

Prof Rüdiger Wurzel (University of Hull) – Written evidence
LPF0013

Questions

What is at stake

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

Environmental and level playing field issues will affect the lives of all citizens in the UK and EU. I have researched environmental issues for almost 30 years.

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

High levels of environmental protection and ambitious climate policy measures. The future relationship should encourage policy innovation and facilitate policy learning between the two parties as well as the ratcheting upwards of standards where possible/desirable. In the past, the UK has had a significant impact on EU environmental policy especially from the late 1980s onwards. A range of procedural measures (such as environmental impact assessment and environmental policy integration) was 'uploaded' by the UK to the EU level. On the other hand, the EU has also had a significant impact on environmental policy in the UK.

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

For product standards (e.g. emissions standards for cars) level playing field provisions are unavoidable to ensure both a high level of environmental protection and free trade. The existing Free Trade Agreements which the EU has signed all include provisions which cover (environmental) product standards. For process standards (e.g. for power stations and factories) level playing field provisions can be justified on the basis that they prevent unfair competition. 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 environmental policy-making in the 1980s. Put simply, 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. Moreover, many EU environmental laws include review clauses that require the updating of these laws. The EU is concerned that EU and UK environmental policies/laws will start to diverge fairly quickly at the end of the transition period thus making likely potential fair competition and level playing field disputes. The EU wants level playing field provisions to prevent this from happening. The EU has argued that the size and proximity of the UK as well as the breadth and depth of its relations with the EU27 requires an agreement that is different from the existing Free Trade Agreements which the EU has signed

with other countries (e.g. with Canada or Japan). It is the first time that an EU Member State has left the EU. This novel situation requires unique solutions. The EU's reasoning on product standards is very sound. On process and procedural standards, the EU is on less firm ground although there are clearly justifiable concerns about the possibility of unfair competition due to lower environmental standards. Non-regression provisions are essential to rule out a race to bottom of environmental standards.

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

The UK government insists on regulatory sovereignty and rejects the EU's level playing field arguments. It does not want the Court of the Justice of the European Union (CJEU) to have any say over UK affairs including any dispute resolution mechanism between the UK and EU after the transition period. It seems however clear that for product standards (e.g. for cars) both sides will have to accept each other's environmental standards to be able to get access to each other's markets. UK government representatives have repeatedly stressed that precedent should be followed when a Free Trade Agreement is negotiated between the UK and EU. The UK wants to use its regulatory sovereignty to draw up its own domestic environmental (and other) laws. Parliamentary sovereignty is highly valued in the UK. The UK has made a commitment to uphold high environmental standards.

The UK government's approach is viable in so far as a sovereign state clearly has the right to negotiate its own free trade agreement and to adopt its own domestic laws. However, for product standards the UK will have to comply with EU laws (and vice versa). Moreover, sovereign states which have signed and ratified international treaties cannot pass domestic laws which are in breach of their commitments as enshrined in these treaties. Regulatory sovereignty therefore does have its limits also for sovereign states at least if they want to interact with other states on the basis of commonly agreed treaties.

Costs and benefits

4. 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 could adopt more but also less ambitious environmental standards if it were to maintain flexibility.

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

They could possibly act according a precedent. The UK's current negotiation strategy relies heavily on pointing out that it wants to follow precedent. However, (new/innovative) precedent will never be set if all parties were to follow only existing precedent.

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

From an environmental perspective it would be desirable for the UK to demand that the EU maintains and, where necessary, raises its environmental standards. However, this contradicts the UK government's core and overriding objective to achieve full regulatory sovereignty.

6. What could be secured or lost in the free trade agreement as a result of what is agreed on the environment level playing field?
- a. What would be the impact of no agreement in this area?

No agreement would result in WTO rules to be applied. This would mean tariffs and quotas.

Civil society participation

7. Do the UK and EU proposals provide appropriate routes for civil society and the private sector to raise concerns about the implementation of the agreement?

There is considerable scope for strengthening this. The Aarhus convention offers some means. However, civil society (and especially environmental NGOs) and businesses do not always have the same objections when it comes to environmental standards, procedures and instruments.

Non-regression

8. Both the EU and UK have included clauses on upholding levels of environmental protection, what are the implications of the different approaches?

See above.

9. Must the agreement refer to the common standards that apply in the EU and UK 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?

The UK government would like reference to be made to international standards and agreements such as the Paris Agreement on climate change. However, EU (and UK) environmental standards are usually more ambitious than international environmental agreements, some of which barely managed to adopt standards that are above the lowest common denominator. This is partly due to the fact that unanimity rule applies for international treaties while qualified majority voting is now the rule for most EU environmental laws (although there are exceptions). Making reference to international treaties therefore creates the danger of regression at least in the medium to long term.

3. Would a reference to common standards in the EU and UK at the end of the transition period bring in the Court of Justice of the European Union (CJEU)?

Not necessarily. It would depend on the exact wording of the agreement.

Environmental principles

10. If the environmental principles are included in a UK-EU agreement, what difference would that make to policy-making and the decisions of courts in the UK?

The environmental principles proposed by the EU would have to be taken into account by UK courts.

Enforcement and dispute resolution

11. What shape should the relevant enforcement and dispute resolution mechanisms take to be both negotiable and to help ensure that the agreement can be maintained in the long-term?

Enforcement and dispute resolution mechanisms are extremely important. The agreement will stand or fall with it.

1. Does the Office for Environmental Protection (OEP) meet the criteria of the 'independent body' required under the EU's proposal?

Trade deals with the rest of the world

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

Reaching an agreement

13. Are there helpful precedents or creative proposals that the negotiators should be considering in the main areas of contention?

Mere reference to existing precedents will not suffice. The UK is setting a precedent itself by leaving the EU which no other Member State has done before. New innovative solutions will therefore have to be found. Existing Free Trade Agreements can offer some guidance. However, they cannot offer on their own a blue print for an agreement between the EU and UK that ensures both a high level of environmental/climate protection and (close to) free trade.

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