

UK-EU Series: Trade & Cooperation Agreement Level Playing Field

March 2022



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UK-EU Series: Trade & Cooperation Agreement Level Playing Field

March 2022

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The Trade and Cooperation Agreement sets the terms of the UK-EU relationship following the UK's withdrawal from the EU. This series summarises key parts of the agreement and what it means 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 on the terms of their future relationship 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:

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

unless such agreements provide otherwise. 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 have new arrangements in place which aim to maintain open and fair competition between them for trade and investment, in a manner conducive to sustainable development. This is known as the ‘level playing field’ (LPF).

The Trade and Cooperation Agreement’s level playing field provisions can be found in **Title XI of Heading One of Part Two**.

How to use this guide

- **Section 2** explains the **level playing field basics**;
- **Sections 3-6** explain how it works in **more detail**, including specific rules on **subsidy control, labour and social standards** and **environment and climate standards**;
- **Section 7** explains how the **sustainable development** provisions work in more detail;
- **Section 8** explains how level playing field **disputes** can be resolved; and
- **Section 9** explains the level playing field **review process**.

2. Level Playing Field: the basics

Before the end of the Brexit transition period, the UK and EU's rules were the same. Now that the transition period has ended, their rules for all types of things can differ or stay the same. 'Divergence' is the term used to for when rules differ. 'Alignment' is the term used for when rules stay the same. The UK and EU want to 'level the playing field' between them for trade and investment. By doing this, they hope to keep competition between them open and fair.

For this new system, the UK and EU have agreed to use a combination of mechanisms. This system is underpinned by a commitment to operate in a manner that is conducive to sustainable development.

The LPF mechanisms and the TCA's approach to sustainable development are summarised below.

Mechanisms

The mechanisms are:

- Non-regression
- Divergence and rebalancing measures
- Rules
- International commitments
- Dispute resolution

These are key to understanding the TCA's LPF provisions. Different mechanisms apply to different parts of the LPF, making this part of the TCA complex. Each is explained in further detail below.

Non-regression duty

A non-regression duty aims to prevent standards or levels of protection from being reduced, weakened or 'rolled back'.

As a result of the UK's EU membership, the UK and EU had the same standards and levels of protection in place at the end of the Brexit transition period, on 31 December 2020.

In the TCA, the UK and EU aim to maintain, as far as possible, minimum standards for trade and investment. The non-regression duty means that standards should not be reduced, weakened or 'rolled back' to the position before 31 December 2020.

As a minimum, the UK and the EU must maintain the standards and levels of protection they had in place on 31 December 2020. If they do not, the other party can respond using temporary measures.

The duty includes failing to effectively enforce law and standards.

The non-regression duty applies to:

- labour and social standards
- environmental and climate standards

The non-regression duty does not apply to all parts of the TCA.

Divergence & rebalancing measures

Now that the UK has left the EU, it 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.

Rebalancing measures can be taken with respect to:

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

The provisions on rebalancing measures, including relevant rules and procedures, are explained in detail **in an Annex** to this guide.

Rules

In addition to the non-regression and rebalancing mechanisms described above, the TCA puts in place general and specific rules to maintain the LPF.

The general rules set out the UK and EU's existing targets and shared understanding on climate neutrality, future standards and the precautionary approach. This is a variant of the precautionary principle, used in **environmental governance**.

The specific rules cover:

- Competition policy
- Subsidy control
- State-owned enterprises
- Taxation
- Labour and social standards
- Environment and climate change
- Other instruments for trade and sustainable development
- Horizontal and institutional provisions

International commitments

The TCA's LPF provisions reaffirm the UK and EU's international commitments and list many standards and treaties with which they must comply or take steps to ratify, such as International Labour Organisation (ILO) Conventions and the European Social Charter.

Dispute processes and review

The TCA establishes a bespoke dispute process for its LPF provisions, summarised in [section 8 of this guide](#). This forms an important part of the TCA review process for its trade provisions, summarised in [section 9](#).

Sustainable development

The LPF is supplemented by a commitment to operate in “a manner conducive to sustainable development.”

The UK and EU set out their shared understanding of sustainable development to cover:

- economic development;
- social development; and
- environmental protection.

More detail is included in [section 7 of this guide](#).

What does the level playing field mean for Wales?

As the TCA introduces the possibility of future divergence (differences) or alignment (similarities) of standards and rules between the UK and EU, this will also apply to Wales.

This can happen in different ways, as explained by the [Institute for Government](#):

[R]egulatory divergence between the UK and EU will occur over time – either actively, when the UK decides to regulate in its own way, or passively, when EU rules change without the UK following suit.

This may not be uniform across the four nations, with Northern Ireland obliged to stay aligned with some EU regulations through the Northern Ireland protocol, and the Scottish government taking powers to voluntarily align with the EU in devolved policy areas.

Wales-EU divergence

The Counsel General and Minister for the Constitution, [Mick Antoniw, has stated](#) that there should be “no derogation from the standards that we have” and that the Welsh Government wants to improve on standards in Wales in devolved areas of responsibility. However, he has also [told the Senedd](#) that “there is no central mechanism to monitor differences between EU and Welsh law”.

International obligations

The Welsh Government must ensure that its actions remain compatible with its international obligations, as explained in [our recent article](#). These are duties and commitments which the UK has agreed, or rules which apply universally, and includes current and future UK-EU agreements.

The TCA itself places monitoring duties on the UK and EU. For example, [Article 395](#) requires the UK and EU to regularly meet and cooperate in monitoring and enforcing their laws relating to environment and climate non-regression.

Divergence and alignment between UK nations

In addition to UK-EU divergence and alignment, the four nations of the UK are able to diverge or align from one another in devolved areas previously governed or coordinated by the EU. For example, Wales can have different rules in place to Scotland or England.

Common frameworks

The UK and devolved governments have been negotiating agreements on how to manage divergence in law and policy between them since 2017. These are called 'common frameworks'.

Common frameworks are agreements between the UK's four governments setting out how they will work together in some areas previously governed or coordinated at EU level, such as air quality, food safety and cross-border health threats. [Our article](#) provides an introduction to common frameworks.

Internal Market Act 2020

The [governments agreed in 2017](#) that common frameworks should be established where needed to ensure the functioning of the UK internal market, to prevent unintended barriers to trade from developing between different parts of the UK.

However, the UK Government was concerned that common frameworks wouldn't be enough to do this. In December 2020, the UK Parliament passed the [UK Internal Market Act 2020](#). The devolved legislatures, including the Senedd, [did not consent to the legislation](#).

This Act sets new market access principles in law. These principles are intended to ensure that goods, services and professional qualifications sold or recognised in one part of the UK can be sold or recognised in another part.

3. General rules

The TCA sets general rules which set out the UK and EU's existing targets and shared understanding, as follows.

On **climate neutrality, they agree**:

- to achieve economy-wide climate neutrality by 2050.

On **future standards** and the LPF provisions, they:

- clarify that future standards need to stand the test of time in preventing UK-EU distortions of trade or investment.
- agree that the purpose of future standards is not to harmonise standards between them, although both are “determined to maintain **and improve** their respective high standards”; and
- affirm their own right to regulate. Each can determine their appropriate levels of protection and adopt or modify their laws and policies in a manner consistent with their international commitments, including the TCA.

On the **precautionary approach**, they:

- affirm their shared understanding of the ‘precautionary approach’. This is a variant of the precautionary principle, used in **environmental governance**. It means that a lack of scientific evidence cannot be used as a reason not to take measures which aim to prevent potential threats of damage to the environment or to human health.
- have a duty to take into account “relevant, available scientific and technical information, international standards, guidelines and recommendations” when preparing or implementing measures to protect labour and environment conditions that may affect trade and investment.
- agree that while the TCA's dispute settlement provisions do not apply to most of the TCA's LPF provisions, it does apply to the provisions on the precautionary approach.

4. Specific rules: subsidy control

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

Our article explains the UK Government's Subsidy Control Bill and what it means for Wales. The Bill, for which the **Senedd's consent** has been sought, provides a legal framework for the UK's post-Brexit subsidy control regime.

Under the TCA, the UK and EU are free to determine how their obligations are implemented in the design of a subsidy regime, provided that six principles are followed.

Article 366: Six principles of subsidy control

1. Subsidies pursue a specific public policy objective to remedy an identified market failure or to address an equity rationale such as social difficulties or distributional concerns ("the objective").
2. Subsidies are proportionate and limited to what is necessary to achieve the objective;
3. Subsidies are designed to bring about a change of economic behaviour of the beneficiary that is conducive to achieving the objective and that would not be achieved in the absence of subsidies being provided;
4. Subsidies should not normally compensate for costs the beneficiary would have funded in the absence of any subsidy;
5. Subsidies are an appropriate policy instrument to achieve a public policy objective and that objective cannot be achieved through other less distortive means;
6. Subsidies' positive contributions to achieving the objective outweigh any negative effects, in particular the negative effects on trade or investment between the Parties.

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 those relating to the audio-visual sector.

Some examples of the duties placed on the UK and EU are that they must each:

- establish and maintain certain bodies and systems for subsidy control, such as establishing an operationally independent authority;
- have in place an effective mechanism of recovery;
- ensure that their courts and tribunals are competent to carry out certain functions; and
- adhere to transparency requirements.

Rebalancing measures apply

Rebalancing measures can be applied in relation to subsidy control.

Dispute settlement

Different types of retaliatory measures and dispute settlement apply to subsidies, providing the UK and EU with options on how to respond where disputes arise.

Generally, the TCA's dispute settlement procedure applies to subsidy control, except for the provisions on independent authorities (Article 371) and on courts and tribunals (Article 372).

Importantly, Article 375(2) provides that an arbitration tribunal has no jurisdiction regarding:

- individual subsidies, except in limited circumstances;
- whether a recovery remedy has been correctly applied in any individual case.

Other types of measures that can be taken include:

- unilateral remedial measures within 60 days where subsidies cause, or are at risk of causing, a significant negative effect on trade or investment; and
- rebalancing measures can be applied in relation to subsidy control.

Additional UK-EU agreements relating to subsidy control

Alongside the TCA, the UK and EU agreed a **joint political declaration** on subsidy control policy. This sets out their shared understanding of three additional types of subsidies for (i) the development of disadvantaged areas, (ii) transport and (iii) research and development.

In addition to the TCA, Article 10 of the **Withdrawal Agreement's** Protocol on Ireland-Northern Ireland ('the Protocol') applies to any UK subsidy measure which affects trade between Northern Ireland and the EU. The UK Government recently proposed changes to the Protocol, including replacing its subsidy control arrangements. More information is included in our **quick guide to Article 16 of the Protocol**.

Declarations and **decisions** of the UK-EU Joint Committee, which **oversees the Withdrawal Agreement**, also form part of UK-EU arrangements in this area.

5. Specific rules: labour and social standards

The levels of protection, in law and in standards of the following areas are included in the LPF provisions:

- Fundamental rights at work;
- Occupational health and safety standards;
- Fair working conditions and employment standards;
- Information and consultation rights at company level;
- Restructuring of undertakings.

Social security and pensions are not included in the LPF and are excluded from rebalancing measures.

Non-regression

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 labour and social standards. They also commit to striving to increase their labour and social 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) in a way which affects 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 labour laws of a higher priority.

Rebalancing measures

Rebalancing measures can be applied in relation to divergence in labour and social standards.

Enforcement

To enforce these provisions, the UK and EU must have in place and maintain a system for effective domestic enforcement. This includes:

- Labour inspections for working conditions and worker protection;
- Making available administrative and judicial proceedings that allow individuals and public authorities to bring action against violations; and
- Providing for effective remedies and sanctions.

In implementing and enforcing the non-regression provisions, the UK and EU must respect the role and autonomy of social partners at a national level.

The UK Government **published proposals** to establish a new single enforcement body for employment rights in June 2021.

Dispute settlement

The UK and EU have limited options to resolve disputes in relation to the LPF provisions on labour and social 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 disagreements.

Some parts of the LPF's chapter on governance can be used, which are summarised in **section 8 of this paper**.

International labour standards and agreements

Duties relating to international labour standards and agreements are included in the LPF's provisions on sustainable development.

The UK and EU must:

- Make every effort to ratify and implement the fundamental ILO Conventions and its core labour standards (of freedom of association and the recognition

of the rights of collaborative bargaining, elimination of all forms of forced or compulsory labour, effective abolition of child labour and the elimination of discrimination in respect of employment and occupation);

- Exchange information regularly to provide updates on the status of ratification of ILO Conventions and protocols and of 'other relevant international instruments';
- Ratify the Council of Europe's European Social Charter;
- Continue to promote the ILO's Decent Work Agenda and other international commitments with regards to decent working conditions, health and safety at work and non-discrimination in respect of working conditions;
- Protect and promote social dialogue among workers and employers on labour matters;
- Work together on trade-related aspects of labour policies and measures, including in multilateral fora; and
- Consider the views of worker and employer representatives and civil society organisations when identifying areas of cooperation and joint activities.

6. Specific rules: environment and climate

The LPF applies to environment and climate. They are defined 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;
- 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 UK, its economy-wide share of the EU’s 2030 target (to cut emissions by **at least 55% by 2030**), including its system for carbon pricing.
- For the EU, the 40% economy-wide share of its 2030 target, including its system for carbon pricing.

Non-regression

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) in a manner affecting trade or investment between them. This includes by failing to effectively enforce its law and standards.

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

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

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

The TCA says that 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

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 United Nations Framework on Climate Change (UNFCCC), and the Convention on Biological Diversity.

Article 393 states, 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
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.

Rebalancing measures

Rebalancing measures can be applied in relation to divergence in environment and climate standards.

Enforcement

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.

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.

Dispute settlement

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. These are summarised in [section 8 of this guide](#).

International environmental agreements

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.

7. Sustainable Development

While the TCA does not define 'sustainable development', Article 355 recognises that sustainable development encompasses:

economic development, social development and environmental protection, all three being interdependent and mutually reinforcing, and affirm their commitment to promoting the development of international trade and investment in a way that contributes to the objective of sustainable development.

The LPF provisions aim to enhance the integration of sustainable development into the UK-EU trade and investment relationship. It does this in four ways:

1. First, it contains several duties relating to **international instruments** for labour and social and the environment and climate.
2. Second, it 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;
 - Trade and biological diversity;
 - Trade and forests;
 - Trade and sustainable management of marine biological resources and aquaculture;
 - Trade and investment favouring sustainable development; and
 - Trade and responsible supply chain management.
3. Third, it **sets certain transparency requirements**, including to promote public participation, awareness and understanding and to make information public.
4. Fourth, it limits sustainable development disputes to consultations via the LPF **dispute settlement procedure**.

8. Dispute settlement

The TCA establishes a bespoke LPF dispute process. This is via consultation, which means that the parties discuss their dispute between themselves to try to find a solution. They are able to:

- reach out to others for information, such as international bodies, organisations and experts; and

- set up a panel of experts to assist them in their discussion and to make non-binding recommendations suggesting a way forward.

The full process is set out below:

LPF Chapter Nine: Horizontal and institutional provisions

Article 408 Consultations = This article sets out the process available to the UK and EU to consult each other regarding disagreements about labour and social standards, environment and climate and sustainable development. The process begins with a written request from one party to another, after which consultations must begin within 30 days. They are able to approach international bodies or organisations for advice, or to seek the views of their Domestic Advisory Groups (DAGs) set up by the TCA.

Article 409 Panel of experts = A panel of independent experts can be established if a disagreement has not been resolved within 90 days. Experts are drawn from a list created and maintained by a new **UK-EU committee**, the Trade Specialised Committee on the Level Playing Field for Open and Fair Competition and Sustainable Development.

The panel can also seek advice from international bodies and organisations and will issue an interim and final report containing non-binding recommendations within 100 days, which either party can request be reviewed. The respondent party does not need to follow the recommendations contained in the report.

The final report will ultimately be delivered within 195 days, to be made public 15 days thereafter. 105 days after its delivered, the respondent party must inform its DAGs and the other party of any measures to be implemented. DAGs can submit observations on the follow-up to the Trade Specialised Committee, which will monitor any follow-up. The complaining party can contact the panel of experts again regarding any continuing non-conformity and the panel will issue its findings within a further 45 days.

Article 410 Panel of experts for non-regression areas = This article adds on that temporary remedies can be used in relation to disputes. The UK and EU agree that, where the responding party chooses not to take any action to conform with the expert panel's report or the TCA, temporary remedies are available to the complaining party.

9. Review

The TCA has a specific review process for its LPF provisions. This is set out in Article 411 and aims to ensure an appropriate balance between the UK and the EU in the longer term.

The review will address whether the TCA delivers “an appropriate balance of rights and obligations” between the UK and the EU (in particular with regards to trade) and whether there is a need for any modifications to its terms.

The TCA’s general dispute settlement procedure does not apply to this review.

The LPF review process is summarised below.

LPF review process

From 1 January 2025, four years after the entry into effect of the TCA either party can request for a review of the operation of its trade provisions, contained in Heading One of Part Two. More Headings can be added to the LPF review process, on agreement of both parties.

A review can also begin earlier at the request of either party, if they believe that:

- rebalancing measures or measures taken using the rebalancing measures procedure have been taken frequently by either or both parties; or that
- a measure that has a material impact on trade or investment has been applied for a period of 12 months.

In relation to an earlier review, the measures in question must be one that has not been challenged, not found by the arbitration tribunal to be inconsistent and not have been subject to the arbitration procedure.

A review will begin within three months and will conclude within six months. It can be repeated every four years under these articles or following the entry into force of an amending agreement.

Role of Partnership Council

The **UK-EU Partnership Council** can decide that no action is required following a review.

However, if one party believes there is a need for an amendment to the LPF provisions, the UK and EU must use their best endeavours to negotiate and conclude an agreement making the necessary amendments.

If this is not done within one year, either party may give three months' notice to terminate Heading One on Trade or any other Heading added to the review, or they can decide to continue negotiating.

If Heading One on Trade is terminated in this way, Heading Two on Aviation will also be terminated at the same date **unless** it is agreed that the TCA's LPF provisions will be incorporated into Heading Two.

Annex: Rebalancing measures in detail

This Annex explains the procedure for taking rebalancing measures, described in **section 2 of this guide**.

The purpose of the TCA's LPF provisions is to maintain, as far as possible, minimum labour and social, environment and climate and subsidy control standards for trade and investment between the UK and EU.

While both have expressed their desire and intention to improve their current standards in the TCA, it is possible that their standards will diverge in future.

If this has a “material impact on trade **or** investment” between the UK and EU, either party can take rebalancing measures to address the situation.

Rebalancing measures can be taken with respect to:

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

Some clarity and requirements are set out in Article 411:

Such measures shall be restricted with respect to their scope and duration to what is strictly necessary and proportionate in order to remedy the situation.

Priority shall be given to such measures as will least disturb the functioning of this Agreement.

A Party's assessment of these impacts shall be based on reliable evidence and not merely on conjecture or remote possibility.

Further clarity is provided by way of a procedure to be followed when taking rebalancing measures, described below:

Rebalancing measures: procedure

Step 1 = The concerned party notifies the other party of the measures it intends to take via the Partnership Council.

Step 2 = The parties immediately enter into consultations for 14 days from the date of the notification.

Step 3 = If no solution is found, the rebalancing measures can be adopted 5 days from the end of the consultation **unless** the responding party requests the establishment of an arbitration tribunal via written request to the concerned party within the same 5 days.

If they fail to submit the written request within 5 days, they can still initiate the arbitration procedure using the general dispute settlement procedure without recourse to consultation and as an urgent case. The tribunal in that procedure must only decide if the rebalancing measures are consistent with the requirements quoted above – it cannot strike down measures or issue orders to cease measures.

Step 4 = The arbitration tribunal must deliver its final ruling within 30 days. If it doesn't, the concerned party can adopt its rebalancing measures 3 days after the end of the 30 day period. The responding party can also adopt counter-measures proportionate to the rebalancing measures in the meantime until the tribunal delivers its ruling.

Step 5 = Tribunal ruling:

(a) If the tribunal finds the rebalancing measures to be consistent with the requirements described above, the concerned party may adopt these.

(b) If the tribunal finds the rebalancing measures to be inconsistent, the concerned party must, within three days from the ruling, notify the responding party of the measures it intends to adopt to comply with the ruling, including withdrawal or adjustment of the rebalancing measures.

If counter-measures were adopted by the responding party, they must be withdrawn within five days of the ruling (but immediately, if possible).