

BREXIT: TRADE AND COOPERATION ARRANGEMENT – IMPLICATIONS FOR CONSTRUCTION

The EU/UK Trade and Cooperation Agreement (TCA) was concluded on 24th December 2020. The agreement introduces significant changes to the operation and regulation of UK markets that will have an impact on construction markets in the short and long-term.

The agreement of the TCA avoided the worst disruptions that would have accompanied a disorderly no-deal exit from the EU. As a result, the immediate impacts of Brexit on construction markets have been limited.

This paper has been prepared for general information relating to the TCA and as such it sets out an initial assessment of the likely medium and long-term effects of that deal on construction projects in the UK. It is not based on a detailed reading of the TCA (the “Agreement”), annexes and guidance notes that have been published following the conclusion of the Agreement. Its contents should not be relied upon as guidance as to exact steps that can be taken following the conclusion of the Agreement and so you should complete your own due diligence and seek professional advice before making any decisions or taking any actions relating to it.

This document addresses the following issues:

- Movement of goods imported into the UK
- Movement of labour into the UK
- Construction materials marks and standards
- Chemicals regulations
- Procurement
- Data adequacy.



Movement of goods imported into the UK

Short-term impact

Potential disruption at the border – particularly for small goods consignments.

Long-term impact

Simplification of the UK’s Global Tariff – minor cost savings.

The TCA abolishes the right of free movement of goods but preserves tariff-free and quota-free trade between the UK and EU, subject to rules of origin requirements. Non-tariff barriers apply to goods shipped to Northern Ireland as well as the EU.

Most construction products in use in the UK are sourced from the UK. Around 25% of materials by value are imported. Around 60% of these materials are imported from the EU.

The introduction of non-tariff barriers is clearly causing some disruption at UK borders. Presently, most of the issues are associated with exports from the UK to the EU, where full customs measures have been put in place. The UK will phase in customs requirements by June 2021.

Large goods consignments appear to be manageable under the new arrangements, but a number of parcel delivery firms including DPD and DB Schenker have temporarily suspended movements between the UK and the EU citing challenges with compliant documentation and computer interfaces. This situation highlights that one-off goods orders from Europe



Movement of labour in the UK

Short-term impact

Limited – existing workforce appears to have remained in the UK.

Long-term impact

UK construction sector will in future be more dependent on UK entrants to replace ageing workforce.

The TCA abolishes the right of free movement of labour but includes some flexibilities that are supportive of business operation across borders. The Common Travel Area which gives UK and Irish citizens the rights to live and work in both countries is retained.

are more likely to be disrupted than the large-scale, planned material movements associated with construction projects.

It is too early to judge whether vehicle movements into the UK will face delays once full customs requirements are in place at the UK border. Traffic levels remain low at the time of writing. It is likely that there will be some short-term disruption to just-in-time deliveries as new systems come online albeit this disruption will be predictable and easier to plan for than the delays seen in December 2020.

Other issues associated with movement of goods include:

- Status of Northern Ireland. In line with the transition agreement, Northern Ireland is part of the EU Customs Union. Non-tariff barriers including customs declarations apply to goods transported from the UK. Rules of Origin requirements apply to imported goods transported to Northern Ireland via the UK; this may result in tariffs being applied on some imported goods distributed from the UK.
- UK Global Tariff (UKGT). The UKGT has replaced the EU Common Tariff schedule applied by the EU to imports from countries where it does not have a trade deal. Overall, tariff arrangements are simplified under UKGT. The average duty is cut from 7% to 6%. The value of goods imported tariff-free into the UK will increase by £30bn to £425bn pa. The introduction of the UKGT addresses widely held concerns about the introduction of tariffs post-Brexit.
- Rules of Origin. Products imported from the EU will be subject to tariffs if around 50% or more by value is made outside of the EU. This will affect the distribution of products imported from non-EU markets as well as assemblies that include a high proportion of imported components. This measure is likely to result in the reshoring to the UK of some product distribution currently managed from Europe.

Some complete, high-value assemblies including curtain wall, lifts and building services plant that are imported into the UK from Europe may also have a high proportion of non-EU manufactured content. This will need to be checked on a product-by-product basis.

Around 90% of the UK construction workforce are UK born. However, overseas workers have a key role in some markets such as London and the South East, where a much larger share of the workforce are not UK citizens.

Movement of labour has been a material concern for the UK construction industry, given that around 10% of the construction workforce are non-UK born, and a high proportion of EU nationals work in the professional sector. With respect to the UK, the rights of foreign-born people to live and work in the UK are determined by the UK Settled Status scheme and the Points Based Migration system.

The Settled Status scheme is open until June 2021 .

Successful applicants have the same rights to live, work, healthcare and welfare as UK citizens. Pre-settled status provides live, work and healthcare rights but less access to welfare. Based on data up to the end of November, nearly 4.5 million EU citizens have entered the scheme, and 2.3 million have so far qualified for settled status. Although there is no data available detailing the occupations of scheme applicants, it is reasonable to assume that a large proportion of overseas workers will have secured continuing rights to work under the scheme. This will de-risk the UK construction labour market in the short-term.

Separate data has been published by the Economics Statistics Centre for Excellence indicating that 1.3m people born abroad may have left the UK in the past 12 months. This finding is likely to reflect significant job losses in locked down sectors such as hospitality. Recent ONS data suggests that the number of EU-born construction operatives has fallen by over 25% in the past 12 months, highlighting that workers will return home when there is no work. The settled status scheme permits this. As a result, construction firms continue to be concerned that skills shortages will emerge as a result of the loss of access to EU labour.

The UK's Points-based migration scheme is now operational.

The scheme operates globally and is focused on relatively highly skilled and paid jobs. To be suitable for overseas recruitment, a job must reach a minimum points threshold. Points are awarded for skills level, language proficiency, salary level etc. Further points are awarded to

shortage applications and PhD level qualifications. **Only licenced employers can use the scheme.**

Many construction jobs pass the salary test but may not pass the qualifications test which is equivalent to A Level (NVQ6). Some construction occupations are recognised as being in shortage, but the construction list of shortage occupations is relatively short and is focused on professions rather than craft skills. **Furthermore, applicants under the scheme must be directly employed by the sponsor. The self-employment model, so common in construction, is not supported.**

Looking forward, UK employers will have to replace at least some of their ageing workforce from the UK labour market – placing further pressure on recruitment, training and development of career paths.

Post-Brexit, international businesses operating in the UK will need to apply an Intra-Company Transfer route (ICT) visa to enable their people to be able to work long-term in the UK. This is needed if employees do not have settled status. Jobs should be at NVQ6 or above and the salary threshold is £41,500. The ICT does not allow for future settlement in the UK. The ICT provision will enable, for example, European Contractors operating in the UK to maintain continuity of operations.

Other issues associated with the movement of people include:

- Fly-in, fly-out journeys to the EU. Short-term visits for conferences, meetings, inspections etc are permitted without visa and work permits. Visits to undertake paid work in EU states will require visas and work permits in accordance with national requirements and may also be subject to local restrictions such as economic needs tests. Time spent in the EU without a visa is limited to 90 days in a 180-day period.
- Professional qualifications. EU professional qualifications recognised or applied for in the UK before 1st January 2021 will remain protected. There is no equivalent recognition of UK qualifications in the EU and future recognition will be on a country-by-country basis. This outcome is broadly supportive of the delivery of projects in the UK which benefit from inputs from EU-born professionals.
- Social security costs. Social security costs are only paid once – subject to having the correct certification.



Short-term impact

Manufacturers who place new materials into the UK & NI require separate testing.

Long-term impact

Reduction of materials and products placed in the UK & NI as a result of additional UK-specific compliance costs.

Prior to 1st January 2021, the placing of construction products into the UK market was regulated under the EU Construction Products Regulations (CPR). Post-Brexit, a UK CPR system is being introduced.

There is no specific provision for construction materials in the deal. Their future treatment highlights some of the thorny issues associated with third country status.

The regulations have been transposed, so at present products approved for the EU can be placed in the UK and can be given the UKCA product mark. From 1st January 2022, products being placed into the UK market will need to be tested by a UK testing body. As no equivalence has been granted between the EU and UK, this will mean that duplicate testing will be required.

It is possible that some EU-based material producers will choose not to place their products once the new measures come into force. Furthermore, UK testing bodies will need to develop capacity to ensure that they can maintain pace with the introduction of new products.

The EU CPR is a live system that is subject to constant development. The UK and EU systems will already have started to diverge, and this issue will increase over time. As regulation develops, there may be further impacts on the availability of construction products.

Northern Ireland is treated differently as a result of the border arrangements associated with the transition agreement. Products used in Northern Ireland from January 2022 onwards can either be compliant with EU regulations, or alternatively compliant with both Northern Ireland (UK(NI)) and EU regulations. Over time, it is likely that the Northern Ireland market will migrate to CE marked products imported from Ireland.

Other issues associated with construction materials include:

- European (EN) standards. EN Standards are being transposed into British Standards. They will be given a British Standard (BS) reference using the same number.

Chemicals regulation

Short-term impact

Requirements for manufacturers, importers and some users of chemicals to register – cost and administrative burden.

Long-term impact

Reduction of materials and products placed in the UK as a result of additional UK-specific compliance costs.

The European Chemicals Regulation (REACH) was transposed into UK law on 1st January 2021. There are implications for the registration of chemicals under UK Reach affecting manufacturers, importers and downstream users.

Construction relies on a large variety of chemicals. These are used by a fragmented supply chain. Implications include:

- Cost and effort associated with registering existing products and users onto the UK system.
- Capacity of the UK REACH system – meaning risks of bureaucratic delay.
- Significant cost associated with the duplication of test data in the UK REACH technical database.

Products and users in Northern Ireland remain registered under the EU REACH scheme. Products registered under REACH in the EU can have approvals ‘grandfathered’ into the UK. Registration will need to be completed within a set time frame, between 2 and 6 years depending on the volume of chemicals involved and the level of risk.

Manufacturers and importers of chemicals must be registered with UK authorities. A similar requirement applies to downstream users that use over 1 tonne of a single compound per annum.

New products will need to be separately tested to confirm that UK REACH requirements are met. The implications of this are a significant requirement for the collection of product data as well as product testing. The UK chemicals industry claims that the total cost of the development of a new database could exceed £1bn. There is no immediate provision for data sharing in the CTA. It is unlikely that the EU commission would offer such a concession, given the competitive advantage that it gives to European chemicals companies.

Costs of testing can be shared by groups of manufacturers that produce or use the same product. Widely used chemicals are likely to be more readily taken through the registration process than chemicals with a smaller user base.

Procurement

Short-term impact

Public procurement opportunities are now published on the Find a Tender (FTS) portal and portals used by the devolved regions.

Long-term impact

Government intends to reform public procurement.

The UK has left the OJEU system. Above threshold opportunities in the UK will no longer be published on the OJEU portal, TED.

The principal replacement service is Find a Tender (FTS). The devolved authorities maintain separate systems.

EU procurement regulations and case law up to 31st December 2020 have been transposed into the UK. **Looking forward, UK procurement regulations will be required to comply with the WTO’s Agreement on Government Procurement (GPA).**

Consultations have started in connection with an update to UK public procurement regulations. Potential areas of change could include:

- An extensive overhaul of award procedures
- Facilitation of an online pre-qualification database
- New grounds for exclusion including previous poor performance, assessed using KPIs
- A more flexible approach to bid evaluation based on Most Advantageous Tender criteria (MAT)
- Greater transparency across the bid process
- Some changes to the legal challenge process.

The reforms are currently out for consultation. No new legislation will be required to update the existing regulations.



Short-term impact

Temporary measures enable data to be transferred from the EU to the UK from 1st January 2021. Requirement for contingency measures – e.g. contract clauses.

Long-term impact

The UK and EU Commission are expected to complete an adequacy assessment, enabling the data transfers to continue in the future.

The CTA commits both parties to the facilitation of cross-border flows of data and to high standards of data protection.

Interim measures should prevent the need for businesses to put in contingency measures such as the retrospective application of contract clauses.

According to the CTA, **the adequacy assessment should be completed by end June 2021 at the latest.**

Conclusion

In the short term, our assessment is that construction projects will not be exposed to significant disruption as a result of the Brexit transition. There may be some unexpected impacts such as tariffs associated with imported goods that fall foul of rules-of-origin requirements, but these issues are small compared to the effects seen in other sectors.

This is a positive outcome, but clients and their project teams should not be complacent - particularly with respect to the continuing availability of construction products and chemicals in UK markets as new product standards are introduced.

There can be little doubt that the impacts of the UK's exit from the EU will continue to affect the industry for many years to come.

Disclaimer

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