

ITC Trade and environment inquiry: Greener UK Evidence

10 October 2019

Introduction to Greener UK

Greener UK is a coalition of 13 major environmental organisations,ⁱ with a combined public membership of over 8 million. We formed to have a united voice for the environment during Brexit, and are united in the belief that leaving the EU is a pivotal moment to restore and enhance the UK's environment. We have recently produced a briefing 'Priorities for trade and the environment through Brexit'ⁱⁱ which outlines how the UK can ensure the environment is at the core of future trade.

We acknowledge the timely nature of this inquiry and are pleased to have the opportunity to give evidence to the committee.

Executive summary

The UK Parliament has declared a climate and environmental emergency. As the impacts of climate change and ecological breakdown become clearer, the UK must ensure its future trade policy is aligned with the maintaining and enhancing of environmental protection.

Trade (and trade liberalisation in particular) can affect the environment in many ways. As such, it is essential that trade agreements are designed with the environment at their core. This means that they must, as a minimum:

- Guarantee the maintenance and enhancement of environmental standards. The environmental footprint of trade must be minimised and trade must not undermine the continued implementation of national and international environmental commitments
- Be developed in a democratic, transparent and accountable way. Giving Parliament and civil society meaningful roles in the negotiation of trade agreements.

Question 1: What is the relationship between trade and investment liberalisation and environmental outcomes?

1. The UK government has acknowledged that trade can have a significant impact on the environment. In its 25 Year Environment Plan, the government pledged to embed environmental sustainability "at the very heart of global production

and trade”, committed to developing “a trading framework that supports ... environmental ... goals”.

2. The UK Government has also committed to leaving the environment in a better state than it inherited it. In its 25 Year Environment Plan, the Government promised to “leave a lighter footprint on the global environment by enhancing sustainability and supporting zero deforestation supply chains”.ⁱⁱⁱ
3. UK trade policy and agreements must be developed in line with environmental policy to ensure that the approach taken to international trade does not negatively impact environmental quality and progress. A key goal of the UK’s trade policy should be the reduction of the UK’s footprint on the global environment.
4. Trade and investment ‘liberalisation’ indicates a particular approach to international trade, which has as a key goal the reduction or elimination of ‘barriers’ and ‘restrictions’ to trade, whether in the form of financial tariffs or trading rules, safeguards and requirements. This approach to trade often creates pressure to reduce regulation intended to protect the public interest, such as environmental protection. This is because, when viewed through the logic of trade liberalisation, environmental protections are often misclassified as ‘unnecessary restrictions on trade’, rather than as public interest measures that are driven by the furthering of a public good.
5. Where trade liberalisation takes the form of the removal or weakening (for example through changes in interpretation) of environmental protections, it can encourage a race to the bottom. In goods, this can intensify unsustainable production methods that degrade natural resources and increase greenhouse gas emissions.
6. Even where the pressure to deregulate domestically is resisted, trade liberalisation can undermine the effectiveness of domestic policy to protect the environment by requiring domestic producers to compete with producers operating to lower requirements.
7. The UK’s approach to food production and trade will be telling for the environment, since it has a profound impact on global land use, water supply and habitats. UK policy, including relating to trade, must incentivise a shift away from consumption of environmentally destructive commodities. It should also explicitly disincentivise deforestation, to reduce our global environmental footprint and support a transformation towards more sustainable global land use, rather than simply offshoring our emissions abroad. Fully robust and transparent zero deforestation supply chains should be required, building on the commitment in the 25 Year Environment Plan. This must account for the issue of opacity around origin of products such as soy reaching the UK and links to

deforestation. Finally, all goods imported into the UK must meet high environmental standards. For example, no food should be imported that has been produced using neonicotinoids that are banned in the UK. Additionally, deals covering fisheries should prohibit the import from unsustainable fisheries and exclude illegal, unreported and unregulated fishing from supply chains.

8. Trade liberalisation could potentially also encourage 'light touch' biosecurity where free movement is favoured over thorough checking of commodities. The risk is that trees, plants and wood products are moved freely until an issue is identified when it is often too late to do anything about it. For example, Ash Dieback has been estimated to cost the UK £15bn^{iv} when prevention would have been a fraction of the cost. The cost of managing issues is often borne by the public and landowners and not the responsible trade or industry.
9. Trade liberalisation is currently primarily designed to further commercial access, whereas trade policy should instead be designed in a way that serves the wider public interest and long term sustainability. International trade agreements should not focus exclusively on trade and investment liberalisation, but on how trade and investment can contribute to a healthy environment and a sustainable economy, as well as food and energy security within Europe and beyond.
10. There is potential for the UK's trade policy to support positive environmental and social impacts. However, in order to achieve this, the rules governing future trade agreements must be designed, implemented and enforced with environmental considerations at their core, avoiding deregulatory pressures on our most important protections.

Question 2: How effectively do trade and investment agreements address environmental issues, including climate change?

11. The status quo approach to trade and investment agreements impacts heavily on the environment, in a predominantly negative way. As noted above, trade agreements create deregulatory pressure on environmental standards. These agreements tend to put barriers in place that restrict a government's freedom to regulate in public interest matters.
12. For example, 'regulatory co-operation' chapters are increasingly being included within trade agreements with the aim of creating a process for aligning regulations in order to promote trade, rather than achieve social or environmental objectives. In previous instances of trade negotiations, regulatory co-operation measures have attempted to slow down the implementation of existing laws, decrease levels of protection by aligning standards and assessments, and prevent or delay new measures needed to

protect public health and the environment. Regulatory co-operation provisions in trade agreements thus pose an intrinsic deregulatory threat.

13. In the context of a potential US-UK trade deal, the differences between the two regulatory approaches and the stated negotiating objectives of the US mean that it is likely that regulatory harmonisation would lead to reduced protection in the UK. In particular, the US and EU regimes on the control of hazardous chemicals diverge too fundamentally to seek full harmonisation or mutual recognition without lowering standards.
14. Another important deregulatory pressure often found in international trade and investment agreements is Investor State Dispute Settlement mechanisms (ISDS). ISDS enables foreign investors to challenge states where state action has, or potentially will, negatively impact the profitability of an investment. The natural world can suffer where investors challenge domestic law and regulation that protects the environment.
15. An example of where ISDS has resulted in negative environmental consequences is the case of *Vattenfall AB vs Germany*. In 2007, the Swedish energy corporation, Vattenfall AB, was granted a provisional permit to build a coal-fired power plant near the city of Hamburg. In an effort to protect the river Elbe from wastewaters and to limit carbon emissions, the government imposed environmental restrictions before the final approval of its construction. Rather than complying with the environmental requirements, Vattenfall launched an ISDS claim against Germany, stating that the environmental rules amounted to expropriation and violated Germany's obligation under the Energy Charter Treaty to give foreign investors 'fair and equitable treatment'. To prevent further uncertainty and avoid the risk of a significant compensation payout, the German government settled the case with Vattenfall in 2010. The settlement included a commitment by Germany to drop its additional environmental requirements and issue the permits required by Vattenfall to proceed. Moreover, the settlement resulted in a waiver of Vattenfall's obligation to mitigate the coal plant's impact on the river Elbe.
16. Investment agreements such as ISDS can lead to the phenomenon of regulatory chill, where states become discouraged from introducing, or are encouraged to revoke, public interest regulations which can include environmental protections, due to a concern about risk or actuality of legal action by a foreign investor on the basis that the regulation impedes the investor's ability to operate in the state.

Question 3: How does and should the Government approach issues of the environment and climate change in its trade and investment policy, and its work on export promotion?

Question 4: How might the Government seek to address environmental issues, including climate change, at the multilateral and plurilateral level as part of its trade policy post-Brexit?

17. Existing trade agreements often include sustainability chapters, which covers matters relating to the three pillars that compose sustainable development: economic, environmental and social. However, for example, Trade and Sustainable Development (TSD) chapters in EU trade agreements have problems in their design: they are hard to enforce and their implementation in practice is often limited. The UK government must therefore learn from this in relation to the development of future UK trade policy.
18. The UK is at a pivotal moment, poised to devise its own approach to international trade for the first time in 46 years. Alongside its new commitment to net zero carbon emissions by 2050, the government has promised to maintain high environmental and food production standards as the UK leaves the EU. It is crucial that UK trade policy does not undermine these commitments.
19. The government must use the current opportunity to design an ambitious and modern approach to trade and use it to promote high environmental standards, both in the UK and with its future trading partners, in areas including chemicals, land use, energy efficiency and plastics.
20. Approaches should be progressive and creative. For example, carbon sequestration is impacted every year due to the loss of tree species to pests, diseases and invasive species. This can be avoided by investing in infrastructure and personnel at borders to reduce unnecessary risks of importing pets and diseases. This was alluded to in the Governments Tree Health Resilience Strategy (2018) but commitments are yet to be announced.
21. To this end, UK trade policy must:
 - a) Place a **moratorium on trade negotiations with nations that have not ratified or adequately implemented key international commitments**, including under the Paris Agreement, the Convention on Biological Diversity, and the Sustainable Development Goals.
 - b) **Be guided by, and consistent with key international commitments as listed above, and environmental principles such as** the precautionary principle and the integration principle.
 - c) Require **environmental impact assessments** to take place at key stages during the negotiation of trade agreements, not simply at the end of the negotiations. This should be done in a timely manner and cover the environmental impacts of the agreement both within the UK and the relevant

counter-party(/ies) to ensure that global environmental impacts are fully understood and mitigated.

- d) Be democratic, transparent and accountable. A clear process should be established via primary legislation outlining specific and meaningful roles for civil society and Parliament in the negotiation of trade agreements (see below also).

22. And any trade agreements signed by the UK must:

- a) **Reinforce existing international environmental and human rights commitments**, making clear that compliance with their requirements is an essential part of the agreement. Domestic and international environmental and human rights law must take precedence over and above trade rules.
- b) Require **environmental impact assessments** to take place at regular intervals throughout the life of the FTA. If impact assessments show negative effects and adequate mitigation measures are not implemented, FTAs (or certain chapters or provisions of them) must be subject to suspension or termination. Furthermore, all rollover FTAs inherited by the government from the UK's EU membership should be evaluated to ensure that they meet or are moving towards the aims above
- c) Include **meaningful and enforceable commitments to non-regression** to prohibit any weakening of environmental laws.
- d) Guarantee **the freedom to develop and implement domestic law** and policy which enhance environmental protection, even if they have the effect of restricting international trade.
- e) The environmental provisions of trade agreements must **be enforceable through procedures that properly involve civil society and environmental expertise**. Appropriate and dissuasive remedies and sanctions must be available. To facilitate this, they must include obligations on all parties to ensure that these processes are well resourced at the domestic and international level.
- f) **Exclude ISDS mechanisms** and similar investor protection mechanisms. ISDS is an asymmetric, outdated and untransparent procedure which unjustifiably prioritises the rights of investors above those of all other stakeholders. The mere existence of ISDS clauses can have a chilling effect on regulation intended to protect the environment.
- g) Include robust, transparent and reliable procedures **for monitoring the implementation** of the environmental commitments contained in the agreement.

Export promotion

- 23.** The UK's industrial strategy is closely integrated with its Clean Growth Strategy but less so with commitments to protect the natural environment. The intersection of these three policy areas is also relevant to trade policy, which must enable UK companies to adopt low carbon and nature positive solutions at home and export them to a rapidly decarbonising global market.
- 24.** As noted by the OECD,^{vi} strong domestic environmental regulations play an essential role in creating a market for environmental goods and services: finding that "stringent environmental regulations increase exports of environmental goods and services". The OECD work on environmental stringency also shows no overall negative effect on economic performance. It is therefore key that the UK firstly takes the lead in setting out an ambitious environmental legislative agenda in the Environment Bill and then develops a trade policy that is compatible with this.
- 25.** In order to achieve a net zero goal, carbon emissions must be dramatically reduced across all sectors of the economy. Climate change cannot be addressed as part of trade policy alone, but rather a strategy to cooperate multilaterally to address the climate emergency should be secured and supported by trade policy.
- 26.** The UK is also a major donor of aid focused on the impacts of climate change, and as a country that has taken a lead on reducing its own carbon emissions, the UK is an important supporter of emerging economies charting low carbon paths. In the next ten years the majority of infrastructure spending and economic growth will happen in the global south. UK trade policy must point both the UK and our international partners towards an equitable and legally robust low carbon future and not reflect the politics, technologies and investment challenges of the past. For example, no aid finance or indeed any UK government finance should support investment in fossil fuels.

Question 5: How can the imposition or reduction of tariffs on trade in goods be used to pursue environmental aims?

- 27.** The UK government should consider shaping tariff levels based on the environmental impacts of production in a similar way to how the WTO currently charges different tariffs on different types of good at different stages of production. A tariff system could be introduced that makes it more expensive to export/import goods with a high carbon or environmental footprint. For example, the UK government might look to implement a 'Border Carbon Adjustment', which the EU Commission has suggested.^{vii} Such a mechanism would need to be sensitively developed to support a globally just transition. Care must be taken to ensure that its primary purpose of dissuading purposeful

deregulation or the outsourcing of emissions is not overshadowed by unintended consequences such as penalising nations still in the process of moving away from a fossil fuel based economy'

28. Biosecurity can be improved by promoting a home grown plant production industry. For example, it would be worth exploring how the use of tariffs can support the urgent need to boost the UK's growing domestic sourcing and growing of trees.

Question 6: How can coherence be ensured between trade and environmental policy across Whitehall?

29. UK trade policy, and its development, must be democratic, transparent and accountable. A clear process should be established via primary legislation outlining specific and meaningful roles for civil society and Parliament in the negotiation of trade agreements.
30. This should include a guaranteed vote for MPs when setting a mandate for negotiations and on the final deal, prior to ratification. During the negotiation process, a Parliamentary committee should be able to scrutinise negotiating texts and produce reports on individual trade deals.
31. There should be a defined role for civil society to input into the content of trade deals and as much transparency as possible throughout. As well as improving the quality of the outcomes and complying with the relevant provisions of the Aarhus Convention, to which the UK is a signatory in its own right, this will also help improve coherence between trade and environmental policy.
32. Civil society across the four countries of the UK must be able to participate meaningfully in this process. This includes through timely consultations, engagement with specifically tasked Parliamentary committees and proper and deliberative dialogue with DIT.
33. Greater clarity over the links between the work of DEFRA, the FCO, DFID and DIT are also needed to ensure full join up between actions to tackle climate and environmental harm at home and abroad, as well as those working to provide support to communities to mitigate and adapt to the climate emergency.
34. The UK's trade policy must promote and incorporate the three dimensions of sustainable development: (i) economic, (ii) environmental and (iii) social. As part of this, the UK and its trading partners must commit to ensuring that trade in

natural resources, such as fisheries, and forest products is sustainable. The 17 Sustainable Development Goals (the SDGs) adopted by all countries including the UK at the UN in 2015 provide an important context for future trade agreements. It is critical that trade agreements support the delivery of the SDGs. The SDGs cover a broad range of global issues including poverty, inequality, climate change, biodiversity loss and sustainable production and consumption. The risk of the UK undermining the SDGs through its trade agreements must be assessed.

- 35.** The draft Environment Bill provides that new UK policy must be developed with proper consideration of the environmental principles, including precaution and integration. While Greener UK is strongly of the view that the relevant provisions in the Bill must be improved,^{viii} DIT should comply with this requirement as government policy, even if the Bill has not yet entered force.

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Endnotes

- ⁱ Greener UK membership organisations are as listed: RSPB, National Trust, The Wildlife Trusts, WWF, Campaign to Protect Rural England, ClientEarth, E3G, Friends of the Earth, Green Alliance, Greenpeace, the Marine Conservation Society, WWT, Woodland Trust
- ⁱⁱ Priorities for trade and the environment through Brexit, Greener UK, September 2019, https://greeneruk.org/sites/default/files/download/2019-09/Priorities_for_trade_and_the_environment_through_Brexit.pdf
- ⁱⁱⁱ HM Government, 11 January 2018, A green future: our 25 year plan to improve the environment.
- ^{iv} Hill, L., Jones, G., Atkinson, N., Hector, A., Hemery, G. and Brown, N., 2019. The £15 billion cost of ash dieback in Britain. *Current Biology*, 29(9), pp.R315-R316.
- ^v Key failings of the EU's approach, as identified in the research literature, include: (1) Limited ownership of the TSD agenda by key EU officials; (2) Limited ownership of the TSD agenda by key government officials in trade partners; (3) Civil society involvement undermined by serious operational failings (e.g. lack of resources) and unclear purposes and functions; (4) Cooperative activities not systematically implemented; (5) Dispute resolution provisions inadequate; (6) Insufficient attention paid to diverse contexts of trade partners; (7) Monitoring of the 'sustainability' impacts of the agreement not been properly operationalised; (8) Scant evidence of consideration of labour issues within the EU; (9) Despite rhetoric of tackling labour issues in global supply chains, action limited to encouraging voluntary corporate social responsibility initiatives. For further details see Harrison et al (2018a) at 8f
- ^{vi} Jehan Sauvage, 'The Stringency of Environmental Regulations and Trade in Environmental Goods' (OECD Trade and Environment Working Papers 2014/03) <https://dx.doi.org/10.1787/5jxrjn7xsnmq-en>
- ^{vii} Climate a 'signature issue' as Ursula von der Leyen anointed EU chief, Climate Home News, 16th July 2019 <https://www.climatechangenews.com/2019/07/16/climate-plays-decisive-role-ursula-von-der-leyen-annointed-eu-chief/>
- ^{viii} Greener UK response Greener UK written evidence to the EAC inquiry on the environmental governance consultation paper, 2019 <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/environmental-audit-committee/environmental-principles-and-governance-consultation/written/84028.pdf>

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