



**TRADE JUSTICE  
MOVEMENT**

# **Sustainable Regulation and Trade Agreements for the EU-UK relationship**

Developed by UK civil society in  
partnership with Trade Justice Movement

**April 2020**

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# EXECUTIVE SUMMARY

## Introduction

Brexit means that the EU and the UK must redesign their relationship across a broad swathe of policy areas, with significant implications for social and environmental sustainability. Two areas where it will be vital to ensure the right framework for cooperation are regulation and trade. UK civil society groups, including major trade unions, environment and international development organisations have worked together to create a vision for cooperation that is aligned with social and environmental sustainability. This document sets out that vision and we hope that it will make a positive contribution to broader debates as the UK establishes its independent foreign policy.

Cooperation on regulation and trade will inevitably include significant areas of overlap, and alignment between the two will be important. However this document intentionally separates out an agreement on regulation from a trade agreement and gives the former primacy. This is to ensure that the cornerstone of regulatory cooperation is the achievement of higher standards and that dialogue in this area is not limited to the relatively narrow question of the impact of regulation on the EU and UK's ability to trade with each other.

The trade and regulatory provisions presented here provide a basis for socially-just and sustainable trade between the EU and the UK. These model Agreements are also deeply practical. They cover all key areas normally discussed in trade agreements, and would provide a secure rules-based system for EU-UK trade. The provisions do not extend the Parties' WTO commitments – as the aims of these Agreements are very different from the aims of that organisation – but neither do they conflict with them except in matters of emphasis and priority.

A trade and regulatory relationship of this kind would be a major step forward for trade policy and international law. It would provide an enforceable treaty basis through which to protect social and environmental standards. It would use trade as a tool rather than treat it as a goal in its own right. And it would ensure the UK and EU place social progress and environmental protection at the very core of their new partnership.

## Summary of key provisions

### Part A: Principles and processes for the EU-UK agreements on regulation and trade

The EU-UK regulatory and trade relationships must serve the public interest. The model Regulation and Trade Agreements therefore aim to:

- Protect core values including upholding human rights and achieving gender equality.
- Protect our environment, and be consistent with our responsibility to tackle the climate emergency.
- Prevent economic hardship and not exacerbate inequality within the UK, the EU or beyond.
- Protect decent jobs and our rights at work.
- Maintain high standards in areas such as food, agriculture and animal welfare.

The scope of the Trade Agreement will also be limited. For example, public services will be fully excluded from its scope to ensure that they are run in the public interest and not shaped to facilitate trade and investment. The right to establish public ownership will be enshrined at the highest level within the Trade Agreement.

To ensure that Parties remain free to upwardly diverge, neither of the Agreements in this document include 'disciplines' on regulation.

## Social and environmental standards must be enforced

The Parties' performance against their commitments in both the Regulation and Trade Agreements will be addressed by the dispute resolution mechanism. A monitoring and adjudication body will be created to actively monitor the Parties' performance, and to investigate and pursue complaints. The complaints process will be available for citizens, civil society and other actors to raise concerns about either their own government's application of the provisions or those of the other Party. The monitoring and adjudication body will be able to independently bring cases against either or both state Parties. This is in addition to traditional state-to-state dispute resolution. The Court of Justice of the European Union (CJEU) and UK courts will provide interpretations of their own respective laws. Remedies will include 'soft power' mechanisms such as reporting obligations, financial measures including meaningful fines, and the suspension of relevant trade privileges.

## Process: Transparency and democracy are vitally important

The UK has woefully inadequate procedures for public engagement and parliamentary scrutiny of trade agreements and the future EU-UK relationship.<sup>1</sup> At present, this means that, in the UK, rules that affect almost every aspect of everyday life, from the food we eat to our ability to tackle climate change and the way our healthcare is delivered, are being decided with very little public or parliamentary involvement. This must be changed, in order that the EU-UK Agreements can:

- Be negotiated transparently: information must be available at all stages of the negotiation to inform public debate.
- Be based on a comprehensive Sustainability Impact Assessment, which considers environmental and social impacts, including gender-specific impacts, and allows for civil society input.

- Meaningfully involve the UK and European parliaments and the UK's devolved legislatures in negotiations, with the ability for elected members and parliaments to propose amendments.
- Be subject to guaranteed and binding votes in the UK Parliament.
- Be open to future review, amendment and potential cancellation, where negative social or environmental impacts are identified.

## Part B: Agreement on Regulation

### Regulation and the level playing field: Upward divergence only on social and environmental standards

The UK and EU have together evolved world-leading standards to provide workers' rights, human rights, social protection and advances in gender equality, environmental protection and action against climate change, and food, farming, animal welfare and chemicals standards that reflect our values. To fix a shared floor on these standards, strong and dynamic Level Playing Field rules – established via a separate and binding Agreement on Regulation – will underpin the trade relationship. The UK and EU member states will be free to diverge and develop their own rules by improving standards above the floor set by the Level Playing Field.

### Sustainable Development: A vital precondition for trade

The upholding of high social and environmental standards is considered a precondition for accessing the benefits of the Trade Agreement. If either Party fails to adequately uphold their commitments under their relevant national law, the Agreement on Regulation, or key international agreements including the Paris Agreement on climate change and international labour conventions, and a resolution cannot be found through dispute resolution, trade privileges accorded under the Trade Agreement may be withdrawn. There is no requirement to show that the failures to uphold these commitments is having an impact on trade, or is motivated by the intention to accrue trade or investment benefits.

## Regulation of overseas investment: Overseas investors will be held responsible for their conduct

Each Party is required to ensure that investors from their territory that operate in the territory of the other Party do so responsibly, following national law in host states as well as the terms of the Agreement on Regulation and fulfilling all international obligations. Failure to ensure this may generate disputes against an investor's home state, or actions against an investor in domestic courts based on the terms of the Agreement on Regulation.

## Regulation of public procurement: Social and environmental criteria are key

Public procurement will continue to be regulated to ensure that it is transparent and high quality, with social and environmental goals prioritised over the creation of trade opportunities. Nothing in the treaty shall prevent the Parties from adopting more stringent social or environmental criteria for procurement than those specified within the Level Playing Field provisions, or from favouring local producers or those from the Global South in order to support economic development.

## Part C: Trade Agreement

### Goods: Zero tariffs and quotas, subject to high standards

Tariff-free trade will continue through the use of a sliding tariff scale, in which zero tariffs between the EU and UK are the norm. Higher tariffs will be available, to be charged only when goods fall below agreed standards either in their production or in the final product. This includes standards that leave no trace in the final product, such as goods that are produced by underpaid workers or in factories that create illegal levels of air pollution. These tariff incentives, coupled with potential import bans, provide a means by which high social and environmental standards can be encouraged. They will be applied only with the approval of the monitoring and adjudication body, during or as a consequence of a dispute.

### Services: Public services are not tradable, policy space is paramount

Free trade in public services is limited even within the EU, due to the sensitive and interpersonal nature of many service industries. These sensitivities must be respected in the Trade Agreement, via the following provisions:

- All public services, as defined by EPSU's model clause,<sup>2</sup> will be excluded from the scope of the Trade Agreement, to enable these services to focus on social rather than trade outcomes.
- The use of a positive list for specifying the services to which this Agreement applies. Gender-responsive *ex ante* impact assessment will be used to understand which industries should be included.
- Services that fall within the scope of the Trade Agreement will be entitled to operate in territories of each Party without facing discrimination. Parties will, however, have the policy space to favour socially-oriented companies such as cooperatives or those with a specific environmental focus.
- Trade provisions such as ratchet clauses and necessity tests that limit policy space or stand in the way of re-establishing public ownership will not be included in the Trade Agreement.

### Investment: No special investor protections or ISDS

Investment protection chapters are unnecessary and allow investors to transfer business risk to the public purse. Investor-State Dispute Settlement (ISDS) has been used to challenge important social and environmental policies including a rise in Egypt's minimum wage,<sup>3</sup> Canada's affordable medicines policy<sup>4</sup> and the Netherlands' phase out of coal-fired power stations.<sup>5</sup> We will not introduce special investor protections, or ISDS – including in its reinvented form known as the Investment Court System (ICS) – between the EU and UK. The Parties are instead bound by investor responsibility provisions, as described in the Agreement on Regulation.

## Digital: Policy space is essential to adapt to our evolving digital society

Digital trade policy should leave adequate space for the digital economy to evolve, including through mechanisms to better share the wealth accrued in it, and to regulate to ensure public benefits. Parties should retain strong data protection regimes. Free data flows between the EU and UK are encouraged (but not enforced) where this serves the public interest, subject to relevant Data Adequacy decisions.

In order that computer code can be checked for quality, safety, bias and to prevent fraud, and to ensure that coding is available when necessary for public interest purposes, the Parties should remain free to require access to, or transfer of, source code or algorithms.

## Intellectual property: No further extension of existing protections

Intellectual property protection is already dealt with predominantly through non-trade international agreements as well as national law, in recognition of the broader social factors that must be balanced, such as access to medicines, information and learning and the need to remunerate innovators. This should continue; therefore the Trade Agreement will contain no extension of intellectual property provisions except for the protection of Geographical Indications.

# Two model treaties: An Agreement on Regulation and a Trade Agreement

## Introduction

Brexit means that the EU and the UK must redesign their relationship across a broad swathe of policy areas, with significant implications for social and environmental sustainability. Two areas where it will be vital to ensure the right framework for cooperation are regulation and trade. This will inevitably include significant areas of overlap, and alignment between the two will be important. However this document intentionally separates out an agreement on regulation from a trade agreement and gives the former primacy. This is to ensure that the cornerstone of regulatory cooperation is the achievement of higher standards and that dialogue in this area is not limited to the relatively narrow question of the impact of regulation on the EU and UK's ability to trade with each other.

The following document comprises three main parts: principles and processes for the Agreements, an Agreement on Regulation, and a separate Trade Agreement. The underlying principles and processes are given equal weight to the following two parts because they are crucial to ensuring an outcome that is socially and environmentally sustainable. The Agreements are binding and subject to the same dispute resolution process. They will be closely interlinked, and will sit together alongside other treaties that may be agreed between the Parties such as a security partnership and fisheries deal within an EU-UK Association Agreement or other suitable instrument. They are designed for the EU-UK context, to achieve a relationship based on social justice and sustainability.

Part A describes the key principles that underpin the EU-UK Agreements on Regulation and Trade, and the processes for negotiating, reviewing and amending them. This provides the enabling framework for the Agreements to be socially and environmentally sustainable.

Part B describes the model Agreement on Regulation. This provides an outline of how social and environmental standards could be protected via a 'Level Playing Field'. It also allows for the Parties to go above and beyond these required minimum standards.

Part C constitutes the model Trade Agreement. This follows the format used in 'free trade agreements', outlining the recommended trade provisions for each sector.

The relationship between the Trade and Regulation Agreements is as follows:

- In order to benefit from the provisions of the Trade Agreement, the Agreement on Regulation must be followed.
- If there are concerns that standards have slipped below those required by the Agreement on Regulation, then dispute resolution procedures may be initiated. During and following investigation, trade privileges may be limited or suspended (see procedures detailed in Annex 1: Dispute Resolution).

# Part A: Principles and processes for the EU-UK Agreements on Regulation and Trade

## 1. Principles and General Provisions

### Regulation and trade must serve the public interest:

These Agreements aim to work for the benefit of people and the planet. In particular, they do not seek to achieve more trade or freer trade as goals in their own right. Public interest regulation and high standards are prioritised above trade goals, including where this has the effect of restricting trade. Trade should only be further liberalised where this best serves the public interest.

## 2. Process

### Transparency, scrutiny and democracy are vital at all stages of negotiating these Agreements:

Parties must:

- Act transparently: information must be available to the public at all stages of negotiations to inform public debate.
- Conduct an independent and comprehensive Sustainability Impact Assessment, which considers environmental and social goals, gendered impacts, and allows for civil society input.
- Give elected bodies, specifically the national Parliament and devolved legislatures in the UK and the European Parliament and member state parliaments in the EU, a say over negotiation texts including the initial mandates, and the ability to propose amendments.
- Give elected members of the UK national Parliament and the European Parliament a guaranteed and binding vote on the final Agreements.

### The vital role of civil society in representing and defending the rights and needs of society:

Civil society organisations bring a wealth of expertise and in many cases direct links to individuals with experience of a range of issues. These groups should be given a wide-ranging and ongoing role in ensuring that trade and regulations are acting for the benefit of society. This role should include:

- The contribution of evidence to *ex ante* and *ex post* impact assessments of trade and regulatory proposals and provisions.
- Ongoing engagement as negotiations progress.
- The ability to initiate complaints (via a mechanism that should also be open to other actors), with respect given to their expertise and representative role.

### Review and amendment of the Agreements:

Either Party, or the monitoring and adjudication body (see Annex 1: Dispute Resolution) may request the opening of talks to review and secure amendments to these Agreements, in order to improve their impact on the public interest. Such talks will be subject to reasonable timeframes to ensure that they do not generate undue disruption. Any such reviews shall give serious consideration to the conclusions of impact assessments, and seek to address any negative impacts generated by the Agreements' provisions.

## 3. Exclusions

Traditional free trade agreements have included some or all of the following provisions. The Agreements set out in this document deliberately exclude them because they are at odds with the aims of social and environmental sustainability.

### 'Disciplines' on regulation:

Neither the Agreement on Regulation nor the Trade Agreement shall aim to 'discipline' regulation, i.e. there shall be no attempt made to limit regulation for the purposes of facilitating trade. WTO agreements such as those on Sanitary and Phytosanitary Standards (SPS) and Technical Barriers to Trade (TBT) already apply considerable and often excessive 'discipline' to regulatory efforts, and therefore these agreements do not aim to go further.



### **Necessity tests replaced with a basic non-discrimination test:**

The Agreement on Regulation and the Trade Agreement contain no requirements that measures, including but not limited to regulations and authorisation schemes, must be 'no more onerous or trade distorting than necessary to achieve a legitimate public policy goal', or that they must be objective or based on science. Parties are instead free to regulate as best suits their public interest.

The Agreements include instead a more basic non-discrimination test. Regulations shall be subject to challenge only if they are directly discriminatory against actors from the other Party, both in intention and effect.

### **Regulatory Cooperation:**

Regulatory Cooperation will not be included in the Trade Agreement. This is to ensure that regulations and standards are not subjected to narrow trade facilitation tests. However, in the context of the Agreement on Regulation, an open and transparent dialogue between regulators will be beneficial, provided this has clear aims, including improvement regulation, and clear processes to balance the influence of different outside voices including to ensure that civil society voices are given appropriate weighting.

## **4. Dispute resolution procedures**

Dispute resolution procedures will apply to both the Regulation and Trade Agreements and are based on:

- Active, independent, transparent and participatory monitoring and enforcement.
- The ability of both states and citizens to initiate complaints.
- An emphasis on dialogue and mediation as the most important tools for seeking resolution.
- Legal interpretation by both the Court of Justice of the European Union (CJEU) and UK courts.

Full dispute resolution procedures are set out in Annex 1.

## Part B: Agreement on Regulation

### 1. Minimum social and environmental standards

#### A Level Playing Field on regulation, with upward flexibility:

It is vital that the UK and EU maintain high social and environmental standards. This includes labour, social and human rights, gender equality, environmental protections, food, farming and animal welfare standards, safety and product standards, and minimum tax rates.

However, it is also important that both the UK and EU member states are free to go above and beyond these standards. A Level Playing Field should therefore be considered only a 'floor' for standards. Above this floor, Parties have full flexibility to define their own regulations to fit with higher aspirations and public demands.

The Agreement on Regulation therefore mandates that:

- Social and environmental goals are the driving force for regulation.
- Both Parties are obliged to ensure that there is non-regression of standards from current levels.
- Both Parties are free to regulate to a higher standard within their own territory. This may be extended to require the same higher standards for imported goods and services. This process will be known as 'gold-plating'.
- The UK commits to raise its own regulatory standards to match any improvements made by the EU.
- The UK is granted a meaningful role in the EU's process for developing regulations and standards, through the right to be involved in discussions and to submit proposals.
- It is entirely acceptable that regulations in some cases restrict trade.

Rules in areas such as competition policy and State aid are a key part of cooperation with the EU. Both the EU and the UK will therefore observe a Level Playing Field in these areas while retaining the ability to improve their policies to achieve more socially and environmentally sustainable outcomes. This includes but is not limited to:

- Extending existing EU exemptions from competition rules for some public services to cover all public services, as defined by the EPSU model clause.<sup>6</sup>
- Making available additional flexibility in the application of competition rules for co-operatives and self-employed workers, to ensure for instance that co-operatives can merge to increase their competitiveness, and self-employed workers can meaningfully unionise to ensure protection of their interests.
- Introducing additional flexibility in the assessment of State aid to allow for aid to be granted for the purpose of supporting public policy goals such as decarbonisation of the economy, regional regeneration, or the employment of disadvantaged workers.
- Allowing additional flexibility in State aid rules to facilitate the establishment or defence of public ownership over a company, whether that be a public service or commercial entity.

### 2. Regulation of overseas investment

#### Investor responsibilities:

Investors from the other Party are required to act responsibly in their host country. This means fulfilling all obligations under national law in the host country, as well as the obligations of the Agreement on Regulation, and the international commitments of both home and host country. Failures of either Party to ensure their investors operate responsibly when investing in the other Party may lead to dispute resolution, potentially resulting in the denial of benefits such as zero-tariff trade that are provided by the Trade Agreement.

Furthermore, governments, affected individuals or communities may use the terms of this Agreement as a legal basis for claims against investors which they bring through domestic courts. Claims may be pursued against investors in the domestic courts of both host and home states.

### 3. Regulation of public procurement

#### **Social and environmental value are key criteria:**

The criteria that public bodies should consider when making procurement decisions, alongside value for money, include:

- Environmental considerations and climate action commitments.
- Labour standards and the wages and benefits offered to workers.
- Wider social impacts and goals, including gender equality.

Parties may make more stringent rules for public procurement whereby these considerations are compulsory or must be prioritised.

#### **Local benefit is a permitted consideration but Southern providers should be given equal treatment:**

Local benefit and local content are permitted as considerations and criteria. This means that public bodies may choose to deliberately procure mainly from local companies in order to stimulate local economies. However, just as 'least developed countries' get trade preferences through the Generalised System of Preferences (GSP) and Everything But Arms (EBA) rules, these same principles should be applied to public procurement. Therefore providers from countries benefiting from provisions under GSP, EBA or equivalent schemes that the UK might in future develop, will be given as much access and preference as local suppliers.

#### **A breach of the Agreement on Regulation by a company will justify exclusion from public tenders:**

If a company has been shown to have previously operated at lower social or environmental standards than those required by the Agreement on Regulation, or to have breached national regulations or international commitments, or they propose to do so as part of the tender in question, this shall be considered grounds for exclusion from public tender processes.<sup>7</sup> Whether this will be a mandatory or discretionary basis for exclusion will depend on the severity of the breach and any measures that have been taken to improve standards.

Nothing in either of these Agreements or in shared public procurement rules shall be construed to prohibit the boycotting of specific companies or groups of companies on ethical grounds.

## Part C: Trade Agreement

### Principles and general provisions specific to the Trade Agreement

#### 1. Trade and Sustainable Development

##### Failure to uphold standards is grounds for voiding the Trade Agreement:

The upholding of high social and environmental standards is considered a precondition for accessing the benefits from the Trade Agreement. The Parties have established a shared understanding of what constitutes high standards: this is described in the Agreement on Regulation. Parties are also required to effectively implement social and environmental standards as defined in national law, which reflects democratic agreement in that country as to what constitutes adequate standards, and to fulfil their international obligations and commitments.

If either Party fails to adequately uphold their commitments, trade privileges and other obligations arising from these Agreements may be suspended or cancelled, on the authorisation of the monitoring and adjudication body. There is no obligation to demonstrate that any such breach has any impact on trade or was implemented in order to gain a trade or investment advantage.

##### Mitigation measures must be put in place to offset any negative impacts of the Trade Agreement:

Trade arrangements inevitably favour certain actors, while others may face negative impacts. Gender-responsive impact assessments as well as a public complaints mechanism (discussed in Annex 1: Dispute Resolution) will help to identify those who are suffering harm. Mitigation measures should be implemented by each Party in their territory to offset negative impacts, especially for actors who are socially or economically disadvantaged or where environmental harm is created. Persistent failure to implement adequate mitigation measures may be considered as social or environmental dumping, and therefore grounds for dispute resolution.

#### 2. Retaining Adequate Policy Space

##### Right to public ownership:

Parties have the right to take any company or organisation into exclusive or non-exclusive public ownership at any time, and to pay compensation only in accordance with their domestic law.

##### Replace necessity tests with a simpler non-discrimination test:

Parties are free to prioritise the public interest above trade commitments; therefore the 'necessity tests' that often arise in trade agreements are replaced here by a simpler non-discrimination test. The Trade Agreement contains no requirements that regulations be 'no more onerous/trade distorting than necessary', or that they be objective or based on science, as these requirements can restrict important regulatory efforts. The only restriction placed on regulation by the Trade Agreement is a requirement that rules must be applied in a way that is not discriminatory on the basis of national origin (except where this is expressly permitted, for instance in carve-outs relating to public procurement). Regulations shall only be considered discriminatory if they intentionally discriminate between actors on the basis of their nationality.

##### Exceptions and exemptions:

Derogation from the rules of the Trade Agreement, including the non-discrimination requirement, is allowed for public interest purposes, including (but not limited to) the cases below:

- a) To protect human, animal or plant life or health;
- b) To protect human rights;
- c) To advance gender equality;
- d) To protect labour standards and a living wage for all workers;
- e) To protect the affordable provision of medicines, medical devices and other equipment vital for life or health;
- f) To protect the affordable, sustainable and just provision of necessities including water, food, shelter and energy;
- g) To prevent, lessen, reverse, off-set against or compensate for the effects of climate change or environmental harm;
- h) To address the consequences of natural or human disaster;

- i) To protect public security or public morals or to maintain public order;
- j) To secure compliance with laws or regulations;
- k) For reasons of safety and security;
- l) To protect the privacy of individuals and to maintain data protection and security.

#### **Arms and related items:**

The provisions specified in the Trade Agreement do not apply to arms, military items including software and technology, dual-use items (equipment which is not specifically designed for military purposes but that could be used as such), goods for torture or radioactive sources.<sup>8</sup> The UK, EU and other countries should aim towards progressive demilitarisation. However to the extent that these items are produced or traded, the UK will continue to maintain high regulatory standards which goes beyond EU minimum requirements as part of the Level Playing Field.

## **Goods**

#### **National Treatment:**

Goods from the other Party will be entitled to national treatment, whereby they will be treated as favourably as goods produced domestically.

However, countries may derogate from this provision in order to favour:

- Goods produced by small and medium enterprises (SMEs).
- Goods produced by publicly owned or managed companies, co-operatives, social enterprises and other non-profit organisations.
- Goods produced by companies or organisations that have a particular social or environmental focus or can demonstrate particular social or environmental benefit.

When applying these carve-outs, it is specified that:

- Countries may favour only domestic or local businesses that fall into these categories.
- Countries may favour specific businesses or organisations, and are not obliged to favour all organisations in that category in order for the carve-out to be valid.

#### **Exclusion of Most Favoured Nation provisions:**

Most Favoured Nation (MFN) provisions will not be included in this Trade Agreement. This Trade Agreement specifies the level of trade liberalisation that is desired for the EU-UK relationship. MFN provisions could create pressure to liberalise further – for instance by removing some of the carve-outs and flexibilities specified here. Rather than accepting such automatic liberalisation, future changes to this Agreement may be made via the review mechanism if such changes would better serve public benefit.

#### **Market Access:**

Producers and traders will have access to most sectors of the other Party to sell their goods, subject to the tariff and regulatory arrangements described in these Agreements.

Access to highly sensitive sectors, such as for medicines, may be subject to specific arrangements. This may include bulk-buying practices or exclusivity arrangements designed to keep products affordable and available. Nothing in the Trade Agreement challenges the rights of Parties to control their terms of access to highly sensitive markets.

#### **Tariffs:**

Goods trade between the EU and UK will be subject to a sliding scale of tariffs, with zero tariffs charged on all goods (except specified highly sensitive products) if produced in accordance with the law and regulations, while tariff rises can be used to discipline derogation from labour, environmental or other standards while such derogations are resolved.

Any charging of higher tariffs will be subject to preliminary assessment by the monitoring and adjudication body (see Annex 1: Dispute Resolution for further details). The rate of these higher tariffs will be decided by an *ex ante* impact assessment, which ascertains the rate that will be necessary to successfully discipline transgressions while allowing trade to continue as appropriate. Such a tariff increase will normally be applied to particular shipments or particular companies rather than to whole countries, unless there is evidence that all goods from a particular sector in that country are produced to inadequate standards.

**Import standards:**

Parties have the right to block the importation of goods that do not meet adequate standards, as decided by the monitoring and adjudication body. When considering whether a good meets adequate standards, process and production methods will be fully taken into account even if they leave no trace in the final product. Such a block will normally be applied to particular shipments or particular companies rather than to whole countries, unless there is evidence that all goods from a particular sector in that country sector are produced to inadequate standards.

Parties who wish to apply any such block must raise a case via the dispute resolution mechanism. This will trigger an investigation and resolution phase. During this phase, goods may be charged a higher tariff rate rather than the usual zero tariff (see clause on Tariffs). Import blocks will be used only when dialogue has not led to resolution and production continues to derogate from the standards required. More detail about this process is available in the Agreement on Regulation and in Annex 1: Dispute Resolution.

**Quotas:**

Trade in goods between the EU and UK will not be subject to quotas.

**Rules of Origin:**

In deciding whether a product meets minimum local content requirements (and therefore qualifies for zero tariffs and quotas), content from either Party (both the UK and the EU), as well as countries that have EBA or GSP status and countries with whom the EU or UK has an Economic Partnership Agreement shall be considered a legitimate component of local content. This ensures that producers based in developing countries are not cut out of supply chains in order to meet Rules of Origin requirements.

Regional cumulation is recognised for trade with developing countries, so if an input into a UK company's product comes from, for example, a GSP country, but that input also contains products from neighbouring countries (who may not be GSP, EBA or EPA countries for the UK), then it will nevertheless be considered to originate from that GSP country and be recognised as local content in the UK when deciding if a tariff applies in UK-EU trade. This will ensure that developing countries can make use of their trade preferences, while still collaborating on supply chains with their neighbours.

**Geographical Indications:**

Existing and future geographical indications, e.g. Cornish Pasty, that are registered in either Party will receive full protection in the territories of both Parties.

**Trade defence:**

A range of trade defence instruments such as countervailing measures will be available to both Parties, to protect their economies and industries from dumping and shocks.

**Border Carbon Tax Adjustments:**

Carbon taxation, or equivalent charging for carbon, may be an important environmental measure and where applied it may be necessary to apply border adjustments. However it is a tax measure best applied to all imports rather than a trade measure that is only applied to goods from countries which are party to an agreement; for this reason no provisions on this topic are included here. This does not affect the application of any Level Playing Field provisions that may be agreed regarding carbon pricing or taxation.

## Services

### Scope:

The services to which this chapter applies are defined via a positive list. Any service not specifically listed in a Party's schedules should not be affected or obligated in any way by the provisions of the Trade Agreement.

Parties will list only those sectors for which there is a clear benefit to citizens from being covered by the provisions of the Trade Agreement. Whether such benefit exists will be ascertained via gender-responsive *ex ante* impact assessments that consider impacts on service provision, workers, the environment, gender equality, and other factors rather than a narrow focus on growth or trade.

Public services, as defined by the EPSU model clause,<sup>9</sup> are expressly excluded from the Trade Agreement. Public services should not be subject to trade obligations, except through clauses on public procurement or where specific commitments have been made following gender-responsive *ex ante* impact assessment. Public services and the bodies that run them are therefore not placed under any obligations, nor should they be affected or impacted in any way by the provisions of the Trade Agreement other than via the aforementioned exceptions.

Services not yet invented at the time the Trade Agreement is signed (e.g. ones based on new technologies) are not covered, even if they appear to fall into a category that is listed on a Party's schedule. If Parties wish to extend these trade provisions to new services, they should invoke the review and amendment procedures to reopen negotiations.

### National Treatment:

Service providers from the other Party will be entitled to national treatment, whereby they will be treated as favourably as domestic service providers.

However, countries may derogate from this provision in order to favour:

- Small and medium enterprises (SMEs).
- Publicly owned/managed companies, co-operatives, social enterprises and other non-profit organisations.
- Companies or organisations that have a particular social or environmental focus or can demonstrate particular social or environmental benefit.

When applying these carve-outs, it is specified that:

- Countries may favour only domestic or local businesses that fall into these categories.
- Countries may favour specific businesses or organisations, and are not obliged to favour all organisations in that category in order for the carve-out to be valid.

### Formal requirements:

Nothing in the National Treatment provision shall prevent countries from making requirements in connection with the supply of a service, including (a) to obtain a licence, registration, certification, or authorisation in order to supply a service or as a membership requirement of a particular profession, such as requiring membership in a professional organisation; (b) for a service supplier to have a local agent for service or maintain a local address; (c) to speak a national language or hold a driver's licence; or (d) that a service supplier: (i) post a bond or other form of financial security; (ii) establish or contribute to a trust account; (iii) maintain a particular type and amount of insurance; (iv) provide other similar guarantees; or (v) provide access to records.

### Market Access:

The Parties will provide access to their markets for service providers in accordance with their positive commitments in the schedules. Parties are entitled to include quantitative limits, performance requirements or other restrictions when listing sectors in their schedules, or through domestic regulation. Local content and local ownership requirements are expressly permitted.

### **Standstill clause:**

This standstill clause exists to make clear that existing *de facto* exceptions and exemptions to the provisions of this Agreement will continue to be permitted. Service activities which already exist that do not conform to these trade rules can continue to be non-conforming, including when making changes to the ways in which they operate. However, this clause does not commit the UK or EU to maintain current levels of market openness or national treatment.

### **Mode 1 service provision with no local presence:**

Countries are free to require that service providers, in all or some sectors, have a legal or physical presence within the country as a condition of providing services there. This may be achieved by not making schedule commitments on Mode 1, or through regulations enacted before or after the conclusion of the Trade Agreement, in which case those regulations would supersede any liberalisation commitments made under Mode 1.

### **Freedom to regulate and require authorisation, subject to a non-discrimination test:**

Parties are free to regulate and to apply authorisation and licensing schemes as they see fit, as long as these are not applied in such a way that is discriminatory (against foreign companies) in both intention and effect. This includes the freedom for authorities to set licensing fees at their discretion including at a level intended to cross-subsidise other services or to meet other public policy goals.

### **Exclusions**

#### ● **Most Favoured Nation provisions:**

Most Favoured Nation (MFN) provisions are not included in this Trade Agreement. The Trade Agreement specifies the level of trade liberalisation that is desired for the EU-UK relationship. MFN provisions could create pressure to liberalise further, for instance by removing some of the carve-outs and flexibilities specified here. Rather than accepting such automatic liberalisation, future changes to this Agreement may be made via the review mechanism if such changes would better serve public benefit.

#### ● **Ratchet clause:**

A ratchet clause is not included in this Trade Agreement.

#### ● **The movement of workers (Mode 4 service provision):**

The movement of people, whether to provide services or for any other purpose, is a complex issue that should not be treated as a simple matter of trade. A separate agreement will be created to govern the movement of people between the EU and UK which prioritises humanitarian, social, familial, labour, and cultural factors rather than what is most conducive to trade.

#### ● **Mutual recognition of qualifications:**

Recognition of equivalent qualifications will be dealt with via a separate treaty, as countries should not be pressured to recognise unequal qualifications as equal in order to facilitate trade.

#### ● **Necessity tests:**

The Trade Agreement contains no requirements that measures be 'no more trade distorting than necessary to achieve a legitimate public policy goal', or that they be objective or based on science. Parties are instead free to regulate as best suits their public interest, subject to the non-discrimination test described above.

## **Investment**

### **Investment facilitation:**

The UK should establish its own investment facilitation procedures, separate to a trade agreement, to support positive investment i.e. that which creates high-quality jobs or delivers environmental benefits.

### **Investor responsibilities:**

In the Agreement on Regulation, provisions outline the responsibilities of investors in host countries, and the responsibilities of investors' home states to ensure that these are fulfilled.



## Exclusions

### ● Investment protection provisions:

Like many trade agreements, this Trade Agreement contains no investment protection provisions. Such provisions shall also not be included in any separate investment treaty. Investors from overseas should not be entitled to extra protections relative to those afforded to domestic investors and other citizens through national law.

### ● ISDS or ICS:

The Trade Agreement provides no special dispute resolution mechanism for investors, known as Investor-State Dispute Settlement (ISDS) or the Investment Court System (ICS). Investors may use national legal remedies to resolve any disputes that arise in connection with their investments.

## Public Procurement

### Public procurement will be regulated via the Agreement on Regulation:

Public procurement opportunities – defined as large-scale purchasing by public and government bodies – will continue to be open to providers from both Parties and be regulated at an EU-UK level to ensure that it is transparent and of high-quality. These processes will be overseen via the Agreement on Regulation rather than the Trade Agreement, as the purpose of these provisions is to ensure that high standards are maintained, rather than to facilitate cross-border trade opportunities.

## Digital

### Leave open policy options to harness the digital economy for public benefit:

Digital trade policy should leave adequate policy space for the digital economy to evolve, including through mechanisms to better share the wealth it creates and through regulation to protect the public from risks. These policies should be developed with the full involvement of parliamentarians and civil society. Digital regulation provisions are likely to fit best within the Agreement on Regulation, as their aims should be public benefit rather than the enabling of greater digital trade flows.

## Data protection and privacy:

Parties should retain strong data protection regimes, for their own sake and as a precondition for digital trade. Data Adequacy processes should be utilised by both Parties to assess all partners with whom data may be shared across borders. Rules relating to data protection and Data Adequacy should be established and managed outside of the Trade Agreement via a parallel binding non-trade treaty. However trade in and transfers of data will be subject to Data Adequacy decisions.

### Enable (but do not mandate) free data flows, subject to adequacy decisions:

Free data flows between the EU and UK are encouraged (but not enforced) where this serves the public interest, subject to relevant Data Adequacy decisions.

### Permit localisation of data storage and processing for public interest purposes:

The Parties retain the right to require the localisation of data storage or processing in cases where they unilaterally consider that this may provide public benefit.

### Retain the freedom to check source code and algorithms, or require their transfer:

The Parties may require access to, disclosure or transfer of source code or algorithms for any public interest purpose as they see fit. This may include standardised and regular processes for access, disclosure or transfer that affect many or all companies, as well as targeted or single-company requirements when there are particular grounds for investigation.

The protection of digital intellectual property will be considered and balanced alongside other public interest factors. The Trade Agreement does not extend any additional intellectual property protection to data or digital products.

### **Consumer protection, e-signatures and electronic contracts:**

The Parties should put in place adequate procedures for consumer protection (including for online purchases from overseas) to ensure that consumers from both Parties have meaningful access to rights and redress. The Parties are encouraged to recognise and accept e-signatures and electronic contracts based on any adequate procedure, and will strive to ensure such processes are not unduly onerous to complete.

### **Zero tariffs on electronic transmissions, with flexibility:**

Trade in electronic transmissions (such as film downloads or 3D printer designs) between the EU and UK will be subject to a sliding scale of tariffs similar to that used for EU-UK general goods trade. Zero tariffs will be charged on all products (except specified highly sensitive products) if produced in accordance with the law and regulations, while tariff rises may be used to discipline derogation from labour, environmental or other standards while such derogations are resolved.

Any charging of higher tariffs will be subject to preliminary assessment by the monitoring and adjudication body (see Annex 1: Dispute Resolution). The rate of these higher tariffs will be decided by an *ex ante* impact assessment, which ascertains the rate that will be necessary to successfully discipline transgressions while allowing trade to continue as appropriate. Such a tariff increase will normally be applied to particular items or companies rather than to whole countries, unless there is evidence that all electronic transmissions from a particular sector within a country sector are produced under inadequate standards.

Zero tariffs are suited to the EU-UK context, and should not be considered as the right policy for all international electronic transmissions, which should be assessed on a case-by-case basis.

## **Intellectual property**

### **No extension of existing intellectual property protections**

The Trade Agreement contains no intellectual property provisions, except for protection of Geographical Indications which is discussed within the Goods section. In particular, the Trade Agreement provides no further extension of intellectual property protections such as longer patent or copyright terms, or additions to what counts as intellectual property.

Intellectual property protection is already dealt with predominantly through non-trade international agreements as well as national law, in recognition of the broader social factors that must be balanced, such as access to medicines, information and learning and the need to remunerate innovators. If further agreement is needed between the EU and UK to establish reasonable intellectual property protections, this should be dealt with in a non-trade agreement that considers these broader objectives.

## **Conclusion**

These two Agreements, on Regulation and on Trade, coupled with their shared dispute resolution mechanism, provide the basis for a socially-just and sustainable trade and regulatory relationship between the UK and the EU. The provisions are designed specifically for the EU-UK relationship, and they aim to show a version of what 'good' could look like for post-Brexit trade.

A trade and regulatory relationship of this kind would be a major step forward for trade policy and international law. It would use trade as a tool rather than treat it as a goal in its own right. And it would ensure the UK and EU place social progress and environmental protection at the very core of their new partnership.

# ANNEX 1: Dispute Resolution

## 1. Dispute resolution for the whole treaty relationship, not just the Trade Agreement:

The Parties' performance against their commitments in both the Trade and Regulation Agreements (and potentially other pillars of the relationship, which are not discussed here) will be addressed by this dispute resolution mechanism.

## 2. Active monitoring and enforcement of treaty obligations:

Parties will be actively monitored to ensure they are upholding their treaty obligations, including their obligations to maintain high social and environmental standards. Transgressions will be resolved through dialogue, and where necessary through adjudication and enforcement.

Monitoring will take the form of both (1) periodic assessment and (2) assessment prompted by complaints.

An appropriate and adequately-resourced monitoring and adjudication body will be created. This body will have the following characteristics:

- **Independence:** The body will have independence from the governing bodies of both the EU and the UK. Oversight of this body will include a role for both parliaments.
- **Transparency:** Monitoring and complaints reports as well as enforcement procedures will be made public. The steps the EU and the UK take to comply with recommendations made in those reports will also be communicated publicly in a timely fashion.
- **Balanced objectives:** The body will adopt a set of balanced objectives that encompass social and environmental goals.
- **Diverse expertise:** Monitoring and complaints processes will be conducted by the body, which will contain (and where necessary contract in) sufficient expertise to properly evaluate efforts to implement the terms of the agreements. Relevant expertise will include areas such as the environment, labour rights and gender equality. Certain representative organisations such as trade unions will have an institutionalised role within the body to ensure that important complaints are heard.
- **Participatory:** Citizens, civil society, national regulatory bodies and others will have access to a complaints mechanism through which they can raise concerns as to the application of the agreements. The body will have obligations to fairly assess and respond to all complaints within a reasonable timeframe, and to pursue those warranting further investigation to the subsequent stages of the dispute resolution process. Where the people or organisations raising complaints are brought as witnesses to the monitoring and adjudication body, or required to spend time producing evidence, they may be compensated for their time and expenses in order to ensure they are able to participate.
- **Facilitate citizen-to-own-state as well as citizen-to-other-Party complaints:** The complaints process will be available for actors to make complaints about their own government's application of the Agreement provisions as well as those of the other Party. Complaints may be based on failures to uphold social or environmental standards, or other breaches of the Trade or Regulation Agreements.
- **Exhaustion of national remedies first:** National legal and other mechanisms should normally be utilised first, before complaints are brought to the monitoring and adjudication body as potential breaches of these agreements. For example, national regulators should first be alerted to any issues and given the opportunity to resolve them, and national courts should be used to pursue cases first where possible.

- **Application of the rule of law:** There will be independent appointment of adjudicators, impartiality, the right to appeal and fair and clear processes. The monitoring and adjudication body will be bound to follow CJEU judgments when assessing the application of EU law, and by UK legal precedent when assessing the application of UK law.

Monitoring will broadly assess the Parties' compliance with the terms of the future relationship, including the adequacy and enforcement of regulations within each Party's jurisdiction. It will not consider simply whether non-compliance is causing trade distortions.

### 3. Dispute resolution will be state-to-state or monitoring and adjudication-body-to-state

The Parties will be able to pursue cases against each other via this dispute resolution mechanism, as per the usual state-to-state process utilised in trade agreements.

The monitoring and adjudication body will also be able to independently pursue cases against either or both Parties. These cases shall have the same status as state-to-state disputes. Such cases will be prompted either by evidence from the body's own active monitoring activities, or by complaints submitted through the public complaints mechanism. Those raising complaints may be brought forward as witnesses during the investigation or adjudication of dispute resolution cases.

### 4. The CJEU and UK courts will provide interpretations of their respective laws

Disputes will involve a purported breach of the Trade Agreement, which is jointly-created international law, or of the Agreement on Regulation, which will be underpinned by EU law but may be superseded by UK law where standards go above and beyond the minimum required. It will therefore be necessary to refer to both the Court of Justice of the European Union (CJEU) and to the UK courts for legal interpretations and precedent.

## 5. Dispute resolution and suspension of trade privileges

Both Agreements are subject to binding dispute resolution. If either the UK or EU believes that a regulation is falling below expected standards, or that a Party is failing to adequately enforce regulations, they will have recourse to the dispute resolution mechanism described below.

Fulfilment of the obligations under the Agreement on Regulation should be considered a precondition for accessing the benefits of the Trade Agreement. Parties will therefore have the ability to block the importation of goods or suspend interactions with services companies that do not meet legal standards, subject to appropriate adjudication via the monitoring and adjudication body. Legal standards are defined as EU or national laws and regulations within the EU, or UK law and regulations within the UK, including standards set out by devolved administrations.

## 6. Process for dispute resolution

### Dialogue and pre-legal resolution:

A staged process will be used to resolve disputes regarding social, environmental and other standards, to seek agreement and manage any interim or enforcement actions:

1. **Dialogue:** disputes should in the first instance be raised directly with the other Party with a view to seeking amicable resolution. A period of no less than three months should be allowed and meaningful efforts at establishing dialogue must be demonstrable before proceeding to the following stages of dispute settlement.
2. **Mediation:** where it is not possible to resolve disputes via bilateral dialogue, a Party can request mediation via the monitoring and adjudication body. The other Party will be given a reasonable timeframe within which to respond to a request for mediation and the timeframes for mediation will be set in dialogue with the two Parties and the monitoring and adjudication body, and will vary according to the complexity of the issue under consideration.

3. **Investigation:** where neither of the above processes allows the Parties to resolve the issue in question, the monitoring and adjudication body will undertake an investigation and final adjudication. Where the monitoring and adjudication body assesses that there is a case to answer, and while the case is investigated, the Parties may take measures to limit or suspend trade privileges, including the application of a higher tariff rate. These interim measures will be agreed via the monitoring and adjudication body.

The aim of allowing increased tariffs in the final phase is to incentivise the rectification of problems and restore conforming standards. Import blocks will be used only when dialogue has not led to resolution, and production continues to be in breach of the Agreement on Regulation or other requirements specified in the Trade and Sustainable Development section.

These measures should target only goods or services relevant to the case at hand. Such a block or tariff increase will be applied to particular shipments or particular companies rather than to whole countries, unless there is evidence that all goods from a particular sector in a country are produced to inadequate standards, or if the Party as a whole is failing to adhere to its regulatory commitments.

When considering if a good or service meets adequate standards – defined as their commitments under national law, the regulation treaty, and international agreements (see Trade and Sustainable Development section) – process and production methods will be fully taken into account, even if they leave no trace in the final product. For example goods produced by workers that are not paid the minimum wage may be blocked, as may goods produced in factories that create illegal levels of air pollution.

The operation of this policy will rely on stronger traceability in supply chains, and more active monitoring of production, than is currently in place. This will be a positive development that will support stronger Due Diligence requirements and corporate responsibility.

## 7. Enforcement and the use of penalties

Available enforcement mechanisms and remedies will provide adequate room to resolve the underlying problem, while being sufficiently robust to incentivise compliance with the terms of the Agreements. Available measures will include:

- Soft power mechanisms such as obligations to report on progress against the court's recommendations.
- Fines and financial mechanisms, with monies used in specific ways such as to support affected communities or improve environmental law enforcement.
- Withdrawal of trade benefits including for non-trade cases (e.g. cases arising from breach of the Agreement on Regulation) – use of higher tariffs, import bans or suspension of interaction, and other retaliatory measures, usually targeted at the goods or services relevant to the case at hand.

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- <sup>2</sup> **Krajewski, M.** (2016) *Model clauses for the exclusion of public services from trade and investment agreements: Study commissioned by the Chamber of Labour Vienna and the European Federation of Public Service Unions*. Published by EPSU and Gerechtigkeit Muss Sein. Available online at [https://www.epsu.org/sites/default/files/article/files/Study%20M%20Krajewski\\_Model%20clauses%20for%20the%20exclusion%20of%20public%20services\\_2016.pdf](https://www.epsu.org/sites/default/files/article/files/Study%20M%20Krajewski_Model%20clauses%20for%20the%20exclusion%20of%20public%20services_2016.pdf) accessed on 19/03/2020.

EPSU's Model Clause aims to be broad and flexible, so that all services which are thought of as public services in the country in question will be adequately excluded. This clause is provided on p9 of the explanatory research paper. It reads: "This agreement (this chapter) does not apply to public services and to measures regulating, providing or financing public services. Public services are activities which are subject to special regulatory regimes or special obligations imposed on services or service suppliers by the competent national, regional or local authority in the general interest. Special regulatory regimes or special obligations include, but are not limited to, universal service or universal access obligations, mandatory contracting schemes, fixed prices or price caps, the limitation of the number or services or service suppliers through monopolies, exclusive service suppliers including concessions, quotas, economic needs tests or other quantitative or qualitative restrictions and regulations aiming at high level of quality, safety and affordability as well as equal treatment of users."
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The Model Sustainable Regulation and Trade Agreements for the EU-UK relationship have been developed by UK civil society groups, co-ordinated by Laura Bannister, Senior Adviser for EU-UK Trade at the Trade Justice Movement.

The Trade Justice Movement is a network of nearly sixty organisations, including trade unions, environmental groups and justice campaigns, who push for trade policy that works for people and planet.

For more information please see [www.tjm.org.uk](http://www.tjm.org.uk)