IND0020 - Dr Alexandra R. Harrington

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Introduction: This evidence is being offered in response to the Call for Evidence regarding the UK-India trade negotiations. I am privileged to submit the statements contained herein as an international law expert, scholar and academic, with significant knowledge in the areas of international environmental law, human rights law and climate change-related law. I am a Lecturer in Law (Environment) at Lancaster University Law School and also serve as a member of multiple international legal organisations, including those working in environment, human rights and related fields. 1. International trade is a multifaceted construct of legal policy and practice. Additionally, international trade is highly concentrated in terms of expertise, often leading to a siloing in the ways that free trade agreements function away from other legal and policy areas. However, as has been seen in the context of climate change, the need for and validity of such compartmentalized trade laws, and the governance systems which oversee them, does not reflect the ways in which environmental concerns and trade practices impact upon each other. At the same time, the relationship between human rights, environmental issues and trade law is beginning to occupy a more prominent place in international and national practices but still needs to be articulated as a core tenet of free trade agreements and similar instruments.

2. Further, there is a growing understanding of the nexus between human rights law and the environment which can also be linked directly to the objectives, requirements and impacts of free trade agreements and trade law in practice. In 2021, the United Nations Human Rights Council officially recognized the human right to a healthy environment, which it defined as "important for the enjoyment of human rights." This recognition includes preambular statements stressing the impacts of environmental degradation and climate change on the human rights of all, with particularly damaging results for historically vulnerable and marginalized communities that include Indigenous groups, and that there are important links between the ability of citizens to openly access information regarding the environment and participate in planning processes.

3. International environmental law has evolved since the 1992 adoption of the United Nations Framework Convention on Climate Change, as is reflected in the 2015 Paris Agreement on Climate Change, which incorporates human rights norms as part of its foundational tenets. No longer does international law, or the international community of states, confine climate change and its associated impacts to the realm of environmental concerns and mainly scientific considerations. Instead, it

recognizes that trade, commercial activities and even efforts to transition from highly polluting industries to renewables and cleaner industries must include robust measures to protect the combination of economic, social and environmental rights. While holding the United Nations Framework Convention on Climate Change Conference of the Parties (CoP) 26 presidency, the United Kingdom served a significant role in advancing the

interrelationship between these areas in the international and national law contexts and, even post-CoP 26, it is clear that these concerns are still reflected in national law and policy.

4. In the United Kingdom, climate change and environmental protection laws have evolved in recent years to reflect the increasingly nuanced nature of climate science and new data as part of legal and regulatory efforts. For example, the 2019 amendments to the Climate Change Act of 2008 have committed the United Kingdom and devolved territorial governments to achieving carbon neutrality by 2050 in line with international obligations undertaken through the 2015 Paris Agreement on Climate Change and within the overarching context of the United Nations Framework Convention on Climate Change system. To achieve this, and to implement the terms of the Climate Act, Parliament designed a governance system for climate change and associated issues that is robust and expansive in scope in the form of the Committee on Climate Change. Key among the measures adopted to empower the Committee on Climate Change is the ability to maintain consultations with involved and affected constituencies as well as assessing current and future pressures having the potential to impact climate-responsive laws and policies.

5. Additionally, the Climate Change Act of 2008 provides significant requirements regarding emissions, and emissions reductions, as well as waste regulations. On 1 January 2021, the United Kingdom formally adopted the United Kingdom Emissions Trading System (UK ETS) to ensure that the emissions trading practices which formed part of the United Kingdom's former obligations under the European Union Emissions Trading System (EU ETS) would continue in the post-Brexit legal and regulatory sphere across all territories and multiple industries. The UK ETS thus forms a critical legal and regulatory extension of the grounds laid in the Climate Change Act of 208 as well as serving to create a carbon trading market mechanism as envisioned under the United Nations Framework Convention on Climate Change system. The UK ETS and the market mechanism it establishes forms a critical element of the ways in which the United Kingdom plans to use for meeting the commitments to net zero by 2050 as required under the 2019 amendments to the Climate Change Act of 2008 as well as under the Paris Agreement on Climate Change.

6. In the context of the relationship between environmental issues and trade, attention should also be brought to several important elements of the

November 2021 United Kingdom Environment Act. The Environment Act is premised on protecting the natural environment within the United Kingdom as well as the ability of individuals to enjoy it. To achieve these goals, the Environment Act focuses on regulation and protection of air quality, water resources, biological diversity and the reduction of wastes, including electronic and hazardous wastes, at the governmental level as well as throughout individual use parameters and across industries.

7. The Environment Act places significant aspects of implanting these goals under the jurisdiction of the Secretary of State through a number of reporting and information gathering functions. In carrying out the policy generating aspects of the Environmental Act, the Secretary of State is tasked with incorporating a series of designated "environmental principles," including the polluter pays principle, the precautionary principle, the "principle that environmental protection should be integrated into the making of policies," "the principle of preventative action to avert environmental damage," and the "principle that environmental damage should as a priority be rectified at source." It also creates a new governance mechanism, the Office of Environmental Protection, in order to oversee compliance with the Act's terms and establishes a complaint system for individuals to use as a method of alleging failure of various governmental entities to comply with their legal requirements in relation to environmental protection.

8. Thus, what has emerged from international and national legal commitments is a system through which the United Kingdom has assumed a leading role among states as an advocate for the use of regulatory methods to address climate change and associated environmental issues. It has also come to serve as an advocate for acknowledging and addressing the interrelationship between environmental, climate and human rights issues at the national and international level. By creating new governance mechanisms and compliance reporting requirements that function alongside the international mechanisms and reporting elements of the United Nations Framework Convention on Climate Change system, the United Kingdom has entrenched the role of environmental, climate and human rights concerns in legal and regulatory structures.

9. However, the post-Brexit series of free trade agreements already ratified by the United Kingdom evinces an uneven incorporation of environmental, climate and human rights issues into trade law and governance systems. To illustrate this point, it is necessary to examine the ways in which these issues are raised – if at all – and subjected to governance oversight in these agreements. Environmental protection, often combined with sustainable development concerns, features prominently in some of these agreements, such as the Economic Partnership Agreement between the United Kingdom of Great Britain and Northern Ireland and Kenya (2020), the Agreement on Trade

Continuity between the United Kingdom of Great Britain and Northern Ireland and Canada (2020), the Economic Partnership Agreement between the CARIFORUM States and the United Kingdom of Great Britain and Northern Ireland (2019), the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Korea (2019), the Economic Partnership Agreement between the Southern African Customs Union Member States and Mozambique and the United Kingdom of Great Britain and Northern Ireland (2019). Other agreements, such as the Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Colombia, the Republic of Ecuador and the Republic of Peru (2019), the Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Chile (2019), the Agreement establishing an Association between the United Kingdom of Great Britain and Northern Ireland and the Arab Republic of Egypt (2020), the Agreement establishing an Association between the United Kingdom of Great Britain and Northern Ireland and the Republic of Tunisia (2019), are largely silent on these issues although environmental, climate and human rights issues form core concerns in each of these states.

10. To ensure that trade law is used to further the terms of the United Kingdom's international and national legal commitments regarding the intersections of environmental, climate and human rights laws, it is critical that these issues be included in the negotiations and final text of a proposed free trade agreement with India or any other states moving forward. Uneven terms relating to these issues as part of the trade law realm poses the very real threat of legal uncertainty and inconsistency in application, which poses significant challenges to the ability of the United Kingdom to meet its legal commitments. Given the importance of environmental and climate law issues in India, especially in terms of biological diversity preservation, and the overlaps between these concerns and the achievement of human rights laws in India, it is imperative that a future trade agreement include robust terms in these areas. At the same time, there should be an effort to include governance mechanisms such as oversight committees and complaints review systems as part of a potential trade agreement's terms in order to ensure parity in application of the agreement's terms and provide a forum for hearing issues that could otherwise fall outside the traditional scope of standing and jurisdiction in each state.