

EU Exit Update

Trading standards challenges and opportunities in a post-EU Exit world

KEY FINDINGS

Identifying the most likely impacts and making recommendations for necessary actions

THREATS

Examining future risks to regulation and enforcement of UK consumer protection post-EU Exit

OPPORTUNITIES

Analysing key trading standards areas for potential benefits to the UK's regulatory environment

7.12.2007

The process for
withdrawing from
the European Union

**REVISED &
UPDATED
FOR 2020-21**

This booklet is partly based on the
CTSI Brexit Think Tank report:
*Trading Standards opportunities and
threats from the UK leaving the EU.*

Foreword

From the Chartered Trading Standards Institute

Setting standards

Perhaps more than any other UK regulatory or consumer protection service, the decision to leave the EU has a seismic effect on our system of trading standards. As the EU's ambitions for a harmonised single market were pursued, it led to a swathe of EU legal instruments regulating businesses and protecting consumers. It is trading standards officers that are at the cutting edge of this legal revolution – interpreting, advising and enforcing complex EU laws, ensuring regulations work, that consumers are protected and that market surveillance is robust.

One of trading standards' greatest strengths – and challenges – is the sheer breadth of the work our officers undertake in their day-to-day roles. Everything from fair trading and e-commerce enforcement through to legal metrology, product safety and intellectual property regulation. That is not forgetting our food chain and rural enforcement roles in areas such as feed and food, animal health and welfare and agriculture. This invaluable work can sometimes go unseen and as a result can be undervalued by decision-makers. However, as the debates during the EU negotiations have clearly shown, regulations that protect UK market standards are vital for our economy and equally vital to any new potential trade deals.

As we are poised to leave the EU it will be frontline trading standards officers that will have to unpick the uncertainties and make sure our new regulations and legal frameworks operate effectively.

For those reasons, CTSI brought together a think tank of relevant experts across the range of the activities most influenced by our relationship with the EU. Their task was to examine the risks and opportunities to trading standards from our EU divorce – to influence, engage, advise and to make sure we fight for the most important protections, networks and laws – and that's what they've done. Fundamentally, the goal has been to make sure UK consumers and businesses are not exposed to lower standards and greater risks as we exit the EU and make new trade deals.

This report represents the detail and broad findings from their considerations since the EU referendum in 2016. At the time of writing (November 2020) the door to negotiations has all but closed as trade talks still face "very serious divergences", according to EU chief negotiator Michel Barnier. With little time to agree and ratify a trade deal, a 'No-Deal' scenario looks increasingly likely, but the key findings, threats and opportunities in this report will serve to guide the profession's thinking either way. CTSI wants to thank all of those who helped make this report, the Brexit Think Tank itself and the EU Exit training course possible.



ONE OF TRADING
STANDARDS' GREATEST
STRENGTHS - AND
CHALLENGES - IS THE
SHEER BREADTH OF
THE WORK

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Introduction

CTSI Brexit Think Tank

Since the UK voted to leave the EU in June 2016, through the general election, debates in parliament, resignations, dissension, recriminations, periods of political paralysis and even beyond the UK's official exit from the EU at the beginning of 2019, EU Exit has been a persistent source of confusion and uncertainty in UK life.

Despite all that has happened over the past four years, successive prime ministers and ministers have failed to bring the UK much closer to a clear outcome. Many questions over future trade deals and how they might impact on UK consumers, businesses and regulators remain unanswered right up to the present time.

Not least among those seeking answers to these questions are trading standards professionals, who will play a significant role in the battle to make sense of the legislative landscape and ensure that consumers are not negatively impacted after the Implementation Period Completion Day on 31 December 2020, when the UK is no longer subject to EU rules and regulations.

In 2016, the Chartered Trading Standards Institute (CTSI) gathered together subject matter experts in the nine broad areas most influenced by EU membership to form the Brexit Think Tank. They were tasked with considering and communicating the potential impacts, risks and opportunities of EU Exit as they relate to trading standards.

Joined by CTSI's Policy and Communications teams and Jacqueline Minor, Former Director of Consumer Policy at the EU Commission, the Think Tank discussed the likely impact of EU Exit for trading standards services, both as regulators and consumer protection specialists.

The Think Tank has had its work cut out since then keeping up with an oscillating picture of a post-EU Exit world. The UK's exit from the EU was only knocked from the top of the political and news agenda when the urgent issue of COVID-19 appeared at the beginning of this year. The pandemic switched attentions away from negotiations and has both slowed down the process and significantly complicated and exacerbated the problems facing the consumer protection landscape.

It now looks likely that the implementation period will come to an end without a ratified trade agreement between the UK and EU and the legal basis for their relationship will fall back on World Trade Organisation rules.

The Think Tank has been considering this scenario for a long time. Over the next 20 pages the updated key findings are laid out in summary form. The EU Exit process is constantly evolving and may be subject to change at short notice. For more resources, including detailed training modules and a podcast series on the topic, visit:

www.tradingstandards.uk/euexit

Foreword: Jacqueline Minor

The UK's membership of the EU has seen a period of immense change for consumers and businesses. Since we joined in the early 1970s the manner by which we buy goods and services has changed dramatically as regional, national and global chains largely replaced local high-street sellers. Just as our consumer products became more sophisticated, so too did our markets and contracts. Modern consumers now have much greater choice with complex digital purchase options and financial products at their disposal.

As a former Director of Consumer Policy for the European Commission I was at the heart of EU efforts to adapt, raise and harmonise standards of consumer protection. By removing tariffs and non-tariff barriers, the EU worked to realise the vision of a single market for its 500 million consumers and businesses. This meant a large number of EU legal instruments such as directives and, increasingly, regulations became part of the UK's legal infrastructure.

Regardless of one's political views, there can be no doubt that the UK's vote to leave created a huge legal challenge as the government now has to unpick decades of



For more detailed up-to-date information about how EU Exit could affect this area of trading standards, and to take the EU Exit training course, visit www.tradingstandards.uk/euexit



interconnected laws, frameworks and relationships. Vast though the challenges are, it is vitally important for the UK economy that they are met.

I was honoured to be asked to be part of CTSI's Brexit Think Tank and contribute my knowledge and experience of the potential risks to trading standards. It has been a revelation to see the enormous range of work that trading standards officers undertake, the expertise which Think Tank members have brought to the discussions and the extent to which the EU has impacted on their roles.

The deliberations are technical and detailed – but it is important that we examine every aspect of changes to our EU relationship. We need to fight to ensure that levels of consumer protection and regulatory standards are not diminished outside the EU. Our biggest challenges remain in the uncertain future trading relationship with the EU and our need to retain close reciprocal ties that benefit UK consumers and businesses. ■

Jacqueline Minor is a Former Director of Consumer Policy and a former Head of Representation at the EU Commission. In the latter role, she was responsible for communicating on the operation and policies of the EU in the UK and reporting to the European Commission on policy and politics in the UK.

This statement was written at the inception of the Brexit Think Tank as a foreword to the 2016 version of this booklet.

Overview

CTSI Brexit Think Tank

The UK's withdrawal from the EU could have a potentially all-pervading effect on the work of trading standards, both as regulators and consumer protection specialists, since it has become so heavily intertwined over the years with the EU's ambitions for a single market with harmonised rules.

As the UK's negotiating position has shaped and developed, many of the issues have become clearer. However, much will depend on whether the UK can secure a deal along the lines laid out in the government's policy documents earlier this year, or whether, as now looks likely, we will leave without a Free Trade Agreement in place.

Although CTSI's Brexit Think Tank has considered the issues from the point of view of the nine key areas laid out in this booklet, throughout the deliberations a few broad cross-cutting concerns have emerged.

Budgets continue to fall

CTSI supports the government's ambitions for 'high levels of consumer protection', 'high regulatory standards' and 'robust domestic market surveillance' after we leave the EU, which have been its stated goals ever since the EU Referendum in 2016.

However, as the main consumer protection and regulatory service in the UK, we believe these ambitions are hugely undermined by cuts to frontline trading standards that amount to a halving of trading standards resources in less than a decade.

Much has been made of maintaining the UK's post-EU Exit standards of regulation, but rules without resources for application, advice and enforcement are rendered ineffective and detrimental to the UK economy. A continued drop in trading standards capacity after EU Exit will see UK consumer markets flooded with unsafe goods, scams and rogue traders.

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RULES WITHOUT
RESOURCES FOR
APPLICATION, ADVICE
AND ENFORCEMENT
ARE RENDERED
INEFFECTIVE



Key networks will be lost

EU membership has brought many key consumer rights and we welcome the government's commitment to 'reciprocal high standards of consumer protection'.

We remain very concerned, however, that this will not be secured. Certain key regulations and networks – on issues such as data sharing, policy formation and enforcement – simply cannot be unilaterally recreated by the UK, given that they require reciprocal agreement and action from the

remaining 27 member states of the EU. In the event of no trade deal with the EU many of these very important links could be lost.

For example, the Rapid Alert System for Dangerous Non-Food Products is used by all local trading standards and is mandatory for products posing a serious risk. As well as an important mechanism for informing the European Commission of activities undertaken by the UK it is also a vital source of intelligence.

For more detailed up-to-date information about how EU Exit could affect this area of trading standards, and to take the EU Exit training course, visit www.tradingstandards.uk/euexit



An opportunity for reform

Ongoing uncertainty for consumers, businesses and regulators also brings costs. We urge the government to continue to work closely with CTSI and trading standards to shape the new regulatory environment into one that meets the needs of modern businesses and consumers, with properly resourced and organised trading standards services. While we know the economy has been hard hit, the system urgently needs reform and investment. ■

Average trading standards budget over time

*Source: CTSI Work force survey



2010-11

£1,271,622



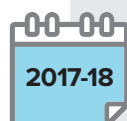
2015-16

£947,591



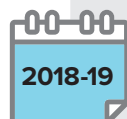
2016-17

£921,025



2017-18

£888,632



2018-19

£860,715



Fair Trading

Ensuring protection in consumer transactions

LEAD OFFICER

Peter Stonely Stonely Training

Peter has more than 20 years' experience as an operational trading standards officer and more than 15 years' experience as a law trainer.

Since the UK entered the EEC in 1972, the European Union's influence on fair trading and consumer law has been substantial. Consumer protection has always been at the heart of the EU with the principle that EU polices should ensure a 'high level of consumer protection' being embedded in the Charter of Fundamental Rights of the European Union.



51%

OF UK IMPORTED GOODS
AND SERVICES CAME FROM
THE EU IN 2019

As the major consumer protection EU Directives have been fully implemented in various pieces of UK legislation, the main aspects of EU consumer law should survive intact at the end of the transition period. It is questionable whether, at that point, there will be political will to make large changes, such as alterations to the Consumer Rights Act 2015, which was designed to modernise, simplify and consolidate UK consumer protection legislation.

The UK government will have to decide whether to implement changes in two Directives regarding consumer rights when buying goods and digital content. These would not weaken the Consumer Rights Act 2015. In addition, the so-called Omnibus Directive would require changes to UK fair trading law that would raise the level of consumer protection for UK consumers when buying through intermediaries, using platforms that use AI to personalise prices and recommend financial penalties based upon turnover of the business.

Threats

The lack of clarity for post-EU Exit consumer markets is a major threat that we cannot yet quantify. The ongoing uncertainty brings potentially significant costs for everyone, including consumers, businesses and regulators.

Also, we are very concerned that key consumer regulations and networks with the EU in areas such as enforcement or data sharing cannot be unilaterally recreated by the UK.



£294bn

VALUE OF EXPORTS OF GOODS
AND SERVICES TO THE EU IN 2019

It has been made clear we will not be part of the EU's digital single market and that will eventually lead to divergence in approaches to consumer digital contracts. We will need to be vigilant and ensure UK consumers and businesses are not disadvantaged.

Opportunities

While the threats from EU Exit have been well debated, it may in time offer opportunities to improve areas of consumer law without any impact on cross-border trading.

For example, post-EU Exit, there might be potential to improve and clarify laws that implement the unfair commercial practices directive and the injunctions directive.

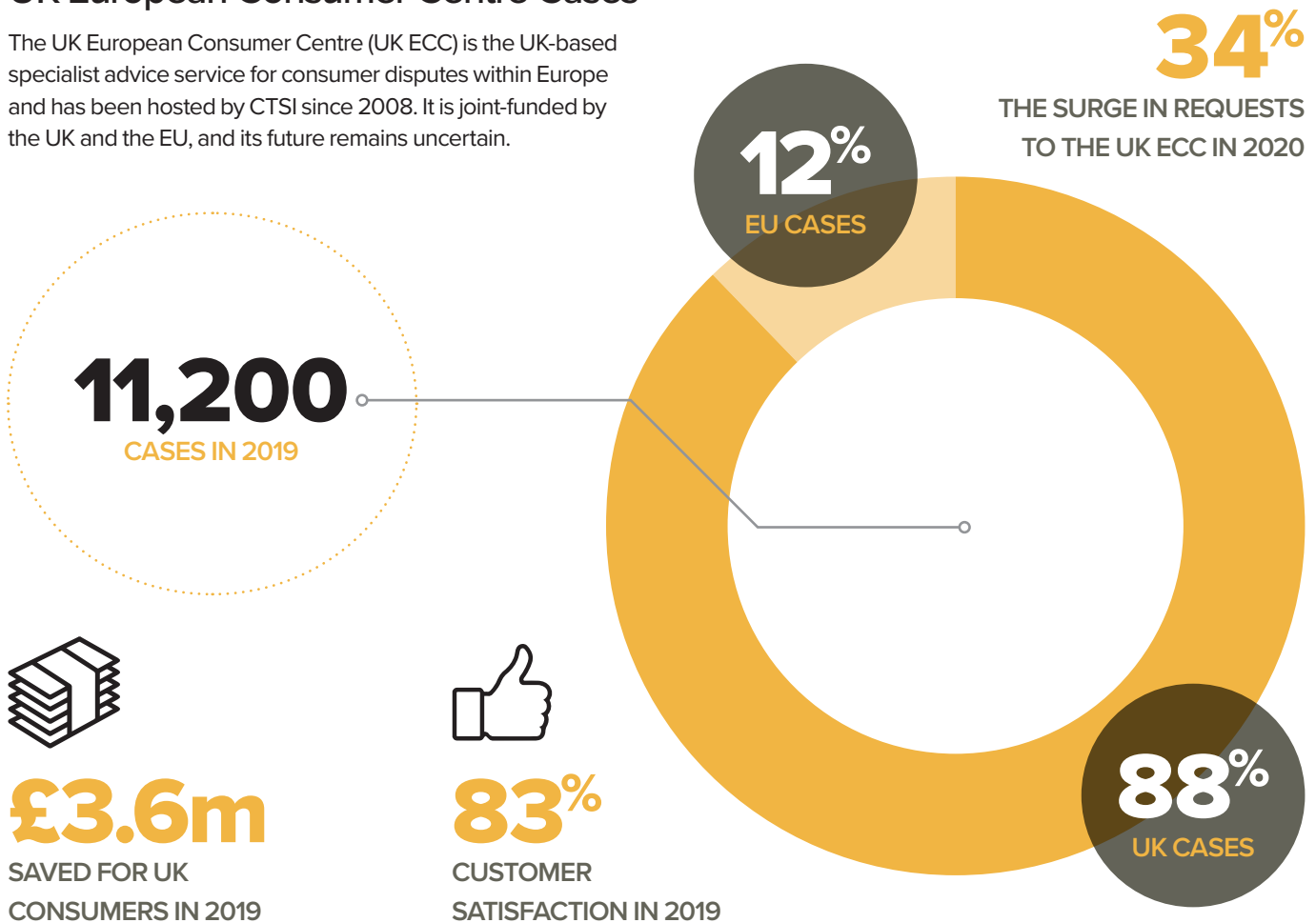
In addition, there could be the chance to simplify consumer law in areas where EU directives have led to uncertainty. There are many examples which are confusing in areas relating to cancellation rights, the return of goods, and exemptions for custom-made products. In short, it may be possible to improve some areas of our complicated consumer protection regime after the transition period. ■

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IT MAY BE POSSIBLE TO
IMPROVE SOME AREAS OF OUR
COMPLICATED CONSUMER
PROTECTION REGIME AFTER THE
TRANSITION PERIOD

UK European Consumer Centre Cases

The UK European Consumer Centre (UK ECC) is the UK-based specialist advice service for consumer disputes within Europe and has been hosted by CTSI since 2008. It is joint-funded by the UK and the EU, and its future remains uncertain.



Dealing with EU scams

The ongoing reduction in local authority trading standards services is having a worrying impact on the ability of officers to tackle scams and rogue trading. Regardless of the adequacy and breadth of the consumer law framework post-EU Exit, enforcement is a crucial aspect needed to retain consumer and business confidence in the system, and one that should not be underestimated.

The challenge of dealing with rogue trading is significantly exacerbated when the threat comes from outside our borders. Especially with the surge in online transactions that the coronavirus pandemic has brought, we need to ensure rogue trading practices and scams that originate from within the EU continue to be tackled.



e-Commerce

Protecting consumer spending online

LEAD OFFICER

David MacKenzie
Highland Council

David is the Trading Standards Manager for Highland Council in Scotland, with 27 years' experience in the profession.

The UK has been at the forefront of the development of e-commerce, especially in the European context. If our consumers and businesses are to continue to successfully utilise the internet, we need provisions that are in harmony with the key markets of the EU and the US (where similar provisions apply).



87%

OF UK SHOPPERS ARE ESTIMATED TO HAVE BOUGHT GOODS OR SERVICES ONLINE*

An agreement with the EU on the mutual recognition of goods and standards would ensure a digital market that is as frictionless as possible. It is vital that the government provides clarity on the post-EU Exit responsibilities and legal rules that will apply to importers of EU goods into the UK market, and vice versa.

CTSI believes that ease of access to the EU market for UK e-sellers and e-buyers is crucial, not only to promote business growth but also to maintain consumer choice. The UK is a European leader on e-commerce, and barriers to the EU market will threaten jobs and prosperity and worsen the consumer experience.



£5.3bn

THE INCREASE IN UK ECOMMERCE SALES EXPECTED FROM THE COVID-19 PANDEMIC SURGE*

The COVID-19 pandemic has accelerated the trend of increasing online sales, making satisfactory progress on e-commerce in the handling of EU Exit even more important.

Threats

The e-Commerce Directive (ECD) has been implemented in UK law and the retention of its provisions is vital. Of particular importance are the information requirements that mean digital sellers must let consumers know who they are, where they are located, and how they can be contacted.

It is the consumer confidence created by the information requirements under the ECD and other statutory protections such as cancellation rights and remedies for faulty goods and digital content that will help maintain the boom in online sales which has boosted the UK economy.

£688bn

TOTAL VALUE OF E-COMMERCE SALES IN THE UK IN 2018

The total jumped from £514bn, just four years earlier and is accelerating.

SOURCE: Office for National Statistics

It is crucial for the wellbeing of UK e-commerce that these protections are maintained. There is longer-term risk that diverging from the EU's Digital Single Market strategy will dent consumer confidence.

COVID-19 has intensified these threats, with e-commerce becoming even more fundamental to the UK economy. Further, e-commerce is likely to play a central role in economic recovery from the pandemic, and the geographically close and culturally similar countries of the EU are likely to be the key potential export market.



£2bn

THE AMOUNT OF THE SURGE EXPECTED TO GO TO AMAZON*

*SOURCE: Edge by Ascential Retail Insight 2020

Opportunities

The ECD is not perfect; it would benefit from modernisation to spell out its application to modern situations, and extra provisions could be added.

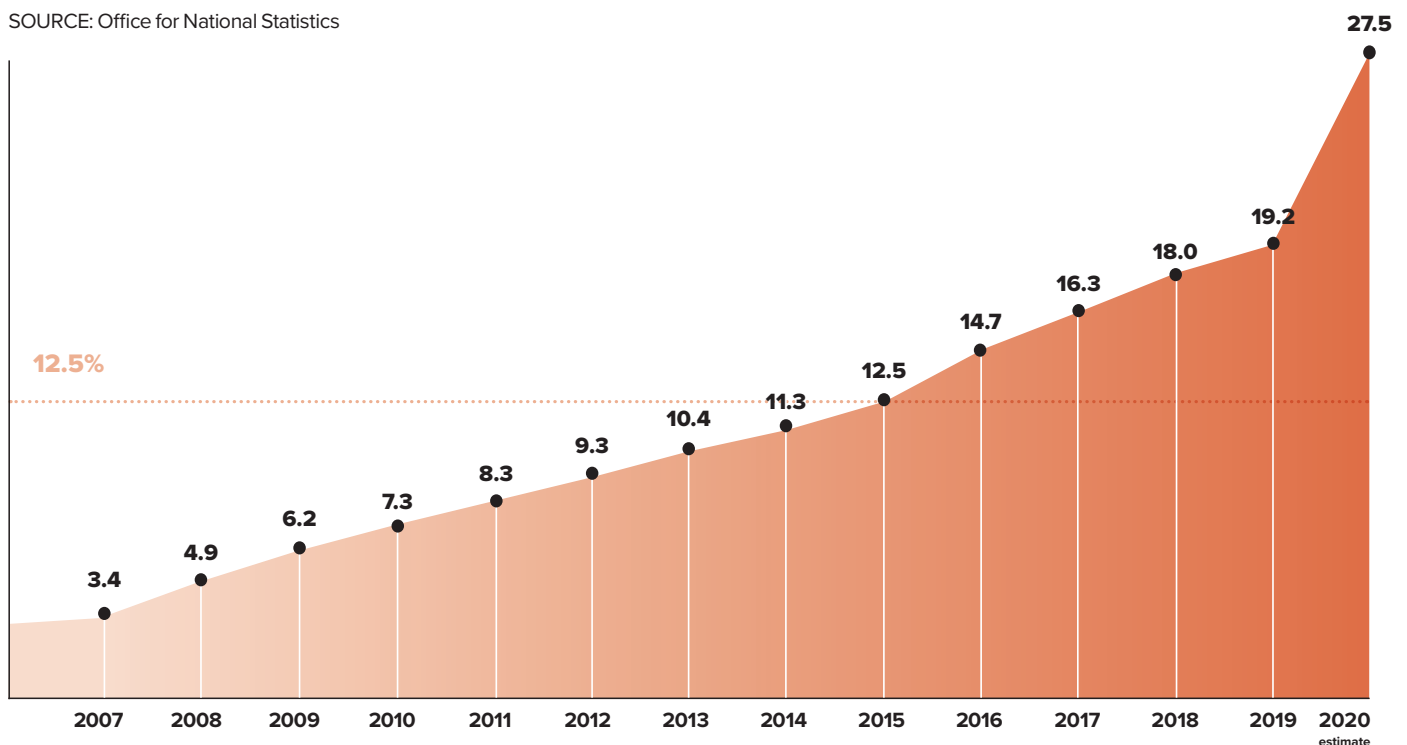
COVID-19 has seen online sales boosted across the world, including in countries beyond Europe where consumers had previously not been prolific users of e-commerce. Many have implemented improvements in internet infrastructure that could make these changes permanent.

Free from the EU customs union, the UK may be able to use its expertise in e-commerce to boost trade with such countries and take advantage of their new appetite and capacity for e-commerce. ■

Internet sales as a percentage of all retail sales

Internet sales are expected to reach 27.5% of all retail sales in the UK in 2020, with Europe an important and growing market for UK e-retailers.

SOURCE: Office for National Statistics



Crucial cooperation

Consumer confidence is key. In order for it to continue in e-commerce, it will be necessary for the UK to maintain appropriate and reciprocal cross-border enforcement powers after EU Exit.

Ideally, the UK should retain the Consumer Protection Cooperation (CPC) model that allows the Competition and Markets Authority (CMA) to tackle issues on behalf of UK and EU consumers through reciprocal enforcement. Without the CPC there is no guarantee that rogue practices affecting UK consumers – but originating from the EU – will be tackled effectively by the remaining 27.

It is crucial that specific powers are retained to investigate and enforce e-commerce breaches, including the power to close down rogue websites, the power to gather information about intermediaries and explicit powers to undertake covert test purchases.

Finally, many UK e-retailers source goods from across the EU. Post-EU Exit these acquisitions may mean the trader becomes an importer with all the various obligations that entails. This could be a serious burden on businesses and potentially a major burden on trading standards services.



Product Safety

Setting minimum standards for conformity

LEAD OFFICER

Mark Gardiner Market Surveillance Specialists

Mark has experience providing expert training and advice to local and national government, NGOs and international development projects.

The entire system of product safety in the UK is at risk from EU Exit. The majority of the laws that dictate the safety of our consumer products originate from the EU and cover issues such as minimum standards, rules for placing on the market and enforcement.

A regulatory framework has been enacted to reflect the UK's final exit from the Single Market and this has been developed to ensure continuity of EU law in relation to product safety and market surveillance.

The UK government has also developed the concept of the UK market to attempt to ensure ongoing free movement of goods between the four nations and to ensure that there are no barriers to internal trade once devolved powers return to national parliaments and assemblies. This is complicated by the position of Northern Ireland, but the government has developed a conceptual protocol to manage this unique relationship which is effective from January 1, 2021. Great Britain will

recognise two separate regulatory frameworks for the safety of goods from Northern Ireland – either the EU one or the UK one, but the same does not appear to be true for goods heading in the opposite direction.

An appropriate product safety system requires local resources to monitor, sample, test and enforce product safety laws and share intelligence. The government's ambitions to maintain a robust market surveillance programme is undermined by cuts to trading standards.

Threats

At present, the current legislative requirements for goods placed on the UK market will remain the same, as all EU-based requirements have been transposed into UK-only law. It is recognised however that the regulations will function differently as they are currently designed to provide a basis for harmonisation leading to the free movement of goods across internal borders. The UK will have its own 'single market' although there is the risk of barriers to trade between Great Britain and Northern Ireland due to regulatory divergence if the current regulatory framework is varied by either side, as EU regulation will not remain static.

In the short term this is unlikely, but the UK government has already stated that it seeks divergence in some respects, and trade deals with countries with differing product safety paradigms may hasten this, along with ongoing development of EU law and jurisprudence via the European Court of Justice. There is therefore the distinct risk of two regulatory frameworks working concurrently in the UK market, which presents specific challenges and uncertainty for businesses and regulators alike.

Currently, UK product safety market surveillance is part of a wider system of regulation throughout the Single Market

both for goods entering the market via external borders and also inland agencies, with information sharing and reciprocal actions built in to ensure where goods are found to be non-compliant in one member state, the same action

18%

OF OPSS SURVEY RESPONDENTS SAID THEY HAD CONSIDERED PRODUCT SAFETY WHEN MAKING A RECENT SECOND-HAND PURCHASE*

*SOURCE: BEIS Consumer Attitudes to Product Safety Report, 2019

is taken in all other jurisdictions. This information exchange may be lost, and reciprocity is unlikely to be a feature of the framework going forward.

Opportunities

There are some opportunities that arise for the product safety regulatory landscape. Primary among them is the ability to refocus data collection, intelligence development and interventions in what will be a significantly reduced market. As a single strategic product safety enforcement agency responsible for the entire market, the Office for Product Safety and Standards (OPSS) is uniquely placed to manage the risk of unsafe products at ports and borders as well as inland.

There are also opportunities for resolving some of the interpretational difficulties and inconsistencies presented by European Law and standardisation, particularly in relation to products which originate outside the market and are supplied direct to consumers, but also alternative supply chain models which weaken the integrity of the market by avoiding certain legal obligations. ■



17%

OF OPSS SURVEY RESPONDENTS SAID THEY HAD CONSIDERED PRODUCT SAFETY WHEN MAKING A RECENT NEW PURCHASE*

Most commonly reported products and risks, UK



SOURCE: European Commission, EU Rapid Alert System for dangerous non-food products report



Safety & Standards

There continues to be some uncertainty over the future approach to and use of standards in product safety regulations, with EU-harmonised standards continuing to have similar status in UK law post-EU Exit.

It is noteworthy at the time of writing that the British Standards Institution (BSI) will continue to participate in international standards development following EU Exit and therefore such standards will continue to have input from UK industry and experts.

The Office for Product Safety and Standards was formed in January 2018 following a series of incidents, including the Grenfell Tower tragedy and fires created by faulty tumble dryers.

Recognising training gaps in our umbrella, the Office has been working with CTSI to enhance local trading standards skills capacity for product safety investigations. Failure to reach a deal on the future relationship with the EU could put our product safety system in real jeopardy.



Animal Health & Agriculture

Enforcing fair rules and regulations for rural areas

LEAD OFFICER

Stephanie Young
Staffordshire Trading Standards

Stephanie is an experienced Principal Trading Standards Officer for Animal Health at Staffordshire County Council.

CTSI is firmly of the view that there is a need to ensure that the rural economy is not economically damaged from the removal of the Common Agricultural Policy (CAP) and that the system of local enforcement is protected.

Regarding CAP, the government has not yet set out how this critical funding structure will be replaced but has given indications that it will be based on funding for environmental rather than land ownership considerations. Withdrawal of funding without an adequate replacement will result in a number of businesses facing financial hardship, with the likely consequences of lower welfare standards on farms and reduced compliance with legislative standards for disease control.

CTSI urges the government to consider a plan to stop the haemorrhaging of resources for animal health and welfare regulation and enforcement at local levels. Regardless of the UK's relationship

HIGH STANDARDS OF ANIMAL WELFARE ARE ONE OF THE HALLMARKS OF A CIVILISED SOCIETY. WE HAVE A LONG TRADITION OF PROTECTING ANIMALS IN THIS COUNTRY, OFTEN MANY YEARS BEFORE OTHERS FOLLOW

Theresa Villiers MP, Secretary of State for the Environment, Food and Rural Affairs

with the EU in the future, it will still have to comply with the OIE International Standards for Animal Health for trade.

Threats

Despite the government's stated aim to retain and, where possible, improve levels of animal health and welfare upon leaving the EU, we believe that there are broad areas of concern. These include the threat to rural businesses from capacity in veterinary and enforcement

resources, pressures on standards from international trade and the impact on animal health from uncertain EU funding replacements.

Furthermore, with such uncertainty in the market, feed companies are already unwilling to extend credit to some farming businesses for livestock feed.

Opportunities

CTSI urges the government not to compromise on the standards of animal health and welfare and agriculture in order to gain access to new global markets. Imports of food and feed from countries such as China and the US will bring competitive pressures on UK businesses to lower standards. The government must hold strong on its aim to preserve and improve standards of animal health and welfare after we leave the EU.

High domestic animal health and welfare standards have become intertwined with EU policy frameworks. It is important that the UK secures access to key networks such as The European Food Safety Authority (EFSA), the Rapid Alert System for Food and Feed (RASFF) and the Trade Control and Expert System (TRACES). ■

60%

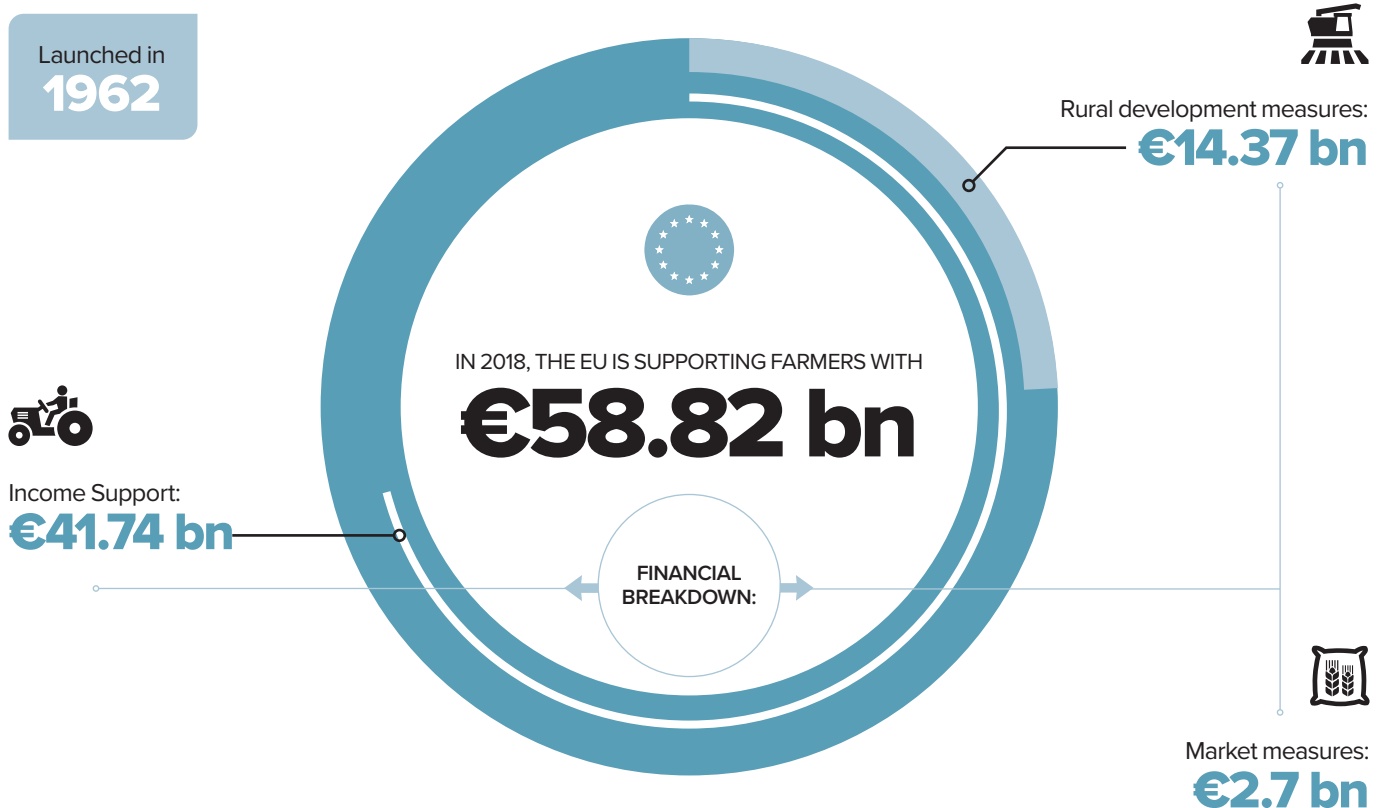
OF UK FARMS HAVE NO PLANS TO INVEST IN ANIMAL HEALTH OVER THE NEXT FIVE YEARS

*SOURCE: Defra Farm Practices Survey 2019 (released March 2020)

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CTSI URGES THE GOVERNMENT NOT TO COMPROMISE ON THE STANDARDS OF ANIMAL HEALTH AND WELFARE AND AGRICULTURE IN ORDER TO GAIN ACCESS TO NEW GLOBAL MARKETS.

The Common Agricultural Policy (CAP) at a glance*



* European Commission



Personnel concerns

Within the UK there is a heavy reliance on veterinary field staff within the public sector from other EU Countries. These veterinary officers have a pivotal role to play in the regulatory functions on farms and in abattoirs. The status of EU workers post-EU Exit, and our ability to recruit and maintain vital veterinary skills, is at risk.

CTSI is also extremely concerned about a reduction in enforcement personnel from both trading standards

and environmental health. While the UK might retain protections and have sufficient powers available to enforcers, resources to effectively police are in severe decline.

If, after the end of the transition period, the UK wishes to trade on a unique selling point of its high health status and its high welfare controls, it will need to demonstrate this is being effectively policed – a position that is already under pressure.



Food Standards

Maintaining high standards and transparency

LEAD OFFICER

David Pickering

Bucks & Surrey Trading Standards

David is Team Leader at Buckinghamshire & Surrey Trading Standards and CTSI Lead Officer for Food Safety.

It is critical that the standards for the food we produce (and import) for consumers are not lowered in the interests of securing new trade deals after EU Exit. That means we need to maintain an ongoing commitment to EU networks that promote high food standards and quickly share risks across borders.

As the transition period draws closer to an end with no agreement in place, a 'no deal' scenario looks more and more likely. This could be disastrous for the UK food industry.



£14.2bn

VALUE OF EXPORTS OF FOOD, FEED AND DRINK TO THE EU*

In all trade scenarios, it is important that the UK stays as close as possible to EU food standards, systems and institutions. It is also important that the government ensures that all standards applied post-EU Exit are based on the best scientific evidence and risk assessment. The government must ensure that there are maintained liaison arrangements with appropriate EU

bodies such as EFSA and systems such as RASFF to ensure that the UK food standards controls can be maintained.

Threats

If the UK drops out of trading arrangements with the EU post-EU Exit and moves to international trade deals, this would add significant costs to the food industry, the food regulation system (particularly at UK ports of entry) and ultimately to the UK consumer.

It is important to understand that any changes and additional responsibilities would come at a time UK regulatory bodies are already under severe pressure as a result of the paucity of resources for essential services such as testing, inspection and port health controls.

The consequences of food scares or incidents may lead the EU to impose emergency controls on the UK, accompanied by increased costs for compliance, rejected consignments, damaged reputations and clearance delays.

£24.3bn

THE UK TRADE DEFICIT IN FOOD, FEED AND DRINK IN 2019

* SOURCE: DEFRA, HMRC, Agriculture in the United Kingdom 2019

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A NO-DEAL SCENARIO COULD BE DISASTROUS FOR THE UK FOOD INDUSTRY



£33.7bn

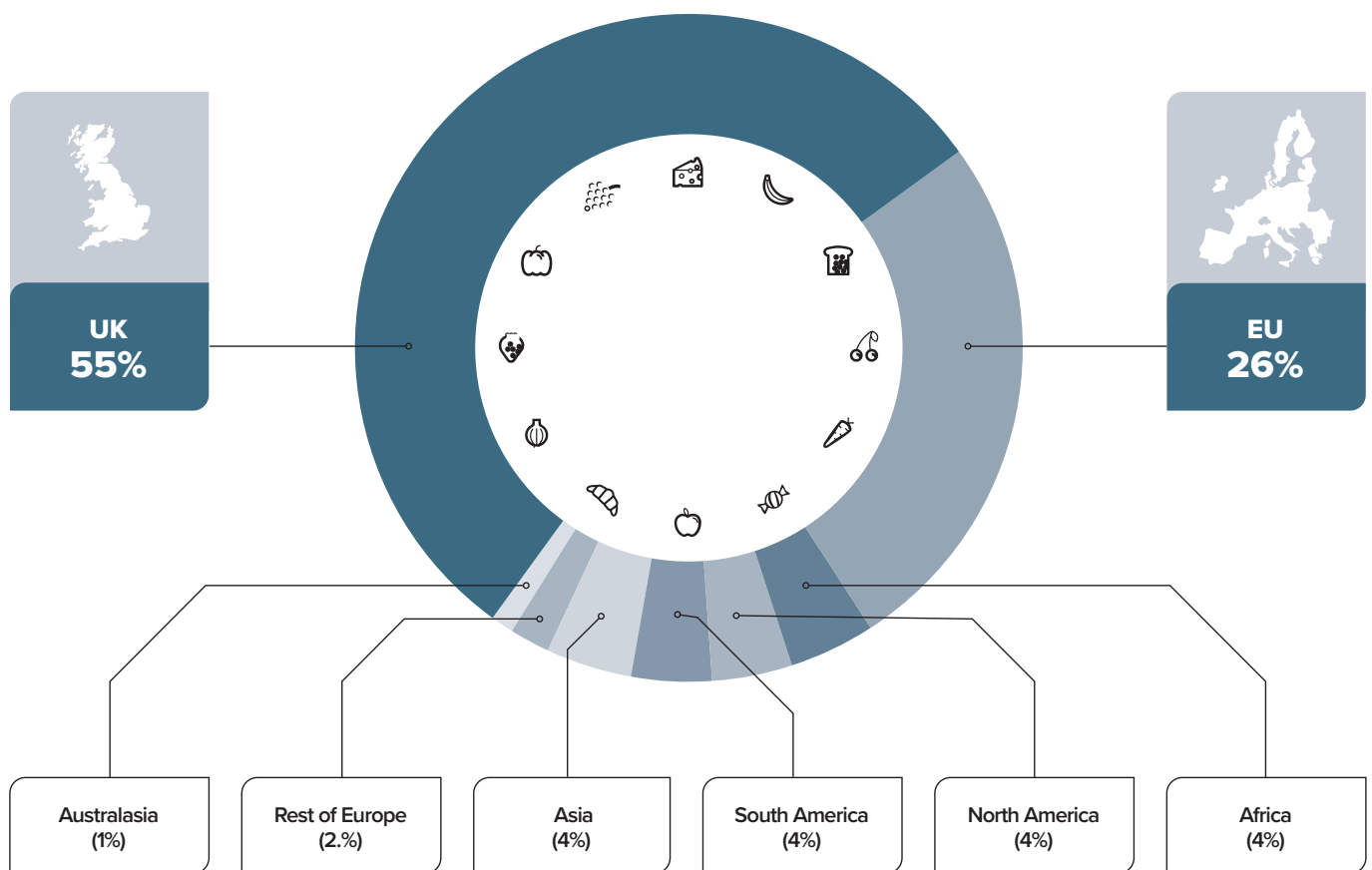
VALUE OF IMPORTS OF FOOD, FEED AND DRINK FROM THE EU*

Opportunities

There is a huge opportunity post-EU Exit to simplify the various national bodies' responsibilities for food policy, enforcement, standards and legislation, as well as those for health and nutrition claims. The current framework is confusing and impedes a solid regulatory system. We call on the government to provide clarity on UK food policy.

CTSI takes the view that whatever trade deal is reached, trading standards services are well placed to deliver business support and, in a modernised approach to food standards and food fraud, provide effective interventions to ensure business and consumer confidence in the market. A further opportunity will be for the UK to establish a new Food Act that clearly sets out the UK's vision for better food, farming and fishing. ■

Origins of food consumed in the UK in 2019



SOURCE: Department for Environment, Food and Rural Affairs, Agriculture in the United Kingdom report, 2017



Maintaining standards

As modern markets and consumer tastes have developed, the UK has become used to high levels of food safety and standards.

Membership of the EU has not changed this fact and the trading relationship has become very important, with the EU being the UK's major market for agriproducts, accounting for 60% of exports and 70% of imports.

It is crucial to remember that virtually all legislation relating to food standards originates from the EU.

Put simply, this means that for regulators, food businesses and consumers, the incorporation of existing EU-based law into UK legislation is vital in the immediate aftermath of EU Exit.



Intellectual Property

Enforcing business rights, upholding authenticity

LEAD OFFICER

Gavin Terry Lead Officers Group

Gavin is a Chartered Trading Standards Practitioner. He has over 25 years' experience as a trading standards investigator working in IP Enforcement for various TS Authorities across the UK.

Membership of the EU has had a significant impact on the UK framework for intellectual property (IP) rights. The UK systems of IP protection exist in parallel with the European and international systems. We must retain compatibility with these systems to ensure that the UK can trade on a global basis.

Put simply, the protection and enforcement of IP rights is crucial to UK businesses, and necessary to safeguard consumers from the dangers of inferior counterfeit products. IP rights are a central part of the modern global marketplace and the UK will need a fit-for-purpose IP legal framework to be competitive post-EU Exit.

The UK government has realised these factors in the negotiations with the EU regarding the future relationship. IP features in:

- The Withdrawal Agreement;
- The Political Declaration;
- The 'Future Relationship with the EU:



3%

SIZE OF UK COUNTERFEIT AND PIRATED GOODS IMPORTS, EQUIVALENT TO GENUINE GOODS.

The UK's Approach to Negotiations' policy paper; and

- The draft text of the Comprehensive Free Trade Agreement (CFTA)

Leaving the EU poses risks for the importation and exportation of infringing counterfeit and pirate goods. Post-EU Exit, the status of the UK as a third country raises many questions about the extent to which imports of trade mark-infringing goods can be enforced. The UK should not become a target for counterfeit goods from the EU or from any other new trading bloc.

Threats

The Withdrawal Agreement has addressed many of the threats to existing IP Rights highlighted by CTSI in the earlier Think Tank report, namely the status of:

- EU or Community Registered Trade Marks
- Registered Community Designs
- Unregistered Design Rights

The UK will automatically create new comparable or equivalent rights from January 1, 2021, ensuring rights holders do not suffer any loss of protection as a result of the EU Exit.

Existing EU or Community Trade Marks (EU or CTMs) will have protection in the UK until the post-EU Exit transition period ends on December 31, 2020.

There is a need to address the anomalies between rights in relation to infringements and criminal offences



59%

OF FAKE CLOTHING AND FOOTWEAR IS BOUGHT BY CUSTOMERS WHO KNOW THEY ARE GETTING FAKES.

for importing and exporting counterfeit and pirate goods. Such confusion undermines enforcement capabilities and helps criminals to exploit weaknesses in the framework. It is vital that reciprocal protections and enforcement actions are retained to fight IP crime and ensure that the UK can join EU partners in tackling markets for fake goods.

Opportunities

Post-EU Exit, the UK will no longer be a member of the various European IP systems. However, businesses will still be able to register European Trade Marks (EUTMs or CTMs) and Registered Community Designs (RCDs) by applying to the European Intellectual Property Office (EUIPO) in order to gain protection in the remaining 27 member states.

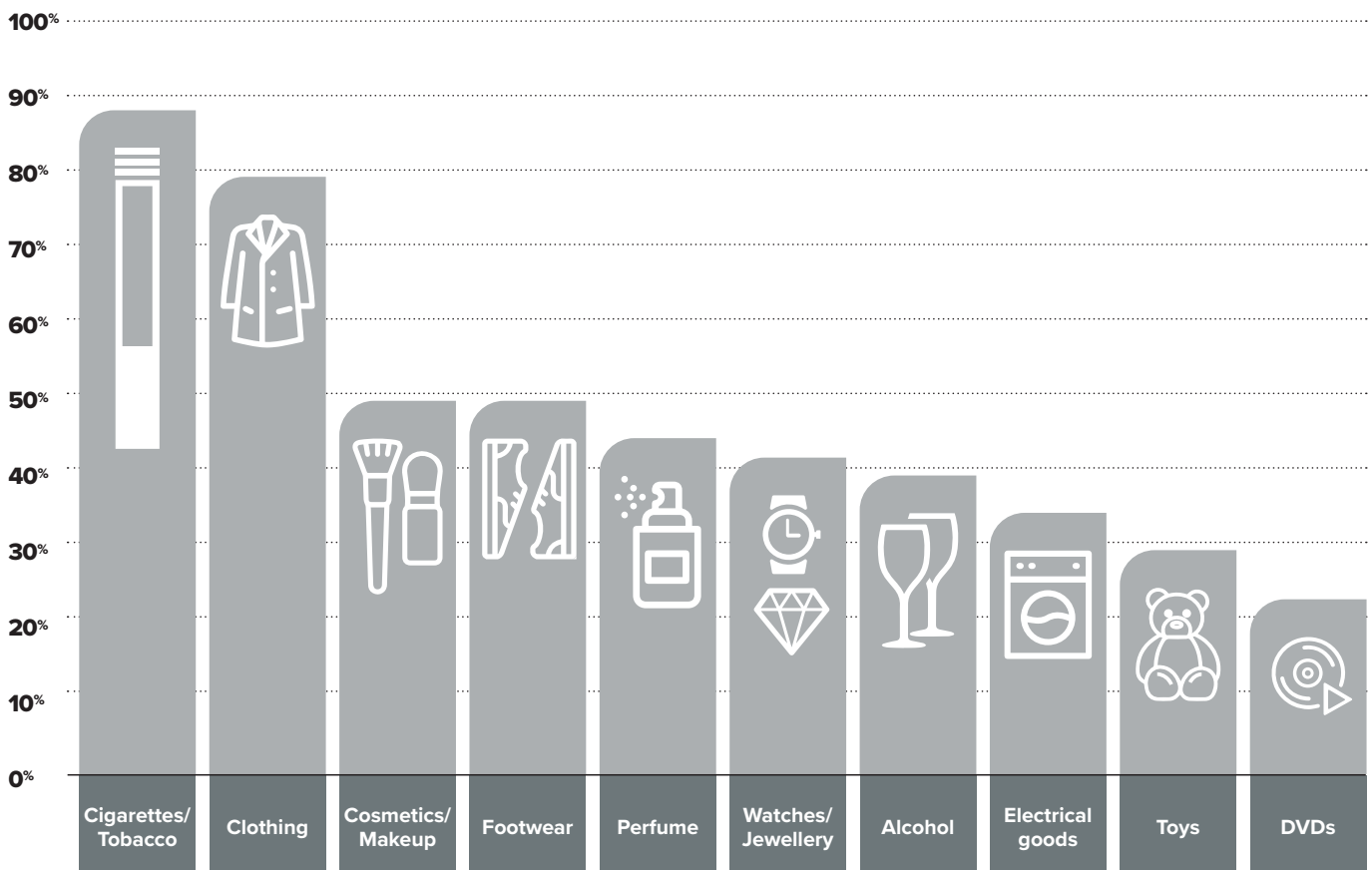
Alternatively, a UK business could make an application to the World Intellectual Property Organisation (WIPO) for international trade mark or design registration, designating the EU as a protected territory. ■

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LEAVING THE EU
POSES RISKS FOR
THE IMPORTATION
AND EXPORTATION
OF INFRINGING
COUNTERFEIT AND
PIRATE GOODS.

Top ten counterfeit/pirate investigated products by trading standards

Percentage of authorities responded



Organised criminal gangs

A EUIPO and Europol 2020 report, 'IP Crime And Its Link To Other Serious Crimes', confirmed that IP crimes are an important source of income for organised criminal gangs.

These gangs are often engaged in other areas of criminality such as illegal drugs, human trafficking and money laundering. While the EU's borders have always faced the threat of counterfeit goods – predominantly from China and the Far East – post-EU Exit, UK customs will be on the frontline of the UK's

defences against counterfeit and pirate goods and trading standards have a key role to play in supporting them.

It is local trading standards officers and specialist teams that are at the forefront of tackling counterfeiting and piracy in the internal market, but the UK's capacity for enforcement actions is undermined by drastic cuts to local services. This is an issue vital to legitimate trade, consumer protection and the health of the UK economy.



Travel

Ensuring fairness and transparency on the move

LEAD OFFICER

Bruce Treloar
CTSI

Bruce leads the Regulatory Delivery, Holiday and Travel Experts Group for CTSI and sits on numerous advisory boards and committees.

Perhaps more than in other sectors, travellers are likely to see the impact on consumer law when they arrange to travel in 2021 after the end of the transition period. EU protections on package travel reflect modern practices but are complicated and may need



97%

THE REDUCTION IN UK
AIR TRAVEL IN 2020 DUE
TO THE COVID-19 PANDEMIC

* House of Commons Transport Select
Committee

simplifying after EU Exit. Cross-border trading will be affected in various ways, not all of them positive. There are a number of major issues. These are: Insolvency Protection; Linked Travel Arrangements; Timeshare; Compensation for Flight Cancellation, Delay and Overbooking; and Mobile Roaming Charges. There are many

aspects of a traveller's holiday and travel experience that remain protected by the UK government umbrella when it is no longer part of the EU.

However, there is a growing and urgent need to clarify the status of EU agreements for UK travellers; for example it is particularly important you get travel insurance with the right cover if you have a pre-existing medical condition. This is because the European Health Insurance Card (not valid after December 31) covers pre-existing medical conditions, while many travel insurance policies do not. The question remains whether the holiday and travel experience will remain positive when the UK has left the EU. There is a growing and urgent need to clarify the status of EU agreements for UK travellers.

Threats

The COVID-19 pandemic hit the travel industry hard. The way we will travel has changed and the impact will be felt for many years to come. The industry will need stability and we are encouraged that the government has committed to retaining EU protections such as compensation for flight delays, cancellations and overbooking.

However, we could see the end of the guarantee of free mobile phone roaming throughout the EU. Travellers will need to check whether their mobile phone company has changed its mobile roaming charges before they travel to the EU, Switzerland, Norway, Iceland or Liechtenstein. They may be charged for using their mobile device in these countries if their operator has

reintroduced roaming charges. There are also significant questions in relation to the EU-wide civil justice system (post-EU Exit) and to what extent UK consumers can enforce their rights abroad. Equally, The Court of Justice of the EU (CJEU) interprets EU law. Its purpose is to ensure the uniform application of EU law across all member states. The UK is no longer



190m

EU DATA CONSUMPTION
REACHED 190M GB IN JULY-SEPT
2018 COMPARED TO JUST 15.7M
IN THE SAME PERIOD BEFORE THE
END OF ROAMING CHARGES.

a member of the EU, but the CJEU will continue to play a role in UK law. Another threat has been the changes which will happen with pet passports. From January 1, 2021, you will not be able to use the existing pet passport scheme. Instead, you'll need to follow a different process, which takes four months.

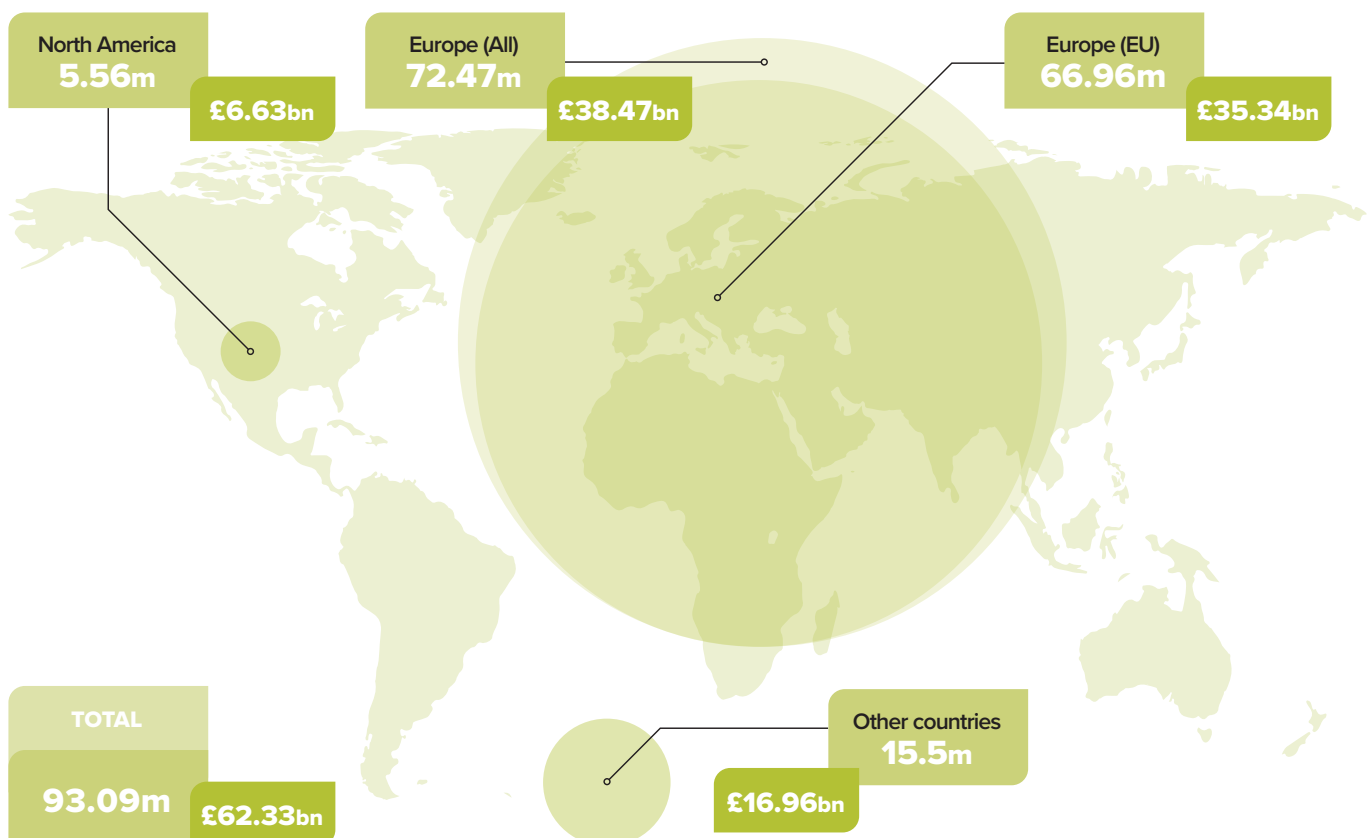
Opportunities

The legal framework applied by the EU to the package travel sector may well undergo significant changes. EU Exit may be a way of ensuring that certain elements can be clarified and perhaps amended. Improvements could be made for travellers, traders and regulators. Many benefits enjoyed by UK travellers, such as protection from timeshare and holiday club mis-selling, are EU in origin. EU Exit could provide an opportunity to reduce consumer confusion by streamlining some of the more confusing concepts from the regulations. ■

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THERE ARE SIGNIFICANT QUESTIONS IN RELATION
TO THE EU-WIDE CIVIL JUSTICE SYSTEM

UK visits and spending abroad, 2019



SOURCE: Office for National Statistics, Travel Trends, 2019



The right to roam charges

Travellers making calls abroad have been a problem for mobile phone users since the devices were invented. These so-called 'roaming charges' were often very expensive but an EU initiative changing telecoms rules meant they were abolished and consumers could effectively 'roam like at home'. Such provisions have become very important for UK holidaymakers.

The government has set an ambitious target of 'no less protection' for consumers as the UK leaves the EU.

Nevertheless, the ambition to leave the EU Digital Single Market and questions over regulations requiring reciprocal agreement with the remaining EU 27 member states seem to provide significant barriers in reaching that goal. In fact, it remains unclear whether the current charging regime can be retained. Current government guidance is that guaranteed free roaming will come to an end on January 1, 2021 and travellers should check with their operators.



Cross-border Access to Justice

Securing fair treatment in cross-border consumer markets

LEAD OFFICER

Elisabetta Sciallis
UK ECC

Elisabetta is a lawyer with over 16 years' consumer law experience. She is the UK ECC specialist lawyer and also oversees the Online Dispute Resolution Platform's UK contact point. Additionally she deals with cross-border resolution under agreements between the UK and various other nations for CTSI.

Consumer rights have been continually strengthened by the EU. It is important that the current levels of consumer protection and thereby confidence in cross-border markets is maintained. However, consumer rights are of very little help if methods to enforce them are not available. It is essential that consumers have access to cross-border consumer advice and assistance.

Whilst in the short term, EU consumer law has been transposed into UK law, providing a respite during the transition period, it is difficult to foresee the impact of withdrawal without visibility on our future relationship with the EU. It is vital that consumers in the EU and the UK can continue to buy from each other's retailers and manufacturers with minimal uncertainty concerning routes to redress. The UK needs to retain clear processes for resolving any disputes that arise and if it is not possible to maintain legal cooperation on civil matters with the EU through the judicial cooperation framework, at least we need new or similar partnership to be put in place.

Threats

Where consumer rights have no means to be upheld they are rendered worthless. The UK ECC forms part of a wider framework – ECC-Net – that provide EU-

wide advice and complaint handling on behalf of UK consumers and represents their interests during consultations on changes in EU consumer-related policy. This is a vital network for consumers that provides cross-border access to justice.

Other concerns for the post-EU Exit world include: how to ensure a

is also a threat that EU consumers may start to 'price in' uncertainty, favouring EU suppliers with a price premium over UK counterparts for peace of mind.

Opportunities

It is vital that when the transition period is over, the government makes good on the promise of ensuring 'no less protection' for consumers. It is also essential to our cross-border trade that consumer confidence is maintained when buying across EU borders, which means there needs to be a continuous monitoring of divergence between UK EU consumer law and any changes clearly communicated to consumers.

There is a significant opportunity here for the UK ECC to leverage its experience and become a key intermediary between relevant consumer bodies in the UK and their counterparts in the EU. Additionally,



£364

THE AVERAGE AMOUNT
PER CONSUMER RECOVERED
BY THE UK ECC

judgement obtained in one country will be recognised and enforced in another; what the rules are to determine which country's courts will hear a cross-border case; and which country's laws will apply. Whilst well-known procedures to enforce the law are at risk because of EU Exit, there might be alternative conventions available which can deliver similar cross-border processes. However, it is not clear yet if the UK will be part of them. There



IT IS ESSENTIAL THAT
CONSUMERS HAVE
ACCESS TO CROSS-
BORDER ADVICE

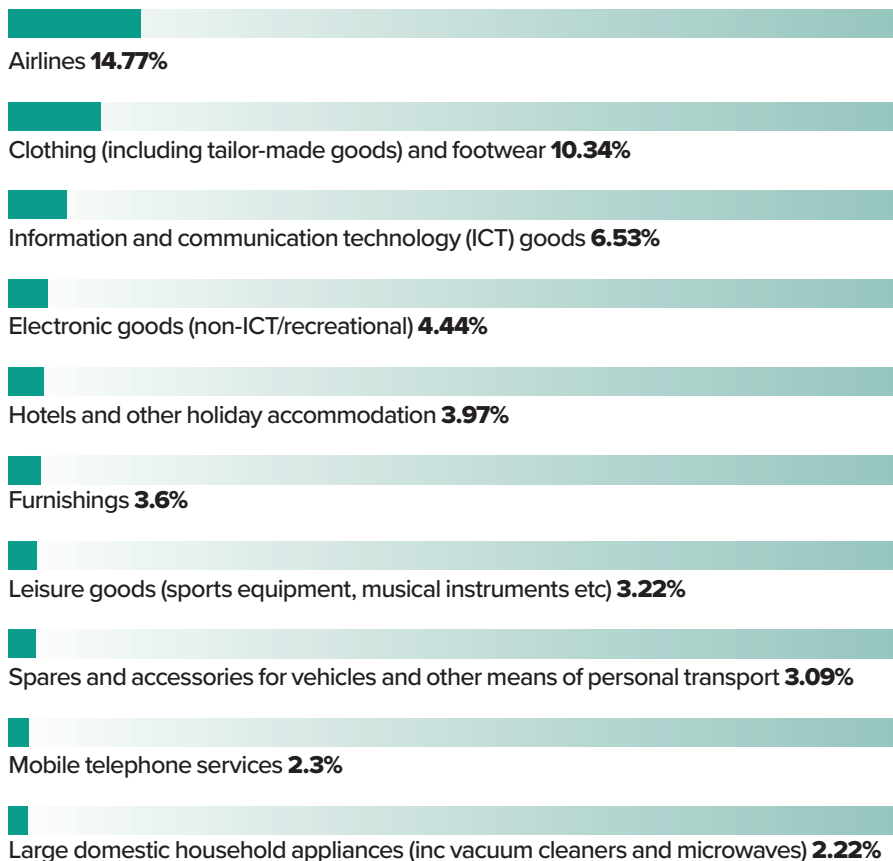


10,000

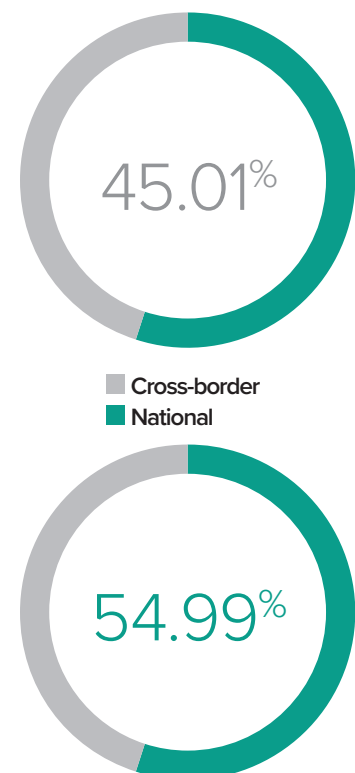
THE NUMBER OF CONSUMERS
HELPED BY THE UK ECC IN 2019

there is the opportunity to build relationships and support mechanisms with countries outside the EU, such as south East Asia and America. This can also seek to mirror trade deals as these are established around the world. ■

Top 10 most complained-about sectors



Percentage of national and cross-border complaints



Providing consistency

Consumers should be assured that, if they have a particular dispute or problem, they will find an established set of organisations which can deal with their complaint after EU Exit.

The UK ECC is geared up to deal with cross-border disputes despite differences in national laws. To provide a level of consistency for consumers post-EU Exit, it is important to preserve the UK ECC's knowledge and expertise.

When we see divergence in consumer rules occurring, the UK ECC will be in a

strong position to keep up-to-date with these changes and work with the EU.

Exiting the EU is making for considerable uncertainty over the future shape of formal relationships and mechanisms between UK consumer protection bodies and their counterpart EU Institutions. Some of these relationships will need to be negotiated afresh, representing a significant risk to cross-border consumer confidence and access to justice for all.



Legal Metrology

Reducing detriment with accurate measurement and enforcement

LEAD OFFICER

Iain Hoey
Aberdeen City

Iain Hoey is a Principal Trading Standards Officer and Lead Officer for Legal Metrology at CTSI.

EU Exit has created a number of changes to legal metrology, the implications of which will only be seen when they are fully implemented and operational. EU Exit presented an opportunity to simplify the system of legal metrology in the UK, but with the introduction of the UKCA mark and the special provisions for Northern Ireland, further layers of complexity have been added.

Following EU Exit, products meeting UK rules will be marked with the UKCA mark. From January 1, 2022, the CE mark will not be recognised in Great Britain; however, a CE-marked instrument would still be valid for sale in the UK so long as it was also UKCA-marked and complied with the relevant UK rules. Also, due to Northern Ireland remaining aligned to EU rules and because of the unfettered market access provisions in the Northern Ireland protocol, CE-marked goods legally placed on the market in Northern Ireland can circulate in Great Britain.

The e-mark allows free movement of goods across the borders of EU member states. Following EU Exit, the government has said e-marked goods coming from Europe will continue to circulate freely in the UK without further checks. However, the person in the

EU to whom producers in the UK sell e-marked packs becomes an importer and will be responsible for ensuring that the packs meet the requirements of the Directive. Consequently, UK producers may be asked to provide the 'necessary guarantees' that the packs are in compliance with the Directive.

Currently, packers do not have to provide such evidence because of assumed compliance and inspection by Local Weights and Measures Authorities. If the UK becomes a third country, packers may look to trading standards for advice and even certification of their procedures in order to satisfy their EU importer.

As we look for trading partners internationally, it has never been more crucial that our legal metrology system is robust, fit for purpose, and fosters confidence. CTSI calls on the government to ensure the UK's system of legal metrology is properly resourced.

Threats

The EU has implemented the SI/metric system of units of measurement for all economic, public health, public safety and administrative purposes. Post-EU Exit, to deviate from the metric system would introduce significant barriers to trade, adversely affect the free movement of goods and undermine the UK's position as a signatory to the Metre Convention.

The impact of EU Exit on UK Notified Bodies, whether providing product certification, quality management system certification or initial qualification of weighing and measuring instruments, cannot be overstated.

The introduction of the UKCA mark for equipment placed on the GB market could mean GB manufacturers operating two separate systems if they wish to continue

to place equipment on the EU market. And the same would be true for EU and international manufacturers wishing to place goods on the GB market. This could lead to higher costs and less choice for buyers of weighing and measuring equipment.



£622bn

VALUE OF GOODS AND SERVICES
SOLD ANNUALLY IN THE UK BY
REFERENCE TO THEIR MASS,
VOLUME OR QUANTITY.
SOURCE: BEIS, 2017

Opportunities

Our economy is built upon principles and confidence in accurate measurement, with more than £600bn worth of goods sold by reference to their mass, quantity or volume in the UK every year.

Leaving the EU represents an opportunity to de-layer, modernise and simplify our regime for verifying and testing weighing and measuring equipment and to create a more proportionate and flexible enforcement regime for legal metrology (though, so far, complexity has been added, not removed).

However, remaining as far as possible aligned with the EU market would be the best possible option for UK businesses and consumers from the metrology perspective: a likely outcome as many EU standards are aligned to international standards. ■

Original Legal Metrology research conducted by Brexit Think Tank representative David Templeton who sadly passed away on June 29, 2018.

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IT HAS NEVER BEEN MORE CRUCIAL THAT
OUR LEGAL METROLOGY SYSTEM IS ROBUST

For more detailed up-to-date information about how EU Exit could affect this area of trading standards, and to take the EU Exit training course, visit www.tradingstandards.uk/euexit

Marking	Route	Market
CE + M Relates to goods from EU countries until January 1, 2022 and those placed on the NI market using an EU NB	EU Regulations + EU Notified Body	EU and UK Enables no extra burden on NI manufacturers as they can run one production line and one quality system. Also available to GB businesses with 'operations' in NI and international manufacturers placing goods on the NI market
CE + M + UK (NI) for weighing and measuring equipment that required third-party conformity assessment and a UK Approved Body is used	EU Regulations + UK Approved Body	UK market only
UKCA + M	UK Regulations + UK Approved Body	Great Britain only EU and international manufacturers can UKCA mark if approved by a UK-approved body
Crown stamp	UK Regulations (beer meters, SMLs)	UK



Measuring up

Post-EU Exit, a divergence from the existing legal arrangements governing the use of units of measurement, the regulation of weighing and measuring instruments and quantity control systems would be isolationist. It would also create increased costs and uncertainty for businesses and consumers.

In addition, it would significantly undermine the likelihood of striking new trade deals with non-European countries. The vast majority of developed and

emerging non-EU economies use the existing legal arrangements currently employed in Europe.

The impact of local authority cuts on weights and measures inspections cannot be overestimated. Chronic underfunding and a lack of prioritisation and direction have seen the surveillance of an annual £622bn economic function reduced to a position of assumed compliance with negligible regulatory checks.

Acknowledgements

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