

Submission on behalf of Chatham House¹, the University of Warwick and the UK Energy Research Centre (UKERC)²: Comments in relation to issues around climate change and energy

Climate Change

General Climate Provisions:

1. Climate change is given prominence in the Trade and Cooperation Agreement (TCA), as the opening paragraph states, "Reaffirming their commitment to ...the fight against climate change, which constitutes essential elements of this and supplementing agreements." This assertion reflects the importance that both parties currently place on taking domestic action on climate change. However, it is also a reflection of climate change's current political relevance, as the UK and Italy are co-hosting the next Conference of the Parties (COP26) in November 2021, which is a significant milestone for the United Nations Framework Convention on Climate Change (UNFCCC).
2. The UK has proposed introducing an ambitious Nationally Determined Contribution (NDC) under the UNFCCC, which should see greenhouse gas emissions fall by 68% compared to 1990 levels by 2030. This is the first time the UK has proposed an NDC as previously it was included within the EU submissions. In December 2020, the EU increased the NDC's mitigation target, raising it from at least 40% below 1990 levels, set in 2019, to at least 55%.
3. Having similar, at least on the surface, political support for climate action is encouraging, but the TCA includes measures to ensure equivalence and non-regression of climate and environmental action (Article 7.2.2.). In addition, the TCA states that "each Party commits to respecting the internationally recognised environmental principles to which it has committed", including the UNFCCC (Article 7.4). Similar language on the adherence to the treaties of the UNFCCC was included within the UK-Japan trade agreement. However, the Agreement also stated that, "nothing in this Section shall affect the right of a Party to define or regulate its own levels of protection in pursuit or furtherance of its public policy objectives in areas" including on climate change.³
4. Recommendation: The impact of these TCA provisions on the UK's climate policy is significantly less binding or specific than when in was part of the EU, through Directives committed to meeting specific, legally binding, emissions reduction targets and specific measures. However, while the TCA does create a 'policy floor' for the UK, its ultimate

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² The UK Energy Research Centre (UKERC) carries out world-class, interdisciplinary research into sustainable future energy systems. the challenges and opportunities presented by the transition to a net zero energy system and economy. It is an independent research centre, with researchers based in 20 different institutions throughout the UK. <https://ukerc.ac.uk/>

³ The Parties reaffirm their commitments to effectively implement the UNFCCC and the Paris Agreement, done at Paris on 12 December 2015 by the Conference of the Parties to the UNFCCC at its 21st session. - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/929181/CS_Japan_1.2020_UK_Japan_Agreement_Comprehensive_Economic_Partnership__v1.pdf

enforcement internationally is questionable and therefore the UK Government should ensure the rigor and scope of domestic agencies balance this. ⁴

Trade and Climate Change:

5. The TCA (and the Japanese Agreement) recognise and propose the promotion, including removing obstacles, of goods and services of particular relevance for climate change mitigation and adaptation. However, the TCA does not include any language on the introduction of Carbon Border Adjustment Mechanisms (CBAM). The EU has suggested that a CBAM will conform to World Trade Organisation (WTO) norms. Others however, suggest that it may end up as a WTO dispute as it may be determined that its purpose is in contradiction to the principles of non-discrimination, which is one of the pillars of the GATT-WTO rules.⁵ In September 2020, Commission President Ursula von der Leyen announced a legislative proposal on the CBAM among the critical new initiatives for 2021. This legislation is likely to be introduced sector by sector in the EU, starting with those that have a significant carbon footprint, such as cement and steel. This would require an additional import levy to be placed on these goods if the exporting country did not have a similar tax or levy to the EU's on the carbon produced during the manufacture of the product. However, even discussions on the intent to put in place a CBAM is likely to have an impact on EU external industrial and energy relations.
6. The UK has introduced its own Emissions Trading System (ETS) and is therefore likely to have, at least in the short term, a similar carbon price. This may become an issue if the UK doesn't have a similar CBAM approach and imports goods and then exports them to the EU. Furthermore, the UK Government stated in October 2020 that *"the UK recognises the importance of addressing carbon leakage. A range of approaches could potentially help to address this, of which carbon border adjustments are one. HMG is undertaking further analysis on the issue of carbon leakage across relevant departments"*.⁶ Already this issue of re-exporting goods imported to the UK and then on to the EU has created issues in relation to rules of origin and threatens many businesses in the UK.
7. Recommendation: Given the EU timetable, the UK Government should speed up its review of the issue and prepare for additional legislation, including introducing a CBAM.

Emissions Trading:

8. During the negotiations, it became clear that the UK would leave the European Emissions Trading System (EU ETS). The UK Government put forward two options: either establishing a domestic trading system or introducing a carbon tax. In the Energy White Paper, both options were said to be on the table until the Government announced in December 2020 that it would introduce a UK-wide emissions trading system.
9. Ending the UK's participation in the EU ETS and transitioning to a UK wide system is complex and ongoing, with several steps including:
 - UK participants of the EU ETS must still comply with their obligations under the 2020 scheme year. Verified annual emissions reports for the 12 months of 2020 must be submitted by 31st March 2021, and allowances for 2020 emissions must be surrendered by 30th April 2021.
 - The UK ETS began operating on the 1st January 2021.

⁴ The UK, through the 2008 Climate Change Act, modified in 2019 to increase its ambition from an 80% reduction by 2050 to Net Zero, creates binding domestic legislation and effectively a policy floor.

⁵ <https://sdg.iisd.org/commentary/guest-articles/is-a-clash-coming-when-trade-and-climate-meet-at-the-border/>

⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/928005/government-response-to-ccc-progress-report-2020.pdf

- The four governments of the UK have established the scheme, which includes Northern Ireland. Therefore, its impact on the single energy market's operation that functions across Northern Ireland and the Republic of Ireland (iSEM) needs to be monitored.
 - The price of carbon in the UK ETS has yet to be set. Legislation states that *"the UK ETS authority must publish the carbon price for the 2021 scheme year on or before 30th November 2021."*⁷ However, some have said that *"the UK ETS exists in name only"* as there are no carbon permits available. The government has said auctions for UK carbon permits will start no later than the second quarter of 2021.⁸
 - As of 30th January 2021, the UK ETS authority's guidance, 'How to comply,' planned for release in 'early 2021' had not been published.⁹
10. The UK ETS coverage is initially in line with the EU ETS, including the energy intensive industries, the power generation sector, and aviation. In the Energy White Paper, the Government stated that the UK ETS will be "the world's first net-zero emissions trading scheme" and that they will "consult in due course on how to align the cap with an appropriate net-zero trajectory."¹⁰ This would require the expansion of the scheme to cover all sections of the economy.
 11. The UK system is not, for now at least, linked to the EU ETS, as some had hoped – a similar arrangement to Switzerland. The White Paper states that the UK is open in principle to linking the system internationally. There are some suggestions that the UK and EU ETS could be linked once the UK system is up and running and before COP26, to highlight the importance of international climate change collaboration.
 12. *Recommendation: The setting up of the UK ETS has highlighted the problems of the protracted negotiations around the TCA; namely, inadequate time to prepare for a new system. Furthermore, it seems highly likely that the current system's scope is temporary, with the eventual establishment of a link to the EU ETS. The UK Government needs rapidly to urge the ETS operators to set a price and to as quickly as possible undertake its review of the future scope of the system.*

Energy

13. Title VIII is responsible for energy and sets out the Principle that each party has the right to pursue measures to ensure public policy objectives, such as environmental protection, security of supply and protecting society, can be met. This principle gives the UK more significant control over its energy sector than when it was a part of the EU. The UK is now treated as a third country concerning the EU, including the Internal Energy Market (IEM), although it should be noted that energy policy was always an area of joint competence between the EU and Member States who were free to determine their energy mix. While energy will be affected by other Titles within the TCA, provisions explicitly relating to energy only take up 16 pages. Therefore, its very nature is limited in its scope and detail.
14. As with a handful (16) of other areas, the Agreement establishes a Specialised Committee on Energy, which will enable regular dialogue and make recommendations to ensure effective implementation.
15. *Recommendation: The EU Member States and the European Institutions will continue to have an energy relationship, and importantly, there is a date by when a new association will be agreed (30th June 2026), not ended. Furthermore, it is essential to note that the current Agreement over Fisheries also terminates at this time. This has been*

⁷ <https://www.legislation.gov.uk/ukxi/2020/1265/article/46/made>

⁸ <https://energymonitor.ai/policy/carbon-markets/at-one-month-old-the-uk-ets-remains-a-mystery>

⁹ <https://www.gov.uk/government/publications/participating-in-the-uk-ets/participating-in-the-uk-ets>

¹⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945899/201216_BEIS_EWP_Command_Paper_Accessible.pdf

taken to mean that these sectors' renegotiations will be linked, which is likely to the detriment of energy, which is of lower profile and may therefore be used as a bargaining chip instead of being considered in its own right.

European Organisations:

16. The TCA makes it clear that the UK's Transmission System Operators will leave the European Organisations, both ENTSO-E and ENTSO-G (European Network for Transmission System Operators – Electricity and Gas), although it was thought that it might be possible for the UK's bodies to remain part of ENTSO-E.
17. Recommendation: Being outside of ENTSO-E and ENTSO-G, the Agency for the Co-operation of Energy Regulators (ACER) and the Council of European Energy Regulators (CEER), is to the detriment of the UK's energy actors. These actors will continue to engage with European counterparts and be impacted by European regulation, but they will no longer have a seat at the table during decision-making. Therefore, the relevant organisations and Government departments are likely to have to spend more time and effort in trying to informally influence future choices than they did when the UK was part of the EU.

Interconnectors:

18. Energy, electricity and gas will continue to flow through the pipes and wires that connect the UK's energy network to those in continental Europe and the Republic of Ireland. However, being outside of the IEM, the operating regime that enables energy to flow has been changed. In particular, the EU-GB interconnectors are no longer market coupled; consequently, it will no longer be possible for the interconnectors' capacity to be sold together with energy in the day-ahead markets, a move from implicit to explicit trading. By its very nature, the new regime is less efficient. It will therefore lead to very marginally more expensive energy according to several economic models¹¹ – although to date, there is little empirical evidence of this.
19. This is a temporary arrangement however, and by April 2022, the Agreement commits both Parties to develop and implement new, efficient trading arrangements. According to the UK Government: "...these will ensure that capacity on the interconnectors is maximised and that there is implicit trading in how this capacity is allocated (i.e. capacity and electricity are sold together). This will benefit UK consumers and help integrate renewables and other clean technologies onto the grid in line with our domestic commitment to net zero emissions."¹² Increased flexibility will also bring benefits to EU consumers.
20. The Ireland/Northern Ireland Protocol to the Withdrawal Agreement provides the operational regime for the Single Electricity Market (iSEM) in Northern Ireland. However, as the Republic of Ireland is now no longer connected to the EU IEM, it is now in the unusual position of having to comply with its rules while being effectively de-coupled from it. The Republic is also in a difficult position: as its production from domestic gas field decreases, it is no longer connected to the European gas network and therefore able to benefit from the solidarity principle, whereby neighbouring Member States will help ensure gas supply to householders and essential services in a severe crisis.
21. Recommendation: In order to develop and implement a new trading scheme by April 2022, a timetable for its development and consultation process needs to be rapidly

¹¹ <https://www.chathamhouse.org/2017/05/staying-connected>

¹² <https://www.gov.uk/government/publications/agreements-reached-between-the-united-kingdom-of-great-britain-and-northern-ireland-and-the-european-union/summary-explainer>

established. Consideration needs to be given to the impact of explicit-only trading on the UK's net-zero objectives.

Renewable Energy:

22. The TCA has specific articles on support for renewable energy and both the EU and the UK reaffirm their targets for renewable energy for 2030 as set out in specific legislation (the 2018 Renewable Energy Directive and the UK's National Energy and Climate Plan).¹³ There are particular requirements that "Each Party shall clearly define any technical specifications which are to be met by renewable energy equipment and systems to benefit from support schemes", potentially defining the type of support allowed. This is particularly important as according to the UK Government, the existing State Aid rules no longer apply to UK public authorities.
23. Significantly, the TCA calls on the continuation of the North Seas Energy Cooperation initiative. The UK has been a key actor in this initiative, which will enable ongoing collaboration on offshore grid development and exploitation of the large renewable energy potential of the region.
24. Recommendation: It is worth noting that the UK Government has stated that the UK intends to continue its participation as a third country in Horizon Europe, the EU's main research programme, once the regulations establishing the programme have been developed. This may be important for the UK's energy research and will need to be more clearly defined for the benefit of both EU and UK institutions and programmes.

Nuclear:

25. In addition to the TCA, and the EU-UK Security of Information Agreement, an additional agreement was signed, 'The EU-UK Agreement for cooperation on the safe and peaceful uses of nuclear energy'. This is due to the UK having a separate legal arrangement with the EU through the Euratom Treaty for civil nuclear issues. The 18-page document outlines how the flow of nuclear information and materials, as well as the continuation of joint research activities, can continue. In addition, the UK will continue to be party, as a third country, to the Euratom Framework programme and will continue its membership of Fusion for Europe. The Agreement will remain in force for an initial period of 30 years.
26. Recommendation: A Joint Committee will undertake the Agreement's oversight and the settling of any disputes. The mechanisms for establishing the committee, its membership and how often it meets are to be determined and should be open for public consultation and input.

Conclusion:

27. While it should be applauded that climate change issues have been given priority in the overall agreement, when it comes to actual operational policies there is much that needs to be resolved, and the sooner the better in the fields of climate and energy.
28. The UK has had to dedicate a large amount of civil service capacity to negotiating and implementing Brexit in energy and climate-facing departments. At the same time the Climate Change Committee notes that the UK is missing its targets. The clear indication from the energy and ETS provisions of the TCA is that negotiations about how to set up replacement regimes and rules will be ongoing for some years to come. The UK needs to recognise this, and ensure that there is sufficient civil service capacity in place so that the

¹³ It should be noted that the target of the 2018 directive has been subsequently revised and within the UK's National Energy and Climate Plan there is no single figure for gross final energy consumption, rather there are targets for the individual nations and/or sectors within the UK.

UK can concentrate on complex questions of how to meet legally binding Climate Change Act and net-zero carbon targets.

29. There is the challenge of creating a UK policy framework that is aligned with our net-zero ambitions, whilst retaining UK global economic competitiveness and remaining within the intent of the TCA. The EU may resist any changes that it sees as giving UK industry a competitive advantage to the detriment of EU industry. It is therefore important that ongoing negotiations and dialogues continue.