

Written evidence submitted by Dr Damian Raess (FRE0036)

This submission addresses level playing field (LPF) provisions with respect to labor standards. The analysis on the content of labor provisions in free trade agreements (FTAs) draws on the LABPTA dataset (Raess and Sari 2018).

- What are the current UK and the EU positions on the level playing field provisions in the negotiations on a Future Relationship? What is your assessment of the level of technical detail the negotiators have grappled with on these provisions to date? To what extent might either position impact either party's future plans to legislate?

The EU's negotiating mandate of 25 February 2020 outlines the EU's position on level playing field rules in the area of labor standards (LS). The EU's objective is high standards of protection of workers (art. 10). The EU wants the UK to align with EU labor law (art. 101) in relation to fundamental rights at work (i.e., ILO' four core LS), occupational health and safety (OH&S), fair working conditions and employment standards, information and consultation rights at company-level and restructuring, and social dialogue (SD). It also wants the UK to effectively enforce its domestic labor laws (art. 102). The institutional framework established for the monitoring and implementation should allow for the participation of civil society organizations (art. 112), include a review mechanism (labor impact assessment), and mechanisms for dispute settlement (DS) and capacity building activities (art. 113). The negotiating mandate also stipulates an "evolving LPF", i.e. requirements will need to evolve over time to prevent them becoming outdated, with the EU standards as a reference point (art. 94).

The UK government made clear (speech and written statement of 3 February 2020) that it was ready to reject alignment with EU social and employment law after 2020, invoking its determination to set its own social and labour legislation after the end of the transition period. It aspires to a trade agreement along the lines of those recently concluded by the EU with Canada or Japan.

The parties to a FTA maintain a right to regulate within the boundaries of the commitments made.

- How does the EU's position on a level playing field with the UK compare to that which it held in negotiations on CETA with Canada and the EU-Japan FTA?

- How does the EU's position on dispute settlement in the level playing field compare to the role of dispute resolution in the level playing field provisions in CETA with Canada and the EU-Japan FTA? Have there been any disputes to date concerning the level playing field in either agreement and, if so, how have they been settled and enforced?

> Is there such a thing as a consistent EU approach to labor rights in FTAs? While (significant) differences across EU FTAs do exist, including within a same generation of agreements, it can be

argued that with the EU – South Korea FTA (2011) a model chapter has emerged, at least as far as the main EU FTAs concluded since are concerned. The EU approach has 4 pillars:

- 1) Substantive commitments in relation to international LS (ILO' four core LS) and domestic labor law (non-derogation, and effective enforcement), commitments associated with a high degree of legal obligation (i.e., legally binding commitments)
- 2) Institutionalized cooperation over labor issues that provides for civil society participation and dialogue and a specialized body (e.g., Labor Affairs Council) in charge of monitoring and implementation (trade related cooperation activities)
- 3) Compulsory review mechanism (i.e. impact assessment requirement)
- 4) Dedicated DS, including governmental consultations and recourse to independent arbitrators make findings of fact and recommendations regarding non-compliance (in a final, public report), which does not allow the (unilateral) imposition of trade sanctions (withdrawal of trade concessions or monetary fines) against breaches of labor provisions (LPs) in its FTAs.

The Canada-EU FTA (CETA) was more ambitious than previous 'new generation' EU FTAs. On top of the provisions just listed, it adds commitments regarding OH&S and minimum employment standards as well as access to domestic courts (i.e., right of workers and employers to fair, equitable and transparent domestic procedures), which are not only legally binding but also covered by DS. The additional provision that really stands out in the EU-Japan PTAs, in relation to the model chapter, is that the commitment to promote CSR is covered by both a legal obligation and DS.

In light of what precedes, how does the EU's approach to negotiations with the UK go beyond the position it held in negotiations with Canada and Japan?

Additional provisions the EU insists on with the UK concern principally social dialogue, in particular information and consultation rights at firm level. Moreover, provisions on decent working conditions and OH&S are likely to be strengthened to reflect extensive EU legislation in these areas. In fact, in these three areas, EU Directives have provided for minimum standards – European Works Council (EWC) Directive (1994), EU Working Time (WT) Directive (2003), and, regarding OH&S, the Framework Directive (1989), amongst others.

The EU is unlikely to take a different position on DS in relation to labor issues with the UK compared to that it held with Canada and Japan.

To my knowledge there has been no dispute to date concerning the level playing field in relation to LS in either agreement. But there is an ongoing labor-related dispute between the EU and South Korea. After unsuccessful government consultations, an arbitration panel has been established.<sup>1</sup>

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<sup>1</sup> See <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2095>

- Where an EU Directive has provided for minimum standards, has the UK tended to go for the minimum or to choose to set higher standards on the areas covered by the level playing field? How does the UK's record on compliance to EU rules compare to EU Member States on the areas covered by the level playing field? What is your assessment of the level of trust on each side that either will maintain or enhance their standards and compliance in future?

> One (in-) famous case where the UK went for minimum standards is the case of the EU WT Directive, which, amongst others, sets a maximum weekly working hours of 48 hours including overtime. The UK has opted-out of this rule, giving individuals in the UK the right to work for more than 48 hours per week if they choose to do so. In only five EU member states – Bulgaria, Cyprus, Estonia, Malta and the UK – is the opt-out of generalised use, regardless of the sector or activity or occupation concerned.<sup>2</sup>

To take another example, the commitment to internationally recognized LS, compared to the other major European economies of Germany, France and Italy, the UK has a poorer record of ratification of ILO conventions. To date, the UK has ratified 88 conventions in total, on par with Germany (85), while France and Italy have ratified 127 and 113, respectively.<sup>3</sup> The performance of the UK is particularly poor with respect to the ratification of conventions on wages (0), working time (0) and OH&S (4) – the corresponding numbers for Germany, France and Italy are 2-1-11, 4-6-9, 3-4-10.

For this (and other) reason(s), the level of trust in the EU that the UK will maintain (or enhance) its standards and compliance in the future is low. The converse is not true, as the EU prides itself of its social model.

- What international commitments do the UK and the EU have on the areas covered by the negotiations on a level playing field? If an agreement is not reached before the end of the Transition Period, what would be the WTO and international legal baseline as regards the policy areas being negotiated on a level playing field?

> By virtue of their membership in the ILO, they commit to uphold the 8 fundamental conventions defining the four core LS, namely the freedom of association and the right to collective bargaining, the elimination of all forms of forced labor, the effective abolition of child labor, and the elimination of discrimination at work. They also commit to effectively implement the ILO conventions which they have ratified (see previous point).

(Note: Via the ILO 2008 Declaration on Social Justice for a Fair Globalization and the UN SDG 8, countries across the world, including EU member states and the UK, increasingly commit to ILO's Decent Work agenda which calls for acceptable minimum standards of employment. Because I am not a legal expert, I cannot comment on the degree of legal obligations these commitments entail.)

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<sup>2</sup> See [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef1527en.pdf#page=29](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1527en.pdf#page=29)

<sup>3</sup> See [https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:102651](https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102651)

The only provision on labor in the multilateral trading system is GATT art. XX(e) which allows to withdraw market access concessions if the goods produced use prison labor.

- To what extent would agreeing to the EU's position on a level playing field restrict the UK's ability to reach a trade agreement with the US and other third countries? To what extent is the EU restricted by its existing agreements with third countries in what it can offer the UK on a level playing field?

It would not restrict the UK's ability to reach a trade agreement with the US and other third countries. For instance, signing up to stringent LPs in FTAs with Canada (1996) and the US (2003) has not prevented Chile from signing FTAs with shallow or no LPs in more recent years (e.g., with Japan or Malaysia).

In trade negotiations with the US, the UK will not get away from having to sign up to comprehensive and stringent LPs. On average the US has a higher number of LPs in its FTAs than does the EU. Note that NAFTA 2.0 (US-Mexico-Canada FTA, USMCA, signed in 2018) has considerably strengthened its LPs, including via a new provision on rules of origins requiring that a certain percent of auto content be made by workers earning at least US\$16 an hour. And, importantly, US FTAs include the possibility to impose trade sanctions in case of violations of labor commitments.

From the perspective of developed economies, there is a compelling socio-economic rationale to include LPs in North-South (NS) FTAs, namely levelling the playing field. NS trade has greater distributional consequences than NN trade, and given that violations of fundamental labor rights are widespread in the South, Northern countries fear that certain labor practices in developing countries can provide unfair competitive advantage.

From the perspective of developing countries, the fear is that LPs will increase labor costs, which in turn will decrease their comparative advantage in the exportation of labor-intensive goods. In a co-authored paper using a large sample of FTAs with global scope and the most comprehensive dataset on the content and design of LPs in FTAs, we show that while the inclusion of LPs has on average across all PTAs no impact on bilateral trade flows, exports of developing countries with weaker labor rights benefit from the introduction of LCs in NS FTAs (Carrère, Olarreaga and Raess 2017, current version April 2020). The mechanisms driving the positive impact of LPs on SN trade flows are increased demand in the North for goods produced with higher LS and related increased labor productivity. In another working paper, we show that (certain types of) LPs are effective at improving labor rights in developing countries (Raess and Sari 2020). Taken together, the results suggest that the inclusion of LPs in FTAs help level the playing field for workers and businesses in high income countries, as the increased SN trade they generate is also associated with LS upgrading in developing countries and thus amounts to "fairer trade".

It should be emphasized that we find that the introduction of labour clauses in NN FTAs has no impact on bilateral trade flows among trade partners. Now the level of economic development does not perfectly correlate with a country's LS. So in complementary analysis we use differences in worker protection (as opposed to economic development) across countries. We

find, in line with the previous result mentioned, that the introduction of LPs has a positive and statistically significant impact on trade when the exporter has weaker LS than the importer but only when the difference in worker protection between the exporter and importer is sufficiently large – for example, exports from Algeria to France, Malaysia to Japan, or Peru to Canada.

The take away message is this: unless the UK becomes Algeria (in terms of its level of labor protection), the introduction of LPs in its FTA with the EU is unlikely to boost its exports. But neither is it likely to reduce its exports. The corollary is that it is also unlikely that reducing or eliminating altogether LPs in its FTA with the EU will boost UK exports.

- How relevant are geographical proximity and economic interconnectedness to LPF provisions?

They are because the volume of trade is larger, and so potential difficulties in international trade.

- How confident are you that it is possible to conduct negotiations on something as technical as the level playing field by videoconference? Given COVID-19 has the potential to fundamentally change some aspects of the economy and the way people live and work, is there a case for looking again at what the two sides are trying to negotiate? Is there a danger that the current negotiating aims and mandate will lead us to an outcome on the level playing field that is not fit for purpose in a post-pandemic economy?

- Could you sketch out a possible compromise on the level playing field provisions and how it might be achieved? Would it be possible for such an outcome to not involve the CJEU? How united are EU Member States and the European Parliament in what the EU can offer the UK in the negotiations on the level playing field? To what extent might treating the areas of the level playing field separately help or hinder a compromise?

The UK (and the US) have been among the countries hardest hit by the pandemic both in terms of the number of deaths and the size of the economic contraction. If anything, this will only reinforce the belief in European capitals for the need of strong welfare states (including well-funded universal healthcare) and labor protection. The EU will fight tooth and nail to preserve high standards. The EU Parliament has signaled that it could veto any trade deal between the EU and the UK that lacks strong level field provisions to ensure fair competition.

Linking issues in trade negotiations rather helps than hinders reaching a compromise. Giving way on LPF might earn the UK better EU market access for its financial services.

***June 2020***



# Committee on the Future Relationship with the European Union

House of Commons, London, SW1A 0AA

Email: [freucom@parliament.uk](mailto:freucom@parliament.uk) Website: <https://committees.parliament.uk/committee/366/committee-on-the-future-relationship-with-the-european-union/>

21 May 2020

Dr Damian Raess  
Assistant Professor in Political Science at the World Trade Institute  
University of Bern

Dear Dr Raess,

The House of Commons Committee on the Future Relationship with the European Union is inquiring into the progress of the negotiations between the UK and the EU. Under normal circumstances, the Committee holds regular oral evidence sessions in Westminster. However, measures to prevent the spread of the coronavirus make this difficult.

The Committee is keen to gather as much evidence as possible to inform its deliberations so I am writing to you to ask whether you would be willing to help us with our work by making a written submission. We welcome general responses to our call for evidence, which was published on 4 March. We also hope that you would be willing to answer some of the more specific questions set out below on issues that fall within your area of expertise. Submissions need not address every bullet point and can include other matters that you think are relevant to the negotiations and should be drawn to the attention of the Committee.

In the questions below, we take the level playing field provisions to include state aid, competition, social and employment standards, environment, climate change, and relevant tax matters, as set out in the Political Declaration. We welcome contributions that address one, some or all of these areas and in your submission you can choose to group them together as level playing field provisions or to break out issues where you feel it is important to draw the Committee's attention to them. Please do not feel you need to address all of these policy areas.

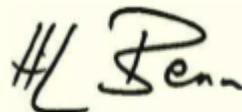
- What, if any, existing level playing field provisions are already included in the Withdrawal Agreement? What, if any, role is there for the Joint Committee to address any such provisions? What, if any, means is there for stakeholders to enforce any such provisions in domestic courts?
- What are the current UK and the EU positions on the level playing field provisions in the negotiations on a Future Relationship? What is your assessment of the level of technical detail the negotiators have grappled with on these provisions to date? To what extent might either position impact either party's future plans to legislate?
- How does the EU's position on a level playing field with the UK compare to that which it held in negotiations on CETA with Canada and the EU-Japan FTA?
- How does the EU's position on dispute settlement in the level playing field compare to the role of dispute resolution in the level playing field provisions in CETA with Canada and the EU-Japan FTA? Have there been any disputes to date concerning the level playing field in either agreement and, if so, how have they been settled and enforced?
- How relevant are geographical proximity and economic interconnectedness to level playing field provisions?
- To what extent would agreeing to the EU's position on a level playing field restrict the UK's ability to reach a trade agreement with the US and other third countries? To what extent is the

EU restricted by its existing agreements with third countries in what it can offer the UK on a level playing field?

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The Committee staff will be happy to discuss the inquiry, any issues raised, or the process for submitting written evidence. You can contact them at [freucom@parliament.uk](mailto:freucom@parliament.uk).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'H/ Benn', written in a cursive style.

**Hilary Benn**  
**Chair of the Committee**