively modest) existing 10 per cent tariff. For a medium-sized country dependent on a nearby giant market for trading goods, there may be limits to the scope for such independence.”

On the UK’s approach to trade in services, the Resolution Foundation report stated:

“So there are potential conundrums even before we get to services, where UK interests are much more expansive and varied. Our analysis points to a host of important objectives. One is keeping those crucial ‘workarounds,’ subsidiaries and digital sales, running smoothly by proactively seeking new agreements to remove (and avoid creating) barriers to trade through these channels. A serious effort also needs to be made to allow regulated services finally to share in Britain’s service export boom. Brokering mutual recognition agreements on professional qualifications is urgent, and something that the private sector cannot sort out alone. Hammering such deals out with giant European and American markets are both obvious priorities, but so too must be large growing markets, notably India and Singapore.

Fortunately, some of the testing features of goods trade – hard borders, physical checks, fears about ‘backdoor’ access – don’t arise in quite the same way for services. Nor is the service trade caught in the same political glare that Trump is shining on the merchandise trade. And thus in services there is less reason to fear Britain being forced to ‘choose’ between America and Europe. It can – and must – look freely around the world with an opportunistic eye for any takers for negotiating service deals, and be pragmatic too about the many different ways in which progress can be forged. The detail will be varied, often technical and rarely glamorous. It may not make headlines, but it will sustain the trade in services, which is, in the end, Britain’s brightest hope for the future.”

What will be the driver for UK trade policy decisions?

As Professor Baldwin has set out geopolitical changes mean that trade policy considerations are now also driven by individual countries security considerations. This may be no different for the UK. In addition, in a post-Brexit world, there may be other considerations for UK Governments in shaping its trade policy.

In 2022, [Gabriel Siles-Brügge writing a blog with Tony Heron, Professor of International Political Economy set out the previous UK Government’s trade policy approach following Brexit](#). They wrote that the policy was based on the principle of a “post-geography trading world”. Using the example of the UK’s accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) ([SPICe has published a briefing on the CPTPP](#)), the authors set out the three reasons for the UK seeking this agreement:

“There are three elements to this in relation to the Asia-Pacific. First, the policy reflects the idea that trade is increasingly unconstrained by geography; gravity does not constrain economic exchange. It is also reflected in the

specific emphasis on rules for digital trade. The CPTPP promises differentiation from the EU's data protection rules, said to constrain the information flows necessary to facilitate international exchange. Second, in the words of Liz Truss, the CPTPP offers free trade 'without EU-style strings attached'. CPTPP is one in a series of 'high standards, rules-based, modern trade agreements'. These stand in contrast to the EU's sovereignty-diminishing model of regulatory harmonisation and oversight by the European Court of Justice. Finally, CPTPP is presented as the gateway to the dynamic East Asian region, a term used in the same breath as 'Asia-Pacific' and, increasingly, 'Indo-Pacific'. In the words of Truss, 'two-thirds of the world's middle-class will be in Asia by 2030'. The UK would thus be swapping a 'low-growth' bloc, the EU, for a 'high growth' one. This is even though only a minority of CPTPP parties can be classed as being within East Asia.

In addition to coming up against economic gravity, the focus on 'post-geography' also ignores important geopolitical realities in the region. The UK Government has consistently othered China as a rule-breaker inimical to its 'values-based' trade policy. The Trans-Pacific Partnership (TPP), moreover, was negotiated between the US and its client states to explicitly exclude China. When the US pulled out, and the remaining parties came together to sign the CPTPP this intention remained. And yet China and its economic weight remains implicit in the economic conception of Asia-Pacific region, especially if this is equated with East Asia. By presenting the CPTPP as a boundless space of like-minded states the UK is projecting an imaginary which suppresses the political norms of the region."

Areas for discussion

Today's evidence session is an opportunity to hear the witnesses perspective on the current international trade environment, how this might influence the UK-EU relationship and consequently what the UK Government might seek from the TCA review in terms of a closer UK-EU trading relationship. There is also an opportunity to discuss with the witnesses what issues will inform the UK Government's decisions about the direction of its international trade policy.

Specific issues the Committee may wish to discuss with the witnesses include:

- How the world's approach to international trade has changed over recent years and how the role of the WTO has changed alongside this.
- The balance between international trade and national security?
- What the changes to approaches to international trade mean for the UK and what this means for the UK's relationships with the European Union and the United States of America,
- The UK's balance of exports between the EU and the United States?

- How the geopolitical situation is likely to influence the direction of the UK-EU relationship and in particular the review of the Trade and Cooperation Agreement.
- Opportunities for developing the UK-US relationship with President Trump?
- The factors which will inform the UK Government's development of its international trade policy.
- The importance of geography when considering the UK's geopolitical relationships.

Iain McIver
SPICe Research

The UK-EU reset: more important than ever in the wider geopolitical situation.

Peter Holmes *

Fellow UKTPO

University of Sussex

1.The background⁹.

In the run up to the Brexit referendum in 2016 the external trade dimension was not central to the debate. There was a tension between Vote.Leave and Leave.EU:there were two threads to the pro-Brexit argument:

- a) Trump -like anti globalisation and anti immigrant sentiment
- b) pro globalisation free trade sentiment, seeking to control migration but not necessarily to reduce it.

It was essential to the pro-Brexit campaign that there should be ambiguity about the policies adopted post-Brexit since neither faction of the pro-Brexit camp by itself could have commanded a majority.¹⁰

The expression “Global Britain” came into use after the referendum. The House of Commons Foreign Affairs Committee observed in 2019:

“The most frequent complaint we have heard from several witnesses is that the only thing that is clear about Global Britain is that it is unclear what it means, what it stands for or how its success should be measured.”¹¹

It came to mean attempts to negotiate free trade agreements with as many partners as possible, but in early 2020 the Johnson government also promised to be a world leader in promoting multilateral free trade. Johnson’s Greenwich speech (Feb.2020) acknowledged that there were pressures for protectionism but suggested that the UK could be “the supercharged champion, of the right of the populations of the earth to

*This note solely reflects the views of the author.

⁹ Ch 20 “Bilateral, Trilateral or - Quadrilateral? The UK-US Trade Relations in a Global Context” *Peter Holmes and Minako Morita-Jaeger in The Routledge Handbook of Transatlantic Relations*

Edited By Elaine Fahey

¹⁰ Peter Holmes, Jim Rollo, 'EU-UK POST-BREXIT Trade Relations: Prosperity Versus Sovereignty?', (2020),European Foreign Affairs

¹¹ <https://publications.parliament.uk/pa/cm201719/cmselect/cmfaaff/780/78002.htm>

buy and sell freely among each other”¹² at the very moment when frontiers were closing and “friendshoring” was beginning.

The resilience of the world trade system to tariffs imposed by Trump after 2017 was surprising. There were predictions that we would see global protectionism and a return to the 1930s through multiplier effects and disappearance of the rules-based WTO. An alternative perspective saw the rest of the world uniting against Trump to keep the world trading. Somewhat surprisingly the optimistic view was probably mostly vindicated. Trade blocked by the US was largely diverted elsewhere. Global trade fell post Trump less than feared. US-China trade is actually only around 2% of total world trade important but even if it had gone to zero it was survivable it flowed elsewhere if 1929 type multiplier effects could be avoided. The COVID crisis was also surmounted. In retrospect the ability of the Multilateral Trade System to keep pharma value chains operating during the pandemic was remarkable.

Britain was of course especially badly hit before and after 2000 by Brexit, but even this was more of a slow puncture (and poison) than a car crash. Goods trade with the EU did not recover post covid as much as other countries’, though services did. The actual scale of the post Brexit fall in UK exports depends on the counterfactual employed and the years chosen. A tentative conclusion would be that Brexit hit the UK supply side and affected global competitiveness.

Overall during Trump 1 and COVID (and earlier the GFC) world trade just about held up, probably due to relatively little beggar-my-neighbour policies due to a lingering respect for the rules and realisation of the lessons of the 1930s. The Global Trade Alert¹³ has highlighted many protectionist policies in recent years but there has so far been a recognition by most countries that everyone’s imports are someone else’s exports and every curb on imports cuts someone else’s ability to buy.

UK policies did not rescue the UK. The FTAs we signed had negligible impact and the fantasy of a trade deal with the US was no more than that. Despite the political affinity between Trump and the UK Brexiteers, the chances of a US-UK Free trade area were minimal.

In 2019 the Trump USTR published a list of negotiating objectives¹⁴ for a potential UK-US FTA which made it clear that the US was seeking alignment of UK with US regulatory frameworks in a manner that would have been impossible for any UK government to agree tot. Accepting US food safety standards was one factor in killing TTIP before 2016 . The stated aims were perhaps simply honest in that they listed all the areas where the US wanted to open the UK market, whilst requiring that there would be derogations where the US wanted them.

¹² <https://www.gov.uk/government/speeches/pm-speech-in-greenwich-3-february-2020>

¹³ <https://www.globaltradealert.org/>

¹⁴ https://ustr.gov/sites/default/files/Summary_of_U.S.-UK_Negotiating_Objectives.pdf

But even if a reciprocal deal on reducing trade barriers could have been achieved, the nature of the UK's commercial relations with the US does not offer much scope for mutually beneficial gains.

- UK commerce with the US (much more so than the EU) is overwhelmingly in FDI and services not goods trade that can be addressed by an FTA. Goods trade is overwhelmingly with the EU.
- Goods trade with the US is not focussed on integrated value chains, as with the EU, and it would be very hard to reorient the production networks.
- The barriers that could have been addressed were asymmetrical: US demanding UK adoption of US regulatory frameworks for goods but being unwilling and in many areas unable to negotiate from DC changes in state level regulatory rules, on services or Public Procurement.

The Trump administration soon lost interest in the UK, partly because Trump is obsessed with countries that have a trade surplus with the US. US statistics in fact show a US trade surplus with the UK, (though UK data shows the opposite). There is no prospect of a return to such a deal.

2. Post 2020

Under Biden the US kept its hostility to the WTO and tariffs against China but sought economic cooperation with the EU, though much less so with the UK.

With no deal possible under either US administration, the UK sought partnership with the Asia Pacific countries separately and together with CPTPP. Japan, the party which really matters has made it very clear that from an economic perspective its main interest is in the EU, and that the value of the UK to Japan depends on a close cooperative EU-UK relationship¹⁵ with minimal disruption of supply chains. The UK's entry into an FTA, the TCA, with the EU instead of a customs union, inevitably created barriers due to rules of origin as of course did active and passive regulatory divergence. For Japan, the UK remained important diplomatically as another "Middle Power", even though UK economic interest was less.

A HoC library study confirmed the general decreasing relative attractiveness of the UK as a destination for FDI in recent years.¹⁶

The UK Integrated Review Strategic document for 2021 had indicated a refocus towards Asian Pacific¹⁷. Its 2023 successor recognised that after the Russian

¹⁵ See letter September 2nd, 2016 <https://www.mofa.go.jp/files/000185466.pdf>

¹⁶ <https://researchbriefings.files.parliament.uk/documents/CBP-8534/CBP-8534.pdf>

¹⁷ <https://www.gov.uk/government/publications/global-britain-in-a-competitive-age-the-integrated-review-of-security-defence-development-and-foreign-policy>

invasion of Ukraine and the increased global focus on “friendshoring” and “strategic autonomy” the UK had to make Europe its central focus.¹⁸

3. Post 2025 options

The basic conclusion of the impact of Brexit is that trade with third parties cannot replace the importance of the proximity and value chain integration we have with the EU and this must be a top priority for future trade policy.

Trump’s re-election does not change the position. It does not open new opportunities for productive trade deals. Trump is now far less sympathetic to the UK than in 2019 and would not offer anything worthwhile. Promises made by the Trump administration could not possibly be trusted.

Moreover any proposals to secure a deeper trade relationship with the US would jeopardise the prospect of a re-set with the EU.

The core priorities remain the same: securing deep regulatory alignment, which inevitably means some concession on regulatory sovereignty. Here the UK has to be ready to “give”, even though actually our ability to use post-Brexit “freedoms” has been minor.

Sincere 2022 defence and security cooperation is recognised as a mutual benefit but this would clearly be jeopardised by the UK seeming willing to sacrifice its links to the EU by appeasing Trump.

The one argument in favour of seeking a deal with Trump would be to seek exemption from tariffs he threatens to impose on others and in particular those who refuse to join his tariff war on China. Given the structure of UK-US trade the gains from giving in to Trump would be minor compared to the costs, even before the broader costs of damage to our relations with the EU. This conclusion has been arrived at with real numbers by Sam Lowe.¹⁹ Some analysts have argued that²⁰ the UK could and should offer a Trump to take tougher action against China in exchange for exemption from US trade barriers but there is probably a consensus that Trump would demand a lot and not be bound by his promises. In any case there is likely to be concern about Chinese exports diverted away from the US to the EU and UK. Our big policy dilemma would then be how far to match EU barriers against China in fields where we produce little. Starmer has cautiously opted for an improvement with relations with China, a move that the PRC has declared “not only serves the interests of both nations, but also meets the expectations of the international community”²¹ We will unquestionably be damaged if Trump’s threats

18

https://assets.publishing.service.gov.uk/media/641d72f45155a2000c6ad5d5/11857435_NS_IR_Refresh_2023_Supply_AllPages_Revision_7_WEB_PDF.pdf

19 <https://substack.com/home/post/p-153978877>

20 See Lucy Fisher and Peter Foster FT Nov 14th <https://www.ft.com/content/2c74f7be-5384-4af4-8910-39df561fc153>

21 <https://www.chinadaily.com.cn/a/202501/12/WS6783decaa310f1265a1da50d.html>

to world trade materialise but they would not undermine the overwhelming need to repair our economic and political relations with Europe. They would however make it harder to manage.

If recent experience is any guide, - a very big if - the world will not descend rapidly into total chaos and the UK has an interest in maintaining our links with the leading players in the WTO, including the EU, China and Japan. The WTO remains a key forum for plurilateral dialogue even if its dispute settlement role is in a deep coma.²² Global Britain cannot go it alone.

²² <https://blogs.sussex.ac.uk/uktpo/2024/10/04/is-the-wto-really-a-dead-parrot/>

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)

Committee hearing of 16 January 2025

1. The author

My name is Arianna Andreangeli and I am the Professor of Competition Law in Edinburgh Law School, University of Edinburgh.

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.