

Nature-Based Solutions to Climate Change: Paths Forward in the Context of the UK-US Trade Negotiations

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Executive Summary

After more than 100 hours of debate in Parliament, the passage of the landmark Agriculture Act marks the first of a wave of new legislation following the United Kingdom's exit from the European Union. This moment, in turn, offers UK policymakers unprecedented opportunities to be ambitious in how they act to meet the UK's global environmental and climate change commitments. Specifically, the UK has the rare opportunity to establish itself as a leader on "nature-based solutions" to climate change – the use of better forestry, farming, and land management practices to reduce greenhouse gas emissions and capture and store carbon dioxide. The UK could emerge as a global leader in nature-based solutions by introducing cutting-edge, innovative policies. For example, the UK has already laid the groundwork in the Agriculture Act to incentivise climate change mitigation and other "public goods," like the protection of open space and biodiversity in British agriculture and land management policies.

While supporters of these new programmes worry that a free trade agreement with the United States might limit the policy options available in the UK (putting British farmers at a competitive disadvantage and potentially reversing climate change progress), the political landscape has changed significantly in recent weeks. The incoming Biden administration's commitment to tackling climate change, as well as recent transitions among the Prime Minister's advisors, have created a new window in which the UK can pursue a trade deal aligned with its ambitions on climate and the UN Sustainable Development Goals (SDGs).

In fact, there are ways to incorporate nature-based solutions in the UK's new policies that will both benefit British farmers and establish the UK as a global climate leader. In this memo, we lay out several arguments that supporters of nature-based solutions can use to ensure that any trade agreement with the United States capitalizes on the unique opportunity to support climate change action with nature-based solutions. Specifically, we explain the sometimes-complex rules of the international trading system and show how the General Agreement on Tariffs and Trade (GATT), and precedent set by previous trade agreements, offer pathways to pursue these critical environmental goals. Finally, we identify specific measures that the UK can adopt to become a global leader on sustainability and nature-based climate change solutions within its trade relationship with the United States *and* across the broader global trade regime.

Key Points

- ❖ The UK's commitments to global goals like the Paris Agreement and the SDGs include plans for action on nature-based solutions to climate change. Meeting these goals will require new and innovative policies and programmes at the domestic level and modifications in the UK's trade relationships.
- ❖ Existing international rules on free trade allow governments the flexibility to adopt environmental policies that restrict importation of certain products so long as these restrictions are applied in a non-discriminatory manner – meaning that they (1) treat domestic and imported products the same, and (2) do not violate the access rights of other World Trade Organization (WTO) trading partners when setting out favourable terms with any given WTO member state. Moreover, compliance with global and international agreements – including the Paris Agreement and the SDGs – *can* and *should* take precedent over the so-called *disciplines* of trade agreements or the *non-tariff barrier* goals of international trade law.
- ❖ Applying UK food and environmental standards to imported goods will protect British farmers and land-use priorities while allowing imports to enter the UK market on a fair and equal basis.
- ❖ The UK can negotiate for the inclusion of certain non-discriminatory measures in its trade agreements that safeguard its ability to meet its climate change commitments and that will guarantee transparency and accountability in trade policy. Sometimes, the trade context for certain products makes compliance with global climate change and sustainability goals more difficult. But there are solutions that the UK can adopt to continue its trade policy in these areas while *also* keeping its commitments. Such solutions might include mandatory environmental, social, and governance (ESG) disclosure requirements on traded goods and border tax adjustments to ensure that imported goods match the UK's carbon pricing commitment.

What are Nature-Based Solutions to Climate Change?

Keeping global temperature rise below 2 degrees will not only require the world to reduce greenhouse gas emissions to net zero by 2050, but also to remove a significant amount of carbon dioxide from the atmosphere. Nature-based solutions to climate change harness natural ecological processes to achieve two goals: (1) reducing greenhouse gas emissions from forestry, farming, and other land use and (2) capturing carbon dioxide and storing it in soil and ecosystems. Nature-based solutions include forest conservation; reforestation (and “afforestation,” or creating forests where there previously weren’t any); wetland and peatland restoration; and regenerative agricultural practices such as cover cropping, no-till and low-till farming, agroforestry and silvopasture (the integration of trees in grazing systems), and rotational grazing. Unlike other carbon removal technologies, nature-based solutions are cost-effective and deployable *today*. Some analyses suggest that nature-based solutions could deliver over a third of the global emissions reductions needed by 2030. They also represent a unique opportunity to address both the climate crisis and biodiversity loss, as well as provide other valuable benefits like ecosystem services, food security, cultural values, and sustainable livelihoods.

Food and farming represent critical sectors for the implementation of nature-based solutions given their enormous global footprint. This sector is responsible for roughly 30% of global greenhouse gas emissions, 70% of terrestrial biodiversity loss, and 50% of freshwater biodiversity loss. The COVID crisis has further illuminated how the pressures of farming on ecosystems through deforestation, land conversion, and industrial agriculture pose global risks to public health. Transforming our food production system can further establish principles relevant for other industries and provide solutions to the interrelated climate, biodiversity, and development crises.

The United Kingdom's Obligations Under International Commitments

The United Kingdom's commitment to a number of global goals and international agreements can only be achieved with strong action to promote nature-based solutions to climate change, enhanced greenhouse gas mitigation, and sustainable land management – and thus these areas of policy activity must be expressly protected in the context of new trade agreements.

Under the Paris Climate Change Agreement, the UK's long-term *Clean Growth Strategy* includes plans for ambitious, but achievable, climate change progress in the land use and agriculture sectors. The plans established goals for tree planting, peatland restoration, reduced food waste, and low-carbon farming. In 2019, the UK went further in its climate change commitment, raising the 80% emissions reduction set forth by the 2008 Climate Change Act to a goal of net-zero emissions by 2050. At the 2019 UN Climate Action Summit, the UK signed on to the *Nature-Based Solutions for Climate Manifesto*, joining a coalition of over 70 governments and private sector, civil society, and research organizations committed to accelerating ambition and action on nature-based solutions over the next decade.

The UK is also a leading supporter of the *UN Sustainable Development Goals* (SDGs), many of which operate at the intersection of nature-based solutions and trade, including Climate Action, Life on Land, Sustainable Cities and Communities, Responsible Consumption and Production, and Partnerships for the Goals. Goals like "Responsible Consumption and Production" call for the UK to go beyond its borders and work with its trading partners to appropriately price products so that they include the full cost of pollution and resource use. Otherwise, externalities like greenhouse gas emissions, poor soil health, and ecosystem degradation – which are caused by *individual* countries, but affect *all* countries – will persist globally.

Domestic Commitments and Implications for UK–US Trade Negotiations

The UK has recently passed the Agriculture and Fisheries Acts and is in the process of developing domestic legislation related to the environment and trade. This section briefly reviews each of these areas of policymaking.

The Agriculture Act

As the UK navigates its exit from the EU, it is establishing a replacement for the EU Common Agricultural Policy (CAP), as well as new regulations for domestic food production and processing. The CAP is the EU's policy that provides direct subsidies to farmers in EU member states. While farmers must meet minimum environmental and animal welfare standards to qualify for CAP subsidies, most of CAP's subsidies are based on the amount of land the farmer owns or leases. The CAP has been criticized for encouraging farming practices that damage the environment and that favour large-scale farming operations over small, family-owned farms.

As nearly 55% of UK farmer revenue came from direct subsidy payments under the CAP, the UK has tremendous potential to incentivize nature-based solutions while filling the newfound revenue gap. Through CAP's voluntary agri-environmental scheme (AES), small family farms in Less Favoured Areas such as the Lake District National Park adopted award-winning regenerative agricultural practices such as mobile hen huts for free-range eggs, diversifying open hill grazing (rather than mono-grazing by sheep), reducing stock density to promote biodiversity and efficiency, and expanding organic farming to improve wildlife and soil health. Much of this could not be sustained without the subsidies offered through CAP. The UK's withdrawal from the EU created an opportunity to require an integrated approach to agriculture – with concern toward soil health, biodiversity, pollution removal, and carbon sequestration – in order to receive the farming subsidy.

On November 9, Parliament came to agreement and enacted the Agriculture Act, which received Royal Assent and became law on November 11. The UK's replacement farming subsidy programme is fundamentally different from the CAP. Under the Agriculture Act, the UK will gradually phase out the CAP over seven years and instead implement a new agriculture subsidy programme, the Environmental Land Management (ELM) scheme, in which farming subsidies will be based on environmental or animal welfare improvements. This "natural capital approach" would directly reward farmers for providing "public goods," such as managing land or water in a way that improves environmental quality, supports public access to the countryside, or improves soil quality and its ability to capture carbon. For example, farmers would receive payments for planting trees to replenish nutrients in the soil and protect sensitive habitats from

agricultural runoff – or for protecting areas of cultural and natural heritage. Agriculture accounts for 70% of the UK's land use, presenting widespread opportunities to implement nature-based solutions that reduce emissions and capture carbon. The Agriculture Act will thus play a major role in helping the UK meet its 2050 net-zero greenhouse gas emissions goal.

The legislation requires the Secretary of State to report on food security at least once every five years to Parliament. This report may include, among other things, an assessment of global food availability, supply sources for food, the resilience of the supply chain, household expenditure on food, and food safety and consumer confidence in food. Though the duty to report on food standards is a step in the right direction, UK farmers and consumers are still vulnerable to irregular food standards through side arrangements, the room for much-needed food standard growth is limited, and end-point scrutiny on the impact of trade on food standards is unlikely to incentivize change. The House of Lords and Commons were unable to come to an agreement on proposed amendments that would require that all trade deals oblige UK trading partners to meet existing food safety, animal welfare, and environmental impact standards for domestic food production and processing. The Constitutional Reform and Government (CRAG) process, requiring parliamentary approval before treaty ratification, could be a landing ground for scrutiny of international trade agreements to prevent backsliding of animal welfare and environmental standards of food imports.

As the UK negotiates a free trade deal with the US, UK farmers fear the cost of meeting these high domestic environmental and human health standards will create a competitive disadvantage if they are forced to compete with cheap US imports. Though large-scale industrial agriculture in the US can be characterized as efficient, its impact on the environment is far from negligible. Intensive land-use for feed production, concentrated animal feeding operations (CAFOs), extensive fertilizer and pesticide application, and the dependence of agriculture on the fossil fuel industry cause significant downstream water and air pollution, biodiversity loss, and greenhouse gas emissions.

The recent Biden victory marks a significant change in the context of the US-UK trade negotiations. President-elect Biden has committed to re-joining the Paris Agreement and spending \$2T on initiatives to help the US achieve net-zero emissions by 2050. The incoming Biden administration will still face pressure from the powerful industrial agriculture lobby when it comes to food additives, pesticides, hormones, antibiotics, and animal welfare. However, the dramatic change from the anti-climate and deregulatory agenda of the Trump administration has created an opportunity for renewed emphasis on prioritizing climate change and nature-based solutions in the UK. Specifically, the UK

may now more easily pursue provisions specifically requiring US imports to meet UK environmental and food safety standards and uphold the responsible policies adopted for British farmers under the Agriculture Act.

The Environment Bill

The purpose of this bill is to create a new, far-reaching environmental policy for the UK. This policy includes setting long-term, binding environmental targets focused on air quality, biodiversity, water quality and management, waste reduction, and resource efficiency in keeping with the UK's Net Zero target. The framework also adopts "Environmental Improvement Plans" to track progress, requires the government to consider environmental protection principles (three in particular: the integration principle, prevention principle, and precautionary principle) in all decisions affecting the environment, and creates the Office for Environmental Protection. The law would also create standards for product labelling and marketing, update criteria for automobiles, implement minimum eco-design and energy efficiency requirements for various products, and enhance waste management and resource efficiency. As it stands now, the Environment Bill does not contain a "non-regression clause" that would prevent the government from accepting weaker standards and regulations than those imposed by EU law. The UK's ability to meet its climate change goals, while protecting British farmers from unfair competition that might undermine UK land use practices and the commitment to improve biodiversity, depends on a commitment to maintain the strictness of these standards in the context of the rules governing the UK's trade with the US and the EU.

The Fisheries Act

The Act sets out the framework for the UK to leave the EU's Common Fisheries Policy (CFP). After leaving the EU, the UK will be able to operate as a sovereign state with full autonomy over its waters, as well as power and responsibility to sustainably manage its fish stocks. The Fisheries Act opens with eight key objectives – sustainability, precautionary, ecosystem, scientific evidence, bycatch, equal access, national benefit, and climate change – which are intended to guide fishery management and the yearly determination of fishing quotas. The Act repeals a provision of the CFP that gives EU fishing boats "equal access to waters and resources" in all EU waters. Instead, the Act gives UK ministers the power to grant fishing licenses to foreign ships with "catch and effort" quotas. Foreign ships must now also comply with the UK's standards for production to fish in its waters. These provisions are controversial within the UK-EU free trade negotiations as the UK seeks to limit quotas and restrict access of EU ships in UK waters.

The Trade Bill

The purpose of the Trade Bill is to empower the UK to adopt roll-over trade agreements with countries with whom the EU *already has* trade agreements instead of as an EU member state. The Trade Bill's outcome could affect how much scrutiny Parliament has over trade deals, which could queue up a review of the UK trade policy specifically as it relates to the UK's environmental commitments. Additionally, some proposed amendments to the Trade Bill could guarantee that international trade agreements do not conflict with the UK's environmental commitments, require sustainability impact assessments, and improve transparency around potential environmental impacts of trade agreements. The provisions of the Trade Bill do not apply to new international trade agreements and though no Trade Bill for new agreements is under consideration, such a bill would be a logical opportunity for the UK to set out its new trade policy.

Ensuring Consistency between Trade Policies and Climate Change Goals

There are viable pathways for UK policymakers to pursue both its trade and environmental goals and ensure that the adoption of nature-based solutions to climate change is not challenged or undermined by trade negotiations with the United States.

The ground rules for trade are established by the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO). These rules allow a trading country's environmental goals to prevail over the importation of specific products in certain circumstances. A critical part of global free trade policy is the idea of *non-discrimination* – that countries cannot favour domestic goods over imported goods, nor goods from one trading partner in a way that violates the access rights of other trading partners. Accordingly, a commitment to free trade requires general movement toward the removal of both overt trade barriers like tariffs as well as “technical barriers to trade” (TBT), which include regulations, standards, and subsidies that give domestic products an unfair advantage and create unnecessary obstacles to imported products.

However, Article XX of the GATT allows regulations on imports that are “necessary to protect human, animal or plant life or health” or “relat[e] to the conservation of exhaustible natural resources.” The WTO’s Sanitary and Phytosanitary (S&PS) Agreement allows countries to adopt their own regulations on where food products can be produced, how products are treated or inspected, and what ingredients or residues are contained in the product – as long as these standards are based on science and apply fairly to both domestic and imported goods. The GATT also has a provision which allows nations to block imports of products that can be shown to run counter to the public morals of the nation imposing the ban, which was used successfully in the European Communities – Seal Products case.

When thinking about how the UK can adopt nature-based solutions in its trade policy the critical takeaway is: **efforts to require that production and food standards (which may relate to production, but are applied to all food sold in the UK regardless of where it is produced) on imports are the same as domestic UK standards are allowed under these requirements.**

Furthermore, **the UK has agreed to a set of global and international agreements that require the government to prevent climate change and adopt sustainable land management across the entire economy, including in trade policy.** In areas where international environmental agreements are in place, trade rules should be viewed as *strengthening*, not *weakening*, environmental standards. Sustainable development should be a central goal of trade agreements, and obligations under international environmental agreements, particularly the SDGs and the Paris Agreement, should be

given primacy over trade liberalization goals in cases where these obligations are in conflict. This idea was first adopted within the North American Free Trade Agreement (NAFTA) and has since become a common feature of the “Trade and Sustainable Development” chapters of modern EU trade deals. While an important first step, these chapters typically lack enforcement mechanisms, and may even be in tension with other sections of the trade agreement. To truly deliver on international environmental goals, future trade deals should integrate sustainability provisions throughout the entire agreement, including sector-specific and S&PS chapters. With this standard in mind, the UK is poised to maintain its position as a global leader on sustainability and climate change as it negotiates new trade agreements.

Indeed, in recent decades, the WTO has agreed that free trade doesn’t need to contradict environmental protection and sustainable development goals. However, strict requirements have often undermined efforts to achieve progress on environmental and health regulation. For example, even though the WTO allows restrictions on imports that fail to meet domestic environmental or health standards, GATT rules have inhibited regulation of imports based on their production process or method (PPM). The WTO has historically ruled against discrimination between domestic and imported products based on PPM if the products are considered to be “like” in their physical characteristics and functionality. However, a growing body of experts agree that, since the issue of *how* things are made is just as important as *what* is traded, a ban on PPM requirements is illogical and indeed, examples of rules based on production methods already exist.

In the 1998 “Shrimp-Turtle” case, the WTO ruled that trade restrictions based on PPM requirements are not considered “discrimination” under GATT if they are applied fairly. The US Marine Mammal Protection Act’s new Import Provisions offer a model of how PPM rules might work in practice. The provisions require that nations exporting fish and fish products to the United States demonstrate that they have a regulatory program for reducing marine mammal mortality and serious injury from fishing that is comparable in effectiveness to US standards. Exporting nations were initially given five years to develop regulatory programmes, and had the option to consult with the National Oceanic and Atmospheric Administration for guidance and capacity building to achieve comparability. Such a model – one that requires imported products to meet standards or regulations that are comparable in effectiveness in meeting certain environmental and climate change mitigation goals, rather than meeting the exact same domestic standards or regulations – could be incorporated into individual trade agreements.

Here is the takeaway: **It is possible for the UK to adopt and apply nature-based, sustainable food and environmental standards and not run afoul of its duties under GATT.** In other words, if the UK requires domestic producers to meet certain production

practices, it should be allowed to require the same of foreign producers. This understanding of GATT rules and WTO practices guarantees that the trading system supports – and does not undermine – the SDGs and the Paris Agreement. It further addresses concerns that food standards would unfairly stop some foods accessing UK markets. A core standards process would help determine which rules applied domestically would also be applied to imports. Ultimately, trade deals should not reduce baseline production and food standards.

Finally, equal application of food and environmental standards to imports will allow UK farmers to compete on an even footing with the vast US agricultural industry, and balance against the manipulative effect of the United States' high agricultural subsidies.

Paths Forward for Trade Negotiations

With these arguments in mind, we propose a set of non-discriminatory measures that can be adopted to ensure that free trade policies don't infringe on the UK's environmental goals:

- ❖ **Action 1:** Parties to the UK–US trade negotiations should consider requiring environmental, social, and governance (ESG) performance disclosure by exporting companies above a certain size – and the recognition of a right to discriminate against imported products from companies that don't report on their ESG performance or that have low ESG scores. Parties should also require similar ESG disclosure requirements on domestic producers to maintain a non-discriminatory status.
- ❖ **Action 2:** The UK–US trade agreement should further adopt “pollution haven” provisions to prevent a “race to the bottom” situation in which parties reduce their environmental standards to gain a competitive edge. Such provisions are in NAFTA, which advance freer trade without sacrificing “the protection of human, animal, or plant life or health . . . or protection of the environment.” The key idea is to ensure that a country's willingness to accept environmental degradation cannot be used to gain an advantage in the marketplace.

- ❖ **Action 3:** The UK should insist that its trade partners adhere to the “polluter pays” principle so that the cost of pollution and natural resource use is not “externalized” and imposed on society at large. The underlying principle here is that those who cause damage to shared natural resources, human health, biodiversity, and the climate should bear the cost of their pollution or resource use. In the context of the UK’s commitment to strong climate change action, border carbon adjustments, which would impose special tariffs on goods coming from nations with less strict climate change policies, would be an important way to ensure that the polluter pays principle is upheld. Caution should be taken to ensure that such a principle is based on a robust pricing mechanism that factors in the full costs of production on the environment (including elements such as land use change, human health impacts, etc.) and avoids a narrow definition of efficiency.
- ❖ **Action 4:** Consistent with Recommendation Five of the National Food Strategy, Part One, the UK Government should define a set of standards, with room for improvement, on food production. These standards on food safety, public health, animal welfare, and environmental impacts should be applied universally. The UK should implement a certification scheme requiring international producers to prove they have regulations comparable in effectiveness to the UK’s minimum standards and condition entry into a free trade agreement with the UK on compliance with these standards, following the model of the US Marine Mammal Protection Act.
- ❖ **Action 5:** In future trade agreements, the UK should build off the example of the NAFTA and EU trade deals’ “Trade and Sustainable Development” chapters by requiring that obligations under international environmental agreements take primacy when these obligations conflict with free trade. The UK can forge ahead as a sustainability leader by mainstreaming sustainability principles throughout the entire body of its trade agreements, rather than relegating them to a single chapter without enforcement capabilities.
- ❖ **Action 6:** The UK should engage with other nations both within and outside the WTO member states to begin to shift the framework of the WTO from one centred solely on corporate objectives and free trade at any cost to one that advances global sustainability goals. The UK should encourage the WTO to revisit rules, like the PPM distinction, which may inhibit action on global environmental objectives, and to publicly endorse the incorporation of sustainability goals into all institutions of international economic governance.

Further Reading

"Natural climate solutions" by Griscom et al. in the Proceedings of the National Academy of Sciences

Agriculture and Horticulture Development Board: "Food standards and trade deals."

"Chapter 14: Free Trade and Environmental Protection" by Dan Esty in *The Global Environment Institutions, Law, and Policy*, 4th ed.

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