

# Kluwer Arbitration Blog

## Sandeels and Sovereignty: The First Ruling Under the UK-EU Trade Agreement

Matthew Procter (Herbert Smith Freehills Kramer LLP) · Sunday, June 29th, 2025

On 2 May 2025, a three-member tribunal constituted under the [UK-EU Trade and Cooperation Agreement](#) (“TCA”) published its ruling in a dispute brought by the European Union (“EU”) against the United Kingdom (“UK”) government. The case was noteworthy as the first to be heard under the dispute resolution provisions of the TCA, the agreement that sets out the legal framework for UK-EU relations post-Brexit.

The dispute centred on the UK and Scottish governments’ ban on sandeel fishing in UK waters, which the EU claimed disproportionately affected its fishing industry, especially in Denmark.

Both sides have claimed the Tribunal’s recent ruling as a victory. The UK government’s decision was found to have been based on the best scientific advice and not to have been discriminatory, and the decision to ban fishing in Scottish waters was found to be proportionate in the context of the TCA. However, the ban in English waters was not found to be proportionate. The EU has indicated that it expects the UK to take further measures to bring itself into compliance with the ruling.

The case is of interest for the following reasons, which are discussed further in the remainder of this blog post:

- **Political context of the case:** The ruling came shortly before an important EU-UK summit held on 19 May 2025, at which a further agreement between the EU and the UK on trade and cooperation was struck.
- **Functioning of the TCA’s dispute resolution mechanism:** The case provided an initial insight into how the TCA’s dispute resolution mechanism operates. The fact that the Tribunal permitted submissions from a number of *amicus curiae* parties is particularly noteworthy.
- **Precedent value of the case:** The case potentially sets a precedent for further EU challenges to other areas in which the UK has diverged from EU law in the realm of environmental protection since Brexit.

### Dispute and the Parties’ Positions

Sandeels are small fish found in large numbers in UK waters and are essential prey for certain seabird species, including puffins and arctic terns. In an attempt to stem declining seabird

populations, the UK and Scottish governments banned fishing for sandeels in March 2024. Before the ban, EU vessels, particularly from Denmark, had held almost all quotas for sandeel fishing within the UK.

Following the failure of consultations on the ban's impact under Article 723 of the TCA, the EU initiated dispute proceedings under Article 739. An arbitration tribunal was formed in November 2024 under the aegis of the Hague-based Permanent Court of Arbitration ("PCA") and chaired by Dr. Penelope Jane Ridings (joined by Professor Hélène Ruiz Fabri and Justice David Unterhalter).

The case, representing the first full hearing under the TCA's dispute resolution mechanism, was heard at the PCA from 28 to 31 January 2025. Submissions were made by the UK government, the EU Commission, and *amicus curiae* participants.

The EU's [submission](#) argued that the ban violated the TCA's provisions on joint management and sharing of fish stocks, claiming it was disproportionate, discriminatory against EU vessels, and not based on the best available scientific advice. The UK [countered](#), citing scientific evidence for the ban and emphasising its right to regulate for environmental protection under the TCA.

## Findings of the Tribunal

The Tribunal's decision was [issued](#) on 28 April 2025 and [published](#) on 2 May 2025.

Its findings were mixed, with both sides claiming victory.

In favour of the UK's position, the Tribunal found that the fishing ban was based on the best available scientific advice and was not discriminatory. It found the ban in Scottish waters proportionate and compliant with the UK's obligations under the TCA.

However, the Tribunal also ruled that the ban in English waters was disproportionate and breached the UK's obligation to allow EU vessels access to its fishing waters. Specifically, the Tribunal maintained that:

“the prohibition of fishing for sandeel in English waters is inconsistent with the United Kingdom's obligations under Article 496(1) of the Trade and Cooperation Agreement, read together with Article 494(3)(f) of the Trade and Cooperation Agreement, on the grounds that there was a failure to have regard to the principle of applying a proportionate measure” (para. 747(i) of the ruling).

The UK [praised](#) the ruling for upholding the Scottish ban and stated that it did not interpret the ruling as requiring a reversal of the closure of English waters. Nevertheless, the UK committed to “undertak[ing] a process in good faith to bring the UK into compliance” with its obligations under the TCA.

The European Commission also [welcomed](#) the ruling, emphasising that “it is essential that any unilateral measures are consistent with the commitments and principles in the TCA”, and that it expected the UK to outline compliance measures within 30 days.

## Political Context of the Ruling

The sums in contention were not significant in the context of EU-UK trade, with the revenue loss for non-UK vessels estimated at around GBP 45 million. The case's importance lies instead in its political ramifications, being the first test of the TCA's arbitration framework.

The Starmer government's current policy aims to establish closer ties and reduce barriers to trade with the EU. This culminated in the recent EU-UK summit on 19 May 2025, leading to the [announcement](#) of a new agreement to facilitate EU-UK trade and cooperation. The agreement contains a guarantee of reciprocal fishing rights in British and EU waters for a further 12 years. Under the terms of the agreement on fishing, the UK government has also [announced](#) that the UK would "retain control over its waters to pursue its own sustainable fishing policies", remaining outside the EU's fisheries rules.

In light of the agreement, the UK government may look to claim that, by granting EU vessels continued access to UK waters, it is now in compliance with the "principle of applying proportionate measures for the conservation and management of fisheries resources". The UK government certainly appears to have framed the deal as a proportionate response to the EU's concerns about being denied access to UK fishing waters. The official communication, released on the date that the deal was finalised, [emphasised](#) both the guarantee of reciprocal future fishing rights and the UK's ability to pursue its own sustainable fishing policies.

Indeed, on 25 June 2025, the UK government [announced](#) that the fishing ban in English waters would remain in place. The statement confirmed that the government had "completed a new decision-making process based on updated advice and evidence", which "resolves the failings identified by the tribunal, and brings [the UK] into compliance with [its] TCA obligations". The EU's reaction to this announcement is awaited.

## Functioning of the TCA Dispute Resolution Mechanism

The case also saw interventions from *amicus curiae* participants, as provided under Article 751 and Annex 48 point XII of the TCA. This mechanism allows third-party submissions relevant to the issues in contention, akin to the World Trade Organisation's dispute settlement process, aimed at addressing concerns about the confidential nature of arbitration in matters of social or environmental importance.

In this case, *amici curiae* included environmental organizations (Greenpeace UK and ClientEarth), industry bodies (the Danish Fishers Producer Organisation and the Danish Pelagic Producers Organisation), and local charities (the UK Royal Society for the Protection of Birds).

Although the Tribunal's ruling does not explicitly address these interventions, the case nonetheless offers an insight into the role of third-party submissions in the TCA dispute resolution forum. The *amici curiae* represented both fishing industry interests and environmental concerns, ensuring representations were made on both sides of the dispute. The involvement of wildlife conservation and marine ecology specialists appears particularly apt in a case such as the present, where a key issue in dispute was whether the UK and Scottish governments had acted in accordance with "best

scientific advice” on the importance of sandeels to seabird populations.

### Precedent Value of the Case

Lastly, the case sets a precedent for EU challenges in other areas where the EU may consider that the UK has diverged from EU environmental laws since Brexit.

Since the UK formally left the EU on 31 January 2020, the UK government has not automatically mirrored changing environmental regulations within the EU. This approach was envisaged by the TCA. Article 411 of the TCA provides that both the EU and the UK recognise each other’s right to “determine its future policies and priorities with respect to [...] environmental or climate protection”.

However, Article 411 also acknowledges that:

*“significant divergences in these areas can be capable of impacting trade or investment between the Parties in a manner that changes the circumstances that have formed the basis for the conclusion of this Agreement.”*

In the case of material impacts on trade or investment arising from such “significant divergences”, both the EU and the UK are entitled to “take appropriate rebalancing measures to address the situation”, including tariffs on goods. If consultations on rebalancing measures fail, either side can refer the issue to arbitration under Article 739 of the TCA.

So far, no UK environmental policies have led to arbitration or rebalancing measures. However, there are areas where UK regulations have not matched the EU’s, such as bans on certain chemicals, efforts to remove deforestation from supply chains, and binding targets on microplastic reduction. If the EU considers that any of these to be “capable of impacting trade or investment” – for instance, if the UK’s lack of regulation on a particular area gives it a competitive trade advantage – this may leave the UK exposed to ‘rebalancing measures’ or arbitration proceedings.

All the same, given the Starmer administration’s current emphasis on restoring stronger ties with Europe, the UK may look to adopt more ‘dynamic alignment’ with EU environmental policies. This may reduce the likelihood of the EU or UK resorting to the TCA dispute resolution mechanism.

### Conclusion

The ruling on the sandeel fishing ban marks an important moment in UK-EU relations under the TCA, highlighting the delicate balancing act between the right to regulate in the environmental sphere and the imperative to maintain close UK-EU commercial ties. As both sides navigate compliance with the TCA, the case is likely to set a significant precedent for future environmental and trade disputes.

*The views expressed are the author's own, and not those of Herbert Smith Freehills Kramer LLP.*

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