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27 July 2020

Rt Hon George Eustice MP
Secretary of State
Department for Environment, Food and Rural Affairs
Seacole Block
2 Marsham Street
London, SW1P 4DF

Dear George,

Environment and the Level Playing Field

The EU Environment Sub-Committee has conducted a short inquiry into environment, including climate change, and the level playing field in the UK-EU future relationship negotiations.¹ We heard evidence from industry, environmental NGOs and environment, climate change and trade law specialists. We write to communicate our findings.

We offer our recommendations in a constructive spirit and with the hope that they point towards an agreement in this area that will be acceptable to the UK and the EU. We hope that a way forward is found.

The UK and EU have similarly ambitious environment and climate change aspirations so it should be possible to find common ground. Failure to reach an agreement could have a critical impact, and yet the environment level playing field appears to be a stumbling block in the negotiations. We urge the Government to consider the priorities of industry and the opportunities for the UK in negotiating environment and climate change level playing field provisions with the EU, especially given your world-leading commitments and ambition in these policy areas.

We understand and appreciate the key importance of the Government's emphasis that, having left the EU, the UK is a sovereign state. The evidence we gathered, however, suggested that there is room for an agreement which addresses the EU's concerns, without restricting the Government's ability to increase ambition or choose different policies to achieve the same goals. We recommend that you explore options within this space in the negotiations.

¹ A list of the Committee Members' interests can be found here:
<https://committees.parliament.uk/publications/1433/documents/13218/default/>

Several witnesses told us that the largest barrier to reaching an agreement is a lack of trust. We urge you to consider domestic measures that can be taken to increase trust, for instance strengthening the environmental principles and the Office for Environmental Protection in the Environment Bill and cooperating with the devolved administrations to develop comparable arrangements. This would demonstrate how the Government will deliver its high environmental ambition in practice and could so go some way to building a pathway to an agreement.

The rest of this letter discusses the issues highlighted and solutions proposed by our witnesses. We have annexed a list of the questions and recommendations – made throughout the letter – to which we ask the Government to respond. We recognise that the Department for Business, Energy & Industrial Strategy and the Cabinet Office also have an interest in these matters and ask that your Department coordinates a joint response.

While we understand that the ongoing negotiations may prevent certain details from being shared, we trust that you will provide the necessary information to enable the Committee to properly scrutinise the Government’s position.

The importance of negotiations on environment and the level playing field

Why the level playing field has become an issue

The political declaration agreed by the UK and EU in October 2019 included the following text on the environment and climate change level playing field:

“Given the Union and the United Kingdom's geographic proximity and economic interdependence, the future relationship must ensure open and fair competition, encompassing robust commitments to ensure a level playing field. ... the parties should uphold the common high standards applicable in the Union and the United Kingdom at the end of the transition period in the areas of ... environment, climate change ... They should rely on appropriate and relevant Union and international standards, and include appropriate mechanisms to ensure effective implementation domestically, enforcement and dispute settlement.”²

The rationale for the level playing field is that because production costs are affected by environment and climate change policies (among others), enforceable treaty provisions are needed to ensure that those policies do not lead to unfair competition between the parties.

Prof Rüdiger Wurzel, Professor of Comparative European Politics, University of Hull, explained the origins of the disagreement over the level playing field:

“Lower process standards may help companies to gain a competitive advantage over competitors. This is an argument which caused already a lot of controversy between the UK and most continental European countries (and most of all Germany) in EU

² The Government and the EU, *Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom*, (October 2019) p 13-14: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840231/Revised_Political_Declaration.pdf

environmental policy-making in the 1980s ... at the time, the UK argued that its geographical conditions as an island with strong winds and relatively short, fast flowing rivers did not necessitate process standards (and other environmental quality standards) as stringent as continental European countries. The EU fears that this dispute could resurface in a new guise.”³

Dr Belén Olmos Giupponi, Associate Professor in Law, Kingston University, told the Committee that the EU’s proposal for a level playing field is partly intended to ensure that the environment and climate change policy of one party does not, due to competitiveness concerns, reduce the ambition of the other party. She said the measures aim to “[avoid] the possibility that an area may act as a deterrent for policy measures adopted in the other”.⁴

Dr Mary Dobbs, Lecturer in Law, and Dr Viviane Gravey, Lecturer in European Politics, both from Queen's University Belfast, and Dr Ludivine Petetin, Senior Lecturer in Law, Cardiff University, noted that the transboundary nature of some environmental issues strengthened the case for cooperation: “Air pollution and water pollution spread easily and can lead to significant transboundary harms.”⁵ The United Kingdom Environmental Law Association (UKELA), a membership organisation, agreed.⁶

The importance of the environment and climate change level playing field in the overall UK-EU agreement

The Institute of Environmental Management & Assessment (IEMA), a membership body, told us: “Given the importance ... the EU has attached to level playing field provisions in negotiations with the UK, failure to find agreement in this area potentially puts at risk the entire agreement.”⁷

Prof Andrew Jordan, Professor of Environmental Sciences, University of East Anglia, and colleagues in the Brexit & Environment academic group highlighted the relationship between the level playing field and the wider trading relationship: “The more level the playing field, the deeper and more open the trading relationship and vice versa.”⁸ Make UK and the Society of Motor Manufacturers & Traders (SMMT), which represent manufacturers and the automotive sector respectively, identified their key priorities. Make UK said: “In regards to a future agreement, manufacturers are looking for whatever unlocks preferential EU market access.”⁹ In relation to regulatory autonomy, they added that “as manufacturers’ preference would be to produce one product for multiple markets, in general they are not seeking regulatory divergence”.¹⁰ SMMT had similar priorities: “It is essential that government successfully negotiates an ambitious and comprehensive trade deal with the EU. This is the sector’s

³ Written evidence from Prof Rüdiger Wurzel ([LPF0013](#))

⁴ Written evidence from Dr Belén Olmos Giupponi ([LPF005](#))

⁵ Written evidence from Dr Mary Dobbs, Dr Viviane Gravey and Dr Ludivine Petetin ([LPF0012](#))

⁶ Written evidence from United Kingdom Environmental Law Association (UKELA) ([LPF0014](#)) and Greener UK ([LPF0015](#))

⁷ Written evidence from Institute of Environmental Management & Assessment (IEMA) ([LPF008](#))

⁸ Written evidence from Prof Andrew Jordan, Prof Charlotte Burns, Dr Viviane Gravey, Dr Brendan Moore, and Prof Colin Reid, on behalf of Brexit & Environment ([LPF006](#))

⁹ Written evidence from Make UK ([LPF0010](#))

¹⁰ Written evidence from Make UK ([LPF0010](#))

foremost priority ... This should start from a position of complete alignment, recognising that the UK and EU currently share the same rules which the UK has been instrumental in developing.”¹¹

Issues of trust

Several witnesses suggested that the largest barrier to reaching an agreement is a lack of trust. Dr Emily Lydgate, Senior Lecturer in Environmental Law, University of Sussex, explained that “the disagreement results from entrenched political positions and lack of trust on both sides rather than substantive differences in regulation and outlook”.¹² Brexit & Environment agreed: “At present, a lot hinges on whether the two sides really trust one another.”¹³ Dr Belén Olmos Giupponi made a similar point.¹⁴

Witnesses said that the Government is giving mixed messages about its future environmental ambition, which is not helping to build trust with the EU. The Institute for European Environmental Policy (IEEP), a sustainability think tank, told us that the EU’s concerns “have been given further weight by mixed signals from the UK about the future of environmental standards ... the rejection of the inclusion of a non-regression clause in the Environment Bill and the accelerated trade talks with the USA cause concern”.¹⁵ UKELA and Greener UK, a coalition of 13 environmental organisations, highlighted the potential reduction in UK food standards as a consequence of the UK’s trade policy.¹⁶

Opportunities for the UK

Notwithstanding the erosion of trust, witnesses emphasised that there is an opportunity in this area, given that the UK and EU have high environment and climate change ambitions. Dr Emily Lydgate told the Committee: “Both sides identify themselves as climate and environment leaders and there are opportunities for collaboration and innovation in this area.”¹⁷ The Aldersgate Group, a membership organisation including businesses and NGOs, said: “There is an opportunity for the UK to set an ambitious precedent with regards to trade deals that [promote] a race to the top on environmental standards, where the UK and the EU have shared ambitions.”¹⁸ The IEEP agreed.¹⁹

Climate change policy was identified as an area where the level playing field provisions could be beneficial for the UK. IEMA explained: “Given that EU member states are at different stages of developing robust climate action (and in some countries emissions are rising), and given that climate policy has potential competitiveness issues (hence EU proposals for a carbon border adjustment tariff), this is a specific area in which the UK should demand level playing

¹¹ Written evidence from Society of Motor Manufacturers & Traders (SMMT) ([LPF0016](#))

¹² Written evidence from Dr Emily Lydgate ([LPF002](#))

¹³ Written evidence from Brexit & Environment ([LPF006](#))

¹⁴ Written evidence from Dr Belén Olmos Giupponi ([LPF005](#))

¹⁵ Written evidence from Institute for European Environmental Policy (IEEP) ([LPF007](#))

¹⁶ Written evidence from United Kingdom Environmental Law Association (UKELA) ([LPF0014](#)) and Greener UK ([LPF0015](#))

¹⁷ Written evidence from Dr Emily Lydgate ([LPF002](#))

¹⁸ Written evidence from Aldersgate Group ([LPF004](#))

¹⁹ Written evidence from Institute for European Environmental Policy (IEEP) ([LPF007](#))

field provisions.”²⁰ The IEEP and Brexit & Environment agreed,²¹ as did the Chemical Industries Association (CIA), with the qualified response that “we should demand level-playing field provisions, but more importantly we should design UK policy, that is more effective and reverses the trend of decarbonisation through deindustrialisation”.²²

The UK and EU have similarly ambitious environment and climate change aspirations so it should be possible to find common ground. Failure to reach an agreement could have a critical impact, and yet the environment level playing field appears to be a stumbling block in the negotiations. Has the Government proposed alternative solutions to those included in the UK’s draft free trade agreement and draft energy agreement that were made public?

The lack of trust between the UK and EU is a key barrier to reaching an agreement. We recommend that you seek to build trust with the EU by reviewing Government policy positions that are giving mixed signals, such as the absence of a non-regression clause in the Environment Bill and the potential reduction in UK food standards as a consequence of the UK’s trade policy.

We urge the Government to take into account the priorities of industry. What assessment have you made of the opportunities presented by level playing field provisions, both in terms of promoting environmental and climate change ambition and ensuring fair conditions for competition for UK companies? Level playing field provisions could be beneficial for the UK, especially on climate change policy.

The link between the UK-EU negotiations and other trade deals

The link between the UK-EU negotiations and other trade deals

Witnesses suggested that when it comes to negotiating trade deals with other partners, the Government may need to take a different position on the level playing field. Brexit & Environment explained: “When negotiations begin with countries that have lower environmental standards than the UK, the starting positions are likely to be reversed – with the UK voicing fears about being undercut and insisting on a LPF [level playing field] set at a high level.”²³

The Aldersgate Group said that agreeing a legally binding non-regression clause with the EU could strengthen the UK’s position in relation to other agreements: “Non-EU FTAs [free trade agreements] might present a risk to the UK’s right to regulate and tighten standards over time, through regulatory-cooperation and investment dispute mechanisms. Strong environmental commitments in a UK-EU treaty would offer protection against future threats

²⁰ Written evidence from Institute of Environmental Management & Assessment (IEMA) ([LPF008](#))

²¹ Written evidence from Institute for European Environmental Policy (IEEP) ([LPF007](#)) and Brexit & Environment ([LPF006](#))

²² Written evidence from Chemical Industries Association (CIA) ([LPF003](#))

²³ Written evidence from Brexit & Environment ([LPF006](#))

to dilute UK standards if a non-regression clause was legally binding.”²⁴ The CIA made a similar point.²⁵

We consider that the inclusion of environment and climate change level playing field provisions in the UK-EU agreement could strengthen the Government’s position in negotiations with other international partners.

Non-regression provisions

Non-regression provisions—commitments not to reduce the level of environment and climate protection—are a key part of the level playing field proposals.

The Government’s position

The Government has proposed the following provision on upholding the level of environmental protection: “A party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental law, to encourage trade or the establishment, acquisition, expansion or retention of an investment in its territory.”²⁶ The Government has also proposed a related provision stating that a party shall not “fail to effectively enforce its environmental law to encourage trade or investment”.²⁷

Dr Belén Olmos Giupponi described this text as “a loose commitment not to lower environmental standards to favour trade and investment”.²⁸ Dr Markus Gehring, Fellow and Director of Studies in Law, Hughes Hall, University of Cambridge and Marios Tokas, Legal Fellow, Centre for International Sustainable Development Law, emphasised that the trade and investment test in the UK approach limits “the potential scope of violation significantly. To date mainly labour law related challenges have been successfully brought under FTAs with similar provisions but the burden of proof and threshold are considered very onerous”.²⁹

In your recent evidence session, you told us: “We have no intention of regressing ... We want to ensure that we have the freedom to pursue innovative policy that might do better, and not to be so restrictively bound to an EU approach so that we cannot innovate and deliver for the future.”³⁰ You added: “The difficulty to date is that the European Union has seen level playing field as meaning that we would have to abide by certain EU regulations and

²⁴ Written evidence from Aldersgate Group ([LPF004](#))

²⁵ Written evidence from Chemical Industries Association (CIA) ([LPF003](#))

²⁶ The Government, *Draft working text for a comprehensive free trade agreement between the United Kingdom and the European Union*, (May 2020) p 251:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886010/DRAFT_UK-EU_Comprehensive_Free_Trade_Agreement.pdf [accessed 10 July 2020]

²⁷ The Government, *Draft working text for a comprehensive free trade agreement between the United Kingdom and the European Union*, (May 2020) p 251:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886010/DRAFT_UK-EU_Comprehensive_Free_Trade_Agreement.pdf [accessed 10 July 2020]

²⁸ Written evidence from Dr Belén Olmos Giupponi ([LPF005](#))

²⁹ Written evidence from Dr Markus Gehring and Marios Tokas ([LPF0011](#))

³⁰ Oral evidence taken on 8 July 2020 (Session 2019-21), [Q8](#) (George Eustice)

subject ourselves to the European Court of Justice.”³¹ At the same session, Mark Thompson, Defra’s Deputy Director of EU Strategy and Negotiations, said: “We do not think we need to agree to those and, as the Secretary of State said, effectively to be bound by EU law”.³²

The EU’s proposals, including the link to EU law and the Court of Justice of the European Union (CJEU), and the dynamic aspect

The EU has proposed non-regression provisions on environment and health, and climate change. The environment and health provision states (the climate change provision is similar):

“A party shall not adopt or maintain any measure that weakens or reduces the level of environmental protection provided by the party’s law and practices and by the enforcement thereof, below the level provided by the common standards applicable and targets agreed within the Union and the United Kingdom at the end of the transition period, and by their enforcement.”³³

In addition, the EU has put forward what has been described as a ‘ratchet clause’, where if both parties increase their levels of protection, neither can lower it again below the other party’s level. There is also a role for the Partnership Council to lay down higher standards.³⁴ These add a dynamic aspect to the commitments.³⁵

Several witnesses said that the EU’s proposals would not bind the UK to EU law. They also emphasised that the EU’s proposals were unlikely to restrict the UK from pursuing a more ambitious approach. The IEEP told the Committee: “Under the version of non-regression envisaged by the EU the UK would not be required to maintain exactly the same legislation as that applying in the EU and it would be free to apply higher standards than those adopted in the EU.”³⁶ Dr Markus Gehring and Marios Tokas agreed: “The EU is not proposing automatic adoption of EU rules, rather different shades of equivalence ... Differences in approaches leading to the same or higher levels of environmental protection, would be accommodated by this approach.”³⁷ The Aldersgate Group agreed that the proposals would not prevent the Government increasing environmental protection: “An ambitious level playing field on environmental provisions would not restrict flexibility for domestic policy progression.”³⁸ UKELA described the EU’s proposals in a different way: “The EU is looking to create a baseline with EU standards, throughout the life of the Draft Trade Agreement.”³⁹

³¹ Oral evidence taken on 8 July 2020 (Session 2019-21), [Q9](#) (George Eustice)

³² Oral evidence taken on 8 July 2020 (Session 2019-21), [Q9](#) (Mark Thompson)

³³ European Commission, *Draft text of the Agreement on the New Partnership with the United Kingdom*, (March 2020) p 34-36: <https://ec.europa.eu/info/sites/info/files/200318-draft-agreement-gen.pdf> [accessed 10 July 2020]

³⁴ The Partnership Council is the main body proposed by the EU to be responsible for supervising and facilitating the implementation and application of the UK-EU agreement and is described on page 299 of the EU’s draft agreement.

³⁵ European Commission, *Draft text of the Agreement on the New Partnership with the United Kingdom*, (March 2020) p 34-36: <https://ec.europa.eu/info/sites/info/files/200318-draft-agreement-gen.pdf> [accessed 10 July 2020]

³⁶ Written evidence from Institute for European Environmental Policy (IEEP) ([LPF007](#))

³⁷ Written evidence from Dr Markus Gehring and Marios Tokas ([LPF0011](#))

³⁸ Written evidence from Aldersgate Group ([LPF004](#))

³⁹ Written evidence from United Kingdom Environmental Law Association (UKELA) ([LPF0014](#))

It is a central principle within the EU's legal framework that the final arbiter on questions of interpretation of EU law is the Court of Justice of the European Union (CJEU).⁴⁰ Under the dispute settlement chapter in the EU's draft UK-EU agreement, the CJEU would be asked to provide a ruling on such questions relating to concepts of EU law included, or provisions of EU law referred to, within the agreement. This would happen when a dispute between the UK and EU regarding the interpretation or application of the agreement has gone to an arbitration tribunal. The CJEU's ruling would be binding on the arbitration tribunal.⁴¹

Witnesses provided different assessments of the extent to which the CJEU would retain some form of jurisdiction over the UK on matters covered by the EU's proposed non-regression provisions. Dr Markus Gehring and Marios Tokas told us: "I don't see a role for the CJEU after the end of the transition period over common standards. Of course, those standards are open to interpretation by the Court long after the transition has ended and the EU would be bound by such interpretation and bring it to the joint committee but such interpretations cannot bind the UK."⁴² On the other hand UKELA, Dr Mary Dobbs and colleagues, and Brexit & Environment suggested that the CJEU could become involved.⁴³ Dr Emily Lydgate recommended: "The UK should clarify that the CJEU does not have the ability to interpret decisively whether the UK has [deviated] from a 'common standard'. The role of the CJEU is somewhat ambiguous and clarity would help to assure UK negotiators that these provisions do not interfere excessively with UK autonomy."⁴⁴

On the dynamic aspect of the EU's proposals which would allow for the level of protection to be increased, Dr Mary Dobbs and colleagues said the ratchet clause would mean that if the environmental level playing field "has risen on both sides, this forms the new baseline for both parties".⁴⁵ Brexit & Environment described the other part of the dynamic aspect of the EU's proposals as "a weak form of dynamic alignment – one that has to be mutually agreed on a case-by-case basis via a new body, the Partnership Council".⁴⁶ Dr Markus Gehring and Marios Tokas explained that in the EU's proposals there is "no continuous obligation to maintain a level-playing field (which would most likely involve following EU rules)".⁴⁷

The CIA cautioned against any commitments that required the UK to align with EU rules in the future, without having been able to influence their development:

"Of particular relevance to the chemical sector in the level playing field context includes industrial emissions and waste management. Commitments where the UK has reduced ability to influence the development of new rules risks impairing the

⁴⁰ See in particular: Article 19, [Treaty on European Union \(TEU\)](#); and, Articles 263 and 267, [Treaty on the Functioning of the European Union \(TFEU\)](#)

⁴¹ European Commission, *Draft text of the Agreement on the New Partnership with the United Kingdom*, (March 2020) p 305: <https://ec.europa.eu/info/sites/info/files/200318-draft-agreement-gen.pdf> [accessed 10 July 2020]

⁴² Written evidence from Dr Markus Gehring and Marios Tokas ([LPF0011](#))

⁴³ Written evidence from United Kingdom Environmental Law Association (UKELA) ([LPF0014](#)), Dr Mary Dobbs, Dr Viviane Gravey and Dr Ludivine Petetin ([LPF0012](#)), and Brexit & Environment ([LPF006](#))

⁴⁴ Written evidence from Dr Emily Lydgate ([LPF002](#))

⁴⁵ Written evidence from Dr Mary Dobbs, Dr Viviane Gravey and Dr Ludivine Petetin ([LPF0012](#))

⁴⁶ Written evidence from Brexit & Environment ([LPF006](#))

⁴⁷ Written evidence from Dr Markus Gehring and Marios Tokas ([LPF0011](#))

UK's competitiveness because of the increased likelihood that future EU requirements would be less suited to the UK's regulatory frameworks, favoured approaches, industrial compositions, product portfolios, nature of processes, local and national priorities and concerns, etc."⁴⁸

The policy areas covered by the proposals

Dr Markus Gehring and Marios Tokas told the Committee that the Government's draft free trade agreement appears not to cover climate change, based on the ambiguous definition of environmental law included, and that this policy area is addressed in the draft energy agreement instead.⁴⁹ Greener UK agreed, noting that "for the EU, the fight against climate change is an essential element of the partnership agreement".⁵⁰ Dr Markus Gehring and Marios Tokas argued: "The lack of such provisions in the UK draft [free trade agreement] is hard to explain because the economic drivers of climate change extend far beyond the contours the energy sector."⁵¹ Dr Emily Lydgate suggested: "The UK should concede that climate change has implications that go beyond energy, and be open to addressing it in a Trade and Environment chapter as well."⁵²

Paul Scully MP, Minister for Small Business, Consumers and Labour Markets, told the EU Goods Committee subsequently that "climate is in scope of the trade and environment chapter that we proposed. By that reckoning, it is captured by the provisions, including on non-regression".⁵³ But on climate change, you recently told us: "We are all working towards the same goals through other international fora. That should not be dependent on the FTA [free trade agreement] with the European Union, which is much more around product standards."⁵⁴

The EU's draft partnership agreement includes lists of policy areas covered by the non-regression provisions, including "health and sanitary safety in the agricultural and food sector" – commonly known as sanitary and phytosanitary (SPS) measures.⁵⁵ You told us recently that the negotiations could turn to tariffs "if the EU was unable or unwilling to grant tariff-free access on certain goods without alignment—for instance, on SPS measures, or other technical product standard measures".⁵⁶

IEMA questioned whether the policy areas that the EU has proposed are all justified: "The list of areas identified by the EU in effect equates to the whole environmental *acquis*: some of the areas ... are potentially outside the scope of issues that would be relevant in the context of trade competitiveness."⁵⁷ Dr Emily Lydgate thought that the EU's inclusion of SPS

⁴⁸ Written evidence from Chemical Industries Association (CIA) ([LPF003](#))

⁴⁹ Written evidence from Dr Markus Gehring and Marios Tokas ([LPF0011](#))

⁵⁰ Written evidence from Greener UK ([LPF0015](#))

⁵¹ Written evidence from Dr Markus Gehring and Marios Tokas ([LPF0011](#))

⁵² Written evidence from Dr Emily Lydgate ([LPF002](#))

⁵³ Oral evidence taken before the EU Goods Sub-Committee, 29 June 2020 (Session 2019-21), [Q4](#) (Paul Scully)

⁵⁴ Oral evidence taken on 8 July 2020 (Session 2019-21), [Q9](#) (George Eustice)

⁵⁵ European Commission, *Draft text of the Agreement on the New Partnership with the United Kingdom*, (March 2020) p 34: <https://ec.europa.eu/info/sites/info/files/200318-draft-agreement-gen.pdf> [accessed 10 July 2020]

⁵⁶ Oral evidence taken on 8 July 2020 (Session 2019-21), [Q9](#) (George Eustice)

⁵⁷ Written evidence from Institute of Environmental Management & Assessment (IEMA) ([LPF008](#))

standards within the non-regression clause was “internally inconsistent”, and said that the EU “already requires every country that exports into the EU to conform to its product standards, so there isn’t a clear strategic benefit to effectively multilateralise a requirement on the UK to align on EU product standards (even if many constituencies in the UK would thank them for it)”.⁵⁸ Dr Lydgate recommended that “UK negotiators should clarify that LPF commitments don’t cover product standards and request to eliminate SPS from the EU’s thematic list of common standards”.⁵⁹ She also suggested that, as an alternative to the EU’s proposed list of policy areas, “The UK should propose to negotiate common standards in selected areas that represent key LPF concerns for both sides – Industrial emissions (including use of Best Available Technologies), atmospheric and marine fuels pollutants and carbon tax. Derogation from these could result in sanctions.”⁶⁰

A way forward

Witnesses suggested that a way forward could be to agree standards that allow for different policies to be used to achieve the same outcomes. Dr Mary Dobbs and colleagues suggested that “including objectives and principles, including non-regression, without linking [them] into specific mechanisms might be a suitable way to achieve an acceptable compromise – one where the overall level of environmental protection is maintained”.⁶¹ In this context Greener UK noted that “it would be possible to achieve the same level of protections through different means”.⁶² UKELA, Brexit & Environment, IEMA made similar proposals.⁶³

Dr Belén Olmos Giupponi said that clarity will need to be provided on what a level of protection means in qualitative or quantitative terms.⁶⁴ Colin Reid, Professor of Environmental Law, University of Dundee, highlighted that determining whether equivalence has been achieved is not without challenges, there being “an issue of who is to decide, by what process, whether or not this is the case ... there must be [a] framework that gives it confidence that this is the case, as well as a mechanism for the effective resolution of any disputes”.⁶⁵

Several witnesses argued that the EU’s environment and climate change level playing field proposals would not bind the UK to EU law, and that they would also not constrain the UK’s ability to increase ambition or to adopt different approaches to achieve the same goals. What is the basis of the Government’s belief that the EU’s proposals would bind the UK to EU law, and how would they constrain the Government’s policy ambitions? What consideration are you giving to developing the non-regression provisions further to clarify that equivalent approaches are acceptable? We strongly recommend exploring this possibility and would hope and expect that the EU negotiators will be open to such a proposal.

⁵⁸ Written evidence from Dr Emily Lydgate ([LPF002](#))

⁵⁹ Written evidence from Dr Emily Lydgate ([LPF002](#))

⁶⁰ Written evidence from Dr Emily Lydgate ([LPF002](#))

⁶¹ Written evidence from Dr Mary Dobbs, Dr Viviane Gravey and Dr Ludivine Petetin ([LPF0012](#))

⁶² Written evidence from Greener UK ([LPF0015](#))

⁶³ Written evidence from United Kingdom Environmental Law Association (UKELA) ([LPF0014](#)) and Brexit & Environment ([LPF006](#))

⁶⁴ Written evidence from Dr Belén Olmos Giupponi ([LPF005](#))

⁶⁵ Written evidence from Prof Colin Reid ([LPF001](#))

Experts hold different views on whether the EU's draft agreement would mean that UK-EU disputes over interpretation of the non-regression provisions could lead to the CJEU making binding rulings on the UK. What is the basis for your assertion that the CJEU would have this role under the EU's environment and climate level playing field proposals? Has the Government explored with the EU options for clarifying that the CJEU does not have a role for this part of the agreement? If so, what was the EU's reaction?

The dynamic aspect of the EU's proposals would arise if the UK and EU both independently increased their levels of environment or climate change protection, or reached an agreement to do so. What are the Government's objections to these provisions?

Can you confirm that climate change is covered by the non-regression provisions that you are proposing as part of the main free trade agreement? If not, we recommend that you include climate change given its link to economic sectors beyond energy, but also given that the UK's commitments to combat climate change are strong compared to some EU Member States. We, the UK, should use the level playing field provisions to ensure that the EU does not in future backslide on its climate commitments.

If climate change is covered, what consideration have you given to further clarifying the definition of environmental law?

You told us that the EU was asking for alignment on SPS measures and other technical product standard measures. We agree that it is highly questionable to include SPS measures in this part of the agreement. Would the Government be content with the lists of policy areas covered by the EU's proposed environment and climate change non-regression provisions, if SPS were to be excluded? Has the Government considered developing robust non-regression provisions covering a smaller set of policy areas known to impact trade? We recommend that you explore such alternatives with a view to reaching an agreement.

Environmental principles

The EU's draft partnership agreement refers to four environmental principles:

- the precautionary principle;
- the principle that preventive action should be taken;
- the principle that environmental damage should as a priority be rectified at source; and
- the "polluter pays" principle.⁶⁶

⁶⁶ European Commission, *Draft text of the Agreement on the New Partnership with the United Kingdom*, (March 2020) p 34: <https://ec.europa.eu/info/sites/info/files/200318-draft-agreement-gen.pdf> [accessed 10 July 2020]

As the Parliamentary Office for Science and Technology (POST) explained in a 2018 POSTnote, these environmental principles “have been influential in formulating a range of EU directives and regulatory actions”.⁶⁷ While the principles have different origins, Article 191(2) of the Treaty on the Functioning of the European Union (TFEU) groups them together and requires that EU policy on the environment is based on them.⁶⁸

The EU and UK proposals

The EU’s proposed environment non-regression provision lists the principles explicitly, and requires that “the parties shall respect the following principles in their respective environmental law and practices”.⁶⁹

The Government’s draft agreement does not include the precautionary principle by name, but includes the following text: “Where there are threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”⁷⁰ The Government’s draft agreement does not appear to refer to the other principles or concepts similar to them, though they are referred to in the Environment Bill.⁷¹

Dr Emily Lydgate explained that “the principles the EU are proposing to include are virtually identical to those the UK included in its draft Environment Bill – prevention, precaution, rectifying pollution at the source and polluter pays”.⁷² The Environment Bill would require the Secretary of State to prepare a policy statement on the principles which explains how they should be interpreted and applied by Ministers. The Bill would require Ministers to have “due regard” to the policy statement when making policy. This approach deviates from how the principles are applied within the EU, where they are established in legislation and apply to all public authorities.

Implications of including the environmental principles in the UK-EU agreement

The different drafting of the provisions in the Bill and the EU’s draft agreement lend the principles a different role in the two documents, as described by Dr Leslie-Anne Duvic-Paoli, Lecturer in Law, King’s College London:

“In the Environment Bill ... [the principles] are restricted to a policy role, with Ministers required to ‘have regard to’ the policy statement on environmental principles. The UK-EU Agreement would create a stronger duty on the UK, one to

⁶⁷ Parliamentary Office for Science and Technology (POST), EU Environmental Principles, [POSTnote 590](#), November 2018

⁶⁸ Article 191(2), [Treaty on the Functioning of the European Union \(TFEU\)](#)

⁶⁹ European Commission, *Draft text of the Agreement on the New Partnership with the United Kingdom*, (March 2020) p 34: <https://ec.europa.eu/info/sites/info/files/200318-draft-agreement-gen.pdf> [accessed 10 July 2020]

⁷⁰ The Government, *Draft working text for a comprehensive free trade agreement between the United Kingdom and the European Union*, (May 2020) p 253: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886010/DRAFT_UK-EU_Comprehensive_Free_Trade_Agreement.pdf [accessed 10 July 2020]

⁷¹ [Environment Bill](#), Clauses 16-18 [Bill 009 (2019-21)]

⁷² Written evidence from Dr Emily Lydgate ([LPF002](#))

‘respect’ the four environmental principles – to the extent that the application of the principles, or lack thereof, would impact the level playing field. In addition, in contrast with the Bill that is directed solely at Ministers, LPFS 2.30(4) [the article in which the environment principles are referenced in the draft EU agreement] would create a general duty on the UK to respect environmental principles, which would thus extend to all public authorities (as is currently the case under EU law).⁷³

Dr Mary Dobbs and colleagues agreed.⁷⁴

On the importance of which legal instrument contains the principles, Dr Emily Lydgate explained that “an EU-UK FTA will not have direct effect or primacy on UK legislation”.⁷⁵ Dr Leslie-Anne Duvic-Paoli agreed, arguing that “a provision on environmental principles included in an international treaty like the UK-EU Agreement would not have a direct effect, in that it would not allow individuals to rely on it to, for instance, contest new national legislation”, but added that nevertheless this provision “would encourage UK courts to rely on EU case-law more readily”.⁷⁶ In addition, the principles would be covered by the enforcement and dispute resolution mechanisms associated with that part of the UK-EU agreement.

As with the reference to common standards within the non-regression provisions, witnesses had mixed views on whether reference to the environmental principles would be considered a reference to EU law, or concepts of EU law, meaning that UK-EU disputes over interpretation of the environmental principles could lead to the CJEU making binding rulings on the UK. Dr Belén Olmos Giupponi said: “The application of principles, particularly of the precautionary principle, is relevant as it might necessitate the intervention of the CJEU.”⁷⁷ Dr Mary Dobbs and colleagues made a similar point.⁷⁸

Support for including the environmental principles in the UK-EU agreement

Dr Mary Dobbs and colleagues argued that including the principles within the UK-EU agreement “would involve a continuation of their current role to a great extent and help further a high level of environmental [protection], sustainability and non-regression. Excluding them and relying solely upon the current domestic proposals would lead to a significant watering down of environmental governance”.⁷⁹ Dr Leslie-Anne Duvic-Paoli said: “Including environmental principles in the UK-EU Agreement could be an important tool to ensure a level playing field ... Environmental principles do not dictate specific outcomes: including environmental principles would therefore not be too constraining and would still give the UK enough flexibility to design its own environmental frameworks.”⁸⁰

⁷³ Written evidence from Dr Leslie-Anne Duvic-Paoli ([LPF009](#))

⁷⁴ Written evidence from Dr Mary Dobbs, Dr Viviane Gravey and Dr Ludivine Petetin ([LPF0012](#))

⁷⁵ Written evidence from Dr Emily Lydgate ([LPF002](#))

⁷⁶ Written evidence from Dr Leslie-Anne Duvic-Paoli ([LPF009](#))

⁷⁷ Written evidence from Dr Belén Olmos Giupponi ([LPF005](#))

⁷⁸ Written evidence from Dr Mary Dobbs, Dr Viviane Gravey and Dr Ludivine Petetin ([LPF0012](#))

⁷⁹ Written evidence from Dr Mary Dobbs, Dr Viviane Gravey and Dr Ludivine Petetin ([LPF0012](#))

⁸⁰ Written evidence from Dr Leslie-Anne Duvic-Paoli ([LPF009](#))

A possible domestic solution

Witnesses suggested that strengthening the principles in the Bill could help build trust with the EU. Make UK told the Committee: “The EU would be more confident if the Environmental Bill enshrined EU environmental principles.”⁸¹ Greener UK explained how the principles could be strengthened: “To be effective, the clauses on environmental principles need wholesale reform to strengthen their application including through a duty to apply the principles and the removal of sweeping exemptions for certain parts of government policy making.”⁸²

The environmental principles the EU has included in their draft UK-EU agreement are also listed in clause 16(5) of the Environment Bill, but the principles have different roles under the two approaches. Is the EU’s main concern that the principles are implemented in a particular way in the UK, which could be delivered through the Environment Bill and the devolved administrations’ equivalent legislation? Or is the EU arguing for the principles to be included in the UK-EU agreement, so that they are covered by the agreement’s enforcement and dispute resolution mechanisms? Clarifying this point would help establish the pathway to an agreement.

Witnesses differed over whether including the environmental principles in a UK-EU agreement would result in a role for the CJEU in disputes over interpretation of those provisions. Is this a point of contention in the negotiations with the EU? If so, we hope that EU negotiators engage with the Government’s concerns on this point with a view to finding a creative solution.

We note the part the principles could play to ensure a UK-EU level playing field. We note also the comparatively weak role of the principles in the Environment Bill which has contributed to the lack of trust between the UK and EU. We urge you to strengthen the role of the principles in the Environment Bill—for example by creating a duty on all public authorities to respect the principles—as a potential domestic solution, and to work with the devolved administrations towards comparable approaches as needed. This could go some way to removing the issue from the negotiating table with the EU, as well as contributing to a higher level of environmental protection. What consideration have you given to this approach?

Enforcement and dispute resolution

A point of contention

Quite apart from the role of the CJEU in interpreting any EU law applied to the parties by the agreement, which we have touched on above, enforcement of the standards imposed by the agreement and the resolution of any disputes between the parties remain a point of contention. Prof Rüdiger Wurzler emphasised the importance of this area: “Enforcement and

⁸¹ Written evidence from Make UK ([LPF0010](#))

⁸² Written evidence from Greener UK ([LPF0015](#))

dispute resolution mechanisms are extremely important. The agreement will stand or fall with it.”⁸³

The Government and EU’s draft texts contain proposals for how the environment provisions should be enforced domestically—enforcement mechanisms—for example stating how compliance with environmental law should be monitored and complaints about alleged violations should be handled. There are also separate arrangements—dispute resolution mechanisms—proposed for resolving disputes between the UK and EU on the interpretation and application of the agreement by the other party.⁸⁴

Dr Emily Lydgate explained one of the sources of disagreement in this area: “Pre-Brexit, the UK relied upon EU bodies for environmental monitoring and enforcement, and this latter requirement [UK environmental enforcement being tied to sanctions] reflects the EU’s interest in ensuring these functions are replicated, particularly as the UK has often faced the CJEU for environmental non-compliance.”⁸⁵

Enforcement

On domestic enforcement of the non-regression provisions, the Government’s proposal requires the parties to provide any individual “with a legally recognised interest in the matter” access to a legal remedy for infringements of environmental law.⁸⁶ The EU has proposed that there should be an “independent body” responsible for domestic enforcement of the law and practices covered by the non-regression provisions; the EU’s text also specifies the independent body’s powers and responsibilities.⁸⁷ Comparing the two approaches, the EU prescribes in more detail how the domestic enforcement of environmental law should be conducted by the two parties, including through the requirements for an independent body.

Greener UK and UKELA both argued that the environmental provisions in the UK-EU agreement should be covered by mechanisms for robust domestic enforcement, and institutional arrangements overseeing the agreement that are open to non-state actors.⁸⁸ The IEEP told the Committee that civil society could play a role in supporting the enforcement of the agreement: “Effective enforcement of the agreement is more likely if it is exposed to scrutiny and there are provisions for launching and pursuing complaints which

⁸³ Written evidence from Prof Rüdiger Wurzel ([LPF0013](#))

⁸⁴ Some witnesses also argued that what have been referred to here as dispute resolution mechanisms should also be accessible to non-state actors.

⁸⁵ Written evidence from Dr Emily Lydgate ([LPF002](#))

⁸⁶ The Government, *Draft working text for a comprehensive free trade agreement between the United Kingdom and the European Union*, (May 2020) p 252: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886010/DRAFT_UK-EU_Comprehensive_Free_Trade_Agreement.pdf [accessed 10 July 2020]

⁸⁷ European Commission, *Draft text of the Agreement on the New Partnership with the United Kingdom*, (March 2020) p 35: <https://ec.europa.eu/info/sites/info/files/200318-draft-agreement-gen.pdf> [accessed 10 July 2020]

⁸⁸ Written evidence from United Kingdom Environmental Law Association (UKELA) ([LPF0014](#)) and Greener UK ([LPF0015](#))

governments may be reluctant to do within the confines of only a formal state-to-state dispute settlement mechanism.”⁸⁹ Greener UK agreed.⁹⁰

IEMA supported the EU’s proposed approach: “The approach set out by the EU for the domestic enforcement by an independent body of level playing field provisions would seem to be appropriate.”⁹¹

The Environment Bill would create the new Office for Environmental Protection (OEP). This body is intended to fill gaps in environmental governance as the UK leaves the EU. It would cover England and there is provision for the body to be extended to cover Northern Ireland.⁹² It is expected that the OEP would perform the domestic enforcement of environmental law in England that is required under a UK-EU agreement, though it has not been created solely for this purpose. Greener UK highlighted that the devolved administrations have more distance to travel to establish post-Brexit environmental enforcement: “The devolved governments must urgently press ahead with the establishment of strong accountability and enforcement mechanisms.”⁹³

Witnesses were concerned that the OEP may not meet the criteria that the EU are proposing for an independent enforcement body. Dr Mary Dobbs and colleagues questioned whether the proposed remedies available to the OEP are strong enough: “The EU proposal ... requires that litigation by the independent body/bodies be with a view to seek ‘an adequate remedy’. It is questionable whether the powers and remedies outlined in the Environment Bill for the OEP are adequate in respect of actions by the State/arms of the State.”⁹⁴

The EU’s proposed draft agreement states that “given the powers of the European Commission under the Treaties, the Union is deemed to comply with this Article”.⁹⁵ However the IEEP referred to the EU governance system for enforcement and said: “The UK would have an interest in ensuring that this system works effectively and should establish a means of monitoring it if a reciprocal agreement can be reached.”⁹⁶ Greener UK stressed both parties’ need for effective governance arrangements: “Robust governance arrangements are required to ensure that both sides uphold their commitments.”⁹⁷

Dispute resolution

The Government proposes specific procedures for resolving disputes between the UK and EU regarding the ‘Trade and Environment’ Chapter of the draft free trade agreement, which

⁸⁹ Written evidence from Institute for European Environmental Policy (IEEP) ([LPF007](#))

⁹⁰ Written evidence from Greener UK ([LPF0015](#))

⁹¹ Written evidence from Institute of Environmental Management & Assessment (IEMA) ([LPF008](#))

⁹² [Environment Bill](#), Chapter 2 [Bill 009 (2019-21)]

⁹³ Written evidence from Greener UK ([LPF0015](#))

⁹⁴ Written evidence from Dr Mary Dobbs, Dr Viviane Gravey and Dr Ludivine Petetin ([LPF0012](#))

⁹⁵ European Commission, *Draft text of the Agreement on the New Partnership with the United Kingdom*, (March 2020) p 35: <https://ec.europa.eu/info/sites/info/files/200318-draft-agreement-gen.pdf> [accessed 10 July 2020]

⁹⁶ Written evidence from Institute for European Environmental Policy (IEEP) ([LPF007](#))

⁹⁷ Written evidence from Greener UK ([LPF0015](#))

would not result in sanctions.⁹⁸ There are no specific procedures for resolving disputes between the UK and EU regarding the environment and climate protection non-regression provisions in the EU's proposals, suggesting that they would be covered by one of the agreement's main dispute resolution procedures, which can result in sanctions.⁹⁹

Dr Emily Lydgate highlighted that the EU's proposed approach on dispute resolution for the provisions was novel in the context of EU free trade agreements: "Unlike many EU FTAs, the EU has tied Section 6 and 7, on environment and climate non-regression, to the primary dispute settlement mechanism of the FTA, which means that violation could result in fines and also one side suspending concessions (ie, applying tariffs) against the other."¹⁰⁰ While the Government has rejected such an approach with the EU, she noted that it "seems prepared to accept dispute settlement attached to trade sanctions for its environmental chapter with the US".¹⁰¹ Dr Markus Gehring and Marios Tokas also highlighted that the Government was considering this approach in other agreements: "Some of the UK's contemplated agreements, such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) do include environmental commitments in the dispute settlement provisions."¹⁰²

Alternatives to the UK and EU proposals

Several witnesses said that there are positive precedents in the institutional arrangements for enforcement and dispute resolution linked to the North American Free Trade Agreement (NAFTA), NAFTA's replacement, the United States-Mexico-Canada Agreement (USMCA),¹⁰³ and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Dr Belén Olmos Giupponi singled out the independent monitoring system first established by a side-agreement to NAFTA and the robust dispute resolution mechanism in CPTPP.¹⁰⁴¹⁰⁵ Dr Markus Gehring and Marios Tokas highlighted that in USMCA: "The citizen submission in environmental matters process now forms part of the main agreement."¹⁰⁶

The Government has proposed the Office for Environmental Protection (OEP) to address environmental governance gaps as the UK leaves the EU. We strongly recommend that you strengthen the remedies and sanctions available

⁹⁸ The Government, *Draft working text for a comprehensive free trade agreement between the United Kingdom and the European Union*, (May 2020) p 255-258: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886010/DRAFT_UK-EU_Comprehensive_Free_Trade_Agreement.pdf [accessed 10 July 2020]

⁹⁹ European Commission, *Draft text of the Agreement on the New Partnership with the United Kingdom*, (March 2020) p 302-312: <https://ec.europa.eu/info/sites/info/files/200318-draft-agreement-gen.pdf> [accessed 10 July 2020]

¹⁰⁰ Written evidence from Dr Emily Lydgate ([LPF002](#))

¹⁰¹ Written evidence from Dr Emily Lydgate ([LPF002](#))

¹⁰² Written evidence from Dr Markus Gehring and Marios Tokas ([LPF0011](#))

¹⁰³ USMCA entered into force on 1 July 2020: <https://www.state.gov/entry-into-force-of-the-united-states-mexico-canada-agreement/>

¹⁰⁴ The side-agreement to NAFTA is the North American Agreement on Environmental Cooperation (NAAEC). This was recently superseded by the Agreement on Environmental Cooperation (ECA), a side agreement to USMCA, and the environmental chapter in USMCA. Some features of the NAAEC have been retained under the new agreements, while others have changed.

¹⁰⁵ Written evidence from Dr Belén Olmos Giupponi ([LPF005](#))

¹⁰⁶ Written evidence from Dr Markus Gehring and Marios Tokas ([LPF0011](#))

to this body and cooperate with the devolved administrations to develop comparable arrangements. This would contribute to the development of trust in the UK-EU negotiations and the conclusion of an agreement, as well as high levels of environmental protection across the UK. Will you consider tabling amendments to the provisions of the Environment Bill establishing the OEP with these goals in mind? How is the Government working with the devolved administrations to ensure that there are compatible arrangements across the UK after the transition period?

Domestic enforcement of environmental law by trading partners and effective state-to-state dispute resolution are both in the UK's interests, given that the absence of such mechanisms could result in unfair competition. The Government should pursue these mechanisms. We hope that EU negotiators are open to cooperation on monitoring and enforcement in a manner that fulfils both parties' needs for effective enforcement by the other party.

The enforcement and monitoring mechanisms linked to NAFTA and USMCA, and the dispute resolution mechanism in CPTPP are positive precedents. The Government is pursuing these or similar mechanisms in trade negotiations with non-EU partners. What are the reasons for the difference of approach in the UK-EU negotiations?

The Committee looks forward to a response by 21 August 2020.



Lord Teverson
Chair of the EU Environment Sub-Committee

Cc the Department for Business, Energy & Industrial Strategy, the Cabinet Office and the Committee on the Future Relationship with the European Union

Annex: Questions and recommendations made throughout the letter requiring a response

The importance of negotiations on environment and the level playing field

1. The UK and EU have similarly ambitious environment and climate change aspirations so it should be possible to find common ground. Failure to reach an agreement could have a critical impact, and yet the environment level playing field still appears to be a stumbling block in the negotiations. Has the Government proposed alternative solutions to those included in the UK's draft free trade agreement and draft energy agreement that were made public?
2. The lack of trust between the UK and EU is a key barrier to reaching an agreement. We recommend that you seek to build trust with the EU by reviewing Government policy positions that are giving mixed signals, such as the absence of a non-regression clause in the Environment Bill and the potential reduction in UK food standards as a consequence of the UK's trade policy.
3. We urge the Government to take into account the priorities of industry. What assessment have you made of the opportunities presented by level playing field provisions, both in terms of promoting environmental and climate change ambition and ensuring fair conditions for competition for UK companies? Level playing field provisions could be beneficial for the UK, especially on climate change policy.

The link between the UK-EU negotiations and other trade deals

4. We consider that the inclusion of environment and climate change level playing field provisions in the UK-EU agreement could strengthen the Government's position in negotiations with other international partners.

Non-regression provisions

5. Several witnesses argued that the EU's environment and climate change level playing field proposals would not bind the UK to EU law, and that they would also not constrain the UK's ability to increase ambition or to adopt different approaches to achieve the same goals. What is the basis of the Government's belief that the EU's proposals would bind the UK to EU law, and how would they constrain the Government's policy ambitions? What consideration are you giving to developing the non-regression provisions further to clarify that equivalent approaches are acceptable? We strongly recommend exploring this possibility and would hope and expect that the EU negotiators will be open to such a proposal.
6. Experts hold different views on whether the EU's draft agreement would mean that UK-EU disputes over interpretation of the non-regression provisions could lead to the CJEU making binding rulings on the UK. What is the basis for your assertion that the CJEU would have this role under the EU's environment and climate level playing field proposals? Has the Government explored with the EU options for clarifying that the CJEU does not have a role for this part of the agreement? If so, what was the EU's reaction?

7. The dynamic aspect of the EU's proposals would arise if the UK and EU both independently increased their levels of environment or climate change protection, or reached an agreement to do so. What are the Government's objections to these provisions?
8. Can you confirm that climate change is covered by the non-regression provisions that you are proposing as part of the main free trade agreement? If not, we recommend that you include climate change given its link to economic sectors beyond energy, but also given that the UK's commitments to combat climate change are strong compared to some EU Member States. We, the UK, should use the level playing field provisions to ensure that the EU does not in future backslide on its climate commitments.
9. If climate change is covered, what consideration have you given to further clarifying the definition of environmental law?
10. You told us that the EU was asking for alignment on SPS measures and other technical product standard measures. We agree that it is highly questionable to include SPS measures in this part of the agreement. Would the Government be content with the lists of policy areas covered by the EU's proposed environment and climate change non-regression provisions, if SPS were to be excluded? Has the Government considered developing robust non-regression provisions covering a smaller set of policy areas known to impact trade? We recommend that you explore such alternatives with a view to reaching an agreement.

Environmental principles

11. The environmental principles the EU has included in their draft UK-EU agreement are also listed in clause 16(5) of the Environment Bill, but the principles have different roles under the two approaches. Is the EU's main concern that the principles are implemented in a particular way in the UK, which could be delivered through the Environment Bill and the devolved administrations' equivalent legislation? Or is the EU arguing for the principles to be included in the UK-EU agreement, so that they are covered by the agreement's enforcement and dispute resolution mechanisms? Clarifying this point would help establish the pathway to an agreement.
12. Witnesses differed over whether including the environmental principles in a UK-EU agreement would result in a role for the CJEU in disputes over interpretation of those provisions. Is this a point of contention in the negotiations with the EU? If so, we hope that EU negotiators engage with the Government's concerns on this point with a view to finding a creative solution.
13. We note the part the principles could play to ensure a UK-EU level playing field. We note also the comparatively weak role of the principles in the Environment Bill which has contributed to the lack of trust between the UK and EU. We urge you to strengthen the role of the principles in the Environment Bill—for example by creating a duty on all public authorities to respect the principles—as a potential domestic solution, and to work with the devolved administrations towards comparable approaches as needed. This could go some way to removing the issue from the

negotiating table with the EU, as well as contributing to a higher level of environmental protection. What consideration have you given to this approach?

Enforcement and dispute resolution

14. The Government has proposed the Office for Environmental Protection (OEP) to address environmental governance gaps as the UK leaves the EU. We strongly recommend that you strengthen the remedies and sanctions available to this body and cooperate with the devolved administrations to develop comparable arrangements. This would contribute to the development of trust in the UK-EU negotiations and the conclusion of an agreement, as well as high levels of environmental protection across the UK. Will you consider tabling amendments to the provisions of the Environment Bill establishing the OEP with these goals in mind? How is the Government working with the devolved administrations to ensure that there are compatible arrangements across the UK after the transition period?
15. The domestic enforcement of environmental law by trading partners and effective state-to-state dispute resolution are both in the UK's interests, given that the absence of such mechanisms could result in unfair competition. The Government should pursue these mechanisms. We hope that EU negotiators are open to cooperation on monitoring and enforcement in a manner that fulfils both parties' needs for effective enforcement by the other party.
16. The enforcement and monitoring mechanisms linked to NAFTA and USMCA, and the dispute resolution mechanism in CPTPP are positive precedents. The Government is pursuing these or similar mechanisms in trade negotiations with non-EU partners. What are the reasons for the difference of approach in the UK-EU negotiations?