

## UKTF (2021) 1 – Commission to EU27

**Subject:** Slides on Governance and Enforcement in the EU-UK Trade and Cooperation Agreement

**Origin:** European Commission, Task Force for Relations with the United Kingdom

**Remarks:** These slides are for presentational and information purposes only and were presented to the Council Working Party on the United Kingdom on 21 January 2021.

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# **EU-UK Trade and Cooperation Agreement**

**Governance and enforcement**

# Overall institutional framework

## Partnership Council co-chaired at ministerial level (EU Commissioner & UK Minister)

Meets at least once a year

May meet in different configurations

Assisted by:

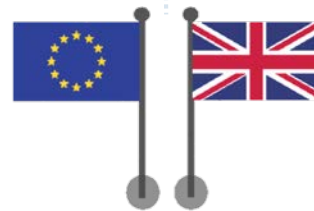
### Trade Partnership Committee

#### Trade Specialised Committees on:

- Goods
- Customs Cooperation and rules of origin
  - SPS
  - TBT
- Services, Investment and Digital Trade
  - Intellectual Property
  - Public Procurement
  - Regulatory Cooperation
    - Level Playing Field
- Administrative Cooperation in VAT and Recovery of Taxes and Duties

#### Specialised Committees on:

- Energy
- Air transport
  - Aviation safety
  - Road Transport
- Social Security Coordination
  - Fisheries
- Law Enforcement and Judicial Cooperation
- Union programmes



# Partnership Council

## Horizontal tasks – Article INST.1

- ✓ Oversees the attainment of the objectives
- ✓ Supervises and facilitates implementation
- ✓ Discusses any matter arising
- ✓ Adopts decisions, including amendment of non-essential provisions, where specifically provided in the Agreement
- ✓ Makes non-binding recommendations to the Parties
- ✓ Establishes and dissolves Trade Specialised Committees and Specialised Committees
- ✓ [...]

## Specific tasks – Throughout the TCA

- ✓ Forum to resolve disputes at political level (INST.13)
- ✓ Adopts lists of arbitrators (INST.27)
- ✓ Decides yearly on continuing application of Energy Title as of 2026 (ENER.33)
- ✓ May maintain illustrative list of subsidies amounting to significant effect on trade or investment (LPF.3.12)
- ✓ Reviews the implementation of Fisheries Heading (FISH.18)
- ✓ [...]

## Decision-making in the Partnership Council

- ✓ All decisions taken by mutual consent of EU & UK co-chairs
- ✓ Commission represents the Union – Formal position determined by Council Decision (Article 218(9) of TFEU)
- ✓ Member States may attend meetings as part of EU delegation but no voting rights (Art. 3 of signing decision)
- ✓ European Parliament is duly informed (Article 218(10) of TFEU and working modalities)

# Committees

## Horizontal tasks – Articles INST.2

- ✓ Supervise / monitor / review the implementation of relevant chapters
- ✓ Preparatory work for Partnership Council
- ✓ Forum to exchange information, discuss best practices and share implementation experience
- ✓ Assisted by technical Working Groups where necessary
- ✓ Forum to resolve disputes
- ✓ [...]

## Specific tasks – Throughout the TCA

- ✓ Specialised Committee on Regulatory Cooperation to enhance and promote regulatory cooperation between EU and UK
- ✓ Specialised Committee on Air Transport to facilitate exchange of statistical information on air transport
- ✓ Specialised Committee on Road Transport to discuss new regulatory measures
- ✓ [...]

## Decision-making in the Committees

- ✓ All decisions taken by mutual consent of EU & UK co-chairs
- ✓ Commission represents the Union – Formal position determined by Council Decision (Article 218(9) of TFEU)
- ✓ Member States may attend meetings as part of EU delegation but no voting rights (Art. 3 of signing decision)
- ✓ European Parliament is duly informed (Article 218(10) of TFEU and working modalities)

# Setting up the joint bodies

- Commission to **formally appoint EU co-chairs and secretaries**
  - Co-chair of the Partnership Council will be the **Vice-President in charge of Interinstitutional Relations and Foresight**
  - Co-chairs of the Trade Partnership Committee, Trade Specialised Committees and other Specialised Committees ***still to be decided – Working Party will be duly informed***
- Commission to notify the UK (*Note verbale*) of its co-chairs and member of the secretariat
- UK to notify the EU of its co-chairs and members of the secretariats
- **Meet at least once a year** (unless otherwise agreed by the co-chairs)
- **First meetings to be organised in early 2021 and as needed thereafter**
- Each **Member State** will be allowed to send **one representative** to accompany the Commission representative, **as part of the Union delegation** (Article 2 of Council Decision on signing of TCA)



# European Parliament's role in implementation

- European Parliament to be **immediately and fully informed** at all stages of the procedure (Article 218(10) of the TFEU)
- Role for European Parliament foreseen in Council decision on signing of the TCA
  - To be put in a position to **exercise fully its institutional prerogatives**
  - To be **informed of unilateral measures taken by the Commission** or draft bilateral agreements between the UK and Member States
  - To receive a **yearly report on implementation from the Commission**
- Commission committed to **high level of transparency and sincere cooperation**, as it is clear from practical arrangements under the Withdrawal Agreement:
  - Commission briefs and debriefs European Parliament before and after joint bodies meet
  - Commission shares all documents related to joint bodies meetings with both European Parliament and Council at the same time



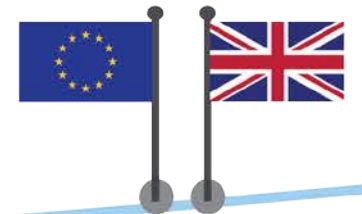
# Parliamentary cooperation and civil society participation

## Parliamentary Partnership Assembly

- ✓ Framework for EP and UK parliament to establish a Parliamentary Partnership Assembly
- ✓ Will consist of Members of the European Parliament and of Members of the Parliament of the United Kingdom
- ✓ Forum to exchange views on the partnership
- ✓ Entitled to request information from the Partnership Council, be informed of its decisions and recommendations
- ✓ May make recommendations to the Partnership Council

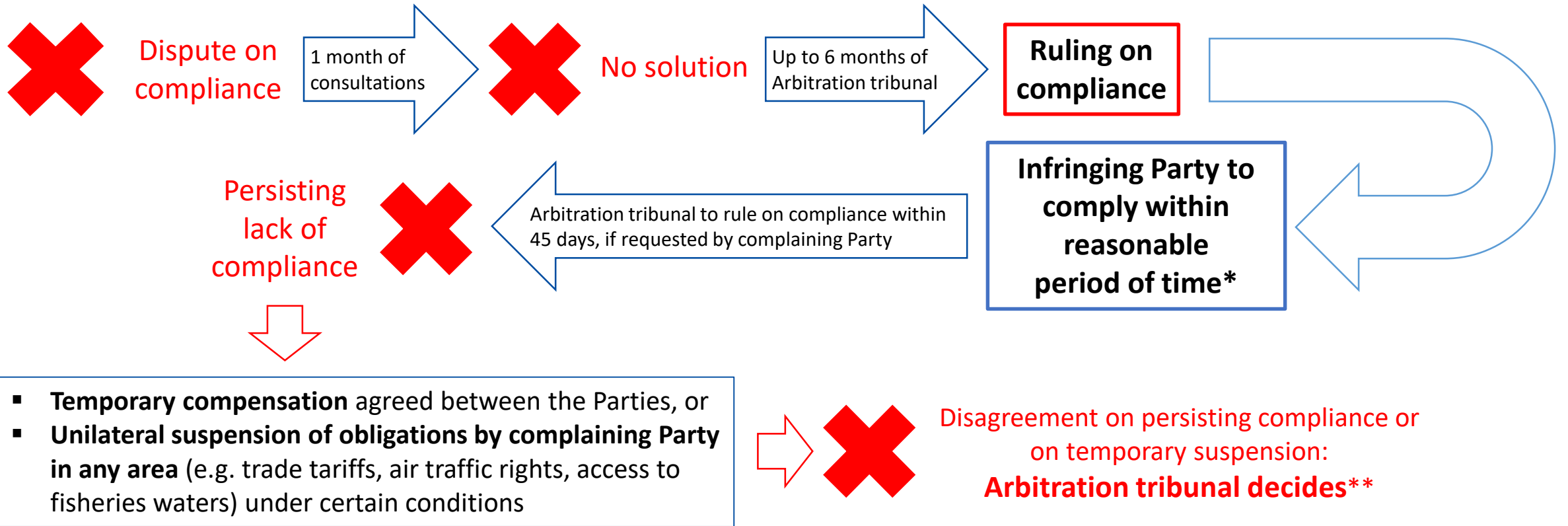
## Civil society participation

- ✓ Strong commitment on consulting civil society on the implementation of the TCA
- ✓ In line with all modern EU international agreements
- ✓ Domestic Advisory Group(s) and Joint Civil Society Forum composed of balanced representation of employers' associations, trade unions, NGOs and other organisations





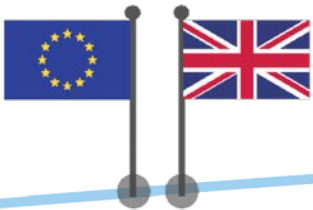
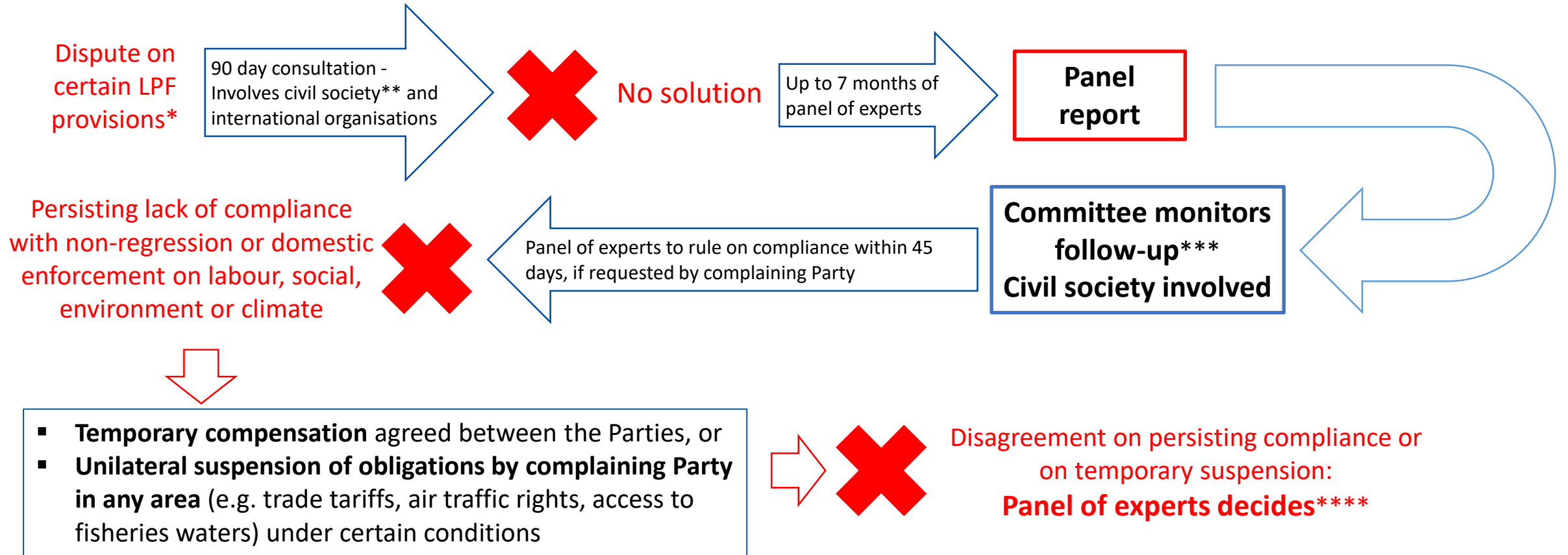
# The Dispute Settlement Mechanism: A simplified overview



\*40 days max to determine reasonable period of time + reasonable period of time

\*\*30 days for Arbitration tribunal to rule on temporary suspension (proportionality / compatibility with principles), 45 days for Arbitration tribunal to rule on compliance

# The Dispute Settlement Mechanism for parts of LPF: Panel of experts



\*Climate neutrality, labour and social standards, environment and climate, other instruments for sustainable development

\*\*Domestic Advisory Groups (DAGs) composed of balanced representation of civil society

\*\*\*105 days max for respondent Party to inform DAGs and other Party of measures taken

\*\*\*\*30 days for panel to rule on temporary suspension, 45 days to rule on compliance

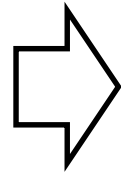
# Remedial / rebalancing / compensatory / safeguard measures

- Set of measures available for each Party under the Trade and Cooperation Agreement
- Listed in Article 3 of Council decision on signing of the TCA
- **Complementary to dispute settlement mechanism** → Arbitration tribunal to review e.g. underlying breach or necessity / proportionality of the measure
- Until the adoption of **a specific legislative act regulating the adoption of these measures**, the procedure for adopting measures is set out in Council signing decision:
  - Measures to be adopted by Commission decision
  - Commission to **inform Council in a timely manner** and **take utmost account of Member States' views**, when adopting these measures
  - One or more Member States may request the Commission to adopt such measures. If Commission does not adopt them, it must inform Council of the reasons
  - Commission must also **duly inform the European Parliament**



# Example 1: Subsidies remedial measures (Art. 3.12)

In case a **SUBSIDY** causes or seriously risks causing a significant negative effect on trade or investment between the Parties



Possibility of applying

## REMEDIAL MEASURES

preceded by  
60 days for **REQUEST FOR INFORMATION & CONSULTATIONS**



Other Party **may** request establishment of  
**ARBITRATION TRIBUNAL**



**URGENT PROCEEDINGS  
(3 MONTHS)**

OR



**EXPEDITED PROCEDURE  
(30 DAYS)**



**If Tribunal finds measure inconsistent**  
Remedial measure must cease/be adjusted  
&  
if inconsistency of measure is significant,  
responding Party may apply proportionate  
compensation (at level determined by  
Arbitration tribunal)

### What kind of measures?

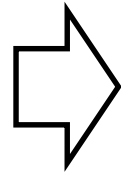
- “Appropriate” measures restricted to what is strictly necessary and proportionate in order to remedy significant effect or to address serious risk
- Priority given to those measures which will least disturb the functioning of this Agreement



# Example 2: Fisheries remedial measures (FISH.14)

In case of **ALLEGED BREACH** of the Fisheries provisions by the other Party, e.g.

- Discriminatory technical measures for conservation management, or
- Non-respect of respective quota shares,
- Etc.



Possibility of applying

## REMEDIAL MEASURES

preceded by  
7-day **CONSULTATION PERIOD**



Party taking the measure **must** request establishment of  
**ARBITRATION TRIBUNAL**



**URGENT ARBITRATION PROCEEDINGS (3 MONTHS)**



**If Tribunal finds there was no breach**

Remedial measure must cease

&

if inconsistency of measure is significant,  
responding Party may apply  
proportionate **compensation** (level  
determined by Arbitration tribunal)

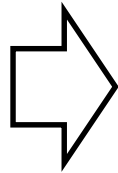
### What kind of measures?

Proportionate to the alleged failure and economic and societal impact thereof and consists of

1. Suspending access to waters and tariff treatment of fishery products,
2. If (1) not commensurate to economic and societal impact, suspending tariff treatment of other goods,
3. If (1) & (2) not commensurate to economic and social impact, suspending obligations in Part Two (Trade, Road, Aviation, etc.) except LPF.

# Example 3: Safeguard measures (INST.36)

In case of **serious economic, societal or environmental difficulties** of a **sectorial** or **regional** nature, including in relation to fishing activities and their dependent communities, **that are liable to persist**



## SAFEGUARD MEASURES

Possibility of applying

preceded by  
30-day **CONSULTATION PERIOD**  
(not in exceptional circumstances)



If safeguard measures create **imbalance**, other Party may adopt appropriate **rebalancing measures**

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**Dispute settlement mechanism applies**  
to safeguard and rebalancing measures

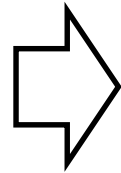
### What kind of measures?

- “Appropriate” measures restricted in scope and duration to what is strictly necessary in order to remedy the situation
- Priority given to those measures which will least disturb the functioning of this Agreement
- May consist in suspend obligations under TCA or supplementing agreements



# Example 4: Rebalancing measures (Art. 9.4)

Possibility of applying



## REBALANCING MEASURES

In case of **SIGNIFICANT DIVERGENCE** in the areas of:

- Labour and social,
- Environmental and climate protection
- Subsidy control systems

**WITH MATERIAL IMPACT ON TRADE OR INVESTMENT BETWEEN THE EU AND UK**



preceded by  
14-days **CONSULTATION PERIOD**



If requested by other Party, establishment of an **ARBITRATION TRIBUNAL**

OR

**URGENT PROCEEDINGS**  
(3 MONTHS)

**EXPEDITED PROCEDURE**  
(30 DAYS)



### What kind of measures?

- “Appropriate” measures restricted in scope and duration to what is strictly necessary in order to remedy the situation
- Priority given to those measures which will least disturb the functioning of this Agreement

**IF NO RULING WITHIN 30 DAYS:**

Party may apply rebalancing measures, but other Party may apply proportionate

**COUNTERMEASURES**

until delivery of ruling

# Review under Trade Heading

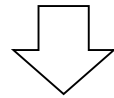
Either Party may ask a review of the operation of Heading One [Trade] of TCA (and other Headings by mutual agreement) to assess

→ „whether the Agreement delivers an appropriate balance of rights and obligations“

→ „whether there is a need for any modification of the terms of this Agreement.“

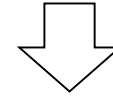
## WHEN?

- no sooner than every 4 years
- or: if rebalancing measures applied frequently
- or: if rebalancing measures have been applied for 12 months and have a material impact on trade or investment



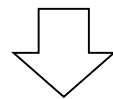
Agreement delivers appropriate balance

**No action required**

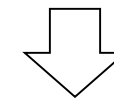


Agreement does not deliver appropriate balance

**Need for amendment of Agreement**



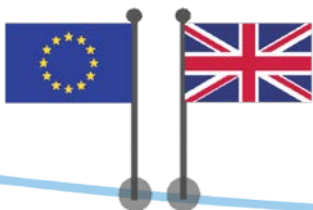
**Negotiation and conclusion of amendments**



Inconclusive negotiation for 1 year:

**Possibility of unilateral termination of the parts on trade and road transport**

after 3 months



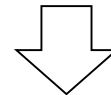


# General (FINPROV.3) and sectoral reviews

→ **General joint review** of the TCA and supplementing agreements' implementation **every 5 years**

→ **Many sectoral reviews** at different intervals:

- Review of the Parties' duty drawback and inward-processing schemes (ORIG.17) not earlier than every two years at the request of either Party by Specialised Committees on Customs Cooperation and Rules of Origin,
- Review of Fisheries' Heading by the Partnership Council four years after end of the adjustment period (FISH.18),
- Review of the Law Enforcement and Judicial Cooperation Part at the request of either Party where jointly agreed (LAW.OTHER.135),
- [...]



**EU and UK jointly draw the conclusions  
of these reviews**

