

39 from 39, Series 3 Episode 8: The UK / EU Trade and Cooperation Agreement – Renewables, Nuclear, Agriculture & Fisheries

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Stephen Tromans QC

Richard Wald QC

Gethin Thomas

Ruth Keating

Tom van der Klugt

Nuclear Cooperation

Stephen Tromans QC

Despite legal debate, Brexit also meant Brexatom after over 40 years

- Red lines of immigration and Court of Justice. Also state aid (Hinkley C)
- A number of potentially challenging and controversial issues arose: see Report of UKELA Brexit Working Group
- The EU/UK TCA is accompanied by the EU/UK Agreement for Cooperation on Safe and Peaceful Uses of Nuclear Energy



Role of Euratom



- Established 1957
- Goals of ensuring access to nuclear material, free movement of capital and free movement of experts
- Euratom Supply Agency
- Party to IAEA Conventions and to Nuclear Co-operation Agreements with Third Parties, e.g. US, Australia, Canada
- Ensuring supply of medical isotopes
- Research, e.g. into nuclear fusion
- Safeguards inspections
- Increasingly interested in safety and waste management

Challenges of withdrawal

- Ensuring fuel supplies (import of UF8 for enrichment and fabrication)
- Ensuring supplies of medical isotopes (80% from EU)
- Replacing Euratom safeguards
- Continuity of third party cooperation agreements
- Participation in research (fusion)
- Cessation of Euratom ownership of fissile special material in UK



Safeguards

- Replacement of Euratom/IAEA/UK Agreement by IAEA/UK Agreement
- Institution of domestic safeguards system by ONR: Nuclear Safeguards Act 2018
- Conclusion of bilateral cooperation agreements with US, Canada, Australia, Japan
- Inspecting UK facilities involved very significant resource by Euratom (around 26%). Advances of around £7 million from Contingencies Fund to BEIS to set up domestic system



Cooperation Agreement: principles

- UK and Euratom at comparable level of regulation, nuclear safety, safeguards, security
- Both benefit from cooperation in peaceful uses of nuclear energy
- Both subscribe to standards of IAEA, Non-Proliferation and Convention of Physical Protection of Nuclear Material
- Importance of further research into advanced technologies and mutual interest in collaboration
- Confined to “peaceful purposes” – i.e. power generation, medicine, industry, agriculture

Scope of cooperation: Article 1

- Trade and commercial cooperation
- Supply of nuclear material and equipment
- Transfer of technology and information
- Procurement
- Safe management of spent fuel and waste
- Nuclear safety, radiological protection, emergencies
- Safeguards
- Use of radioisotopes
- Uranium resources
- Regulation
- Research and development

Forms of cooperation: Article 4

- Transfer of material and technology
- Exchange of information
- Facilitation of exchanges, visits and training
- Symposia and seminars
- Exchange of scientific and technical information
- Joint projects, joint ventures, bilateral working groups
- Commercial cooperation on nuclear fuel services including enrichment of uranium
- Other forms of cooperation to be determined

Safeguards, security, safety

- Article 6 requires nuclear material to be subject to the appropriate safeguards regime within the Community and within the UK
- Both parties undertake to implement “robust and effective systems of nuclear material accountancy and control”
- Article 7 requires essentially application of IAEA standards of physical protection and security of nuclear material and safe transport of nuclear material
- Article 8 records adherence to IAEA Conventions on Safety, Assistance and Early Notification and undertaking work together on continuous improvement on nuclear safety standards. Commitment not to weaken protection. Possible participation as third country in Euratom groups.

Trade

- Article 9: mutual agreement to facilitate trade and procurement of relevant items, material and technology, provided in accordance with relevant international commitments, contingent upon safeguards, under fair commercial conditions, so as not to frustrate the Community's common supply policy
- Provisions restricting onward transfers and retransfers of material (consent of supplier party and compliance with rules of Nuclear Suppliers Group)
- Framework on import and export of Trigger List and Dual Use items remains essentially the same but new UK export licences required

Enrichment, reprocessing, research

- Article 10: consent of other party required prior to enrichment of uranium
- Article 11: consent granted to reprocessing nuclear fuel, subject to compliance with conditions of Annex (to ensure peaceful use of plutonium)
- Article 12: mutual cooperation on R&D for peaceful uses, power to allow cooperation by universities, laboratories, private sector. Includes participation by UK as third country in Community programmes and UK membership of Fusion for Energy
- Joint Declaration allows UK participation in Euratom Programmes, ITER (International Thermonuclear Experimental Reactor) and F4E. March 2019 Agreement for €100m funding for JET at Culham.
- Annex 3 of Decision COM(2020) 855 on security procedures for exchanging information; immunities and privileges and application to UK of Broader Approach Agreement on fusion between Euratom and Japan

Information

- Article 13: promotion of appropriate and proportionate exchange of information and technical expertise
- Article 14: Agreement does not transfer any IP. Parties to ensure effective protection of any IP created or technology transferred
- Article 16: Agreement not to be used for purpose of seeking commercial or industrial advantages or for interfering with nuclear policy of either party or of Member States

Joint Committee and disputes

- Article 19: creation of Joint Committee for exchanging information, establishing working groups, consulting on technical issues, adopting recommendations, forum for consultation, coordinating action in particular to minimise risks of shortages of medical isotopes
- Article 21: disputes to be discussed in Joint Committee and if not resolved to be submitted to three person arbitral tribunal
- Article 22: suspension or termination in event of serious breaches, e.g. safeguards, physical protection, enrichment

Overall assessment

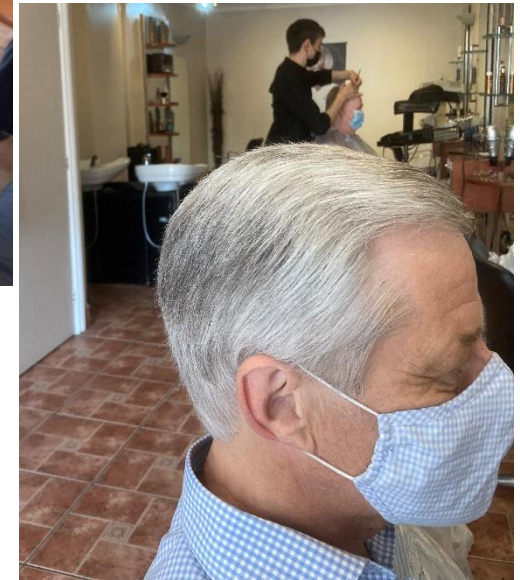
- Little should change in terms of safety, security and (subject to Euratom no longer inspecting) safeguards
- Continuity has been secured on international agreements
- Process for movement of radioactive sources with prior declaration covering multiple shipments: [Shipments of Radioactive Substances \(EU Exit\) Regulations 2019](#)
- Reducing reliance on radioisotope imports by development of possible domestic Medical Radioisotope and Research Reactor (MRRR)
- Participation in fusion and other Euratom initiatives plus domestic UKAEA proposals on STEP fusion reactor
- Possible associate status under Article 206 Euratom Treaty

Overall assessment pictorially by reference to my recent haircut

- How things looked in 2017



- How they look now



Renewables Ruth Keating



Recognising renewable energy

TRADE AND COOPERATION AGREEMENT BETWEEN THE EUROPEAN UNION AND THE EUROPEAN ATOMIC ENERGY COMMUNITY, OF THE ONE PART, AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, OF THE OTHER PART

PREAMBLE

RECOGNISING the benefits of sustainable energy, renewable energy, in particular offshore generation in the North Sea, and energy efficiency,

Article 6 ENER

“Article ENER.6: Provisions relating to wholesale electricity and gas markets

1. Each Party shall ensure that wholesale electricity and natural gas prices reflect actual supply and demand. To this end, each Party shall ensure that wholesale electricity and natural gas market rules:

...

(e) enable the integration of electricity from renewable energy sources, and ensure the efficient and secure operation and development of the electricity system.

2. Each Party shall ensure that balancing markets are organised in such a way as to ensure:

...

(d) that producers of renewable energy are accorded reasonable and non-discriminatory terms when procuring products and services.

...

4. Each Party shall assess the necessary actions to facilitate the integration of gas from renewable sources.

...”

Article 8 ENER

“Article ENER.8: Third-party access to transmission and distribution networks

...

2. Without prejudice to Article ENER.4 [Principles], each Party shall ensure that transmission and distribution system operators in its territory grant access to their transmission or distribution systems to entities in that Party’s market within a reasonable period of time from the date of the request for access.

Each Party shall ensure that transmission system operators treat producers of renewable energy on reasonable and non-discriminatory terms regarding connection to, and use of, the electricity network. The transmission or distribution system operator may refuse access where it lacks the necessary capacity.

Duly substantiated reasons shall be given for any such refusal.

...”

Article 21 ENER

“Chapter 3: Safe and sustainable energy

Article ENER.21: Renewable energy and energy efficiency

- 1. Each Party shall promote energy efficiency and the use of energy from renewable sources.*

Each Party shall ensure that its rules that apply to licencing or equivalent measures applicable to energy from renewable sources are necessary and proportionate.

- 2. The Union reaffirms the target for the share of gross final energy consumption from renewable energy sources in 2030 as set out in Directive (EU) 2018/2001 of the European Parliament and of the Council.*

The Union reaffirms its energy efficiency targets for 2030 as set out in the Directive 2012/27/EU of the European Parliament and of the Council.

Article 21 ENER

3. *The United Kingdom reaffirms:*

(a) its ambition for the share of energy from renewable sources in gross final energy consumption in 2030 as set out in its National Energy and Climate Plan;

(b) its ambition for the absolute level of primary and final energy consumption in 2030 as set out in its National Energy and Climate Plan.

4. *The Parties shall keep each other informed in relation to the matters referred to in paragraphs 2 and 3.”*

Article 22 ENER

“Article ENER.22: Support for renewable energy

- 1. Each Party shall ensure that support for electricity from renewable sources facilitates the integration of electricity from renewable sources in the electricity market.*
- 2. Biofuels, bioliquids and biomass shall only be supported as renewable energy if they meet robust criteria for sustainability and greenhouse gas emissions saving, which are subject to verification.*
- 3. Each Party shall clearly define any technical specifications which are to be met by renewable energy equipment and systems in order to benefit from support schemes. Such technical specifications shall take into account cooperation developed under Article ENER.25 [Cooperation on standards], Article TBT.4 [Technical regulations] and Article TBT.5 [Standards].”*

Article 23 ENER

“Article ENER.23: Cooperation in the development of offshore renewable energy

1. The Parties shall cooperate in the development of offshore renewable energy by sharing best practices and, where appropriate, by facilitating the development of specific projects.

2. Building on the North Seas Energy Cooperation, the Parties shall enable the creation of a specific forum for technical discussions between the European Commission, ministries and public authorities of the Member States, United Kingdom ministries and public authorities, transmission system operators and the offshore energy industry and stakeholders more widely, in relation to offshore grid development and the large renewable energy potential of the North Seas region. That cooperation shall include at least the following areas:

(a) hybrid and joint projects;

(b) maritime spatial planning;

(c) support framework and finance;

(d) best practices on respective onshore and offshore grid planning;

(e) the sharing of information on new technologies; and

(f) the exchange of best practices in relation to the relevant rules, regulations and technical standards.”

Cooperation on renewables

- A specific forum for cooperation on offshore grid development and the large renewable energy potential of the North Sea region (ENER 23).
- Cooperation will also extend to the development of international standards with respect to energy efficiency and renewable energy, with a view to contributing to sustainable energy and climate policy (ENER 25).
- Promotion of research and development in energy efficiency and renewable energy is also provided for (ENER 26).

REGO

Renewable Energy Guarantees of Origin: reporting renewable electricity

Renewable Energy Guarantees of Origin issued in EU countries will continue to be recognised. This allows electricity suppliers to continue to use EU Renewable Energy Guarantees of Origin, and ensures that existing supply contracts are not compromised, in so far as these contracts depend upon Renewable Energy Guarantees of Origin.

We intend to review this in 2021 so that, longer term, domestic recognition of Guarantees of Origin issued in EU countries will take place only on a reciprocal basis.

Renewable Energy Guarantees of Origin issued in the UK are no longer recognised in the EU. This means that existing contracts with EU countries' electricity suppliers or traders may be compromised if the contract terms require the transfer of a Renewable Energy Guarantee of Origin recognised by the EU.

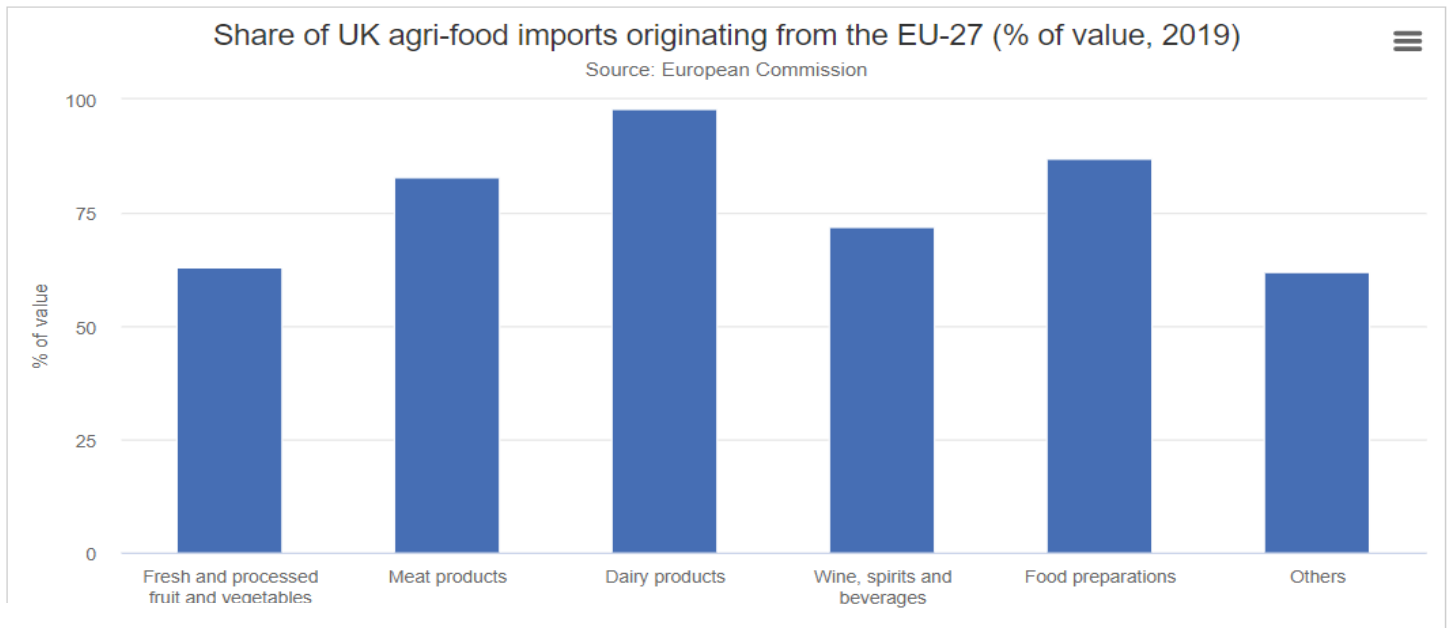
The future



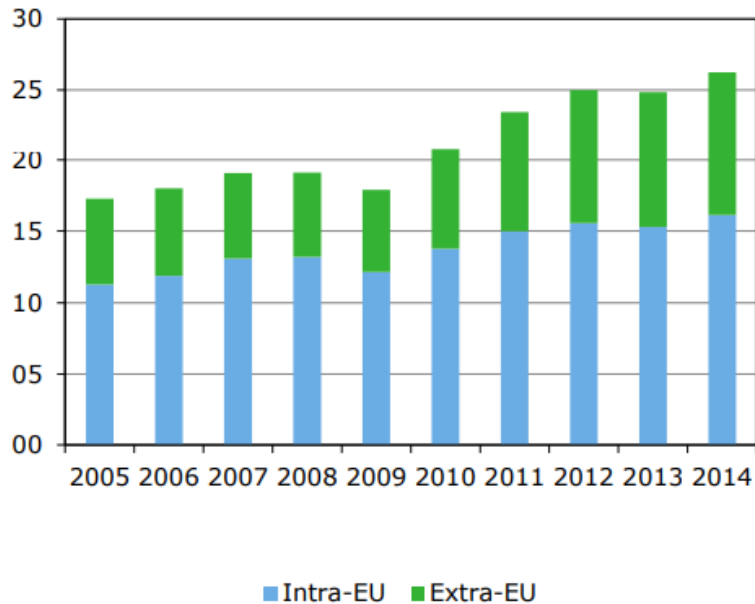
Agriculture



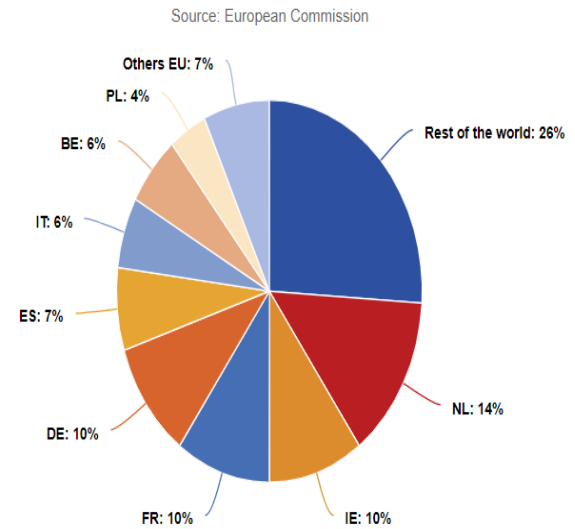
Gethin Thomas



UK exports of agrifood products to EU and non-EU countries (€bn)



UK agri-food imports (2019, % of total value)



Common Agricultural Policy

- (1) Income support through direct payments ensures income stability, and remunerates farmers for environmentally friendly farming and delivering public goods not normally paid for by the markets, such as taking care of the countryside: (a) European Agricultural Guarantee Fund (EAGF) and (b) the European Agricultural Fund for Rural Development (EAFRD)
- (2) Market measures to deal with difficult market situations such as a sudden drop in demand due to a health scare, or a fall in prices as a result of a temporary oversupply on the market (for example: EU regulation 1308/2013);
- (3) Rural development measures with national and regional programmes to address the specific needs and challenges facing rural areas.



Overview of Agriculture Act 2020

- Part 1: Financial Assistance
- Part 2: Food and agriculture markets (food security, and intervention in agriculture markets)
- Part 3: Transparency and fairness in the agri-food supply chain
- Part 4: Farming and the countryside (including fertilizers, identification and traceability of animals, and a red meat levy)
- Part 5: Agricultural products
- Part 6: WTO Agreement on agriculture
- Part 7: Wales & Northern Ireland
- Part 8: General and final provisions



EXPLANATORY NOTES

Agriculture Act 2020

Chapter 21

£16.40

Financial Assistance

- **‘Public payments for public goods’** - Section 1 of the AA 2020:

The Secretary of State may give financial assistance for or in connection with any one or more of the following purposes—

(a) managing land or water in a way that protects or improves the environment;

(b) supporting public access to and enjoyment of the countryside, farmland or woodland and better understanding of the environment;

(c) managing land or water in a way that maintains, restores or enhances cultural or natural heritage;

(d) managing land, water or livestock in a way that mitigates or adapts to climate change;

(e) managing land or water in a way that prevents, reduces or protects from environmental hazards;

(f) protecting or improving the health or welfare of livestock;

(g) conserving native livestock, native equines or genetic resources relating to any such animal;

(h) protecting or improving the health of plants;

(i) conserving plants grown or used in carrying on an agricultural, horticultural or forestry activity, their wild relatives or genetic resources relating to any such plant;

(j) protecting or improving the quality of soil.

(2) The Secretary of State may also give financial assistance for or in connection with either or both of the following purposes—

(a) starting, or improving the productivity of, an agricultural, horticultural or forestry activity;

(b) supporting ancillary activities carried on, or to be carried on, by or for a producer.

The TCA: Non-tariff measures

- **Compliance with WTO Agreement on Agriculture**
- **Rules of Origin requirements**: To export tariff-free under the TCA, goods must meet the UK-EU preferential rules of origin. The TCA sets out (at Article ORIG) how the origin of goods is to be determined. The purpose of the rules is to ensure that preferential tariffs are only given to goods that originate in the UK or EU and not from third countries.
- **Sanitary and phytosanitary checks**: The TCA 'reaffirms' the parties' rights and obligations under the WTO's SPS Agreement. The parties also agree to not use SPS measures to create unjustified barriers to trade:
 - *'Each Party shall ensure that any administrative procedure it requires concerning the import conditions on food safety, animal health or plant health is not more burdensome or trade restrictive than necessary to give the importing Party adequate confidence that these conditions are met. Each Party shall ensure that the negative effects on trade of any administrative procedures are kept to a minimum and that the clearance processes remain simple and expeditious while meeting the importing Party's conditions'* (Article SPS.5(5))
- **Organic Products**: The TCA also includes a specific annex on organic products, which provides for the recognition of one another's organics regimes as equivalent (Annex TBT-4: Organic Products).

Implications for the environment?

- **New fertilizers?** Section 33 of the AA 2020 amends Part 4 of the Agriculture Act 1970, to enable a broader range of materials to be regulated as a fertiliser in the UK.
- **Food security:** The AA 2020 imposes a duty on the Secretary of State to, at least once every five years, prepare and lay before Parliament a report containing an analysis of statistical data relating to food security in the UK.
- **New animal health and welfare standards?**
- **Organic means organic?** Under the AA 2020, Ministers have powers to make new provisions or amend existing provisions regarding organic certification, the import and export of organic products and the enforcement of organic regulation
- **GMO's?**



Article 9.4 - Rebalancing

- (1) The Parties recognise the right of each Party to determine its future policies and priorities with respect to labour and social, environmental or climate protection, or with respect to subsidy control, This document has been agreed between the European Union and the United Kingdom and is provided for information only. No rights may be derived from it until the date of application. The numbering of the articles is provisional. 215 24.12.2020 in a manner consistent with each Party's international commitments, including those under this Agreement. At the same time, the Parties acknowledge that significant divergences in these areas can be capable of impacting trade or investment between the Parties in a manner that changes the circumstances that have formed the basis for the conclusion of this Agreement.*
- (2) If material impacts on trade or investment between the Parties are arising as a result of significant divergences between the Parties in the areas referred to in paragraph 1, either Party may take appropriate rebalancing measures to address the situation. Such measures shall be restricted with respect to their scope and duration to what is strictly necessary and proportionate in order to remedy the situation. Priority shall be given to such measures as will least disturb the functioning of this Agreement. A Party's assessment of these impacts shall be based on reliable evidence and not merely on conjecture or remote possibility...*



Wales, Scotland and Northern Ireland

- Agriculture (Wales) Bill
- Agriculture (Retained EU Law and Data) Scotland Bill
- Northern Ireland - TBC



Fisheries



Tom van der Klugt

Context to the agreement

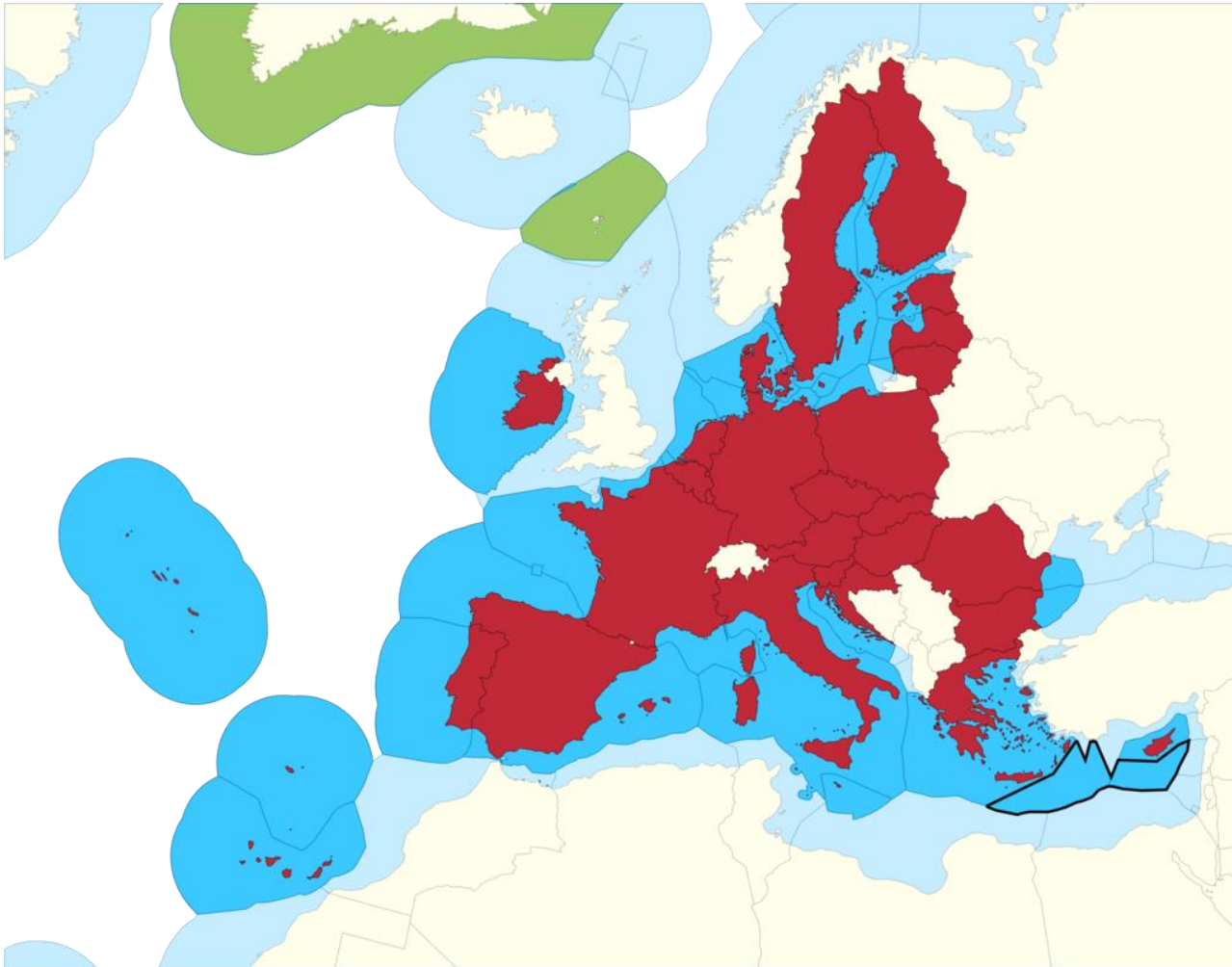
“123. The Agreement reflects the UK’s departure from the EU’s Common Fisheries Policy and new identity as a sovereign independent coastal State with the right to manage the resources in its waters. The UK is now free to create its own laws and fisheries management practices to the benefit of fishers and coastal communities across the whole UK.”

International Treaty Summary Explainer, GOV.UK

“The EU and the UK agreed on a new framework for the joint management of fish stocks in EU and UK waters. The UK will be able to further develop British fishing activities, while the activities and livelihoods of European fishing communities will be safeguarded, and natural resources preserved.”

The EU-UK Trade and Cooperation Agreement, EUROPA.EU

The Common Fisheries Policy (CFP)



The Trade & Cooperation Agreement

PART TWO: TRADE, TRANSPORT, FISHERIES AND OTHER ARRANGEMENTS

HEADING FIVE: FISHERIES

Chapter one: Initial provisions

Chapter two: Conservation and sustainable exploitation

Chapter three: Arrangements on access to waters and resources

Chapter four: Arrangements on governance

ANNEX FISH.1-ANNEX.FISH.4

Ch 1: Initial provisions – objectives

Article FISH.2: Objectives and principles

1. The Parties shall cooperate with a view to ensuring that fishing activities for shared stocks in their waters are environmentally sustainable in the long term and contribute to achieving economic and social benefits, while fully respecting the rights and obligations of independent coastal States as exercised by the Parties.
2. The Parties share the objective of exploiting shared stocks at rates intended to maintain and progressively restore populations of harvested species above biomass levels that can produce the maximum sustainable yield.

Ch 1: Initial provisions – principles

3. The Parties shall have regard to the following principles:

- (a) applying the precautionary approach to fisheries management;
- (b) promoting the long-term sustainability (environmental, social and economic) and optimum utilisation of shared stocks;
- (c) basing conservation and management decisions for fisheries on the best available scientific advice, principally that provided by the International Council for the Exploration of the Sea (ICES);
- (d) ensuring selectivity in fisheries to protect juvenile fish and spawning aggregations of fish, and to avoid and reduce unwanted bycatch;
- (e) taking due account of and minimising harmful impacts of fishing on the marine ecosystem and taking due account of the need to preserve marine biological diversity;

Ch 1: Initial provisions – principles (cont.)

- (e) taking due account of and minimising harmful impacts of fishing on the marine ecosystem and taking due account of the need to preserve marine biological diversity;
- (f) applying proportionate and non-discriminatory measures for the conservation of marine living resources and the management of fisheries resources, while preserving the regulatory autonomy of the Parties;
- (g) ensuring the collection and timely sharing of complete and accurate data relevant for the conservation of shared stocks and for the management of fisheries;
- (h) ensuring compliance with fisheries conservation and management measures, and combating illegal, unreported and unregulated fishing; and
- (i) ensuring the timely implementation of any agreed measures into the Parties' regulatory frameworks.

(Plus Article FISH.3: Definitions)

Ch 2: Conservation & sustainable exploitation

Article FISH.4: Fisheries management

1. Each Party shall decide on any measures applicable to its waters in pursuit of the objectives set out in Article FISH.2(1) and (2)[Objectives and principles], and having regard to the principles referred to in Article FISH.2(3) [Objectives and principles].
2. A Party shall base the measures referred to in paragraph 1 on the best available scientific advice... A Party shall not apply the measures referred to in paragraph 1 to the vessels of the other Party in its waters unless it also applies the same measures to its own vessels.
3. Each Party shall notify the other Party of new measures as referred to in paragraph 1 that are likely to affect the vessels of the other Party before those measures are applied, allowing sufficient time for the other Party to provide comments or seek clarification...

Ch 2: Conservation & sustainable exploitation

Article FISH.5: Authorisations, compliance and enforcement

1. Where vessels have access to fish in the waters of the other Party pursuant to Article FISH.8 [Access to waters] and Article FISH.10 [Access to waters of the Bailiwick of Guernsey, the Bailiwick of Jersey and the Isle of Man]:

(a) each Party shall communicate in sufficient time to the other Party a list of vessels for which it seeks to obtain authorisations or licences to fish; and

(b) the other Party shall issue authorisations or licences to fish.

2. Each Party shall take all necessary measures to ensure compliance by its vessels with the rules applicable to those vessels in the other Party's waters, including authorisation or licence conditions.

Ch 3: Arrangements on access to water and resources

Article FISH.6: Fishing opportunities

Article FISH.7: Provisional TACs

Article FISH.8: Access to waters

Article FISH.9: Compensatory measures in case of withdrawal or reduction of access

Article FISH.10: Access to waters of the Bailiwick of Guernsey, the Bailiwick of Jersey and the Isle of Man

Article FISH.11: Notification periods relating to the importation and direct landing of fisheries products

Article FISH.12: Alignment of management areas

Article FISH.13: Shares of TACs for certain other stocks

Ch 4: Arrangements on governance

Article FISH.14: Remedial measures and dispute resolution

Article FISH.15: Data sharing

Article FISH.16: Specialised Committee on Fisheries

Article FISH.17: Termination

Article FISH.18: Review clause

Article FISH.19: Relationship with other agreements



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Thank you for listening!

Stephen Tromans QC

stephen.tromans@39essex.com

Richard Wald QC

richard.wald@39essex.com

Gethin Thomas

gethin.thomas@39essex.com

Ruth Keating

ruth.keating@39essex.com

Tom van der Klugt

Tom.vanderKlugt@39essex.com

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