

The third Trade Specialised Committee on Level Playing Field for Open and Fair Competition and Sustainable Development under the UK-EU Trade and Cooperation Agreement

4 October 2023

London

Joint Minutes

The third meeting of the Trade Specialised Committee on Level Playing Field for Open and Fair Competition and Sustainable Development ('the Committee') under the Agreement between the European Union (EU) and the United Kingdom (UK) for Trade and Cooperation took place on 4 October 2023 in London.

The representatives from the United Kingdom and European Union discussed the following points:

1. Introduction/opening session

The EU and UK co-Chairs opened the discussion, introduced their teams, and formally adopted the agenda for the meeting.

2. Discussion on issues related to subsidy control and competition:

2a) EU Green Deal Industrial Plan Subsidy Control and Spending

The EU gave a presentation on the subsidy control and spending elements of its Green Deal Industrial Plan (GDIP). The EU provided an update on the Temporary Crisis and Transition Framework (TCTF) and its objectives, as well as more details on the 'matching' mechanism. The EU explained that the subsidy measures granted under the TCTF are in compliance with the subsidy principles of the EU-UK TCA. The EU noted that the Strategic Technologies for Europe Platform (STEP) is a Commission proposal and that no legislation has been adopted so far. The EU explained that under STEP there would be no new funding instruments, but that existing EU funds would be reallocated.

The UK asked questions about the EU's aid matching mechanism, whether the crisis elements of the TCTF would be extended beyond the end of 2023, and about the streamlining of processes for aid given through Important Projects of Common European Interest. The UK noted its concerns regarding EU statements about the design of subsidy and industrial policy measures, and the potential for some of these measures to impact trade and investment. The UK also noted concerns about the potential for a large-scale funding instrument (whether STEP or a future European Sovereignty Fund) to impact the level playing field. The UK noted that it had sent

written questions to the EU on the GDIP, including subsidy control elements. Finally, the UK noted that it would closely monitor the implementation of the GDIP legislation and the increased subsidisation as a result of the TCTF and additional or repurposed EU and Member State funding.

2b) UK Subsidy Control Matters

The UK and EU took stock of the technical session on UK Freeports and Investment Zones that took place in September 2023, following the discussion at the 2022 meeting of the Committee. The EU noted that Freeports and Investment Zones remain areas of interest and concern for the EU due to their potential impact on trade or investment. The EU noted that there are still aspects of the UK Freeports policy that remain unclear, notably as regards the application of cumulation rules, the scrutiny of the subsidy measures by the Subsidy Advice Unit of the Competition and Markets Authority (CMA), and the impact on investment and trade. The UK noted that in designing these policies, the UK has had particular regard to its international subsidy control commitments, including those under the TCA. The UK noted it was confident that the support provided under the programmes is consistent with those obligations. The UK explained that the programmes have been designed to achieve their respective public policy objectives and the UK has seen no evidence to suggest that the programmes will negatively affect trade and investment between the parties.

The UK provided an update on the UK subsidy control regime. The EU asked questions on several enforcement aspects that are of interest and that may, in the EU's view, impact the effectiveness of the subsidy control system. In particular, the EU asked questions on the implementation of the subsidy control regime by granting authorities, the Competition Appeal Tribunal and the Subsidy Advice Unit of the CMA as well as the subsidy control scrutiny of Acts of Parliament. The EU noted its continued interest in the enforcement of the UK subsidy control regime. The UK provided an update on the enforcement of the UK subsidy control regime, setting out the component parts of the regime, including the roles of the Subsidy Advice Unit and the Competition Appeal Tribunal, noting how they operate together to provide effective enforcement. The UK also explained how the regime, including legislation and guidance, ensures compliance with the requirements of the TCA and the UK's wider international obligations.

The UK provided an update on the British Industry Supercharger (BIS). The EU asked questions on the compliance of the British Industry Supercharger (BIS) with the subsidy principles of the EU-UK TCA. The EU also asked whether and how the UK had accounted for any potential impact on trade or investment brought about by the subsidy measures granted under the British Industry Supercharger (BIS). The UK explained that the objective of the measure is to ensure a level playing field between the UK and other countries with regard to electricity costs for the intended beneficiaries. The UK explained the compatibility of the scheme with the UK's

subsidy control obligations and noted that a number of other countries have similar measures in place to achieve similar objectives.

2c) EU Competition Policy including Digital Markets Act

The EU gave an update on the recent developments on EU competition policy, notably on the implementation of the Digital Markets Act (DMA).

The UK noted that digital competition is one area where the UK and EU have some shared ambitions and common challenges; and welcomed the opportunity for dialogue. The UK noted that the EU had implemented the Digital Markets Act and had made the first gatekeeper designations. The UK asked about the timelines envisaged for the market investigations which the EU is carrying out, how the EU reached its conclusions on which core services have or have not been designated, and how the EU worked with the gatekeepers on their designation. The EU provided an update on the timelines on market investigations into the designation of core platform services under the Digital Markets Act. The EU outlined how it approached the designation process in general and how it reached its conclusions on the designation of gatekeepers in September 2023. The EU also provided an overview on how it engaged with gatekeepers in preparation for these designation decisions.

2d) UK Digital Markets, Competition and Consumers Protection Bill

The UK gave an update on the latest developments of the Digital Markets, Competition and Consumers (DMCC) Bill. The EU asked questions on the timing of implementation, scope of the DMCC Bill and interplay between the reporting obligations under the DMCC Bill and merger control.

The UK outlined that the legislation is expected to come into force in Spring 2024 depending on Parliamentary timelines. The UK noted that the Bill's key objectives are to promote competition in digital markets and respond to increasingly dynamic and globalised digital markets. The UK noted that the Bill as introduced strengthens the powers of UK competition and consumer authorities to better facilitate cooperation with their international counterparts, including powers to offer investigative assistance on a reciprocal basis.

The UK noted that cooperation on competition policy was in both Parties' interests and that these interests would be furthered by the additional competition cooperation envisaged by the TCA.

3. Discussion on issues related to labour and social standards, environment and climate and other instruments for trade and sustainable development:

3a) UK update on Retained EU Law (Revocation and Reform) Act

The UK provided an overview and update on the Retained EU Law (Revocation and Reform) Act 2023, which received Royal Assent in June of this year. The UK

explained that the Act has two objectives. These are to make it easier to amend, revoke or replace Retained EU Law (REUL) in order to meet the specific needs of the UK; and to end the special status of REUL on the UK statute book by removing the principle of supremacy, general principles of EU law and directly effective EU rights.

The UK provided an overview of the REUL Dashboard, which was published in June 2022 and will be periodically updated. The UK explained that the Dashboard contains an authoritative catalogue of all REUL identified by departments. The UK explained that there is a process for ensuring that any legislative changes as a result of the REUL Act will maintain the UK's high standards in areas such as climate, environment and labour in line with the UK's international obligations including the TCA.

The EU noted the adoption of the REUL Act may facilitate regulatory divergence in the UK. The EU expressed its continued interest and concerns about the impact the implementation of the Act could have in the UK's obligations under the Level Playing Field title of the TCA.

3b) UK and EU Labour Policy updates

The UK gave an update on the Strikes (Minimum Service Levels) Act 2023 and the next steps on implementation. The UK also gave an update on its review of retained EU employment law, and proposals for reform, notably on the Working Time Regulations, and on the Transfer of Undertakings (Protection of Employment) Regulations. The EU expressed concerns on the compliance of the Strikes (Minimum Service Levels) Act 2023 with the labour commitments of the EU-UK TCA, in particular as regards compliance with Article 387 TCA and Article 399 TCA. The EU also asked the UK whether and how the recent amendments to Working Time and Transfer of Undertakings Regulations are compliant with the labour commitments of the EU-UK TCA, and in particular with Article 387 EU-UK TCA. The UK explained that the legislation is compliant with TCA obligations, and that these measures do not have an impact on trade or investment.

The UK also gave an update on the package of legislation on employment rights that has been delivered, notably on the Neonatal Care (Leave and Pay) Act 2023; the Employment (Allocation of Tips) Act 2023; the Protection from Redundancy (Pregnancy and Family Leave) Act 2023; the Carer's Leave Act 2023; the Employment Relations (Flexible Working) Act 2023 and the Workers (Predictable Terms and Conditions) Bill. The UK explained that the objectives of the package are to increase workforce participation and protect vulnerable workers.

The EU gave an update on several EU initiatives in the field of EU Labour policy, notably on EU Women on Boards Directive, Pay Transparency Directive, Adequate Minimum Wages Directive, Corporate Sustainability Due Diligence Directive (CSDDD) and the Directive on Transparent and Predictable Working Conditions. The UK asked for an update on transposition of the Directive on Transparent and Predictable Working Conditions. The UK also noted concerns about the proportionality of the CSDDD and a request for adequate guidance and support for

UK companies - in particular SMEs - to manage the expected impact of this Directive coming into force. The EU noted that, while the legislative process is still ongoing, it is likely that the final Directive will require the adoption of various guidance documents to support the implementation.

3c) EU environmental planning rules in EU Critical Raw Materials Act and Net Zero Industry Act

The EU presented the new Net Zero Industry Act (NZIA) and the Critical Raw Materials Act (CRMA) proposals that aim, among other things, to streamline project permitting in the EU. The EU explained that these proposals introduce environmental planning rules that foster the easier identification of areas suitable for NZIA or CRMA projects at an early stage.

The UK asked questions about how the EU would ensure adequate levels of scrutiny and assurance on environmental levels of protection while introducing new and accelerated permitting processes. The UK also asked for detail on the criteria for designating projects with “priority status”. The EU explained that these rules have the objective to streamline environmental processes and that they do not lower the standards of environmental protection.

3d) UK-EU Climate Policy Updates

The UK and the EU discussed cooperation initiatives on tackling illegal trade in fluorinated gases and ozone depleting substances. The UK highlighted the importance of tackling illegal trade and provided examples where the UK has made progress. The EU also highlighted the progress made on tackling illegal imports of F-gases. The UK and the EU agreed to cooperate to prevent illegal trade in F-gases (and ozone depleting substances) on a case-by-case basis and to exchange data on trade in F-gases or ozone-depleting substances.

The UK and the EU each provided an update on the development of their respective carbon pricing schemes, the UK Emissions Trading Scheme and the EU Emissions Trading System. The EU explained the amendments to the EU ETS framework adopted in 2023 in the context of the European Green Deal and the ‘Fit for 55’ package. The EU noted that these amendments are intended to ensure that the EU ETS will deliver further emission reductions in line with the EU’s 2030 climate target. The EU asked questions on the latest reform of the UK Emissions Trading Scheme of July 2023 and expressed its concerns that the reforms may have influenced the significant drop in price of the UK ETS allowances. The EU noted that it is closely following possible divergences between the EU and UK Emission Trading System as well as the impact these divergences may have on the price of the UK ETS allowances.

The UK noted its continued ambition on emissions reduction which is described in the UK ETS Authority’s latest policy announcement and re-affirmed the UK Government’s commitment to the development of measures to support a well-

functioning and stable carbon market. The UK also noted the interactions between carbon pricing regimes and the growth of the carbon capture, use and storage sector in Europe, and the potential future role of negative emissions technologies in carbon pricing. The UK noted the value of dialogue with the EU on these issues.

The UK gave an update on the Powering Up Britain plan announced earlier this year and provided an overview of the UK's current energy and climate strategy. The UK explained that the strategy is to transition to cheap, clean, domestically produced energy, primarily wind, solar and nuclear. The EU asked questions on the envisaged timeline of implementation of the various policies announced under the Powering Up Britain initiative. The EU expressed concerns as regards the amendments to the Net Zero policy measures that were recently announced by the UK Government and noted the EU's view that these amendments could risk achieving the Net Zero and interim targets. The UK explained its continued net zero ambitions and budgets, and that the UK has achieved the first and second carbon budget and is on track to meet the third. The UK explained how in its view the new measures announced in recent weeks would support delivery against that continued ambition.

The EU updated the UK on the proposal for Net Zero Industrial Partnerships and climate cooperation in the Net Zero Industry Act. The EU noted that the Net Zero Industry Act is a Commission proposal and that it has not yet become a legislative Act. The EU explained that the Net Zero Industrial Partnerships have the objective of facilitating trade among participants, including by favouring necessary investments within the EU and in third countries, while enhancing resilience and sustainability of the supportive value chains and guaranteeing a level playing field. The UK noted its interest in the Net Zero Industrial Partnerships proposal. The UK asked for further clarification on the criteria for third countries to be assessed against in the context of these partnerships. The UK also asked for further details on the role of the proposed Net Zero Europe Platform, the timeline for its establishment and how it would work with third countries.

3e) UK REACH and EU REACH updates

The UK and the EU each provided an update on the implementation of their respective REACH regimes.

The UK provided an update on regulatory activities undertaken since the end of the transition period, highlighting work in the areas of registration, authorisation and restrictions. The EU asked questions on registrations, evaluation processes, risk management, authorisations, restrictions as well as timelines of implementation. The EU noted the divergences in timelines and content of the implementation of UK REACH as compared to EU REACH. The UK noted that divergences may exist as a result of both Parties' regulatory autonomy, but that the UK remains confident that UK REACH complies with obligations under the EU-UK TCA.

The EU explained the recent developments in EU REACH in the area of authorisations, restrictions, and registration and evaluation at the end of the transition period. The UK asked questions on the scope and timings for EU proposals in EU REACH reform and the regulation of the synthetic chemical group PFAS.

3f) UK-EU cooperation on Marine Spatial Planning

The UK and the EU discussed the potential benefits of increasing cooperation around marine spatial planning, and the methods through which this could take place. Both Parties discussed the pressures on marine space and outlined the approaches they were taking through respective marine spatial plans.

The UK welcomed discussions and suggested further collaboration through existing routes, including the North Seas Energy Cooperation and Great North Sea Basin initiative as well as via OSPAR.

Closing Remarks

Both Parties took note of the good and extensive discussions that they have had during the Committee. The UK noted that due to the nature of some of the discussions, in some areas it would be desirable to have technical exchanges alongside the TSC which could then help to frame the discussion and support more focused exchanges in the Committee itself.

The EU noted that, should these technical discussions take place, it must be ensured that the discussions are limited to a technical exchange of information and that any technical exchange does not create parallel procedures or structures to the Committee. Technical exchanges should be held under the *aegis* of the Committee. The EU reiterated that the conclusions of the technical meetings should be brought to the Committee.

Specifically, both Parties agreed to hold further technical discussions on the EU Green Deal Industrial Plan including subsidy control and spending, environmental planning and net zero industrial partnerships.

Attachments

1. Final agenda

2. List of participants

1. FINAL AGENDA

Trade Specialised Committee on Level Playing Field for Open and Fair Competition and Sustainable Development under the EU-UK Trade and Cooperation Agreement

4 October 2023

London

1.	Opening remarks and adoption of the agenda
2.	Discussion on issues related to subsidy control and competition: 2a) EU Green Deal Industrial Plan Subsidy Control and Spending <ul style="list-style-type: none">• Temporary Crisis and Transition Framework, Strategic Technologies for Europe Platform (STEP). 2b) UK Subsidy Control Matters <ul style="list-style-type: none">• Freeports and Investment Zones; update on enforcement of the UK Subsidy Control Regime; and British Industry Supercharger. 2c) EU Competition Policy including Digital Markets Act 2d) UK Digital Markets, Competition and Consumers Protection Bill
3.	Discussion on issues related to labour and social standards, environment and climate and other instruments for trade and sustainable development: 3a) UK update on Retained EU Law (Revocation and Reform) Act 3b) UK and EU Labour Policy updates <ul style="list-style-type: none">• UK labour consultations related to REUL and UK legislative updates (Strikes (Minimum Service Levels) Act 2023 and Private Members Bills).• EU legislative updates: EU Women on Boards, Pay Transparency; Adequate Minimum Wages Directives; Corporate Sustainability Due Diligence Directive and Directive on Transparent and Predictable Working Conditions 3c) EU environmental planning rules in EU Critical Raw Materials Act and Net Zero Industry Act 3d) UK-EU Climate Policy Updates <ul style="list-style-type: none">• UK and EU updates on Tackling Illegal trade in F-Gases; UK ETS and EU ETS Policy Updates; UK update on Powering Up Britain; and EU update on net zero partnerships and climate cooperation in Net Zero Industry Act. 3e) UK REACH and EU REACH updates 3f) UK-EU cooperation on Marine Spatial Planning
4.	Closing remarks

2. LIST OF PARTICIPANTS

UK DELEGATION

- UK Co-chair and Secretary of the Trade Specialised Committee for Open and Fair Competition and Sustainable Development
- UK Government Officials from FCDO, DBT, DEFRA, DESNZ, HMT, HSE
- UK Government Officials from the UK Mission to the European Union
- Scottish Government Officials
- Northern Irish Civil Service Officials
- Welsh Government Officials

EU DELEGATION

- EU Co-chairs and Secretaries of the Trade Specialised Committee for Open and Fair Competition and Sustainable Development
- European Commission Officials (TRADE, COMP, SecGen, GROW, JUST, ENER, ENV, CLIMA, EMPL)
- EU Officials from Delegation of the European Union to the UK
- Representatives of EU Member States