eFrom Extra-Territorial Leverage and Transnational Environmental Protection to Distortions of Competition: The Level Playing Field in the EU-UK Trade and Cooperation Agreement

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This article inquires to what extent the EU-UK Trade and Cooperation Agreement (TCA) may help safeguard high levels of transnational environmental protection, taking into consideration potential reductions in UK levels of protection and the ensuing effects. The article encompasses an analysis of the Trade and Sustainable Development (TSD) Chapters in EU FTAs; in this respect, it emphasises that the TCA's provisions are innovative. However, the TCA has marked a shift from the EU's initial attempts to exercise its extra-territorial leverage and push for high levels of transnational environmental protection to a focus on the stricto sensu economic level playing field. This narrow focus cannot possibly capture many aspects of environmental protection. The article thus concludes that, from an environmental perspective, the TCA's provisions are far from ambitious. Further, it develops some considerations on the way forward for the EU institutions, as they start to rethink their approach to TSD Chapters.

Keywords: EU-UK Trade and Cooperation Agreement; Level Playing Field; Transnational Environmental Protection; Trade and Sustainable Development.

This article inquires to what extent the EU-UK Trade and Cooperation Agreement (TCA)[1] may help safeguard high levels of transnational environmental protection. It explores how potential reductions in UK levels of protection would impact the EU biosphere and the EU strategic transnational agenda. Upon an in-depth examination, it concludes that the EU negotiators have failed to strike an adequate balance between the breadth and the enforceability of the obligations in place in the Agreement. Too much attention has been paid to effective economic remedies, and too little to environmental and public health matters. Thus, from a transnational environmental protection perspective, the TCA's provisions are far from ambitious.

The article encompasses an examination of the Trade and Sustainable Development (TSD) Chapters in recent EU trade or trade and investment Agreements (FTAs).[2] This analysis puts the TCA's Title on a 'Level Playing Field for Open and Fair Competition and Sustainable Development' and the relevant provisions on the environment and climate change mitigation into context. Crucially, it also helps to pinpoint the latter Agreement's specificities and innovations.

The article then takes a close look at the negotiations of the TCA and the draft text of the Agreement proposed by the EU in March 2020. The analysis highlights the tension between the EU's attempts to exercise its extra-territorial leverage and pursue high levels of transnational environmental protection, on the one hand, and a narrower focus on the economic level playing field and distortions of trade and investment between the Parties, on the other. Throughout the negotiations, this corresponded to a tension between the negotiating objectives of 'static' and 'dynamic' alignment, or

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[1] Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the One Part, and the United Kingdom of Great Britain and Northern Ireland, of the Other Part [2020] OJ L 444.

[2] The article takes into account a number of recent Agreements which are either in force, or are being provisionally applied. See <https://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/#_in-place> accessed 03/03/2021.

'dynamic' forms of convergence towards equivalent levels of protection, vis-à-vis a circumscribed focus on fair competition.

Finally, the article illustrates the TCA's problematic shift towards a stricto sensu economic framing of the notion of a level playing field. It shows that this narrow focus cannot possibly capture many aspects of environmental and public health protection. As the article demonstrates through specific examples, potential future reductions in UK levels of protection will have a direct impact on the EU biosphere and will directly undermine the EU transnational agenda.

By way of introduction, section 1 provides a concise overview of all relevant notions and illustrates the structure of the article. The analysis then unfolds throughout sections 2 to 4. The final section of the article ties together the strands of the analysis. Further, taking stock of the findings of the enquiry, it develops some reflections on the lessons learned after the TCA negotiations and the way forward for the EU transnational environmental agenda.

As the EU moves on to implement its European Green Deal agenda[3] and embraces an 'Open, Sustainable and Assertive Trade Policy',[4] new challenges lie ahead for the EU institutions to rethink their position on transnational environmental protection. What approach will be followed in future EU FTAs? Will these still take the public international law baseline as the relevant reference point? Will the new TSD Chapters include provisions on a level playing field? Are 'static' and 'dynamic' alignment or convergence necessary to achieve high levels of transnational environmental protection, or may reference to self-standing environmental commitments serve this purpose? And how will the EU confront the trade-off between the breadth and the enforceability of the relevant obligations, as it starts to rethink its approach to trade remedies? Section 5 develops some considerations on these points, emphasising the increasing relevance of EU FTAs as a tool for the EU to exercise its extra-territorial leverage and strive to achieve high levels of transnational environmental protection.

This article's inquiry into the 'extra-territorial leverage' of the EU and its pursuit of transnational environmental protection takes into consideration how the EU may exercise its influence to shape environmental standards applicable beyond its own borders. This is what the 'extra-territorial' element and the terminology of 'leverage' refer to. The analysis is limited to the context of negotiated bilateral agreements. For this reason, the broader debate surrounding the impact of the EU's unilateral regulatory action beyond the territorial boundaries of the EU does not come into play.[5] Rather, this article critically assesses the potential for the EU to exercise its leverage and influence third country environmental and public health protection standards through the new generation of trade and investment agreements.

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[3] European Commission, *Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions. The European Green Deal*. COM(2019) 640 Final.

[4] European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Trade Policy Review – An Open, Sustainable and Assertive Trade Policy* COM(2021) 66 Final.

[5] For an analysis of the global reach of EU law as specifically regards EU unilateral regulatory measures, see Joanne Scott, 'The Global Reach of EU Law' in Marise Cremona and Joanne Scott (eds), *EU Law Beyond EU Borders. The Extraterritorial Reach of EU Law* (OUP 2019); for the distinction between the concepts of extra-territorial application of EU law and territorial extension, see also Joanne Scott, 'Extraterritoriality and Territorial Extension in EU Law' (2014) 62 American Journal of Comparative Law 87; and Joanne Scott, 'The New EU "Extraterritoriality"' (2014) 51 CML Rev 1343. On the 'Brussels Effect', see Anu Bradford, *The Brussels Effect. How the European Union Rules the World* (OUP 2020), and the review article Ioanna Hadjiyianni, 'The European Union as a Global Regulatory Power' (2021) 41 OJLS 243. For an enquiry into the integration of environmental protection requirements in EU bilateral and inter-regional instruments, see Gracia Marín Durán and Elisa Morgera, *Environmental Integration in the EU's External Relations* (Hart Publishing 2012).

Section 5 concludes that, if EU institutions are genuinely attempting to pursue high levels of transnational environmental protection, they should not content themselves with the approach that they have followed so far in TSD Chapters. Nor should they take a narrow economic level playing field perspective, or necessarily set EU regulatory standards as a direct or indirect reference point. Rather, they should strive to negotiate ambitious environmental commitments beyond the minimum baseline of public international law, together with effective economic remedies.

1. Introductory Overview: The TSD Chapters, 'Static' and 'Dynamic' Alignment, 'Dynamic' Convergence and Different Framings of the Notion of a Level Playing Field

The analysis of the article is conducted by reference to three specific areas and three specific types of clauses included in EU FTAs. For each area and each type of clause, the article evaluates the approach which has been followed in other EU FTAs, the negotiating texts preceding the adoption of the TCA, and the final text of the TCA. This introductory section aims to provide the big picture, setting all relevant concepts within a unitary framework prior to the detailed analysis of the following sections. It lays particular emphasis on different framings of the notion of a level playing field, and how these have impacted on the design of the TCA's clauses. In this way, it sets the stage for the following examination. Further, this section provides a brief explanation of the structure of the article.

Since the very beginning of the negotiations, it was clear that the EU-UK Agreement was bound to be very different from all other EU FTAs. As acknowledged by both Parties, agreement on a level playing field for fair competition would be the precondition for unfettered, 'zero-tariff-zero-quota' UK access to the EU internal market. This would be necessary in light of the UK's geographic proximity and economic interdependence with the EU.[6] The Agreement's Title on the level playing field would also include provisions on environmental and climate change standards, with a view to preventing any unfair competitive advantages that the UK could enjoy through undercutting levels of environmental protection.

The TCA's Title on the level playing field is unprecedented in its scope and innovative in many respects. The new generation of EU FTAs includes ad hoc TSD Chapters. However, none of the Agreements concluded before the TCA encompasses provisions on a level playing field. Rather, four recurrent types of clauses can be identified in the TSD Chapters of EU FTAs. The first category encompasses what may be defined as 'compliance with public international law' clauses. The second recurrent clauses are 'non-regression' clauses. The third kind of clause addresses 'future levels of protection'. Finally, the fourth type of clauses may be defined as 'non-derogation and effective implementation' clauses.[7]

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[6] European Commission, *Political Declaration Setting Out the Framework for the Future Relationship between the European Union and the United Kingdom*, TF50 (2019)65, para 77.

[7] This categorisation of the clauses broadly draws on terminology employed and analysis conducted in Lorand Bartels, 'Human Rights and Sustainable Development Obligations in EU Free Trade Agreements' (2013) 40 Legal Issues of Economic Integration 297; Lorand Bartels, 'Social Issues: Labour, Environment and Human Rights' in Simon Lester, Bryan Mercurio and Lorand Bartels (eds), *Bilateral and Regional Trade Agreements: Commentary, Analysis and Case Studies* (CUP 2015); and Lorand Bartels, 'Human Rights, Labour Standards and Environmental Standards in CETA' in Stefan Griller, Walter Obwexer and Erich Vranes (eds), *Mega-Regional Trade Agreements: CETA, TTIP and TiSA. New Orientations for EU External Economic Relations* (OUP 2017). On the other hand, the categorisation in the present section is different from the one in Gracia Marín Durán, 'Sustainable Development Chapters in EU Free Trade Agreements:

'Compliance with public international law' clauses simply enshrine and reaffirm the Parties' commitments under specific public international law instruments. Chapter eight ('Other Instruments for Trade and Sustainable Development') in the TCA's Title on the level playing field includes several such clauses. Section 2, however, will analyse the traditional 'compliance with public international law' clauses of EU FTAs alongside the TCA's provisions demarcating the scope of application of the level playing field.

The 'non-regression' clauses of EU FTAs focus on the levels of protection pursued by domestic legislation. The 'non-regression' clauses enshrined in the TSD Chapters will be analysed together with 'non-derogation and effective implementation' clauses, which relate to the application of domestic legislation. To these types of clauses, section 3 contraposes the notion of 'static' alignment. 'Static' alignment entails a mandatory obligation of non-regression from the levels of protection achieved by the regulatory standards applicable at a specific point in time. During the negotiations of the TCA, EU negotiators pushed for the UK to agree to 'static' non-regression from the levels of protection achieved by common EU and UK standards at the end of the transition period (December 2020). Academic commentators and the British media have framed this non-regression condition in terms of 'static' alignment.[8]

Finally, the examination of the 'future levels of protection' clauses in the TSD Chapters paves the way for an analysis of 'dynamic' alignment and 'dynamic' convergence in section 4. The notion of 'dynamic' alignment is premised on the adoption of *equivalent standards* over time. The standards of one Party become a direct reference point for the other Party; the latter has to adhere to these standards and incorporate them within domestic legislation. By contrast, the terminology of 'dynamic' convergence is more accurate where the aim is the achievement of *equivalent levels of protection*. In accordance with the circumstances of the case and with the specific formulation of these clauses, the standards of either Party will become an indirect reference point. Ultimately, both Parties are expected to converge in the levels of protection that they pursue.

The TCA's Title on the level playing field was bound to encompass 'non-regression' and 'future levels of protection' clauses. However, the scope and the formulation of these clauses have changed considerably throughout the negotiations. This reflects a shift in the underlying framing of the notion of a level playing field. The stricto sensu economic level playing field, which draws on a narrow economic framing of this notion, is safeguarded for as long as regulatory divergencies do not distort competition and do not have an impact on trade and investment between the Parties. Where this happens, effective economic remedies should be available. This means that regulatory areas which are not liable to have an impact on trade and investment between the Parties should be excluded from the scope of application of the level playing field provisions. Further, 'static' and 'dynamic' alignment or convergence are neither warranted nor justified if regulatory divergencies are not liable to distort competition.

'Static' and 'dynamic' alignment or 'dynamic' convergence, by contrast, address environmental and public health protection issues that the economic level playing field cannot

Emerging Compliance Issues' (2020) 57 CML Rev 1031; more specifically, this section draws a straight forward distinction between 'non-regression' and 'non-derogation and effective implementation' clauses and analyses them separately.

[8] For use of this terminology, see House of Lords Select Committee on the European Union, EU Internal Market Sub-Committee, *Uncorrected Oral Evidence: The Level Playing Field, Evidence Session no. 1*; Kenneth Armstrong, 'Regulatory Autonomy After EU Membership: Alignment, Divergence and the Discipline of Law' (2020) 45 EL Rev 207.

possibly capture. Indeed, not all regulatory divergencies and not all unsustainable practices will be economically salient or will have an impact on fair competition. Overall, from the EU negotiating perspective, 'static' and 'dynamic' alignment or 'dynamic' convergence can be defined as *direct* strategies to pursue transnational environmental protection. Being broader in scope, they also achieve the economic goals of the stricto sensu level playing field. Conversely, the economic level playing field may be defined as a lowest common denominator, economically driven *indirect* strategy for environmental protection. Its scope of application is delimited by the economic relevance of specific activities and practices.

The analysis of sections 2, 3 and 4 reconstructs the EU shift towards a stricto sensu economic framing of the level playing throughout the TCA negotiations. Ultimately, the TCA's 'turn' to competition has affected three elements: the specific areas of environmental and public health protection encompassed within the level playing field, the scope of application of the 'non-regression' clauses, and the mechanisms in place to prevent divergencies in 'future levels of protection'. These are the three areas under analysis in the following sections, and correspond to the three types of clauses referenced above.

As the article illustrates, adherence to a stricto sensu economic framing of the level playing field involved a reduction in the areas of environmental and public health protection covered by the level playing field provisions, a reworking of the notion of 'static' alignment, and the replacement of 'dynamic' alignment or 'dynamic' convergence with the economic rebalancing mechanism. The following sections thus explore the implications for transnational environmental and public health protection.

2. Commitments under Public International Law and the Areas of Application of the Level Playing Field

2.1 TSD Chapters: The Public International Law Baseline and the Question of Remedies

'Compliance with public international law' clauses take up the greatest part of the TSD Chapters in all EU FTAs pre-dating the TCA. From the EU – CARIFORUM Economic Partnership Agreement to FTAs such as EU – Vietnam, EU – Japan and the Comprehensive Economic and Trade Agreement (CETA), all TSD Chapters have included references to an increasing number of multilateral environmental and labour protection agreements.[9] These clauses are not exceedingly ambitious. Beside referring to the baseline of protection provided for under public international law instruments

[9] Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part (EU – CARIFORUM) [2008] OJ L289/3, Art 183(1), (3) and (4) – Economic Partnership Agreements are broader in scope than FTAs; Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part (EU – Korea) [2011] OJ L 127/6, Art 13.1(1), (2) and (3) and 13.5; Free Trade Agreement between the European Union and the Republic of Singapore (EU – Singapore) [2019] OJ L294/3, Art 12.6, 12.7 and 12.8; Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam (EU – Vietnam) [2019] OJ L294/3, Art 13.6 to 13.9; Economic Partnership Agreement between the European Union and Japan, signed on 6 July 2017 (EU – Japan), Art 16.5 to 16.8; Comprehensive Economic and Trade Agreement between Canada, of the one part, and the EU and its Member States, of the other part (CETA) [2017] OJ L11/23, Art 24.9 to 24.11.

and standards, they mostly incorporate pre-existing commitments, which the Parties merely reaffirm. The mandatory nature of the obligations enshrined in these clauses thus largely derives from the mandatory nature of the international obligations referenced therein.

If assessed from an environmental protection perspective, these clauses fall short of expectations. If the pursuit of high levels of transnational environmental protection is framed as the relevant goal, the 'compliance with public international law' clauses fail to include and adequately flesh out new and additional commitments or specific targets and timeframes.[10] From this angle of analysis, clearly, the extra-territorial leverage of the EU has not been exercised to any significant extent.

The main weakness of the system, however, lies in the unenforceability of the dispute settlement process and the unavailability of effective remedies. This is the Achilles' heel of the TSD Chapters in EU FTAs.[11] The FTAs specify that, in the event of disagreement on matters covered by the TSD Chapters, the Dispute Settlement Chapter of the FTA shall not apply. All FTAs lay out an ad hoc applicable procedure. This involves the potential request that a Panel of Experts examine the matter, and the adoption of a Report by the Panel of Experts.[12] Nonetheless, the Report is neither binding nor 'enforceable'. No specific remedies are laid out in case of non-implementation of the recommendations; the complaining Party can neither ask for compensation, nor suspend the application of obligations or take other specific measures.[13] The only noteworthy exception is EU – CARIFORUM. Under this Agreement, the 'standard' dispute settlement provisions may apply where matters concerning the interpretation and application of the Chapters on environmental and social protection have not been satisfactorily solved.[14]

Overall, the TSD Chapters combine a soft approach to the identification of the Parties' commitments with a soft approach to remedies. This does not mean that the existing 'compliance with public international law' clauses are purposeless. As demonstrated by the recent dispute on labour protection brought under the EU – Korea TSD Chapter, these clauses are not completely toothless.[15] Where a Party fails to comply with its international obligations, the ad hoc dispute settlement procedure of the TSD Chapters can enhance domestic and international scrutiny. This can create incentives for a Party to change its course of action. Nonetheless, it is fair to acknowledge that this system is neither very ambitious nor necessarily effective.

The unenforceability of the ad hoc dispute settlement process of the TSD Chapters and the absence of robust remedies to induce compliance have attracted increasing attention at EU level. This

[10] In the different context of labour protection, see Panel of Experts Proceeding Constituted under Art 13.15 of the EU – Korea FTA, *Report of the Panel of Experts*, January 20, 2021, paras 277 to 280 and paras 291 to 293. The Panel found that while Korea's efforts towards ratifying the outstanding ILO Conventions were less than optimal, Korea had not acted in breach of the (soft and vague) obligation of best endeavours enshrined in Art 13.4.1, last sentence of EU – Korea.

[11] For this view, see Marco Bronckers and Giovanni Gruni, 'Taking the Enforcement of Labour Standards in the EU's FTAs Seriously' (2019) 56 CML Rev 1591.

[12] See EU – Korea, Art 13.14 ff and 13.16 in particular; EU – Vietnam, Art 13.16; EU – Singapore, Art 12.16; EU – Japan, Art 16.13 ff; CETA, Art 23.9 ff and 24.12 ff, and Art 23.11(1) and 24.16 in particular.

[13] See also Bartels, 'Human Rights and Sustainable Development Obligations in EU Free Trade Agreements', n 7.

[14] Although the suspension of trade concessions is expressly excluded, the enforceability of the arbitration panel's report and the availability of specific remedies marks an important distinction with other FTAs: see EU – CARIFORUM, Art 189, 195, 204(6) and 213(2).

[15] See Report of the Panel of Experts, n 10. The Parties' binding commitments under Art 13.4.1 of EU – Korea as regards freedom of association draw on pre-existing obligations of the Parties deriving from membership of the ILO and from the ILO Constitution; see para 107 of the Report. However, in so far as these obligations are incorporated in the FTA, they enabled the EU to refer the matter to the Panel of Experts, which found that Korea was in breach of its obligations under the FTA: see paras 196, 208 and 227.

has resulted in a gradual 'hardening' of the EU position on remedies, which is apparent from the express reference to the TSD Chapters in the 2021 amendment to the 2014 Trade Enforcement Regulation.[16] The extent to which the 2021 amendments may come to apply to disputes brought under TSD Chapters is impossible to gauge at this stage. Equally, it is impossible to tell whether the 'hardening' of the EU position on remedies could be a prelude to a bolder approach to the identification of the Parties' substantive commitments in 'compliance with public international law' clauses. This, as the next sections show, would require a careful balancing of the breadth of the mandatory obligations enshrined in the clauses vis-à-vis the effectiveness of the remedies available to the Parties. Despite persisting doubts as to the future direction of EU institutions, however, the recent EU focus on remedies reflects an acknowledgment that reform of the TSD Chapters is needed.

2.2 Demarcating the Scope of Application of the Level Playing Field: Environmental and Public Health Protection

With the inclusion of an ad hoc Title on a level playing field, the traditional 'compliance with public international law' clauses of EU FTAs were complemented in the TCA by clauses on the specific areas of application of the level playing field obligations. Indeed, ever since the negotiations of the EU-UK Agreement started, the identification of the areas to be covered by the level playing field provisions was a central question. The issue of environmental protection was expressly raised for the first time in the Resolution of the European Parliament of February 2020.[17] The Resolution focuses on environmental and public health matters and reflects a very broad framing of the level playing field, in pursuit of high levels of transnational environmental protection. According to the opening paragraphs of the Resolution, the Agreement would have to adhere to the precautionary principle, the principle that environmental damage should as a priority be rectified at source, and the polluter pays principle.[18] These are the cornerstone principles of the EU environmental law and risk regulation systems.

As regards the scope of application of the level playing field, according to paragraph 36 of the Resolution, this ought to encompass several areas of environmental regulation. These included access to environmental information, public participation and access to justice in environmental matters; environmental impact assessment and strategic environmental assessment; industrial emissions, air emissions and air quality targets and ceilings; nature and biodiversity conservation; waste management; the protection and preservation of the aquatic environment and marine environment; the prevention, reduction and elimination of risks to human health or the environment arising from the production, use, release and disposal of chemicals; pesticides; climate change; and the precautionary principle. Clearly, regulatory divergencies in some of these areas do not have trade distorting effects. By implication, not all of these areas would be part of a stricto sensu economic level playing field.

[16] Regulation (EU) 2021/167 of the European Parliament and of the Council amending Regulation (EU) No 654/2014 Concerning the Exercise of the Union's Rights for the Application and Enforcement of International Trade Rules [2021] OJ L49/1, Recital (10).
[17] European Parliament, *Motion for a Resolution to Wind Up the Debate on the Statements by the Council and the Commission Pursuant to Rule 132(2) of the Rules of Procedure on the Proposed Mandate for Negotiations for a New Partnership with the United Kingdom of Great Britain and Northern Ireland (2020/2557(RSP))*, B-9-0098/2020.
[18] Ibid, para 2(vii).

Paragraph 22 also asserted the need to maintain a level playing field in the areas of food safety and sanitary and phytosanitary (SPS) measures. These are products standards, and must be complied in full in order to get access to the EU market. On these grounds, regulatory divergencies in these areas cannot distort competition between non-EU (i.e. UK) and EU products; non-complying products simply do not get access to the EU market. This confirms the different framing of the relevant issues under the European Parliament Resolution, as the inclusion of SPS standards within the level playing field can only be justified through the 'lens' of environmental and public health protection. Clearly, such broad scope of application for the Agreement's level playing field provisions would have enabled the EU to exercise its extra-territorial leverage and safeguard high levels of transnational environmental protection.

This framing of the notion of a level playing field was confirmed by the Council Negotiating Directives of February 2020[19] and by the draft text of the Agreement proposed by the EU. The latter's provisions reflect a transnational environmental and public health protection rationale. Article LPFS.2.30 in the Title on the 'Level Playing Field and Sustainability' of the draft Agreement listed all the areas of environmental and public health protection which had already been included in the Resolution and in the Negotiating Directives.[20] Further, and importantly, the 'General Principles' included an unprecedented reference to the EU (broadest and authentic) understanding of the precautionary principle: 'where scientific evidence is insufficient, inconclusive or uncertain and there are indications […] that the potentially dangerous effects on the environment, human, animal or plant health may be inconsistent with the chosen level of protection, a Party may adopt measures to prevent such damage […]'.[21] As the next sub-section illustrates, the TCA's shift to competition has affected both the scope of application of the level playing field and the formulation of the general principles.

2.3 The TCA's 'Turn' to Competition and its Implications on the Scope of the Level Playing Field

The provisions of the final TCA follow a completely different logic and draw on a stricto sensu economic framing of the level playing field. From a transnational environmental protection perspective, this is not devoid of consequences. The first aspect to take into consideration is the change in the formulation of the general principles. In the final TCA, the EU definition of the precautionary principle has been replaced by the much narrower definition provided for under public international law. Pursuant to Article 1.2(2), 'in accordance with the *precautionary approach*, where there are reasonable grounds for concern that there are potential threats of *serious or irreversible damage* to the environment or human health, the *lack of full scientific certainty* shall not be used as a reason for preventing a Party from adopting appropriate measures to prevent such damage' (emphasis added).[22] The very choice to employ the terminology of 'precautionary approach' draws on the

[19] Council of the European Union, *Annex to Council Decision Authorising the Opening of Negotiations with the United Kingdom of Great Britain and Northern Ireland for a New Partnership Agreement*, 5870/20 ADD 1 REV 3, para 103.
[20] Art LPFS.2.30(2) – with the exception of climate change, which was dealt with in an ad hoc Section.
[21] For an in depth analysis, see Giulia Claudia Leonelli, 'Acknowledging the Centrality of the Precautionary Principle in Judicial Review of EU Risk Regulation: Why It Matters' (2020) 57 CML Rev 1773.
[22] Art 1.2(2). The wording draws on the definitions provided in Principle 5 of the 1992 Rio Declaration on Environment and Development, A/CONF.151/26 Vol. I (despite the lack of reference to "cost-effective" measures); Art 3(3) of the United Nations Framework Convention on Climate Change of 20 January 1994, A/RES/48/189; and Recital (8) of the Convention on Biological Diversity of 5 June 1992, 1760 UNTS 69.

findings of the Panels and Appellate Body in disputes involving the WTO Agreement on Sanitary and Phytosanitary Measures.[23] The use of the public international law formulation of the principle reflects a shift in the underlying reference point of the TCA. In accordance with the UK's demands, any references to EU law, EU formulations of specific principles and EU standards as a direct or indirect reference point have been replaced by the (minimum) baseline of public international law and multilateral agreements. This 'adjustment' has brought the TCA in line with other EU FTAs: as illustrated in sub-section 2.1, the traditional approach of EU FTAs involves taking public international law commitments as the relevant benchmark. The choice to employ this different definition, however, has important environmental implications. Clearly, the threshold for the application of the precautionary principle is significantly higher under the public international law formulation.

Secondly, as regards the scope of application of the level playing field, the TCA has marked a considerable reduction in the areas of environmental law covered by the level playing field provisions. Article 7.1(3), on 'climate levels of protection', clarifies that these encompass emissions and removals of greenhouse gases as well as the phase-out of ozone-depleting substances.[24] Pursuant to Article 7.1(1), however, the areas of environmental and public health protection are now limited to industrial emissions, air emissions and air quality; nature and biodiversity conservation; waste management; the protection and preservation of the aquatic and marine environment; the prevention, reduction and elimination of risks to human health or the environment arising from the production, use, release or disposal of chemicals; and the management of impacts on the environment from agricultural or food production, notably through the use of antibiotics and decontaminants.

All areas of environmental protection where regulatory divergencies are not liable to distort competition have been removed from the scope of the Chapter; the only exceptions are nature and biodiversity conservation and perhaps the protection of the aquatic and marine environment. Most importantly, sanitary standards in the food and agricultural sectors are no longer encompassed within the Chapter. As an analysis of Articles SPS.16 and SPS.17 in the Chapter on 'Sanitary and Phytosanitary Measures' demonstrates, the slightly ambiguous reference in Article 7.1(1) to 'the management of impacts on the environment from agricultural or food production, notably through the use of antibiotics and decontaminants', is meant to address two specific issues. These are misuse of antimicrobials and antibiotics in animal production, with a view to combating the public health risks posed by antimicrobial and antibiotic resistance, and animal welfare issues, which are connected to the use of decontaminants in the breeding, holding, transportation and slaughter of food-producing animals. The use of antimicrobials and antibiotics in animal production, notably for growth promotion purposes, can reduce costs for farmers and thus distort competition. The same is certainly true of lower animal welfare standards, which often result in the use of decontaminants. Both areas are thus liable to distort competition and impact trade and investment between the Parties.

This demarcation of the scope of application conforms to a stricto sensu economic level playing field perspective. However, this choice has several consequences from an environmental protection standpoint. First, the TCA's provisions are insufficient to help maintain high levels of protection in regulatory areas where reductions in UK levels of protection would not directly affect the EU. Examples are access to environmental information, public participation and access to justice

[23] See first and foremost *EC – Hormones*, AB Report (adopted 13 February 1998) WT/DS26/AB/R and WT/DS48/1B/R, paras 124 ff.; and *EC – Biotech: EC – Measures Affecting the Approval and Marketing of Biotech Products*, Panel Report (adopted 21 November 2006) WT/DS291, WT/DS292, WT/DS293, paras 7.86 ff.

[24] This includes the EU economy-wide 2030 target of a 40% reduction in emissions, the Union's system of carbon pricing, the UK's share of the 2030 target and its system of carbon pricing.

in environmental matters, environmental impact assessment and strategic environmental assessment. These areas are no longer part of the Chapter on the environment and climate change. In these cases, by taking a narrow economic perspective, the EU has failed to exercise its extra-territorial leverage to promote high levels of environmental protection in the UK.

Secondly, the TCA's provisions are insufficient to help maintain high levels of protection in regulatory areas where reductions in UK levels of protection would directly affect the EU strategic transnational agenda. In these areas, a reduction in levels of protection in the UK would undermine EU efforts to export its approach and exercise its extra-territorial leverage. Notably, product standards in the agricultural and food sector are no longer encompassed within the level playing field.[25] The EU specific approach to risk governance and the promotion of sustainable agricultural and food production systems, however, are key items of the EU transnational agenda.

The EU system of risk regulation is premised on three elements. These are respectively a prudential approach to risk assessment; the possibility for regulators to focus on persistent uncertainty as to the existence of a hazard or the materialisation of a risk, or find that the available scientific evidence is insufficient for a reliable characterisation of risks; and the pursuit of high levels of protection at the risk management stage, potentially involving recourse to the precautionary principle and consideration of 'other legitimate factors'.[26] Due regard is paid to the substitution principle,[27] the availability of more sustainable alternatives to specific products or processes, and a long-term vision for the development of sustainable approaches in specific sectors.

The EU agenda for transnational environmental and public health protection in strategic areas like governance of genetically engineered organisms would be directly affected, should the UK adhere to the dominant 'evidence-based' approach.[28] All in all, in the field of risk governance and food safety standards, UK reductions in levels of protection would undermine EU efforts to uphold precautionary risk management and sustainability at the transnational level. Further, and significantly, the very thin Chapter on Sanitary and Phytosanitary Measures in the EU-UK TCA lacks any references to the precautionary principle or 'precautionary approach'. This suggests that the UK has strongly asserted its right to diverge from EU precautionary risk management as regards food and agricultural standards.

As this sub-section has emphasised, the TCA's 'turn' to competition can hardly do any justice to the EU agenda for transnational environmental and public health protection. The same narrow economic focus clearly emerges from the reworking of the provisions on 'static' alignment in the final text of the TCA. This is what the next section turns to.

3. 'Non-Regression' Clauses, 'Static' Alignment and Distortions of Competition

[25] The SPS Chapter of the TCA includes some clauses on sustainable agricultural and food production systems; however, these are merely aspirational. See Art SPS.1 and SPS.18.

[26] For an in depth analysis, see Giulia Claudia Leonelli, *Transnational Narratives and Regulation of GMO Risks* (Hart Publishing forthcoming 2021); Giulia Claudia Leonelli, 'Judicial Review of Compliance with the Precautionary Principle from *Paraquat* to *Blaise*: Quantitative Thresholds, Risk Assessment and the Gap Between Regulation and Regulatory Implementation' (2021) 22 German LJ 184; and Leonelli, n 21. For a fascinating account of EU risk regulation, see Maria Lee, *EU Environmental Law, Governance and Decision-Making* (2nd ed, Hart Publishing 2014), chapter 2.

[27] Pursuant to which highly hazardous substances should, in so far as technically possible, be gradually phased out and substituted by less hazardous alternatives.

[28] For an in depth overview, see Leonelli, *Transnational Narratives and Regulation of GMO Risks*, n 26.

3.1 The Aspirational Nature of 'Non-Regression' Clauses in TSD Chapters

All TSD Chapters include 'non-derogation and effective enforcement' as well as 'non-regression' clauses. While the former are mandatory, a careful analysis of the latter clauses in the broader context of the TSD Chapters shows that they are aspirational in nature. The two types of clauses will be analysed together, as some FTAs set them within a unitary framework.

'Non-derogation and effective enforcement' clauses provide that the Parties shall not waive or otherwise derogate from their environmental and labour laws, in a manner affecting trade or investment between the Parties. Further, the Parties shall not fail to effectively enforce their environmental and labour laws where such course of action or inaction would affect trade or investment between the Parties.[29] These clauses do not address the issue of the levels of protection pursued by domestic legislation, and potential reductions thereof. This is where the 'right to regulate' provisions and the 'non-regression' clauses come into play. All FTAs enshrine the right of the Parties to set their own priorities in the fields of environmental and labour law; establish their levels of environmental and social protection; and adopt or modify their laws and policies accordingly and in a manner consistent with the multilateral agreements to which they are a Party and the international standards referenced in the TSD Chapters.[30] This is the Parties' 'right to regulate', as consistently affirmed in all FTAs. By contrast, the Agreements differ in their approach to 'non-regression'.

EU – Singapore, EU – Vietnam and CETA employ the same wording: the Parties merely 'recognise that it is inappropriate to encourage trade or investment by weakening or reducing the levels of protection afforded by their [environmental and labour laws]'.[31] Clearly, the wording of these clauses is very weak. The language employed demonstrates that these provisions are aspirational rather than mandatory.[32] Overall, an analysis of these 'non-regression' clauses against the more encompassing background of the right to regulate shows that the Parties are *discouraged from* reducing or weakening their levels of protection; however, they may reduce or weaken their levels of protection for as long as they comply with the minimum baseline of international standards.

The picture becomes more complex if the relevant provisions in EU – Korea, EU – Japan and EU – CARIFORUM are analysed. In a more or less ambiguous way, these three Agreements incorporate the 'non-regression' clauses within the 'non-derogation and effective implementation' clauses. This ambiguity potentially comes with implications. For instance, EU – Korea stipulates that a Party 'shall not weaken or reduce the environmental or labour protections afforded in its laws to encourage trade or investment, by waiving or otherwise derogating from, or offering to waive or otherwise derogate from, its laws, regulations and standards, in a manner affecting trade or investment between the Parties'.[33] EU – Korea sets 'non-regression' of the levels of protection against the backdrop of the standard 'non-derogation and effective implementation' clause, which relates to the

[29] See EU – Singapore, Art 12.12(1) and (2); EU – Vietnam, Art 13.3(2) and (3); CETA, Art 23.4(2) and (3) and Art 24.5(2) and (3). The only relevant difference lies in that CETA (in both paragraphs) and EU – Vietnam (in the second paragraph) refer to derogations or a failure to effectively enforces domestic laws *to encourage* trade or investment, rather than *in a manner affecting* trade or investment.
[30] See EU – CARIFORUM, Art 184(1) and 192; EU – Korea, Art 13.3; EU – Singapore, Art 12.2(1); EU – Vietnam, Art 13.2(1); CETA, Art 23.2 and Art 24.3; EU – Japan, Art 16.2(1).
[31] EU – Singapore, Art 12.1(3); EU – Vietnam, Art 13.3(1); CETA, Art 23.4(1) and 24.5(1).
[32] For this view, see House of Lords Select Committee on the European Union, *Uncorrected Oral Evidence: The Level Playing Field, Evidence Session no. 1*, Q3, Answer by Lorand Bartels, page 11.
[33] EU – Korea, Art 13.7(1) and (2).

application of domestic law. This results in the use of stronger wording, which is nonetheless circumscribed by the following reference to non-derogation.

In a similar vein, Article 16.2.2 of EU – Japan stipulates that 'the Parties shall not encourage trade or investment by relaxing or lowering the level of protection provided by their respective environmental or labour laws and regulations. To that effect, the Parties shall not waive or otherwise derogate from those laws and regulations or fail to effectively enforce them […] in a manner affecting trade or investment between the Parties'. Again, this clause uses stronger wording than the one of other FTAs. However, the extent to which the 'non-regression' obligation is self-standing or circumscribed by the following 'non-derogation and effective enforcement' clause is unclear.

Finally, EU – CARIFORUM reaches the highest level of ambiguity. Article 188 therein provides that, subject to the right to regulate, the Parties 'agree not to encourage trade or foreign direct investment to enhance or maintain a competitive advantage by: (a) lowering the level of protection provided by domestic environmental and public health legislation; (b) derogating from, or failing to apply such legislation'.[34] Further, under the second paragraph, the Parties commit 'to not adopting or applying regional or national trade or investment-related legislation or other related administrative measures […] in a way which has the effect of frustrating measures intended to benefit, protect or conserve the environment or natural resources or to protect public health'.[35] In this case, the wording is not very strong. Yet, unlike in EU – Korea and EU – Japan, the reference to not lowering the level of protection is self-standing. This triggers the question whether the different wording in EU – CARIFORUM entails a proper obligation of non-regression from present or future levels of protection.

Despite the different nuances in the wording of these provisions, an interpretation of 'non-regression' clauses in the broader context of the TSD Chapters militates in favour of acknowledging their aspirational nature. Even in cases where ambiguous wording is employed, the argument on their mandatory nature is unconvincing if the 'right to regulate' provisions are taken into due consideration.[36] For this reason, the traditional EU FTAs approach to 'non-regression' clauses is ineffective in safeguarding high levels of transnational environmental protection and preventing the Parties from lowering their levels of protection. Nonetheless, this approach is unsurprising. Mandatory 'non-regression' clauses limit the Parties' right to regulate considerably and directly encroach on national prerogative powers in legislation and policy-making. For this reason, they are unlikely to be accepted by the Parties at the negotiation stage. Indeed, this is confirmed by changes in the scope of 'static' alignment in the TCA. This aspect is examined in the following sub-sections.

3.2 'Static' Alignment in the TCA Negotiations

A truly innovative approach to 'non-regression' emerged from the negotiating documents preceding the adoption of the TCA. The Political Declaration agreed by the EU and the UK in October 2019 explicitly mentioned that the Parties 'should uphold the common high standards applicable in the Union and the [UK] at the end of the transition period in the areas of […] environment and climate change […] matters'.[37] This refers to non-regression from the levels of protection achieved by the

[34] EU – CARIFORUM, Art 188(1).
[35] EU – CARIFORUM, Art 188(2).
[36] For indirect confirmation of this view, see above, n 32.
[37] *Political Declaration*, n 6, para 77.

standards applicable as of December 2020, or 'static' alignment. Such obligation clearly goes beyond anything that the EU has so far negotiated in the TSD Chapters of its FTAs, as illustrated in the previous sub-section. The European Parliament Resolution as well as the Council Negotiating Directives confirmed this approach.

'Static' alignment was then enshrined in the draft Agreement proposed by the EU in March 2020. The first paragraph of Article LPFS.2.30 ('Non-Regression of the Level of Protection'), in the Section on 'Environment and Health', stipulated that a Party 'shall not adopt or maintain any measure that weakens or reduces the level of environmental protection […] below the level provided by the common standards applicable and targets agreed within the Union and the [UK] at the end of the transition period, and by their enforcement'.[38] Similar considerations apply to Article LPFS.2.34 ('Non-Regression of the Level of Protection') in the section on climate change, which employed the same wording.

These 'static' non-regression or 'static' alignment clauses trigger two considerations. First, the wording was explicit and considerably stronger than the one of 'non-regression' clauses in other EU FTAs. These Articles set out a mandatory obligation and took a specific benchmark for non-regression. Secondly, and importantly, the obligations were not qualified by the trade distorting effect of the regression. The obligation of 'static' alignment thus reflected the exercise by the EU of its extra-territorial leverage in the fields of environmental and public health protection law, rather than a stricto sensu economic level playing field rationale.

Overall, 'static' alignment in the draft Agreement did not merely aim to prevent any unfair competitive advantages that the UK could enjoy through undercutting levels of protection. The environmental and public health protection rationale of the provisions was entirely self-standing. As the next sub-section illustrates, the final text of the TCA follows a very different rationale.

3.3 Narrowing Down 'Non-Regression': the Economic Level Playing Field in the TCA

The shift from the previous EU ambition of extra-territorial leverage to a narrow economic framing of the level playing field emerges directly from the final TCA's 'non-regression' clauses. Article 7.2(2) stipulates that a Party 'shall not weaken or reduce, *in a manner affecting trade or investment between the Parties*, its environmental levels of protection or its climate level of protection below the levels that are in place at the end of the transition period […]' (emphasis added).[39] In other words, regression from the common environmental and climate levels of protection of the transition period is permitted as long as it does not affect the economic level playing field.

Article 7.3 lays out specific obligations surrounding carbon pricing. The wording of this Article is slightly more ambiguous. According to Articles 7.3(3) and 7.3(5), 'the effectiveness of the Parties' respective carbon pricing system shall uphold the level of protection provided for by Article 7.2 [Non-regression from levels of protection]'. Each Party shall maintain its system of carbon pricing as long as it proves effective, but 'shall in any event uphold the level of protection provided for by Article 7.2 […]'. The wording of this Article probably hints at a full obligation of non-regression; however, this is far from clear.

[38] See also Art LPFS.2.30(3).
[39] See also Art 7.2(1) and (4).

The TCA's 'non-regression' clauses have thus marked a shift from 'static' alignment and a full obligation of non-regression, to a mere obligation not to distort trade and investment through regression. 'Static' alignment, as envisaged by the EU during the TCA negotiations, was intended to safeguard environmental and public health protection in regulatory areas which do not evolve rapidly. Further, in areas where regulatory developments might or might not take place, 'static' alignment would at a minimum ensure the maintenance of the levels of protection pursued at the end of the transition period. The turn to competition in the TCA's final 'non-regression' clauses is liable to have far-reaching environmental implications in these areas.

Yet again, the TCA's provisions are insufficient to help maintain high levels of protection in regulatory areas where reductions in UK levels of protection would not directly affect the EU. An example is nature and biodiversity protection; clearly, this is a regulatory area which does not evolve rapidly. Unlike the areas under analysis in section 2, nature and biodiversity protection is still encompassed within the level playing field. However, it is hard to see how regressions from the 2020 levels of nature and biodiversity protection could affect trade and investment. On these grounds, the EU has failed to exercise its leverage to help maintain high levels of environmental protection in the UK in this area.

Further, the TCA's arrangements are insufficient to help maintain high levels of protection in regulatory areas where reductions in UK levels of protection would directly affect the EU biosphere. In the context of the TCA's 'non-regression' clauses, an analysis of areas where regulatory change might or might not take place is particularly relevant; these are the areas where a full obligation of 'static' alignment would have served an important purpose. An economic focus on the effects that regression may have on trade and investment will hardly capture reductions in levels of protection in these areas. For instance, not all changes in waste management policies and regulations surrounding the protection of the aquatic or marine environment are bound to have economically relevant implications; thus, reductions in the levels of protection in the UK will not necessarily have trade distorting effects. Yet, as openly acknowledged, the UK and the EU share a common biosphere in respect of cross-border pollution.[40] Whether or not reduced levels of environmental and public health protection in the UK affect fair competition, they will directly affect the EU biosphere. In these areas, the EU has thus failed to safeguard its environmental values in circumstances where its own environmental protection goals could be jeopardised.

Turning from the effects of the EU shift towards an economic level playing field perspective to its causes, it is important to highlight that two factors came into play in the context of the negotiations. The first element consists in the UK's desire to assert its national sovereignty, and its rejection of EU law as a direct or indirect reference point. Clearly, a full obligation of 'static' alignment to the levels of protection pursued by common EU-UK standards as of December 2020 was hardly reconcilable with this goal. The second factor is by no means specific to the EU-UK negotiations. It consists in the trade-off between the breadth of the mandatory obligations enshrined in FTAs, on the one hand, and the effectiveness of the remedies available to enforce the relevant obligations, on the other.[41] The more effective the economic remedies are, the more reluctant the Parties will be to commit to broad mandatory obligations. Symmetrically, the broader the relevant mandatory obligations are, the harder it will be for the Parties to agree on effective remedies.

[40] See Art 7.4(1) of the TCA.

[41] On this point, see Marín Durán, n 7; and Katerina Hradilová and Ondrej Svoboda, 'Sustainable Development Chapters in the EU Free Trade Agreements: Searching for Effectiveness' (2018) 52 Journal of World Trade 1019.

The draft 2020 Agreement was completely silent as regards the application of the dispute settlement provisions and interim remedies. This suggests that disagreements surrounding remedies lie behind the TCA's 'turn' to a stricto sensu economic framing of the level playing field. Indeed, the TCA's dispute settlement process and the remedies available to the Parties are unprecedented.[42] In cases surrounding the interpretation and application of obligations in non-regression areas, which include environmental and climate change law, an ad hoc procedure involving a Panel of Experts applies. Specific economic remedies are available to the complaining Party where the respondent chooses not to take any action to comply with its obligations; these include a possibility for the Parties to agree on compensation and a potential suspension of obligations by the complaining Party. On these grounds, effective remedies for violations of the level playing field obligations are provided for. This strikes the starkest contrast with the arrangements of other EU FTAs, as explained in section 2.

The specificities of the UK negotiating position and the EU institutions' close focus on economic remedies were most probably the reasons behind the demise of the original clauses on 'static' alignment. As the next section illustrates, the same adjustments in the EU and the UK negotiating positions and the same twofold pattern emerge very clearly in the case of the 'future levels of protection' clauses, 'dynamic' alignment and convergence and the final adoption of the economic rebalancing mechanism.

4. 'Future Levels of Protection' and the Rise and Fall of the Evolution Clauses

4.1 TSD Chapters and 'Future Levels of Protection' Clauses

Like 'non-regression' clauses, the 'future levels of protection' clauses in the TSD Chapters of EU FTAs are aspirational in nature. EU – CARIFORUM, EU – Singapore, EU – Vietnam, CETA and EU – Japan all provide that each Party shall endeavour, seek, or strive to ensure that its laws and policies provide for and encourage high levels of domestic protection in the environmental and social areas, and shall strive to continue to improve such laws and policies with the goal of providing high levels of protection.[43] Despite their broad scope, the wording of these clauses is not very strong. The clauses do not enshrine mandatory obligations.

The wording in EU – Korea is slightly different. Pursuant to Article 13.3, the Parties 'shall seek to ensure that [their] laws and policies provide for and encourage high levels of environmental and labour protection, consistent with the internationally recognised standards or agreements referred to in [the TSD Chapter]'. This link between the 'future levels of protection' clause and the international standards expressly referenced in the Chapter corroborates the view that compliance with the public international law baseline is the only (substantive) limit to the Parties' right to regulate. Ultimately, as already mentioned in the context of the analysis of 'non-regression' clauses in section 3, the Parties are discouraged from reducing their levels of protection ('non-regression') and encouraged to increase them over time ('future levels of protection'). However, they may lower

[42] See Art 9.1, 9.2, 9.3 and Part Six, Title I, Chapter 3, Art INST.24 – as adapted to take into account the differences in the procedure in non-regression areas.

[43] See EU – CARIFORUM, Art 184(1) and 192; EU – Vietnam, Art 13.2(2); CETA, Art 23.2 and 24.3; EU – Japan, Art 16.2(1). Art 12.2(2) of EU – Singapore uses slightly different terminology.

their levels of protection or fail to increase them as long as they are complying with the mandatory 'compliance with public international law' clauses.

Clearly, these aspirational clauses can hardly be effective in leveraging the Parties towards increasing their levels of environmental protection. From a transnational environmental protection perspective, they score quite poorly. However, this soft approach to the 'future levels of protection' clauses is unsurprising. Just like 'non-regression' clauses, these clauses are bound to constrain the Parties' right to regulate and are unlikely to be accepted at the negotiation stage. Indeed, as the following sub-sections illustrate, the issue of the 'future levels of protection' clauses and the relevant applicable remedies was one of the most problematic areas throughout the TCA negotiations.

4.2 'Dynamic' Alignment, 'Dynamic' Convergence and 'Dynamic' Non-Regression in the TCA Negotiations

A truly unprecedented approach to the question of 'future levels of protection' and relevant clauses emerged throughout the negotiations of the TCA. A clear tension surfaced as the EU more or less ambiguously sought to link the trajectory of the Parties' future levels of protection. This could have either occurred directly, by means of clauses on 'dynamic' alignment, or indirectly, through clauses on 'dynamic' convergence. As the analysis of this and the following sub-section shows, both possibilities were taken into consideration by the EU at the negotiation stage. Further, ambiguous references to 'dynamic' non-regression are also present in the negotiating documents.

From a transnational environmental protection perspective, 'dynamic' alignment or 'dynamic' convergence would have enabled the EU to exercise its extra-territorial leverage and safeguard high levels of protection. Through these clauses, the EU could ensure that the UK would directly adhere or indirectly adjust to the EU levels of environmental and public health protection over time. Clearly, as anticipated in section 1 of the article, this would have gone well beyond the narrow rationale of the stricto sensu economic level playing field.

The first document which expressly addressed the question of future levels of protection was the 2020 Resolution of the European Parliament. The Resolution stipulated that 'the level of quota and duty free access to the world's largest single market fully corresponds to the extent of regulatory convergence and the commitments taken with respect to observing *a level playing field* for open and fair competition *with a view to dynamic alignment* […]' (emphasis added).[44] The Resolution lay particular emphasis on 'dynamic' alignment as the way forward to avoid a race to the bottom;[45] overall, the circumscribed notion of an economic level playing field was absorbed within broader references to 'dynamic' alignment.

The text of the 2020 Council Negotiating Directives, by contrast, is fraught with ambiguity. The first paragraph in the section on the level playing field stipulated that the Agreement 'should uphold […] *corresponding* high standards *over time* with *Union standards* as a *reference point*' (emphasis added) in the areas covered by the level playing field.[46] References to *corresponding high levels of protection over time* can be identified throughout the Directives.[47] In this respect, the

[44] European Parliament, n 17, para 12.
[45] Ibid, para 13. See also paras 14(i) and (xiii) and 18.
[46] Council Negotiating Directives, n 19, para 94.
[47] See paras 17 and 95.

Directives indirectly pointed to 'dynamic' forms of convergence. Yet, direct references to this notion are nowhere to be found in the specific sections on environmental protection and climate change.

The picture becomes increasingly complex if the text of section H of the Negotiating Directives is taken into account. Paragraph 110 provided that 'where the Parties increase their level of environmental, social and labour and climate protection beyond the commitments […] [of non-regression], the envisaged partnership should prevent them from lowering those additional levels in order to encourage trade and investment'.[48] This may be defined as an obligation of 'dynamic' non-regression from the Parties' own (additional and increased) levels of protection. By contrast, it does not qualify as a form of 'dynamic' alignment to EU standards or 'dynamic' convergence towards common levels of protection. The same structural ambiguity resurfaced in the 'evolution' clauses in the Draft Agreement, which however deserve a closer look.

4.3 'Dynamic' Convergence and The Thorny Issue of the 'Evolution' Clauses

Article LPFS.2.31(2) stipulated that 'where both Parties have increased […] the level of environmental protection above the [level of non-regression], neither Party shall weaken or reduce its level of environmental protection below a level which is at least equivalent to that of the other Party's increased level of environmental protection'. Article LPFS.2.31(2) enshrined one of the Agreement's 'ratchet' or 'evolution' clauses.[49] A corresponding clause employing the same exact wording could be found in the section on climate change.[50]

When the environmental and public health, climate change and labour law areas of the level playing field proved a sticking point in the negotiations, academic commentators were puzzled by the British media accounts that EU negotiators aimed to achieve 'dynamic' alignment through the application of the 'evolution' clauses.[51] Under the most common interpretation, the slippery 'evolution' clauses were constructed as entailing a negative obligation of 'dynamic' non-regression from the Parties' own increased levels of protection; their application would have been triggered by the choice of a Party to increase its levels of protection above the non-regression level. This would have broadly corresponded to the text of paragraph 110 of the Negotiating Directives. However, as this sub-section endeavours to demonstrate, this was not the real meaning of the clauses. Nor were the 'evolution' clauses afforded all the attention that they deserved.[52]

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[48] Para 110.

[49] See House of Lords Select Committee on the European Union, n 8; <https://www.theguardian.com/politics/2020/dec/07/what-is-the-ratchet-clause-and-could-it-sink-the-brexit-talks>; and <https://www.theguardian.com/politics/2020/dec/09/brexit-evolution-clause-is-biggest-issue-to-be-resolved-says-merkel> accessed 03/03/2021.

[50] And in the section on labour protection: see Art LPFS.2.28(2) and 2.36(2).

[51] See n 49. As explained in the first section of the article, the terminology of 'dynamic' convergence (rather than 'dynamic' alignment) should have been employed.

[52] Substantiating the present interpretation of the 'evolution' clauses, see also the leaked UK Government document 'Government Analysis of the Deal: Table of Victories', page 10, 'Non-Regression/Ratchet Mechanism', according to which 'The EU wanted the UK to maintain EU rules on labour, climate and the environment regardless of whether any changes would have an impact on trade. It wanted to include a so-called ratchet mechanism which would have constrained UK's regulatory independence, by linking it to future EU levels of protection […] Mutual compromise: the UK and EU have agreed to non-regression clauses for the level of protection that exists on 31 December 2020, but the clauses permit the UK to abandon retained EU law so long as the overall level of protection does not fall (i.e. there is no special status for retained EU law). The obligation only applies to changes that have a clear impact on trade. There is no ratchet mechanism'.

The first point to address relates to the interconnections between 'static' alignment, on the one hand, and the 'evolution' clauses, on the other. The 'evolution' clauses would have played a crucial role in regulatory areas which evolve very rapidly and which are characterised by technological developments, a continuous evolution of scientific knowledge, revisions of standards, and renewals of authorisations. Examples are health and sanitary measures in the agricultural and food sector, chemicals and pesticides, industrial emissions and climate change mitigation. It is simplistic to think that the application of the 'evolution' clauses would have only been triggered by the 'deliberate' choice by both Parties to increase their levels of protection in specific regulatory areas. 'Static' non-regression below the levels of protection of December 2020 and the 'evolution' clauses would have interlocked; in so far as a Party could not go below the level of non-regression, any new regulatory intervention would have qualified as an increase in the levels of protection. In rapidly evolving regulatory areas, then, the demarcation point for the application of the 'evolution' clauses would have ultimately consisted in the *novelty of the situation* to be regulated.

The second relevant consideration relates to the substantive obligations stemming from the clauses. The ambiguous wording of the 'evolution' clauses shows the EU negotiators' reluctance to directly set the levels of protection achieved by EU standards as a reference point and directly hint at 'dynamic' convergence over time. Yet, the convoluted wording of the clauses indirectly served the same purpose. As a close look at the text suggests, the ambitious project behind these clauses involved having the level of protection pursued by the Party with the highest standards, presumed to be the EU, as the relevant reference point for equivalence.

The clauses did not provide that, where both Parties had increased their level of protection, neither Party could regress from its own ('new') level of protection. Nor did they stipulate that, where both Parties had increased their level of protection, the Party whose standards achieved the highest level of protection could not weaken or reduce its own level of protection below the (lower) level pursued by the other Party. In a different, and very ambiguous way, the reference point was intended to be '*a level* of protection which would *at least* be *equivalent* to that of the *other Party's increased level* of protection'; in short, the *higher level of protection*, pursued by *either Party*. This condition would only be met if the Parties gradually *converged* in their (increased) levels of protection over time. Presumably, compliance with the 'evolution' clauses would have entailed prospective regulatory adjustments by the Party whose standards achieved the lower level of protection. In other words, the Party whose levels of protection were lower would have been expected to 'catch up' and follow the regulatory trajectory of the Party with higher levels of protection.

While the reference point was presumed to be the level of protection achieved under EU law, it could of course be either Party's level of protection. Further, alignment to specific standards would have not been required. For this reason, the clauses did not mandate 'dynamic' alignment to EU law standards. The UK would have not been under an obligation to follow the same rules, pursue the same strategies, or employ the same means. Rather, the 'evolution' clauses mandated 'dynamic' forms of convergence in the establishment of levels of protection across the EU and the UK.

The thorniest issues would have been the assessment of equivalence in levels of protection. Starting from the assessment of equivalence, this might have been relatively easier in areas where quantitative targets are applied, and where regulatory discretion mostly pertains to the means employed to achieve specific aims; an example could be greenhouse gas emission reduction targets.[53]

[53] Even though the Paris Agreement does not mandate a quantitative approach and the adoption of specific numerical targets; see the text of the Paris Agreement, available on the United Nations Climate Change website at

The picture might have become more complex in cases like industrial emissions, air emissions and air quality targets and ceilings. If the UK regulatory system had evolved differently and a different mix of emission, quality and technical standards had been employed,[54] any judgment on equivalence would have become increasingly difficult. Finally, risk regulation was bound to be the most difficult area of all in terms of equivalence evaluations. Comparing levels of protection in cases where hazards and risks are conclusively established might have proven slightly easier.[55] However, difficulties could have still arisen if different (more or less prudential) approaches to risk assessment had been followed by the Parties, or in the assessment of the threshold of risk that the Parties deemed 'acceptable' or 'negligible'.[56] In cases where hazards or risks are not positively proven, then, any assessment of equivalence would have been exceedingly difficult. In the face of scientific pluralism and complexity, any judgment on the equivalence of levels of protection would have been open to dispute.

On these grounds, admittedly, the implementation of the clauses would have been difficult in many respects. While an imperfect tool, however, the clauses would have at least captured *all* significant divergencies in levels of public health and environmental protection, regardless of their potential economic impacts and distortions of competition. The 'evolution' clauses would have thus enabled the EU to exercise its extra-territorial leverage, pushing towards high levels of transnational environmental protection in all areas where 'static' non-regression would have soon become insufficient.

4.4 The TCA's Rebalancing Mechanism, Public Health and Environmental Protection and Climate Change Law

In the final TCA, the 'evolution' clauses have been replaced by an unprecedented economic rebalancing mechanism.[57] The causes of this change can be easily reconstructed. From the UK negotiating perspective, 'dynamic' alignment or 'dynamic' convergence did more than simply constrain the UK's right to regulate. They also implied acceptance of EU standards ('dynamic' alignment) or EU levels of protection ('dynamic' convergence) as a reference point, well beyond the traditional approach of EU FTAs and references to the minimum baseline of public international law. The UK rejected this approach.

As regards the issue of dispute settlement and enforceability, clearly, these clauses would have only been effective if appropriate remedies had been in place. EU negotiators paid particular attention to this aspect. Nonetheless, the sections of the Draft Agreement where the 'evolution' clauses were located were completely silent as regards the application of the dispute settlement provisions and remedies. This added further ambiguity. Again, as already mentioned in the context of 'static' alignment and 'non-regression', this suggests that disagreements surrounding the applicable reference

<https://unfccc.int/sites/default/files/english_paris_agreement.pdf> accessed 03/03/2021. In this sense, nothing would have prevented the UK from taking a qualitative approach in its Nationally Determined Contributions.

[54] For a general overview from an EU environmental law perspective, see Suzanne Kingston, Veerle Heyvaert and Aleksandra Cavoski, *European Environmental Law* (CUP 2017), 306 to 336.

[55] I.e., cases where the *hazardous* properties of a product or process have been proven and the relevant *risks* (probability of occurrence of adverse effects and their severity, as resulting from exposure to a hazard) have been established and characterised. Examples could be pesticidal products or chemicals.

[56] For an in depth overview, see Leonelli, *Transnational Narratives and Regulation of GMO Risks*, n 26.

[57] Art 7.2(5) of the TCA merely provides that "the Parties shall continue to strive to increase their respective environmental levels of protection or their respective climate level of protection referred to in this Chapter". The weak wording of this provision shows that this is an aspirational clause, along the lines of the clauses found in other EU FTAs.

point and the remedies available to the Parties were the cause of the demise of the 'evolution' clauses. This has resulted in a shift from 'dynamic' forms of convergence towards equivalent levels of protection to a mere focus on distortions of trade and competition. The stricto sensu economic component of the level playing field has thus prevailed in the negotiations.

The rebalancing mechanism addresses the potential distortions of competition resulting from an increasing gap in levels of (inter alia) environmental and climate protection. Pursuant to Article 9.4 of the TCA, either Party may take appropriate rebalancing measures if 'material impacts on trade or investment between the Parties are arising as a result of significant divergences between the Parties'[58] in (inter alia) their environmental and climate levels of protection. A Party's assessment of the impacts shall be based on reliable evidence and not merely on conjecture or remote possibility.[59] Further, such measures shall be 'restricted with respect to their scope and duration to what is strictly necessary and proportionate […]. Priority shall be given to such measures as will least disturb the functioning of this Agreement'.[60]

Paragraph 3 lays out an ad hoc procedure for the application of rebalancing measures: this involves a notification to the other Party of any envisaged measures, consultations, and the possibility for the concerned Party to adopt the measures within five days, unless the notified Party requests the establishment of an Arbitration Tribunal and a decision on the consistency of the rebalancing measures with all necessary preconditions.[61] The Arbitration Tribunal must deliver its final ruling within 30 days. Where this proves impossible, the concerned Party may adopt the balancing measures and the other Party may take proportionate counter-measures.[62]

Again, the TCA provides for rather effective economic remedies, should significant divergences in levels of protection arise in the future. By contrast, environmental questions are not appropriately addressed. At a general level, it is worth emphasising that Article 9.4 on the rebalancing mechanism sets a much higher threshold than the one enshrined in the 'non-regression' clauses. A Party may only take rebalancing measures if *material impacts* on trade or investment are arising as a result of *significant divergencies* between the Parties; a Party's assessment of the impacts must be based on *reliable evidence*, and cannot draw on conjectures or remote possibility. The bar is set high, and the burden of proof is hard for the concerned Party to discharge.[63] It is difficult to envisage how notions such as 'material impacts' or 'significant divergencies' would be interpreted. In a similar vein, it is hard to determine what evidence would qualify as 'reliable' and robust enough for a Party to successfully make its case. If the conditions for recourse to the rebalancing mechanism were to be interpreted restrictively, the economic effects of regulatory divergencies could not be effectively addressed. This could be even more detrimental in environmental terms.

Further, the rebalancing mechanism does not enable the EU to exercise its extra-territorial leverage with a view to safeguarding high levels of transnational environmental protection. The TCA's shift to competition cannot possibly capture many important areas of regulatory intervention; in the context of the rebalancing mechanism, this specifically applies to areas which evolve very

[58] See Art 9.4(2) of the TCA.
[59] Ibid.
[60] Ibid.
[61] Art 9.4(3)(a) and (b).
[62] Art 9.4(3)(c). See further Art 9.4(3)(d) and (e) and Part Six, Title I, Chapter 3, Art INST.34B.
[63] For an analysis of a similar provision subject to litigation in *Guatemala – Article 16.2(1)(a) CAFTA – DR*, see Bartels, "Human Rights, Labour Standards and Environmental Standards in CETA", n 7; and Hradilová and Svoboda, n 41.

rapidly and which are characterised by continuous scientific or technological developments and revisions of standards.

First, the rebalancing mechanism is insufficient to help maintain high levels of protection in rapidly evolving areas where reductions in UK levels of protection would directly affect the EU biosphere. Examples are industrial emissions, air emissions and air quality targets and ceilings. A focus on material impacts on trade or investment will hardly capture regulatory divergencies and reductions in levels of protection. For instance, not all changes in terms of emission and air quality targets and ceilings are bound to have economically relevant implications. This will be the case for industrial emissions, but it will not necessarily be true for the emissions or the concentration levels of different pollutants from different sources. Regardless of whether or not they affect trade or investment, however, reduced levels of protection in the UK will directly affect the EU biosphere. In these areas, the EU has thus failed to safeguard its own environmental protection goals.

Secondly, the rebalancing mechanism is insufficient to help maintain high levels of protection in rapidly evolving areas where reductions in UK levels of protection would directly affect the EU strategic transnational agenda. An economic focus on distortions of trade and investment can hardly do any justice to this agenda. The prevention, reduction, and elimination of risks to human health or the environment arising from the production, use, release and disposal of chemicals is encompassed within the level playing field. However, the economic rationale of the rebalancing mechanism cannot possibly capture the risk governance aspects which are inherent to the regulation of chemicals. Turning to governance of pesticides, whose impacts on public health and the environment have come under close scrutiny in recent years, it is unclear whether the rebalancing mechanism could have any meaningful role to play.

Article 7.1(1) refers to 'the management of impacts on the environment from agriculture or food production, notably through the use of antibiotics and decontaminants'; however, a material impact on trade and investment must still be proven for the rebalancing mechanism to apply. If the future UK approach to authorisation of pesticidal active substances, pesticides and risk management measures in this field were to significantly diverge from the EU approach, maximum residue levels ('MRLs') of pesticides would also diverge from the EU ones. As a consequence, UK agricultural products would not comply with EU product standards and would not be granted access to the EU market. On these grounds, it is difficult to see how a material impact on trade between the Parties could materialise. Yet, UK reductions in levels of protection would still undermine the EU transnational agenda: notably, the 'Farm to Fork' strategy[64] commitment to pursue enhanced levels of protection, minimise the use of (and corresponding exposures to) pesticides, and foster sustainable agricultural and food production systems. It is also worth stressing that the production of chemicals or pesticidal products and unsustainable food production systems are all linked to an increase in greenhouse gas emissions. In this perspective, they also have an indirect impact on the EU transnational agenda for climate change mitigation.

This brings us to the last considerations, regarding climate change. Pursuant to Article COMPROV.5 ('Fight against Climate Change'), the Parties consider that climate change is an existential threat to humanity. Each Party shall thus respect the Paris Agreement and refrain from any acts or omissions that would materially defeat its object and purpose. Article COMPROV.12

[64] European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A Farm to Fork Strategy for a Fair, Healthy and Environmentally-Friendly Food System*, COM(2020)381 Final.

('Essential Elements') stipulates that Article COMPROV.5(1) on climate change is one of the essential elements of the partnership established by the TCA. Accordingly, Article INST.35 on the fulfilment of obligations described as essential elements applies. If either Party considers that there has been a serious and substantial failure by the other Party to fulfil any of the essential elements of the TCA, it shall request that the Partnership Council meet immediately. If no agreeable solution is identified within 30 days, the Party may decide to terminate or suspend the operation of the TCA or any supplementing agreements, in whole or in part. Pursuant to paragraph 4, 'an act or omission which materially defeats the object and purpose of the Paris Agreement shall always be considered as a serious and substantial failure for the purposes of this Article'.

While the acknowledgment that the fight against climate change is an essential element of the TCA comes as welcome news, the importance of these provisions should not be overestimated. More specifically, two problematic aspects can be identified. First, the shift from the adoption of EU levels of protection as a direct or indirect reference point to the minimum baseline of public international law (Paris Agreement) has marked the entrenchment of a 'best efforts' approach. The Paris Agreement lays out a procedural apparatus for Members to adopt specific Nationally Determined Contributions ('NDCs'); however, it does not enshrine any substantive obligations as regards the nature or stringency of the NDCs, their implementation, or compliance with them.[65] Regression below the targets applicable at the end of the transition period would most probably qualify as an act which materially defeats the object and purpose of the Paris Agreement.[66] However, this would hardly be the case for insufficiently ambitious future targets and policies. On these grounds, in this specific case, the economic rebalancing mechanism could turn out to be more effective in safeguarding transnational environmental protection than the 'essential elements' clause. Indeed, divergencies in climate levels of protection are more likely to materially affect trade and investment between the Parties than divergencies in other areas.

Secondly, it is worth noting that the effective implementation of climate change mitigation targets requires specific policies and robust implementation across a range of regulatory areas; these include energy efficiency and governance of renewables, planning and authorisations for development, industrial and non-industrial emissions of pollutants other than greenhouse gases, whose chemical interactions can still produce carbon dioxide, waste management and agriculture and livestock farming. Reductions of UK levels of protection in areas such as environmental impact assessment and strategic environmental assessment, industrial emissions, air emissions and air quality targets and ceilings, waste governance or agricultural and food production systems would then have a domino effect on climate change mitigation, indirectly jeopardising the attainment of the relevant emission reduction targets in practice.

Against this overall backdrop, from an environmental law perspective, it is fair to conclude that the demise of the 'evolution' clauses and the TCA's shift from 'dynamic' forms of regulatory convergence to a stricto sensu economic framing of the level playing field is highly unsatisfactory. The arrangements in place may be sufficient to protect the EU from an economic standpoint, should

[65] For detailed analyses, see inter al Jonathan Pickering and others, 'Global Climate Governance between Hard and Soft Law: Can the Paris Agreement "Crème Brûlée" Approach Enhance Ecological Reflexivity?' (2019) 31 JEL 1; Lavanya Rajamani and Daniel Bodanski, 'The Paris Rulebook: Balancing International Prescriptiveness with National Discretion' (2019) 68 ICLQ 1023; Chris Hilson, 'Hitting the Target? Analysing the Use of Targets in Climate Law' (2020) 32 JEL 195.

[66] See also the analysis of Art 7.3(3) and (5) in sub-section 3.3, suggesting that a full obligation of non-regression may apply in the field of climate change law.

the UK lower its levels of protection; however, they will neither protect the EU biosphere, nor safeguard the EU transnational agenda.

5. Conclusions: the TCA's Unambitious Compromise and the Way Forward for the EU Environmental Agenda

This article has enquired to what extent the TCA may help safeguard high levels of transnational environmental protection, taking into consideration potential reductions in UK levels of protection and the ensuing effects on the EU biosphere and the EU strategic transnational agenda. The analysis has been set against the backdrop of an examination of the TSD Chapters in other EU FTAs. In this respect, the article has shown that the TCA's Title on the level playing field, the 'non-regression' clauses enshrined therein and the economic rebalancing mechanism are innovative in many respects.

However, as the article has illustrated, the TCA has marked a shift from the pursuit of high levels of transnational environmental protection to a mere focus on potential impacts on trade and investment between the Parties. The TCA's 'turn' to competition has resulted in a reduction in the areas of environmental and public health protection covered by the level playing field provisions, a reworking of the notion of 'static' alignment, and the replacement of 'dynamic' alignment or 'dynamic' convergence with the rebalancing mechanism. As the article has demonstrated, this narrow economic focus cannot possibly capture many aspects of environmental and public health protection. On these grounds, future reductions in UK levels of protection are likely to have a direct impact on the EU biosphere and to indirectly undermine the EU transnational agenda.

The compromise enshrined in the final text of the TCA has resulted from an accommodation of the negotiating demands of the Parties. First, in accordance with the UK's demands, any references to EU law and EU standards as a direct or indirect reference point have been replaced by a new focus on the trade-distorting effects of regulatory divergences, and references to the baseline of public international law and multilateral agreements. Secondly, narrowing down the scope of application of the level playing field provisions and the breadth of the 'non-regression' and 'future levels of protection' clauses has facilitated agreement on the available economic remedies, to the advantage of the EU negotiating party. As already explained, a trade-off exists between the breadth of the mandatory obligations enshrined in FTAs and the effectiveness of the remedies available to the Parties. The stricto sensu economic component of the level playing field has thus prevailed in the negotiations.

Overall, the TCA has followed a lowest common denominator approach to environmental protection and climate change. The Agreement pays too much attention to effective economic remedies, and too little to the breadth of the obligations and to environmental and public health matters. EU negotiators could have put more effort into keeping the impact on trade and investment out of the 'non-regression' clauses. In a similar vein, they could have sought a lower threshold for the application of the rebalancing mechanism. Alternatively, they could have put forward more ambitious commitments on environmental protection and climate change mitigation, irrespective of the impact that divergencies in levels of protection can have on trade and investment. These could have been backed up by the same or different remedies. From an environmental law perspective, it is thus fair to conclude that the TCA's provisions are far from ambitious.

Against this overall backdrop, what conclusions can be drawn from the negotiations of the TCA and from a critical assessment of the TSD Chapters in other EU FTAs? As trade and investment agreements become increasingly important tools for the EU to exercise its extra-territorial leverage, with a view to achieving high levels of transnational environmental and public health protection, what lessons can be learnt from the approach that the EU has followed so far?

The analysis of the TSD Chapters has shown that, from a transnational environmental perspective, the EU approach in pre-TCA Agreements has been unsatisfactory. The TSD Chapters combine references to pre-existing commitments under public international law, recourse to aspirational 'non-regression' and 'future levels of protection' clauses, and a very soft approach to remedies. None of these elements enables the EU to truly exercise its extra-territorial leverage and pursue an ambitious transnational environmental protection agenda. Indeed, the recent 'hardening' of the EU position on remedies reflects an acknowledgment that reform of the TSD Chapters is needed. The EU compromises in the TCA negotiations are equally unsatisfactory, from an environmental and public health protection perspective.

If the EU is genuinely seeking to safeguard and enhance transnational environmental protection, it should radically rethink its approach to environmental matters in trade and investment agreements. It should neither content itself with the traditional 'compliance with public international law' clauses, nor focus on the trade-distorting effects of regulatory divergencies and fair competition. As the article has demonstrates, a narrow economic framing of the notion of a level playing field can by no means help safeguard high levels of transnational environmental protection. Nor should EU law be set as a direct or indirect reference point, at all costs. As the article has shown, this may prove highly contentious for the Parties at the negotiation stage.

In a different vein, the EU should focus on setting self-standing and sufficiently ambitious environmental protection commitments for the Parties to comply with, including relevant targets and timeframes. These clauses should be mandatory, enforceable and backed up by effective remedies. The real challenge, thus, lies in striking a fair balance between the *breadth* and the *enforceability* of environmental, public health and climate change mitigation obligations in EU FTAs. This is a challenge that the EU institutions should take up very soon, if they are truly committed to the European Green Deal agenda.

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