WRITTEN EVIDENCE SUBMITTED BY THE UNITED KINGDOM ENVIRONMENTAL LAW ASSOCIATION TO THE HOUSE OF LORDS EU ENVIRONMENT SUB-COMMITTEE INQUIRY TO EXPLORE WHAT IS AT STAKE ON THE ENVIRONMENTAL AND CLIMATE LEVEL PLAYING FIELD IN THE UK-EU FUTURE RELATIONSHIP NEGOTIATIONS

The United Kingdom Environmental Law Association ("**UKELA**") comprises approximately 1,400 academics, barristers, solicitors and consultants, in both the public and private sectors, involved in the practice, study and formulation of environmental law. Its primary purpose is to make better law for the environment. It has been exploring what EU Exit means for environmental law since 2016 and published a series of briefing papers and reports on the topic. Details of the briefings, reports and submissions are provided in the Annex.

Executive Summary

- The following submissions to the inquiry have been prepared by UKELA's Governance and Devolution Group ("**GDG**"). The GDG aims to inform the debate on how UK environmental law and policy should develop post-EU Exit.

- The environmental provisions contained in the Draft UK-EU Comprehensive Free Trade Agreement ("**Draft Trade Agreement**") are only part of a wider picture of environmental protection after the end of the transition period. An explicit demarcation by the UK Government of those areas it considers to be outside the trade negotiations may avoid future disputes.

- UKELA would like to highlight that the setting of many environmental standards is a matter of devolved responsibility, so that there may be divergence within the UK, not a single "UK" standard[1].

- In UKELA's view, cooperation between the EU and the UK is crucial to address pressing cross-border environment and climate issues and to ensure that future economic pressures (such as future trade deals) do not undermine environmental protections.

[1] These submissions do not address specifically the position of Northern Ireland, which will have a continuing relationship with the single market and customs union and will be governed by the Northern Ireland Protocol (referred to by the EU as the "Revised Protocol on Ireland and Northern Ireland") (https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/eu-uk-withdrawal-agreement/protocol-ireland-and-northern-ireland_en).

Cross-border environmental regulation is also necessary to tackle pressing issues affecting both the UK and the EU such as marine pollution (which impacts on, for example, bathing water quality), nitrate pollution, climate change, invasive non-native species, wildlife crime, the conservation of species and habitats, and waste management.

- UKELA would like to see a much more explicit and stronger institutional arrangement for future cooperation between the UK and the EU on the environment that goes beyond trade/environment issues[2].

- The concept of a level playing field is predicated on creating fair and open competition between trading partners. To this extent, UKELA supports this concept with respect to environment and climate regulation between the EU and the UK post-EU Exit. However, the playing field is defined differently by both parties and UKELA proposes a new landing zone or compromise position.

- The UK's current position is that it will provide a commitment that environmental standards will not be weakened, but then specifically excludes this commitment from the Draft Trade Agreement's dispute resolution procedure.

- UKELA has repeatedly expressed firm support for ensuring that there is 'non-regression' from current UK environmental standards (which are largely the shared EU standards) at the end of the transition period. This is crucial to ensuring consistency and certainty in policy, legislation and the judicial system while maintaining the UK's current high level of environmental protection. In UKELA's view, current UK, EU and international standards would provide an appropriate baseline for each of the parties' environmental commitments at the end of the transition period.

- UKELA proposes that the Draft Trade Agreement should include a mechanism to ensure that the EU and the UK consistently maintain high standards with respect to domestic environment and climate regulation after the transition period and going forwards. The EU has proposed that the UK continues to ensure non-regression, with evolving EU

[2] A useful precedent to consider is the Commission for Environmental Cooperation established by the United States, Canada and Mexico and whose five-year strategic plan 2021-2025 has just been published. The Commission was established under a separate environmental agreement running parallel to NAFTA and its successor.

standards as a baseline in the future (known as 'dynamic alignment'). UKELA notes that this conflicts with the high level of flexibility that the UK wants to be able to exercise post-EU Exit.

- A potential compromise would be the adoption of binding common standards or environmental objectives by the parties, which would be subject to the principle of non-regression enshrined in the Draft Trade Agreement and subject to the Draft Trade Agreement's dispute resolution procedure. This would allow each of the parties to exercise autonomy in their methods of achieving these standards or objectives, whilst ensuring that environmental standards are not eroded over time.

- UKELA envisages that a monitoring mechanism for the implementation of common standards and objectives will be required. Where there is actual divergence of standards or environmental objectives by the UK or any of the EU Member States, UKELA proposes that this be publicly announced.

- A mechanism to review and agree on further common standards and environmental objectives (with the ability to impose tariffs where such standards and objectives cannot be agreed), as time passes and environmental priorities evolve, would ensure cooperation and a high level of environmental protection.

- This proposal would fit in with the UK's position of not trading environmental standards for trade agreements, whilst respecting the UK's flexibility in deciding how it will achieve environmental objectives.

- The effectiveness of the provisions of the Draft Trade Agreement will ultimately rest on how enforceable it is. The UK is seeking to exclude environmental standards from the dispute resolution mechanism in the Draft Trade Agreement[3]. In UKELA's view, it is of fundamental importance that there be an effective dispute resolution mechanism recognised as part of the Draft Trade Agreement, whether that mechanism is part of the function of the Joint Committee or delegated to a national public body.

- UKELA's understanding is that the matters in the Draft Trade Agreement will not be transposed into UK/EU law. This means that the Office for Environmental Protection

[3] Chapter 32 of 'The Future Relationship with the EU'.

("**OEP**") will not have jurisdiction over the Draft Trade Agreement. In UKELA's view, the relationship between the Environment Bill and the Draft Trade Agreement needs to be made clear, for example, how will non-regression in the Draft Trade Agreement affect the Environment Bill? Is there a demarcation between environmental protection (or law) and those environmental aspects within the Draft Trade Agreement?

- UKELA has not found a precedent for the EU being able to unilaterally impose sanctions (both interim and final) if it perceives that there has been a disruption of the equal conditions of competition in areas such as the environment.

- As to the proposed international dispute resolution mechanism, UKELA notes that in relation to the environment, the Draft Trade Agreement provides for a consultative mechanism between the parties and a possible Panel of Experts reporting to the parties, but not a final arbitration procedure. While UKELA welcomes the references in the UK's proposals to the need to involve wider civil society, including environmental groups, in these processes[4], it considers that if matters cannot be resolved between the parties then there should be provisions for a robust and binding arbitration mechanism.

Responses to Questions

What is at stake?

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

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

1. Environmental and climate legislation, policy and the judicial system benefit from consistency and certainty. Any trade agreement which includes environmental and climate aspects should ensure regulatory stability and be enforceable with effective dispute resolution procedures.

[4] See for example Article 28.12.5 of the Draft Trade Agreement.

2. In reference to the commitments made by the UK in the Political Declaration, UKELA expects the environment and climate parts of the future relationship to include as a minimum:

    a. a dynamic and proactive commitment to sustainable development, the environment and addressing climate change;

    b. non-regression of environmental standards post-EU Exit that continues into the future;

    c. a robust and effective dispute resolution mechanism capable of enforcing environmental commitments; and

    d. effective implementation of international agreements.

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

3. The EU's justifications for requiring generally a 'level playing field' between the EU and the UK post-EU Exit can be found in paragraph 94 of its Negotiating Directives:

    "Given the Union and the United Kingdom's geographic proximity and economic interdependence, the envisaged partnership must ensure open and fair competition, encompassing robust commitments to ensure a level playing field."

4. The Negotiating Directives also include the EU's 'robust commitments' on the environment and climate change in relation to the level playing field:

    a. "non-regression" of environmental laws at the end of the transition period with minimum standards and targets being agreed at that point in time;

    b. "dynamic alignment" upholding high standards and using EU standards as a baseline for the level playing field after the transition period;

    c. no lowering of environmental protection in order to encourage trade and investment;

d. changes to the level playing field by the governing body to add additional areas or lay down higher standards; and

e. the implementation of a UK-wide transparent system for the effective domestic monitoring, reporting, oversight and enforcement of its obligations by an independent and adequately resourced body.

5. From a general standpoint, UKELA supports a level playing field between the EU and the UK on environmental and climate change regulation, as it considers that this is necessary to ensure open and fair competition where there is a no tariff and a quota-free deal.

6. In respect of the underlying justification of geographic proximity and economic interdependence, UKELA takes the view that, in respect of the environment and climate change, these factors lend themselves to a partnership that encompasses robust commitments. However, cross-border environmental regulation is also necessary to tackle pressing issues affecting both the UK and the EU such as marine pollution, nitrate pollution, climate change, invasive non-native species, wildlife crime, the conservation of species and habitats, and waste management. Furthermore, as EU law has shown[5], common environmental requirements ensure fair competition between states, and thus environmental issues are often important for economic reasons as well.

7. UKELA has previously recommended that the principle of non-regression should be considered by the Government for inclusion as a binding commitment[6]. It is UKELA's position that this should be included in the Draft Trade Agreement. UKELA agrees with the EU's approach to the non-regression of environmental laws at the end of the transition period, with minimum standards and targets being agreed at that point in time, but with UK or EU standards being used as a benchmark.

8. The inclusion of the phrase "*corresponding high standards over time*" in the Negotiating Directives implies that the EU is aiming to establish 'dynamic alignment' of UK environmental regulation with EU environmental rules and regulations in the future.

[5] For example, Case C-300/89 *Parliament v Council* [1991] ECR I-2867.
[6] See UKELA's submissions to the Public Bill Committee on the Environment Bill in June 2020, but also in its July 2018 response to DEFRA's consultation on 'Environmental Principles and Governance after EU Exit'.

Such a future temporal element is entirely absent from the Political Declaration[7]. As discussed in UKELA's response to Question 3 below, the UK wishes to have flexibility in devising its own environmental laws and to set its own environmental priorities, which is likely to be inconsistent with the dynamic alignment model proposed by the EU.

9. Paragraph 94 of the EU's Negotiating Directives also appears to imply an ability on the part of the EU to impose unilateral sanctions (both interim and final) if it perceives that there has been a disruption of the equal conditions of competition in areas such as the environment. UKELA has been unable to find a justification for such a stance in the Political Declaration[8]. Nor is it aware of any similar provisions in other trade agreements to which the EU is a party. For example, in the EU-Canada Comprehensive Economic and Trade Agreement signed on 30 October 2016 ("**CETA**") unilateral sanctions are only permitted in respect of anti-dumping and countervailing measures; all other disputes are to be resolved by arbitration.

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

10. The UK's approach appears in three documents:

    a. the Political Declaration of 19 October 2020 (para 77), which highlights the importance of establishing a level playing field to ensure open and fair competition;

    b. the Draft Trade Agreement (Chapter 26), which highlights the promotion of international trade in a way that promotes sustainable development; and

    c. 'The Future Relationship with the EU'[9] which includes reciprocal commitments between the EU and the UK to ensure that environmental protection will not be weakened in order to encourage trade or investment, but does not include any reference to the level playing field. These reciprocal commitments are excluded from the Draft Trade Agreement's dispute resolution procedure[10].

[7] In particular its paragraph 77, the parallel paragraph to paragraph 94 of the Negotiating Directives.
[8] See in particular Section II ('Governance') of Part IV ('Institutional and Other Horizontal Arrangements').
[9] 'The Future Relationship with the EU', February 2020, paragraphs 77 and 78.
[10] Paragraph 78.

11. From a legal standpoint, the UK's most recent position, as set out in 'The Future Relationship with the EU' document, may result in the following undesirable outcomes:

    a. the flexibility sought by the UK with respect to environmental standards may allow it (and indeed the EU too) to erode these standards to pursue trade and investment and although the UK has stated that this will not be the case, the level of protection afforded by environmental laws could be weakened or reduced for other reasons;

    b. a reciprocal commitment is not necessarily a binding legal commitment, but can be manifested in other, less enforceable, ways; and

    c. no reference is made in 'The Future Relationship with the EU' to the point in time at which the level of protection should be assessed (e.g. at the end of the transition period or as part of a continuing commitment to uphold future environmental law).

12. UKELA notes that the 'robust commitments' sought by the EU in the Negotiating Directives appear to provide greater protection for the environment, particularly with respect to the enforcement of such standards.

13. UKELA is of the view that there could be a compromise reached between the EU's and the UK's approaches. This would involve the EU and the UK developing binding common standards and environmental objectives that serve as a baseline and are subject to the principle of 'non-regression', but allow each of the parties to have their own 'margin of appreciation' on how precisely to implement and achieve these standards and objectives.

14. A mechanism within the Draft Trade Agreement to review and agree on further common standards and objectives, as environmental priorities evolve, would ensure cooperation and a high level of environmental protection.

15. UKELA suggests that it would be advisable to determine, as part of the future relationship, the level of autonomy to be granted to either party to interpret common environmental principles, since this will dictate the extent to which they constitute a strong common foundation of environmental policy. Environmental principles *per se* are

general and malleable concepts in environmental policy, which may be interpreted differently in different legal and regulatory contexts. Note that the UK Withdrawal from the European Union (Continuity) (Scotland) Bill) proposes that "*the Scottish Ministers must have regard to the interpretation of those equivalent principles by the European Court from time to time*", giving them a firm common foundation as environmental policymaking norms (at least between Scotland and the EU).

16. UKELA also supports the inclusion of the principle of non-regression in national law as part of the Environment Bill.

17. UKELA's strongly recommends that any trade agreement contains a mechanism for agreeing standards and a robust enforcement mechanism for resolving disputes. The mere fact that there is already conflict between the EU's position seeking environmental guarantees and the UK's desire for flexibility only serves to highlight that the proposed level playing field could be a potential and significant source of dispute between the parties for years to come.

18. It will also be crucial for a monitoring body to report on the status and effectiveness of all environmental standards and objectives against a non-regression benchmark and against any evolving standards and objectives. This could be a function delegated to the OEP (or the equivalent devolved bodies). There is precedent for this in CETA's Joint Interpretive Statement, where environmental commitments relating to trade and sustainable development and trade and environment are subject to "*dedicated and binding assessment and review mechanisms*." In the Statement, Canada and the EU pledge to make effective use of these mechanisms for the life of the agreement and to initiate an early review of these provisions[11].

[11] CETA Joint Interpretative Instrument, paragraph 10(a), page 9. This is also enshrined in CETA at Article 22.3(3).

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?

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?

19. In UKELA's view, the role of environmental protection and climate change standards is not to secure trade deals. The UK has already stated that it will not 'weaken or reduce' the level of protection afforded by environmental laws in order to encourage trade or investment[12]. This now requires a robust dispute resolution mechanism in place to ensure adequate enforcement.

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

20. All policies areas should be subject to the level playing field if fair competition is to be maintained.

21. The difficulty at present is the lack of development of environmental standards in the UK independently of the EU, although the UK has been a world leader in adopting the net zero carbon emissions target by 2050, while the EU is proposing only a 95% reduction. Further, UKELA notes that the progression of the Environment Bill has stalled due to Covid-19 and the current draft lacks sufficient detail on meaningful progress reports or a continuing system of public review to be considered a gold standard that could be used to influence EU environmental standards.

22. UKELA supports a method of monitoring compliance by the Member States and the UK with the common standards or environmental objectives as set out in the Draft Trade Agreement and as they evolve over time.

[12] 'The Future Relationship with the EU', paragraph 77.

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?

23. The Government recently voted against an amendment to the Agriculture Bill which would have guaranteed existing UK food standards in any trade agreement[13]. This could potentially create distortions of competition within the UK, risk lowering the UK's high food standards and negatively affect the current UK food industry.

24. The same risks would exist for UK current environmental standards, unless they are set as baseline standards in the Draft Trade Agreement and are subject to a robust enforcement mechanism, or a commitment to the principle of non-regression is enshrined in the Draft Trade Agreement.

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?

25. The Draft Trade Agreement needs to ensure that civil society and the private sector have the opportunity to participate in its effective implementation. This could be achieved by setting up a Civil Society Forum. For example, under Article 22.5 of CETA, the EU and Canada are required to facilitate a joint annual Civil Society Forum, including participants from their domestic advisory groups, in order to conduct a dialogue on the sustainable development aspects of CETA. The provision of such a forum should be enshrined in the Draft Trade Agreement.

<u>Non-regression</u>

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

26. The EU is looking to create a baseline with EU standards, throughout the life of the Draft Trade Agreement, unilaterally impose sanctions on the UK if there has been a disruption

[13] See amendments NC1, NC2 and NC6 (https://publications.parliament.uk/pa/bills/cbill/2017-2019/0292/amend/agriculture_rm_rep_0131.1-7.html).

of equal conditions of competition, and where a dispute arises in relation to EU law, (this could include environmental standards and principles) refer the matter to the CJEU.

27. The UK seeks a non-binding commitment on environmental protection, makes no reference to the point in time the level of protection should be assessed, and specifically excludes environmental standards from the dispute resolution mechanism outlined in Chapter 32. It is therefore particularly important that the UK identifies what it considers should be the appropriate dispute resolution mechanism for issues concerning the implementation and upholding of appropriate environmental standards.

a. How would the EU and UK's different approaches to non-regression affect UK policymaking?

28. The UK approach would mean that at the end of the transition period, when making policy the UK could set any environmental and climate change standards, including lowering or increasing current UK (and EU) environmental and climate change standards and objectives.

29. The EU's approach would require the UK to at least maintain current and future EU standards when making policy. There is a risk that the CJEU would intervene where the dispute is considered a matter of EU law.

b. What happens if a party lowers their standards or level of protection under each approach?

30. The EU could not lower its standards after the end of the transition period without amending the Draft Trade Agreement or amending its own EU standards. If the UK lowered its standards, it appears open to the EU to unilaterally impose sanctions, or alternatively the matter would be subject to the dispute resolution mechanism of the Draft Trade Agreement or, if considered a matter of EU law, would be dealt with by the CJEU.

31. It is not clear under the UK's approach what would be the consequence if a particular Member State lowered a standard or failed to meet common agreed standards or environmental objectives.

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?

32. UKELA's view is that common standards going forward must be consistent with international environmental and climate agreements.

33. UKELA would like to highlight that that the setting of many environmental standards is a matter of devolved responsibility, so that there may be divergence within the UK, not a single "UK" standard.

a. 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)?

34. It is likely that it would need to be explicitly stated that any dispute over environmental standards was a matter for independent arbitration, to avoid bringing in the CJEU.

35. UKELA notes that the CJEU has recently confirmed that in the case of a dispute involving an agreement between the EU and a non-EU country, EU law does not require a reference to the CJEU[14].

36. The Draft Trade Agreement could outline its own dispute mechanism procedure and exclude the role of the CJEU in interpreting law applicable to the level playing field.

[14] Opinion 1/17 dated 30 April 2019 concerning investor-state dispute settlement under the Comprehensive Economic and Trade Agreement between Canada and the EU: "*Since the CETA Tribunal and Appellate Tribunal stand outside the EU judicial system and since their powers of interpretation are confined to the provisions of the CETA in the light of the rules and principles of international law applicable between the Parties, it is, moreover, consistent that the CETA makes no provision for the prior involvement of the Court that would permit or oblige that Tribunal or Appellate Tribunal to make a reference for a preliminary ruling to the Court*" (para 134). The position is different where the agreement in between two EU Member States: Case C-284/16 *(Archmea*)

Environmental principles

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

37. This may depend on whether they are determined to be legal concepts (in which case the CJEU would want a role) or not. Environmental principles are constitutionally entrenched norms of environmental policymaking in EU law, indicating that they have legal status under EU law. As set out above, the CJEU wishes to retain its position as the sole arbiter of EU law.

38. If the environmental principles are included in a UK-EU agreement, this may affect how the UK is then required to adopt these in domestic law, and in turn how they might impact policymaking. Environmental principles are, to an extent, currently proposed to be incorporated into English environmental law via the Environment Bill. Any stronger formulation of embedding environmental principles as a common benchmark in a UK-EU agreement – for example, if it also were to include a reference to a high level of protection – may require a rethink of domestic law reform in this regard and alter (likely increase) the legal influence of environmental principles on policymaking.

39. Nevertheless, it may be considered that principles are not, by themselves, unduly restrictive and may in fact promote higher environmental standards over time (or they may not, depending on the governance and enforcement approaches linked to any targets). What is likely to be more prescriptive is the method by which those targets are achieved.

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?

40. UKELA would like to point out that Question 11 and Question 11(a) address fundamentally different propositions. If it is to be intended that the UK proposes to

include within the remit of the OEP dispute resolution functions on environmental issues that arise under the future agreement, this is yet to be made clear.

41. UKELA considers it is important to distinguish between the two dispute resolution mechanisms under consideration:

    a. an international mechanism dealing with disputes between the UK and the EU as to their obligations under any final agreement reached. Any such agreement will have the status of a treaty under international law, but relying solely on the International Court at the Hague for resolving disputes and enforcement will be both cumbersome and lengthy; and

    b. national mechanisms which provide that there is an independent body or bodies monitoring and enforcing environmental law duties of governments and other public bodies, including obligations under the agreement which have been transposed into national law, and where the EU seeks an equivalence to the EU Commission's power to bring infringement proceedings against Member States.

42. As to the international dispute resolution mechanism, UKELA notes that in relation to the environment the Draft Trade Agreement provides for a consultative mechanism between the parties and a possible Panel of Experts reporting to the parties, but not a final arbitration procedure.

43. While UKELA welcomes the references in the UK's proposals to the need to involve wider civil society, including environmental groups, in these processes[15], it considers that if matters cannot be resolved between the parties then there should be provisions for a robust and binding arbitration mechanism. Furthermore, it is important to recognise the distinctive vulnerability of the environment because it lacks any legal interest, and there is a strong case for establishing an Environment Compliance Committee. The Committee could take complaints from the public and interest groups to alert it to possible breaches by either party of obligations under the agreement, and report to the

[15] See for example Art 28.12.5 of the Draft Trade Agreement.

parties[16]. If an issue cannot be resolved, the dispute mechanisms, include arbitration if necessary, would come into play.

44. The negotiators could take a more radical standpoint and accept that environmental issues are cross-border issues of fundamental importance, and where disputes cannot be resolved between the parties create an international environmental tribunal, with judges from both the EU and the UK to provide an authoritative interpretation on the obligations under the agreement.

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

45. UKELA's understanding is that the matters set out in the Draft Trade Agreement would not be transposed into UK/EU law. This means that the OEP would not have jurisdiction over the Draft Trade Agreement. In UKELA's view, the relationship between the Environment Bill and the Draft Trade Agreement needs clarification.

46. For Scotland, the Draft Trade Agreement would probably not be viewed as relating to "environmental protection" and thus fall outside the scope of Environmental Standards Scotland.

47. Provided there is a strengthening of the international compliance mechanisms concerning the environmental obligations under the Draft Trade Agreement, UKELA considers it unnecessary and confusing for the OEP to have jurisdiction over the Draft Trade Agreement itself. Its functions and those of equivalent bodies in Scotland and Wales should be focused on environmental law duties under national law, including those derived from the Draft Trade Agreement.

48. UKELA is concerned with how enforcement and dispute resolution will be carried out in a cross-border context. Either environmental standards are a matter of fact to be determined by arbitration or they are a mixed issue of fact and law that should be determined by an international environmental tribunal.

[16] This would be similar to the Aarhus Compliance Committee established by the parties to the Aarhus Convention.

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?

49. This is addressed in our response to Question 4 above.

Reaching an agreement

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

50. UKELA notes that the UK's current position constantly refers to trade/environment measures, implying that there are many environmental measures which are largely considered to be outside the scope of the agreement. UKELA's view is that this underplays the importance of any agreement with the EU to protect and enhance the European environment as a shared heritage, whether or not that contributes to trade and sustainable development.

51. Without compromising the ability of both parties to develop their own national environmental policies where appropriate, the language of the Draft Trade Agreement could be much stronger to reflect the significance of the environment. For instance, the environmental provisions of the 2019 Agreement between the United States, Canada, and Mexico (the successor to NAFTA) contain a provision:

> "*Taking account of their respective national priorities and circumstances, the Parties recognize that enhanced cooperation to protect and conserve the environment and the sustainable use and management of their natural resources brings benefits that can contribute to sustainable development, strengthen their environmental governance, support implementation of international environmental agreements to which they are a party, and complement the objectives of this Agreement."*[17]

52. The provisions also recognise that their purpose is not simply to promote "*mutually supportive trade and environmental policies and practices*", but to promote in their own

[17] Article 24.2.5.

right "*high levels of environmental protection and effective enforcement of environmental laws"*[18].

53. UKELA would like to see a much more explicit and stronger institutional arrangement for future cooperation between the UK and the EU on the environment, and one that goes beyond trade/environment issues. A useful precedent to consider is the Commission for Environmental Cooperation established by the United States, Canada and Mexico and whose five-year strategic plan 2021-2025 has just been published[19].

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

54. See UKELA's proposed compromise between the EU and UK's position or 'landing zone' in the response to Question 2 above.

15. Miscellaneous matters

55. There is the need to consider the internal level-playing field as well as that with the EU. If England and Wales were to favour moving away from EU standards, but the Scottish Government maintains its policy of dynamic alignment, then there is the potential for major intra-UK tension. This will need to be addressed in the Draft Trade Agreement.

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[18] Article 24.2.2. It is arguable that because of the close physical and economic proximity of the countries concerned, the US-Canada-Mexico trade agreement is a more compelling precedent than CETA.
[19] The Commission was established under a separate environment agreement running parallel to NAFTA and its successor.

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Annex

UKELA EU Exit Reports

- Brexit and Environmental Law: Exit from the Euratom Treaty and its Environmental Implications (July 2017)
- Brexit and Environmental Law: Enforcement and Political Accountability Issues (July 2017)
- Brexit and Environmental Law: Brexit, Henry VIII Clauses and Environmental Law (July 2017)
- Brexit and Environmental Law: the UK and International Environmental Law after Brexit (September 2017)
- Wales, Brexit and Environmental Law (October 2017)
- Brexit and Environmental Law: The UK and European Co-Operation Bodies (January 2018)
- Brexit and Environmental Law: Environmental Standard Setting outside the EU (February 2018)
- UKELA's response to the consultation paper published by Defra: *Environmental Principles and Governance after the United Kingdom leaves the European Union: Consultation on environmental principles and accountability for the environment* (July 2018)
- UKELA Submission to Inquiries by the Environmental Audit Committee and the Select Committee on Environment, Food and Rural Affairs for Pre-Legislative Scrutiny of the Draft Environment (Principles and Governance) Bill (January 2019)
- UKELA's Scottish Working Party response to the consultation paper published by the Scottish Government: Consultation on environmental principles and governance in Scotland (May 2019)
- UKELA's Wales Working Party Response to the Welsh Government Consultation on Environmental Principles and Governance in Wales Post European Union Exit (May 2019)

These are available at: https://www.ukela.org/brexitactivity.