

UK-EU Series: Trade & Cooperation Agreement

Environment, climate & energy

May 2022



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UK-EU Series: Trade & Cooperation Agreement

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The Trade and Cooperation Agreement sets the terms for the UK-EU relationship following the UK's withdrawal from the EU. This series summarises key parts of the agreement and what they mean for Wales.

The UK formally withdrew from the EU on 31 December 2019 and entered a transition period while the terms of its future relationship with the EU were negotiated.

On 24 December 2020, the UK and EU announced that they had reached agreement in the Trade and Cooperation Agreement (TCA) alongside a number of other agreements and joint statements.

The agreement applied provisionally from 1 January 2021, pending UK and EU ratification. It entered fully into force on 1 May 2021.

The TCA follows the Withdrawal Agreement which set the terms for the UK's withdrawal from the EU. Both agreements remain in force.

The UK and EU have agreed that the TCA will govern future agreements between the:

- UK-EU;
- UK-EU plus EU 27 Member States; and
- UK-Euratom bilateral agreements

unless otherwise provided for in the agreements themselves. These agreements are called 'supplementing agreements' in the TCA and form part of the overall framework as an integral part of UK-EU bilateral relations.....

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1. Introduction

The UK and EU agreed the terms of their new relationship in the Trade and Cooperation Agreement (TCA). The TCA includes several commitments related to the environment, climate and energy, which are summarised in this guide.

This guide shows how the environment, climate and energy parts of the TCA:

- interact with devolution;
- engage new UK-EU decision-making processes;
- are introduced as priorities in the TCA's Preamble;
- form the basis for UK-EU cooperation and constitute 'essential elements' of the TCA and future UK-EU agreements;
- are incorporated in to the TCA's trade provisions, including the right to regulate, energy cooperation, the level playing field and how the TCA takes sustainable development into account.

2. What does it mean for Wales?

Many of the areas discussed in this guide were devolved to Wales when devolution began in 1999. At that time, the UK was in the EU and the majority of UK environmental legislation derives from EU law. Now that the Brexit transition period has ended, the UK can depart from EU-derived environmental law if it chooses.

The UK must still comply with its international obligations, including UK-EU agreements and other treaties, like the Paris Agreement. The devolved governments and legislatures must comply with obligations entered into by the UK Government and are responsible for their implementation in devolved areas.

This means that the Welsh Government and Senedd are responsible for the implementation of, and compliance with, the significant parts of the TCA discussed in this guide. These responsibilities will frame future policy and legislation on the environment, climate and energy in Wales.

Further reading

Senedd Research has produced several guides explaining the UK and Wales' post-Brexit arrangements in the areas discussed here:

- **This article** traces how the Welsh environment has changed during 20 years of devolution, including key legislative and policy milestones;
- This guide to **environmental governance after Brexit** explains the EU's system and what Brexit means for the UK and Wales;
- **This article** explains how devolution works to make sure Wales complies with international obligations;
- This **guide** presents important environmental issues for this Senedd, such as climate change and clean air for Wales; and
- This infographic shows the **responsibilities of Welsh Ministers** in implementing the TCA and Withdrawal Agreement, including the Minister for Climate Change.

3. UK-EU decision-making

The TCA establishes a complex network of new UK-EU forums, set out in an infographic on the next page. Our guide to the [TCA's institutional framework](#) provides more detail on the powers and role of each forum.

The Welsh Government can attend some meetings as an observer. Senedd Research articles provide regular updates on [how Wales is represented](#) in UK-EU relations and [track meetings](#).

Where are UK-EU environment, climate and energy decisions made?

Discussions and decision-making on the TCA's environment, climate and energy provisions can occur in multiple forums, as follows:

Partnership Council

The Partnership Council is the main oversight body. Here, delegations from the UK and EU discuss the operation of the agreement, including its **basis for cooperation** and **essential elements** described in section 5 of this guide. The Welsh Government attends the Partnership Council as an observer.

Specialised Committees

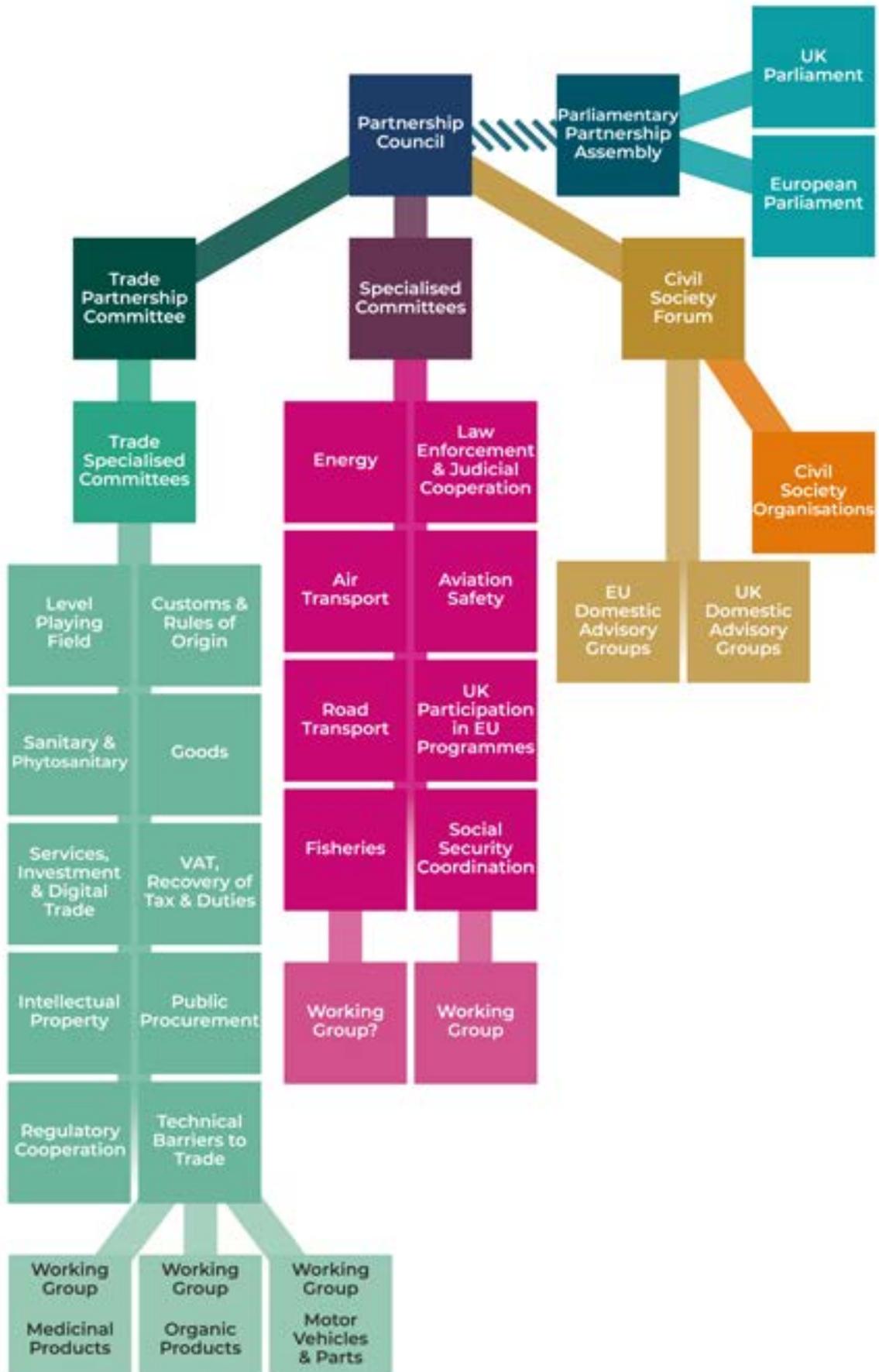
The Specialised Committee on **Energy** is the lead committee for the energy provisions, summarised in section 6 of this guide. A Welsh Government official attended the [first two meetings](#) of this Committee., in July 2021 and March 2022.

Trade committees

A Trade Specialised Committee leads on the **level playing field** provisions, which includes the environment and climate elements described in section 6 of this guide. A Welsh Government official attended [the first meeting](#) of this Committee in October 2021.

Matters can be escalated to the Trade Partnership Committee, which supervises Trade Specialised Committees. Attendees are not listed in the [minutes of its first meeting](#), held in November 2021.

Trade and Cooperation Agreement: institutional framework



4. Preamble

What is a preamble?

Treaties often begin with a preamble which introduces their contents. It provides a good indication of what is important to the parties and what can be expected in detail later on in the agreement.

Environment, climate and energy cooperation feature in the TCA's preamble, as follows:

1. The **fight against climate constitutes an 'essential element'** of the TCA and subsequent UK-EU agreements.¹ A breach of an essential element is the quickest way to terminate the TCA or any subsequent agreements, in whole or in part, within 30 days.
2. The UK and EU **recognise each other's autonomy and right to regulate**. The UK and EU agree that each has the autonomy and right to regulate in their territories to achieve public policy objectives while 'striving to improve' their levels of protection. 'Environment including climate change', is listed as an example.
3. The UK and EU **recognise the need for an economic partnership underpinned by a level playing field** for open and fair competition in a manner conducive to sustainable development. This includes a commitment to uphold their levels of protection in the areas of environment and the fight against climate change.
4. The UK and EU recognise the benefits of **trade and investment in energy and raw materials**.
5. They also recognise the importance of supporting the delivery of **cost efficient, clean and secure energy supplies** to the EU and UK.

1. Article 771 states that the following constitute essential elements of the TCA: democracy, rule of law and human rights, the fight against climate change and countering proliferation of weapons of mass destruction.

5. Basis for UK-EU cooperation

The TCA sets out the basis for UK-EU cooperation in Articles 763-770. There are two which relate directly to environment and climate:

1. The fight against climate change (Article 764); and
2. Global cooperation on issues of shared economic, environmental and social interest (Article 770).

More information on these is provided below:

Basis for cooperation: fight against climate change (Article 764)

In Article 764, the UK and EU state that they consider climate change to represent an existential threat to humanity and reiterate their commitment to strengthening the global response to this threat.

They agree to:

- respect **the Paris Agreement** and the process set up by the United Nations Framework on Climate Change (UNFCCC) and refrain from acts or omissions that would materially defeat the object and purpose of the Paris Agreement. As explained in this guide, this could lead to the termination of the TCA and other UK-EU agreements, in whole or in part; and
- advocate the fight against climate change in international forums, including by engaging with other countries and regions to increase their level of ambition in the reduction of greenhouse emissions.

Basis for cooperation: global cooperation on issues of shared economic, environmental and societal interest (Article 770)

In Article 770, the UK and EU recognise the importance of global cooperation to address issues of shared economic, environmental and social interest. They agree to promote multilateral solutions to common problems, where it is in their interest.

They agree to:

- endeavour to cooperate on current and emerging global issues of common interest such as peace and security, climate change, sustainable development, cross-border pollution, environmental protection, digitalisation, public health and consumer protection, taxation, financial stability, and free and fair trade and investment.

To do this, they will:

- endeavour to maintain a constant and effective dialogue and to coordinate their positions in multilateral organisations and forums in which they participate, such as the United Nations, the Group of Seven (G-7) and the Group of Twenty (G-20), the Organisation for Economic Co-operation and Development (OECD), the International Monetary Fund (IMF), the World Bank and the World Trade Organization (WTO).

Essential elements (Articles 771-773)

Article 771 of the TCA says that parts of the TCA and future UK-EU agreements should be considered 'essential elements'. This includes the 'fight against climate change' (Article 764).

Essential elements have an elevated status in the TCA because a breach can lead to termination of the agreement. This section describes how this works.

Breaches

A breach of an essential element is the quickest way to terminate the TCA or future UK-EU agreements, in whole or in part, within 30 days (Article 772).

Article 772 says that an act or omission which materially defeats the object and purpose of the Paris Agreement will always be considered a breach.

Safeguarding & rebalancing measures

Article 773 allows for the UK or EU to unilaterally take safeguarding measures if they consider that there has been a serious and substantial failure by the other to fulfil their essential elements obligations.

Safeguarding measures are only permitted where such failure has caused:

serious economic, societal or environmental difficulties of a sectorial or regional nature, including in relation to fishing activities and their dependent communities.

The other party can respond with rebalancing measures to remedy an imbalance caused by safeguarding measures.

Furthermore, the TCA's provisions on safeguarding and rebalancing measures can be applied to future UK-EU agreements.

6. Trade

The TCA's trade arrangements can be found in Heading One of Part Two of the agreement. The UK and EU make several commitments to cooperate on the environment, climate and energy, which are summarised in this section.

Right to regulate

The UK and EU reaffirm their right to regulate in their territories to achieve legitimate public policy objectives, such as for the environment, including climate change. Right to regulate provisions can be found in relation to:

- Trade in services and investment (Article 123);
- Digital trade (Article 198); and
- Good regulatory practice, including defining and regulating levels of protection (Article 340). Article 340 also requires that regulatory measures shall not constitute a disguised barrier to trade.

Energy cooperation

The UK and EU made a number of energy-related commitments in the TCA's trade provisions, which can be found in Title VIII of Heading One of Part Two.

Title VIII covers:

- UK-EU trade and investment in energy and raw materials and security of supply;
- electricity and gas;
- safe and sustainable energy; and
- energy goods and raw materials.

Title VIII applies until 30 June 2026 but can be extended until 31 March 2027 and until 31 March of each subsequent year.

Specific references made to the environment, climate and energy are summarised below.

Objectives (Article 299)

The objectives of Title VIII are to:

1. facilitate UK-EU trade and investment in energy and raw materials; and
2. support security of supply and environmental sustainability, notably in contributing to the fight against climate change in those areas.

Principles (Article 302)

The principles of Title VIII state that the UK and EU each preserves the right to adopt, maintain and enforce measures necessary to pursue legitimate public policy objectives, such as relating to the environment, including fighting against climate change.

Renewable energy & energy efficiency (Article 319)

In Article 319, the UK and EU agree to promote energy efficiency and the use of energy from renewable sources.

They reaffirm their existing plans and targets for their energy consumption from renewable energy sources and agreed a duty to keep each other informed of these.

For the UK, this refers to:

- 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**; and
- its ambition for the absolute level of primary and final energy consumption in 2030 as set out in its National Energy and Climate Plan.

For the EU, this refers to:

- its 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**; and
- its energy efficiency targets for 2030, as set out in the **Directive 2012/27/EU of the European Parliament and of the Council**.

Other articles provide specific information on how the UK and EU will cooperate over energy supplies. For example:

- joint support for renewable energy, including the use of **biofuels, bioliquids and biomass, is set out in Article 320**;

- cooperation in the development of offshore renewable energy, including in the North Seas region, is set out in Article 321; and
- cooperation on offshore risk and safety is set out in Article 322, including on maintaining high levels of safety and environmental protection for all offshore oil and gas operations.

Cooperation to develop international standards (Article 323)

The UK and EU agree that regulators and bodies in their territories will cooperate to facilitate the development of international standards with respect to energy efficiency and renewable energy, with a view to contributing to sustainable energy and climate policy.

Level playing field (LPF)

The level playing field is explained in more detail in [another guide](#) in this series.

Before the end of the Brexit transition period, the UK and EU's rules were mostly the same. Since the UK has left the EU, their rules for all types of things can differ or stay the same.

The UK and EU want to 'level the playing field' between them for trade and investment to keep competition between them open and fair.

For this new system, the UK and EU have agreed to use a combination of mechanisms, including specific rules for environment and climate.

This is underpinned by a commitment to operate in a manner that is conducive to sustainable development.

What does it cover? (Article 390)

The TCA defines environmental and climate levels of protection, as follows.

'Environmental levels of protection' means the levels of protection which have the purpose of protecting the environment, including the prevention of danger to human life or health from environmental impacts. This includes in the following areas:

- Industrial emissions;
- Air emissions and air quality;

- Nature and biodiversity conservation;
- Waste management;
- Protection and preservation of the aquatic environment;
- Protection and preservation of the marine environment;
- The prevention, reduction and elimination of risks to human health or the environment arising from the production, use, release or disposal of chemical substances; and
- The management of impacts on the environment from agricultural or food production, notably through the use of antibiotics and decontaminants.

‘Climate level of protection’ means the level of protection with respect to emissions and removals of greenhouse gases and the phase-out of ozone-depleting substances. For greenhouse gases, this means:

- For the EU, the 40% economy-wide 2030 target, including its system for carbon pricing; and
- For the UK, its economy-wide share of the EU’s 2030 target, including its system for carbon pricing.

Non-regression (Article 391)

While they are able to set their own priorities, policies and laws in these areas, the UK and EU have agreed a non-regression duty for environment and climate change standards. This includes any targets incorporated into their domestic laws, even if the target aims towards a future date.

They also commit to striving to increase their environment and climate levels of protection in the areas listed above.

This means that the UK and EU commit not to reduce or weaken the levels of protection in place at the end of the transition period (on 31 December 2020) in a manner affecting trade or investment between them.

This includes failing to effectively enforce their laws and standards, although the UK and EU have agreed that this duty can be waived to prioritise enforcement of other environment and climate laws of a higher priority.

The European Commission and the UK’s supervisory body have a duty to meet regularly and to cooperate on the monitoring and enforcement of environment and climate law as it relates to non-regression.

Carbon pricing (Article 392)

From 1 January 2021, the UK and EU were required to each have in place a system of carbon pricing to cover greenhouse gas emissions from electricity generation, heat generation, industry and aviation.

More time is given to incorporate carbon pricing into aviation. It must be included by 1 January 2023, if it isn't already. The EU's system will cover flights to the UK from the **European Economic Area (EEA)** (EU plus Norway, Iceland and Liechtenstein).

The UK and EU must maintain their systems for as long as they are an effective tool in the fight against climate change.

A duty is included for the UK and EU to cooperate on carbon pricing, including that they must "give serious consideration" to linking their systems in future.

Environment and climate principles (Article 393)

The UK and EU both commit to respecting internationally recognised environmental principles.

A few examples are listed in this part of the TCA (there are more included later in this guide), such as **1992's Rio Declaration**, **the UNFCCC**, and the **Convention on Biological Diversity**.

Article 393 states that, in particular, these five principles should be respected:

1. Environmental protection should be integrated into policy making;
2. Principle of preventative action;
3. Precautionary 'approach';
4. Environmental damage should be rectified at source; and the
5. Polluter pays principle.

The UK and EU also reaffirm their commitments to existing procedures for evaluating likely environmental impact, including via environmental impact assessments and strategic environmental assessments. Examples of certain procedures, including those for public participation, are also set out.

Economy-wide climate neutrality by 2050 (Article 355)

Both parties reaffirm their ambition to achieve economy-wide climate neutrality by 2050.

Energy and environment subsidies (Articles 363-375)

The TCA places a duty on the UK and EU to have in place and maintain an effective system of subsidy control.

The TCA covers different types of subsidies – those which are prohibited, prohibited but allowed under certain conditions or prohibited but exceptions apply. Other subsidies are excluded from its provisions, such as subsidies relating to the audio-visual sector.

In Article 367, the UK and EU recognise:

the importance of a secure, affordable and sustainable energy system and environmental sustainability, notably in relation to the fight against climate change which represents an existential threat to humanity.

To this end, conditions are placed on subsidies relating to energy and environment. These must be aimed at, and incentivise the beneficiary in, either:

- delivering a secure, affordable and sustainable energy system and a well-functioning and competitive energy market; or
- increasing the level of environmental protection compared to the level that would be achieved in absence of the subsidy.

Additionally, the TCA requires that:

- the beneficiary is not excused from their responsibilities and liabilities as a polluter under the law of the UK or EU; and that
- the conditions described in this section must be applied if the subsidies have or could have a material effect on trade or investment between the parties. This is a reference to the **level playing field** requirements.
- If compensation for electricity-intensive users is granted in the event of an increase in electricity cost resulting from climate policy instruments, it shall be restricted to sectors at significant risk of carbon leakage due to the cost increase.

International multilateral environment agreements (Article 400)

The LPF provisions place extensive duties on the UK and EU regarding international environmental agreements and initiatives, including to:

- effectively implement, follow or promote multilateral environmental agreements, including the Paris Agreement, the Law of the Sea Convention and UN Food and Agriculture Organisation (FAO) agreements;
- exchange information on the status of the ratification and implementation of international environmental agreements, ongoing negotiations of new multilateral agreements and their views on becoming a party to additional agreements;
- to work together on trade-related aspects of environmental policies and measures, including at multilateral fora; and
- to consider the views or input from the public and interested stakeholders for the definition and implementation of UK-EU cooperation.

Enforcement (Article 394-395)

For the purpose of enforcement, the UK and EU must ensure that:

- their domestic authorities have adequate and effective remedies available to them, including injunctive relief and sanctions; and that
- national administrative and judicial proceedings are available to natural and legal persons, that these are not prohibitively costly and are conducted in a fair, equitable and transparent way.

Article 395 places a duty on the UK and EU to ensure that their supervisory bodies meet regularly and cooperate on the monitoring and enforcement of environment and climate law as it relates to non-regression.

Disputes (Article 396)

The UK and EU have limited options to resolve disputes in relation to the LPF provisions on environment and climate standards.

The TCA's general dispute settlement procedure does not apply.

Instead, the TCA requires that they “make all efforts” through dialogue, consultation, exchange of information and cooperation to address any disagreements.

Some parts of the LPF's chapter on governance can be used, which are explained in

section 8 of [our LPF guide](#).

Rebalancing measures (Article 411)

Now that the Brexit transition period has ended, the UK can regulate and set different standards. The TCA allows for standards to diverge. However, where divergence has a “material impact” on UK-EU trade or investment, either party can take rebalancing measures to address the imbalance.

Rebalancing measures can include the introduction of tariffs on goods (which are otherwise eliminated under the TCA’s trading terms) or the temporary suspension of parts of the TCA.

Measures can also be applied across different parts of the TCA, so that divergence in one area can lead to rebalancing measures in another. The TCA sets out a specific procedure to follow when initiating rebalancing measures, which can be found in Article 411.

Rebalancing measures do not apply to all areas of the TCA. They can be taken with respect to:

- labour and social standards;
- environmental and climate standards; or
- subsidy control.

Trade and sustainable development

The level playing field described above is supplemented by a commitment to operate in “a manner conducive to sustainable development.”

To this end, the TCA contains a number of focused sections on trade and specific environmental areas which impose multiple duties on the UK and EU relating to:

- Trade and climate change (Article 401);
- Trade and biological diversity (Article 402);
- Trade and forests (Article 403);
- Trade and sustainable management of marine biological resources and aquaculture (Article 404);
- Trade and investment favouring sustainable development (Article 405); and
- Trade and responsible supply chain management (Article 406).

To illustrate one focused section, the trade and climate change provisions are summarised below:

Trade and climate change (Article 401)

In Article 401, the UK and EU recognise the importance of taking urgent action to combat climate change and its impacts, and the role of trade and investment in pursuing that objective.

They agree that this is in line with international law and standards. Listed are the UNFCCC, the purpose and goals of the Paris Agreement and ‘other multilateral environmental agreements and multilateral instruments’ in the area of climate change.

In light of this, **the UK and EU agree that they must:**

- 1. effectively implement the UNFCCC**, and the Paris Agreement;
- 2. promote the mutual supportiveness of trade and climate** policies and measures;
- 3. facilitate the removal of obstacles to trade and investment in goods and services** of particular relevance for climate change mitigation and adaptation. Examples are listed here, such as via renewable energy, energy efficient products and services. Ways of achieving this are also suggested, for instance through addressing tariff and non-tariff barriers or by utilising best available solutions; and
- 4. work together to strengthen their cooperation on trade-related aspects of climate change policies and measures bilaterally, regionally and in international fora.** More detail is provided to clarify that this includes at the UNFCCC, the WTO, the Montreal Protocol, the International Maritime Organisation (IMO) and the International Civil Aviation Organisation (ICAO). Suggested areas of cooperation are listed as follows but these are **not mandatory:**
 - ensure **policy dialogue and cooperation regarding the implementation of the Paris Agreement**, such as on means to promote climate resilience, renewable energy, low-carbon technologies, energy efficiency, sustainable transport, sustainable and climate-resilient infrastructure development, emissions monitoring, international carbon markets;
 - support the development and adoption of ambitious and effective **greenhouse gas emissions reduction measures by the ICAO and the**

- IMO** to be implemented by ships engaged in international trade; and
- support an ambitious **phase-out of ozone depleting substances and phase-down of hydrofluorocarbons under the Montreal Protocol** through measures to control their production, consumption and trade; the introduction of environmentally friendly alternatives to them; the updating of safety and other relevant standards as well as through combating the illegal trade of substances regulated by the Montreal Protocol.