

The background features abstract, overlapping green geometric shapes in various shades, including light lime green, medium green, and dark forest green, creating a modern, layered effect.

# **Continuing obligations: International and Trade Constraints on Regulatory Choices**

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# Introduction

- ▶ Brexit would mean that UK was no longer formally bound by EU environmental law
- ▶ Most EU environmental law is in the form of directives; thus implemented in the UK by means of legislation
- ▶ Advocates of reducing ‘red tape’ may want to scrap or water down that legislation (cf. Cameron’s Bloomberg Speech)
- ▶ They are likely to be constrained in doing so by UK’s international obligations

## Introduction (cont.)

- ▶ Such constraints would arise in two ways:
  - Provisions equivalent to much of the substance of EU environmental law are found in treaties to which the UK is a party
  - EU will be able to apply environmental requirements to goods exported from UK to EU. [EU is UK's largest export market, accounting for ca. 50% UK exports]

# Treaty provisions equivalent to EU environmental law

Area of EU environmental law	Treaty to which UK is party
Air pollution	LRTAP Convention and protocols (SOX, NOX, VOCs, POPs, O <sub>3</sub> , heavy metals); Montreal Protocol
Marine pollution	OSPAR Convention
Nature conservation	Berne Convention, CMS, CBD, OSPAR, CITES
Regulation of Chemicals	Rotterdam Convention on PIC; Stockholm Convention on POPs
EIA	Espoo Convention (but only in a transboundary context)
Access to enviro info	Aarhus Convention

## But:

- Some significant gaps where no international equivalent, e.g. waste management (but Stockholm Convention on waste containing POPs; Basel Convention on transboundary movement), quality of freshwater, carbon emissions trading (but not necessary to be a member of EU to participate), renewable energy targets
- Compliance/enforcement mechanisms of environmental treaties are much weaker than those of the EU (no EC Commission, ECJ)

# Impact of Brexit on the UK's international environmental obligations

Limited, but

- ❑ UK will no longer have rights/obligations under treaties to which EU is a party by virtue of its exclusive competence, e.g. regional fisheries management orgs. May therefore want to become a party to some, e.g. NE Atlantic Fisheries Commission
- ❑ Will no longer be bound by EU common position in int. orgs to which EU and MS are parties, or to which only MS are parties but come within EU competence, e.g. IMO, IWC, CITES and other MEAs. Therefore will (re)gain right of initiative and independent vote

# Application of EU environmental measures to UK exports of goods

- ▶ EU has adopted harmonised standards for intra-EU trade in goods, including some for environmental purposes, e.g. packaging waste, VOC emissions, fluorinated greenhouse gas emissions
- ▶ EU may apply such standards to imports of goods from third States. NB EU cannot apply higher standards (contrary to WTO law)
- ▶ UK likely to want to conclude a free trade agreement (FTA) with EU
- ▶ EU practice re FTAs concluded with some possible comparators

# EU practice re application of EU environmental measures in FTAs

## □ EEA and Switzerland:

must apply all EU internal market legislation, including technical measures

EEA (but not Switzerland) must apply EU environmental legislation

## □ Association agreements with Eastern European States, e.g. EU-Ukraine

Art. 56: Ukraine to incorporate EU acquis re technical measures and standards

Art. 290 recognises ‘the right of the Parties to establish and regulate their own levels of environmental protection’, but must ensure that their legislation provides for ‘high levels’ of protection and ‘shall strive to continue to improve it’

Art. 292: must apply precautionary principle, PPP etc

Art. 296: a party must not weaken its environmental laws in order to encourage trade or investment

## □ Canada Comprehensive Economic and Trade Agreement

Applies WTO's TBT Agreement (below)

Parties to cooperate to ensure that their technical measures are compatible

Provisions on environmental measures similar to Arts 290, 292 and 296 of Ukraine agreement, plus public access to justice and environmental information

- ▶ If no FTA between UK and EU, trade in goods would be governed by WTO law. No implications for UK environmental law, unlike FTAs, but UK exporters to EU would be affected. WTO Agreement on Technical Barriers to Trade would permit EU to apply its technical environmental regs to UK exporters provided the regs:
  - ❖ Did not treat UK products differently from like products from other WTO members or EU MS
  - ❖ Were not more trade restrictive than necessary to fulfil legitimate environmental objectives
  - ❖ Were based on relevant international standards unless inappropriate or ineffective to fulfil those objectives

## Conclusion

Brexit would allow UK to water down its environmental legislation, **but** within the constraints of the UK's existing international environmental obligations and the need to comply with the EU's technical measures.

However, any resulting reduction of red tape would be offset by **new** regulatory burdens on UK exporters:

- ❑ Necessity of complying with EU rules of origin and completing required documentation: “tedious, costly and disruptive to trade” (Trade Policy Research Centre, 2012)
- ❑ Outside an FTA, and possibly within as regards trade in agricultural and fisheries products (e.g. EEA), tariffs would be payable. This would add extra costs and delays and require further documentation.