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1. Why are the negotiations on environment and the level playing field important to you and your members?

The negotiations are important because they have significant implications for environmental policy and law in the UK and potential implications for action taken in the EU as well. The outcome may have an impact on future trade agreements and could be seen as a test case and a precedent in certain respects. There is an opportunity to build environmental ambition into a trade agreement in a way that has not been achieved previously, in UMSCA for example. The potential to address the implementation of environmental law and associated governance in a substantial way is a step beyond what has been achieved in previous agreements and could provide a foundation for future agreements as well as reinforcing efforts to ensure compliance in the UK and EU.

a. What should the environment and climate parts of the future relationship deliver?

Ultimately, the goal is better environmental outcomes for both parties and at the global level as well since both the EU and the UK have the capacity to influence other countries and multilateral agreements. More concretely, the aim should be to secure the protection of existing standards and effective structures for delivering them while creating a strong basis for improving them further within a framework that fosters co-operation between the two parties.

An agreement should underpin a close co-operative relationship between the UK and EU, both on bilateral and more global questions (such as the Paris Agreement and routes to decarbonisation). The relationship should be based on a combination of unambiguous political support for maintaining and improving standards, underpinned by clear legal obligations and governance systems (including compliance and dispute procedures) and incorporating practical mechanisms for joint action/co-operation in certain areas such as emissions trading, the regulation of chemicals and the management of the marine environment. A wider sense of trust to allow both parties to co-operate proactively and effectively is highly desirable.

2. What are the key disagreements on this topic between the UK and the EU, and how substantive are they?

In brief since others covered this, the key disagreements include:

- The level of commitment and detail related to the environment proposed by the EU is greater than that favoured by the UK where the emphasis is on maintaining national sovereignty and autonomy while stating that high standards will be maintained. The EU wants a single all-encompassing partnership agreement, whilst the UK is proposing a comprehensive free

trade agreement alongside separate bilateral agreements on certain issues such as energy and fisheries.

- The EU is looking for a binding agreement on non-regression, some mechanisms to promote future alignment, commitments on governance within the UK, a broader frame for the trade element of the agreement, including a climate dimension, and a different approach to enforcement and participation than that proposed by the UK.
- The UK opposes a binding commitment to non-regression that would cover most areas of environmental law and favours a model similar to CETA in which the commitments are much more limited. Nonetheless, the proposed Energy Agreement would contain mechanisms intended to promote more active co-operation. The UK rejects the notion that agreement on a “level playing field” is a legitimate demand for tariff and quota free access to the Single Market and is particularly allergic to mechanisms which would involve any role for the ECJ.

The differences are fairly substantive with respect to the extent of formal commitment envisaged, the level of detail envisaged for the environment, the framing of the overall agreement and the extent to which the UK retains complete autonomy. However, both parties have firmly emphasised their commitment to higher standards and there is some evidence for this in the form of the Green Deal proposals in the EU and proposed advances in environmental legislation in the UK, including the creation of the OEP.

3. What are the EU’s justifications in pushing for the environment and climate level playing field provisions, and how sound are these?

The EU’s concerns have economic, environmental and more political dimensions. These could be summarised as:

- A concern that the UK could adopt lower standards than those applying in the EU, resulting in lower costs for industries affected and a competitive advantage for the UK. This could undermine EU standards. It is difficult for them to read UK intentions in this area.
- A concern about the political contagion that could arise within the EU in the environmental domain if the UK is seen to be able to negotiate lower or simply looser standards. This could make it more difficult to maintain and enforce existing standards within the EU and may lead to some Member States asking for derogations from more demanding legislation for example. It could weaken support for adopting higher standards in future.
- A concern that the environment could be impacted adversely, both because of these factors and the exposure of at least parts of the EU to transboundary impacts, such as if UK standards are lowered. This is separate from the level playing field issue and perhaps more of a concern in the European Parliament for example.

These are all legitimate concerns and have been given further weight by mixed signals from the UK about the future of environmental standards. On the one hand, the Conservative manifesto contained a clear commitment not to compromise environmental protection in the course of trade negotiations and ministers have repeated this frequently. On the other hand the rejection of the inclusion of a non-regression clause in the Environment Bill and the accelerated

trade talks with the USA cause concern. In Brussels US environmental standards are seen as lower than in the EU, not without reason. A non-regression commitment would not prevent the UK from adopting higher standards than the EU so it is reasonable to interpret Government resistance to this mechanism as signalling an interest in loosening standards. There appear to be differences between the four countries of the UK in relation to the desirability of a non-regression commitment and the merits of future alignment but there is yet to be much indication of how this tension will be resolved internally or how it will be reconciled with an agreement with the EU.

There are solid reasons for believing that differing environmental standards can effect the level playing field, although there is not a rich literature of detailed case studies in this field¹². In practice there will be considerable variations in the extent to which different legislative requirements are likely to have a significant impact on production costs, with some, such as the industrial emissions Directive or the nitrate Directive, being much more likely to than others.

The EU anticipates raising its environmental ambitions, not least in relation to the circular economy and climate mitigation but also in the biodiversity strategy. This will extend the importance of environmental requirements as an influence on economic performance and competitiveness and so will heighten the sensitivity of the environmental level playing field.

4. What is the thinking behind the UK's approach and proposals, and how viable are these?

In brief, the aim appears to be to maximise autonomy from the EU and the freedom to change standards in future while accepting more alignment in Northern Ireland and being ready to have a closer relationship in the sphere of at least some of the regulations impinging on energy supply.

Whether this is viable in relation to the goal of seeking an agreement that includes tariff free access to the Single Market remains to be seen. However, there must be considerable doubt that it will be acceptable to the EU unless their position changes significantly. The approach in CETA is less ambitious than in the EU- Japan agreement for example so the UK is some distance from EU preferences. A readiness to compromise looks necessary.

5. Must the agreement refer to the common standards that apply in the UK and EU at the end of the transition period to be acceptable to the EU, or could it refer to other standards in some areas, for instance those in international environmental and climate agreements?

From the perspective of the environment it is important that that the agreement applies to a broad spectrum of standards and not only to the limited number that are set out in international agreements. As well as their limited scope, most of these standards are not backed up by any substantive system to ensure compliance and many are less ambitious than EU standards.

¹ Some of these reasons are explored in Nesbit, M and Baldock, D. *Brexit and the level playing field: key issues for environmental equivalence*. IEEP May 2018.

² See also Baldock, D and Nesbit, M in: *Addressing the Environment* in European Policy Centre (2019) *Ensuring a post-Brexit level playing field*. EPC. Brussels

This is the view of the EU as well, especially given the current level of alignment between UK and EU law in this field and the concerns outlined under Question 3.

6. In which policy areas does the UK stand to lose flexibility by signing up to the EU's proposals and what benefits could be brought by maintaining flexibility?

The UK would lose flexibility over its room to reduce standards, to adopt a significantly less rigorous approach to securing compliance or to sign trade agreements conflicting with obligations accepted within an agreement with the EU. 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.

In any area of law where future alignment was agreed, (which would be desirable in environmental terms in a number of areas such as the regulation of chemicals under REACH), the UK would remain free to adopt higher standards. Nonetheless, on this scenario there might be certain constraints on greater ambition, for example in the timing of the development and introduction of new legislation. An unconstrained UK could in principle adopt new environmental law faster than the EU usually does. However, parliamentary time is a major constraint in the UK, as illustrated by the Environment Bill, despite this being a government priority, admittedly in an exceptional period.

EU law arises from negotiation and compromise is usually involved: it is certainly not flawless. There may be evidence available to the Government that indicates where significant advantage could be obtained by substantive departure from existing legislation but this has not been made public as far as I am aware. Evidence from industry groups so far indicates that there is widespread support for a fairly high level of alignment with EU law, suggesting that the balance of commercial interest is in favour of maintaining a single set of standards where possible rather than elaborating a separate UK regime, even if this would cut some costs for some producers.

a. What effect would LPF commitments in a UK-EU agreement have on the UK's ability to do other trade deals, or the shape of those?

It would not be a barrier to signing other trade deals other than in limited circumstances. The UK is already trading with and also developing trade agreements with many countries that already have trade deals with the EU or are negotiating them. However, it would be a barrier to a deal that created irresistible pressure to lower standards to a point that this amounted to substantive regression. In addition, if a deal with the US for example led to products being available in the UK that were not permitted under environmental law in the EU they would not be allowed entry to the EU and might inhibit trade more generally. A deal that resulted in a different orientation in UK environmental standards, for example to coalesce around US standards (the principal alternative to the EU at the global level), potentially including a different approach to applying the Precautionary Principle, would be likely to conflict with a non-regression agreement with the EU. It would create a greater

conflict with alignment with the EU, particularly in the case of chemicals law, notably REACH.

7. Are there policy areas where the UK should be demanding level playing field provisions, to ensure that the EU maintains its environmental standards?

Yes, a level playing field should be wholly reciprocal. The area where the UK probably has the greatest interest in seeking to prevent regression in EU Member States and also to pursue at least some alignment is the reduction of GHG emissions, given the binding obligations introduced by the Climate Change Act of 2008.

8. What could be secured or lost in the free trade agreement as a result of what is agreed on the environment level playing field?

Given the importance of the level playing field and the environment to the EU, including the European Parliament, (with strong support from national governments and also from environmental NGOs), compromise will not be easy. This is an issue which could be central to the UK's ability to secure an agreement, especially one that allows tariff free access to the Single Market. A willingness by the UK to compromise in this area would not be a major climb down given the government commitment to high environmental standards and the lack of support for lowering them amongst the public or industry. A compromise here might help to secure the deal as a whole.

a. What would be the impact of no agreement in this area?

No agreement would create prolonged uncertainty, both generally and for the environment, reduce trust and set back co-operation with the EU across the board in addition to the economic consequences, such as the disruption to markets and trade which itself would have environmental consequences, not least in the case of food and livestock. There would be both domestic and global environmental implications eg for the preparation of COP 26. A number of concrete co-operative mechanisms of environmental importance would be affected adversely, including the management of fisheries and the marine environment in the absence of any agreement, access by the UK to EU chemicals safety data, co-ordination with respect to emissions trading and the optimal management of the inter-connectors on a European scale.

9. Do the UK and EU proposals provide appropriate enforcement mechanisms, and routes for civil society and the private sector to raise concerns?

No, the proposals for the environment are not sufficiently strong. In the case of the UK, the proposals for addressing non-compliance with the environmental provisions are weaker than those proposed in the general dispute settlement procedure. They are based on a consultation mechanism, with the ability to refer disputes to a Panel of Experts. Parties are only required to discuss or try to resolve issues arising from the Panel's report, which is not binding.

Other witnesses addressed the routes for stakeholders to raise concerns.

10. Where do you see the landing zone between the UK and EU's positions?

This is difficult to forecast!

Adjusting the governance arrangements might unlock some of the issues where the two sides are not so far apart on the substance.

In principle there is scope for compromises outside the level playing chapter in the other elements of the agreement, such as fisheries, and these might allow one side to give more ground within the LPF. Equally there is scope for compromises within the LPF chapter as a whole, with trade-offs between different elements. Separate compromises for each of the LPF elements could be negotiated but are likely to be influenced by this wider picture.

One possibility would be for the EU to give some ground in relation to state aids, given that there may be changes made to the current set of rules as part of the plans to recover from covid-19. This could allow some movement by the UK in accepting a form of non-regression and departing from the principle that changes in standards are prohibited only if they can be proved to distort trade. Other tests of regression could be arrived at, even if they have not been used in previous trade agreements.

Supplementary questions

What changes to the Environment Bill would give the EU more confidence that the UK will not regress on environmental standards?

The key issues likely to give the EU more confidence are:

- The establishment of a sufficiently independent and well resourced OEP with powers to pursue cases through a judicial process that includes the powers to impose effective, meaningful and dissuasive penalties so that there is substantive, sustained and transparent pressure to secure compliance.
- The adoption of a non-regression commitment applying to environmental law.
- A stronger commitment to the environmental principles in the form of appropriate duties applying to government.
- Mechanisms to establish an appropriate level of co-operation between the four UK countries in this sphere, avoiding governance "gaps" and including the establishment of bodies equivalent to the OEP (or a more collective arrangement achieving the same ends).

How can we be sure there will be appropriate enforcement of environment and climate regulations in the EU Member States?

This relies on the existing EU governance system, including monitoring by the European Commission, with input from other institutions and civil society and

procedures to ensure compliance, involving the ECJ in a number of more serious cases. 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.

If there are non-regression provisions, will they effectively be one-way? Will the EU be compelled to mirror the UK when the UK increases its standards?

Non-regression provisions would be two-way. They are distinct from future alignment provisions. If non-alignment provisions are agreed, for example for industrial emission standards, they are likely to be developed through some form of co-operative or consultative system.

Why should civil society participation mechanisms be included in the trade agreement?

Leaving aside general principles of accountability and transparency, the case for participation is based on the wide scope of the envisaged agreement, the inclusion of many provisions of general public and environmental interest and direct relevance to domestic legislation (as opposed to the minutiae of many tariff provisions). Civil society has a direct interest in the enforcement of environmental legislation by both parties, (which is expected to be an explicit part of the agreement) and in the level of adherence to the provisions 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 governments may be reluctant to do within the confines of only a formal state-to-state dispute settlement mechanism.