

## **Prof Colin T Reid, Professor of Environmental Law, University of Dundee - Written evidence (EEH0004)**

In response to this enquiry, I wish to make just three brief comments, based on my experience in environmental law matters. These comments are made on a wholly personal basis.

1. A first point is that there is major uncertainty over exactly what the Agreement will mean in practice and when certain provisions will take effect. When will a weakening on either side in environmental or climate protection be regarded as being “in a manner affecting trade and investment”, what does the qualification “trade and investment *between the parties*” mean when the effect is not directly on bilateral relations but on how other parties may respond (e.g. in attracting American or Asian investment) and when will the impacts be “material” so as to activate the potential for rebalancing measures (arts 7.2 and 9.4 in chapter 7 of Title XI of Heading 1 of Part 2 of the Agreement)? Views will differ on when the various tests are passed and therefore on whether or not the Agreement is being fulfilled.

2. Secondly, any steps towards a response to such questions rest firmly in the political as opposed to the legal sphere. Whereas under EU law individual enterprises who felt that the trade rules were not being properly applied, and that they were suffering as a result, could themselves take legal action, now everything is in the hands of the political bodies. Whether any formal or informal action is taken will depend not on whether a legal threshold has been crossed, nor on the response of those suffering, but wholly on the willingness of the UK Government or EU Commission to make an issue of the situation. Such decisions will be affected by many different considerations – the *realpolitik* of all such relationships means that at times a blind eye is turned to some significant matters and at others molehills are turned into mountains. The result is that the uncertainty will continue.

3. Thirdly, there is a major challenge created by the UK Government agreeing such a far-reaching Agreement when responsibility for many of the matters covered lies in the hands of the devolved administrations. This affects both “inputs” and responsibility.

In terms of the former, how are the devolved administrations going to be involved in the operation of the Partnership Council, the many Specialised Committees, the Civil Society Forum, etc? How will their views and interests be reflected? The Agreement requires the construction of a substantial institutional framework and this must be done with a willingness to reflect the devolved structure of the UK, something not always apparent in actions from Whitehall. In terms of responsibility, aside from the wider issue of the UK Government being legally responsible for ensuring compliance with any international agreement, even on matters where it does not exercise direct control, the Agreement imposes a number of more specific obligations. In particular, the provisions on Good Regulatory Practices (Title X of Heading 1 of Part 2) seem to require the UK Government to be monitoring and supervising policy-making across the whole UK, including on devolved matters, in a way that could be seen as cutting across aspects of the devolution settlements. The current inter-governmental structures are notoriously dysfunctional, yet fulfilling the

Agreement's requirements will require a substantial degree of information-sharing and more (e.g. art GRP.4), to an extent that does not always seem to be occurring at present.