

<b>Institution:</b> University of Sussex		
<b>Unit of Assessment:</b> 18 – Law		
<b>Title of case study:</b> Shaping UK and EU trade policy and legislation		
<b>Period when the underpinning research was undertaken:</b> 2000 – 2020		
<b>Details of staff conducting the underpinning research from the submitting unit:</b>		
<b>Name(s):</b>	<b>Role(s) (e.g. job title):</b>	<b>Period(s) employed by submitting HEI:</b>
Dr Emily Lydgate	Senior Lecturer in Law	2013 – present
<b>Period when the claimed impact occurred:</b> July 2016 – December 2020		
<b>Is this case study continued from a case study submitted in 2014?</b> N		
<b>1. Summary of the impact</b>		
<p>Dr Lydgate's work, underpinned by her research expertise in trade and environmental policy, led the UK Government to change pesticides legislation to ensure the continued protection of human and animal health from endocrine disrupting chemicals, and formed an evidence base for stronger Parliamentary scrutiny of food standards in UK trade negotiations. It also shaped EU negotiating positions toward the UK on environmental protection through 'level playing field' commitments, and helped to influence Labour Party positions toward a closer relationship with the EU post-Brexit.</p>		
<b>2. Underpinning research</b>		
<p>Dr Lydgate is a Senior Lecturer in Law at Sussex, and Deputy Director of the UK Trade Policy Observatory (UKTPO), an interdisciplinary research centre that aims to inform UK trade policy. Domestic and international law are often academically siloed, and Lydgate's research is unusual for drawing from in-depth understanding of both EU/UK domestic environmental law and international trade rules. Her research examines the way that trade integration influences national environmental regulation. She has argued that environmental regulation responds to complex, scientifically-uncertain problems, which challenges the often instrumentalist logic of international trade treaties and tribunals [R1, R3]. Lydgate's research has also brought new insight into the ways in which the UK Government navigates between competing pressures to liberalise trade and erect regulatory trade barriers that pursue environmental objectives [R5].</p> <p>Since the referendum on membership of the EU in June 2016, Lydgate has focused on examining the relationship between UK trade and environmental objectives. This problem had immediate pragmatic implications: the UK Government's Brexit timetable was much shorter than that of the typical research project. Lydgate's ability to scrutinise and inform policy developments derived from the application of existing research expertise to the new circumstances, getting results out quickly and in an accessible way.</p> <p>More specifically, the UK has historically derived the vast majority of its environmental regulation from the EU. Thus, post-Brexit, crucial questions have arisen that Lydgate's research has addressed. One such question is how new UK environmental regulation will impact upon trade. Lydgate's analysis [R4] revealed that the UK's post-Brexit food safety rules fell short of the level of protection currently provided by the EU and provided a relatively clear path for a UK Prime Minister to overcome Parliamentary opposition to new trade agreements covering food products. It uncovered consequences that led directly to a legislative change, as documented below.</p> <p>A second key question is how the EU and UK will manage future environmental cooperation through a trade agreement. Whilst unwinding their current high level of legislative alignment, they must develop and agree environmental commitments in their future trade relationship. Publication [R3] was co-produced in discussion with the European Policy Centre and EU Commission Task Force 50 (Brexit) negotiators, who sought Lydgate's advice on how to shape environmental commitments in their future trade agreement with the UK. In the paper, drawing from previous research expertise [R1] on how trade agreements interact with domestic environmental protection in the EU context, Lydgate recommended that environmental non-</p>		

regression would be most effectively achieved by emphasising UK domestic environmental enforcement alongside attempting to calibrate a common level of protection.

Lydgate also co-authored [R2] with UKTPO economist Professor L. Alan Winters, which analysed the legal and economic dimensions of replicating conditions of the EU Customs Union post-Brexit on a sectoral rather than economy-wide basis. It concluded that such solutions would be highly complex to administer and provide less legal certainty. EU and UK negotiating positions reveal that the degree of market integration between the EU and UK determines the level of environmental cooperation, confirming that the concerns and findings of her other work are also applicable in this domain.

### 3. References to the research

R1 Lydgate, Emily. (2017) 'Is it rational and consistent? The WTO's surprising role in shaping public policy' *Journal of International Economic Law* 20(3), 561-582.

[doi.org/10.1093/jiel/jgx030](https://doi.org/10.1093/jiel/jgx030) Submitted to REF2.

R2 Lydgate, Emily, and L. Alan Winters. (2018) 'Deep and Not Comprehensive? What the WTO rules permit for a UK-EU Trade Agreement' *World Trade Review* 1-29.

[doi.org/10.1017/S1474745618000186](https://doi.org/10.1017/S1474745618000186) Submitted to REF2.

R3 Lydgate, Emily. (2019) 'Environmental standards and regulation: are non-regression clauses sufficient to maintain the UK-EU future relationship?' European Policy Centre, 32-45.

[https://wms.flexious.be/editor/plugins/imagemanager/content/2140/PDF/2019/pub\\_9223\\_brexit\\_lpf.pdf](https://wms.flexious.be/editor/plugins/imagemanager/content/2140/PDF/2019/pub_9223_brexit_lpf.pdf) (accessed 15 January 2021)

R4 Lydgate, Emily, Anthony, Chloe and Millstone, Erik. (2019) 'Brexit food safety legislation and potential implications for UK trade: The devil in the details' UKTPO Briefing Paper 37, pp 1-12.

<https://blogs.sussex.ac.uk/uktpo/files/2019/10/UKTPO-Briefing-Paper-37.pdf> (accessed 15 January 2021)

R5 Lydgate, Emily and Anthony, Chloe. (2020) 'Coordinating UK trade and climate policy ambitions: A legislative and policy analysis', *Environmental Law Review*, 22(4) 1-22.

[doi.org/10.1177/1461452920960349](https://doi.org/10.1177/1461452920960349) Funder: ESRC (Post-Brexit trade and investment) PI: L. Alan Winters, 05/19-11/20, £136,692. Submitted to REF2.

### 4. Details of the impact

#### Changing UK pesticides legislation

Dr Lydgate's analysis, underpinned by research expertise developed in [R4], led directly to a change in UK pesticides legislation. The research was used by two NGOs in 2019, Chemtrust and the Public Law Project, in separate legal challenges against the UK Government: a pre-action protocol for Judicial Review and a High Court case appealed to the Supreme Court.

Lydgate's research, which received wide media attention [S1], uncovered that the UK Government had omitted EU restrictions on Endocrine Disrupting Chemicals. Inspired by this analysis, and after liaising with Lydgate, the NGO Chemtrust partnered with the Law firm Leigh Day to initiate legal action against then Environment Minister, Michael Gove, regarding this omission [S2.1]. The Department for Environment, Food and Rural Affairs (DEFRA) confirmed that:

'On 16 May 2019, Defra officials became aware of the issue after being alerted by HSE [Health and Safety Executive] to an online news article alleging that controls on endocrine disrupting chemicals would be removed by EU exit legislation. This article was based on work by the University of Sussex's UK Trade Policy Observatory. Officials immediately initiated action to address this issue by including a correcting provision within the forthcoming Pesticides (Amendment) (EU Exit) Regulations 2019.' [S2.2]

The news article to which DEFRA refers is a blog titled 'Not Just a Technical Exercise: a look at new pesticides regulation', published by Lydgate and her team on the UKTPO website on 15 May 2019; this blog was based on research developed in [R4]. In Parliamentary debate on 1 October 2019, Shadow Minister Sandy Martin made clear the harm that could have been caused by this omission:

'...if it were not for this correction in this SI [Statutory Instrument], we would not have been able to prohibit the approval of active substances, safeners and synergists which have endocrine disrupting properties. Endocrine disrupting chemicals have a significant effect on animal and human health.' [S3]

The omission had broader constitutional significance. Lydgate partnered with the Public Law Project (PLP) NGO in a UKTPO event at Chatham House in May 2019, where she presented the results of the pesticide research; it was subsequently included as evidence in the PLP submission to the High and Supreme court cases in which Miller successfully challenged the Government's prorogation of Parliament in September 2019. The pesticides Statutory Instrument was directly cited as an example of poorly-drafted secondary legislation and thus requiring scrutiny from Parliament [S4]. It was thereby used as an example to argue that prorogation would restrict scrutiny of remaining Statutory Instruments, to the detriment of the public interest.

The final judgement of the Supreme Court includes the PLP as an intervenor (non-party participant) and relies upon its argument as a core reason for finding prorogation unlawful: '[The memorandum recommending prorogation] does not discuss the impact of prorogation on the special procedures for scrutinising the delegated legislation necessary to make UK law ready for exit day.' [S5]

### **Strengthening Parliamentary oversight of post-Brexit food standards**

Research undertaken in [R4] also helped to impel stronger Parliamentary scrutiny of how post-Brexit UK trade agreements will shape UK food standards. In Parliamentary debate about the Agriculture Bill, Lord Burnett stated:

'I commend to the House an article dated 12 September 2019, written by Chloe Anthony, a lecturer in law at the University of Sussex, and Dr Emily Lydgate, a fellow of the UK Trade Policy Observatory ... entitled UK food safety Statutory Instruments: A problem for US-UK negotiations? Referring to the statutory instruments created under the European Union (Withdrawal) Act 2018, these authors argue that some provide extensive scope for Ministers to make future changes to food and safety legislation ... We in this House and the other place are aware of the problems of overseeing secondary legislation and the power it gives to Governments. Much of the existing legislation on food safety, animal welfare and environmental standards can be altered by statutory instrument.' [S6.1]

The article Lord Burnett referenced was a blog based on research undertaken in [R4], which argued that food standards statutory instruments undermined Parliamentary oversight over trade agreements – an approach that was fundamentally flawed and needed reform. To rectify this problem, the Lords proposed an amendment to the Agriculture Bill that addressed this concern directly by increasing Parliamentary oversight [S6.2]. Whilst HM Government rejected this amendment, they agreed a similar 'amendment in lieu' which now forms part of the 2020 Agriculture Act. It requires the Government to report directly to Parliament on whether UK Free Trade Agreements weaken food standards [S6.3]. Lydgate's research, explicitly cited in Parliamentary debate, provided an evidence base to support the need to make this change.

### **Guiding the formulation of EU environmental non-regression policy**

When, in 2017, the EU Commission Task Force 50 [Brexit] negotiators began developing their strategy for the 'level playing field' – which would inform the EU's approach to environmental non-regression – they sought Lydgate's expertise on trade agreements and environmental legislation. Although this is a standard component of EU Free Trade Agreements, the UK negotiation requires unwinding existing integration – a unique context. After a series of meetings with EU negotiators, Lydgate wrote a briefing paper for their internal review, followed by a version published by the European Policy Centre [R3].

In both the unpublished version and in [R3], Lydgate put forth, and critically examined, the possibility of basing environmental non-regression on calibrating a shared level of protection. This novel approach was adopted in the Withdrawal Agreement from November 2018. That Agreement was not accepted by UK Parliament, but it formed the basis for the EU's position on environmental provisions in a UK-EU FTA. In the final EU-UK Trade and Cooperation Agreement (TCA), it is incorporated through a novel mechanism which, in certain circumstances,

allows either side to impose tariffs if they do not maintain a shared level of environmental protection (TCA, Part 2, Title XI, Article 9.4) [S7]. In a letter to Lydgate, [text removed for publication] [S8]

### Supporting Parliamentary scrutiny of UK trade policy

Between July 2016 and December 2020, Lydgate contributed to 10 Parliamentary inquiries to 5 different Commons and Lords Select Committees through oral and written evidence – a sustained contribution to the capacity of Parliament to scrutinise trade policy [S9]. Among these, Lydgate’s research briefing [R3] prompted the House of Commons Exiting the EU Committee to invite Lydgate to give oral evidence. [text removed for publication] [S10]

Similarly, [text removed for publication] [S11]

[text removed for publication] [S11].

### Influencing the Labour Party in its advocacy of a UK-EU Customs Union

Lydgate and Winters [R2] examined in detail the limitations of trying to replicate the benefits of the Customs Union through sectoral agreements, and examined the implications of a ‘sectoral’ approach, as well as a UK transitional arrangement, with respect to the rules of the World Trade Organisation. The analysis of this possibility was published in several UKTPO Briefing papers and blogs and underpinned UKTPO influence on the Labour Brexit position. Following several meetings with Lydgate and other UKTPO fellows, the Opposition stated in August 2017 that it would seek to remain in a customs union with the EU. In February 2018, following further meetings, Labour argued for seeking a customs union in the long run. [text removed for publication] [S12].

During spring 2019 the debate and cross-party talks revolved almost entirely around Labour’s demand that the future trade arrangement with the EU include a customs union.

## 5. Sources to corroborate the impact

S1 Media file

S2 Leigh Day Action: S2.1 Leigh Day, Judicial Review Pre-Action Protocol Letter, 4 June 2019, pp. 11-12, available at: [https://chemtrust.org/wp-content/uploads/2019\\_06\\_04-CHEM-Trust-Pre-Action-Protocol-Letter.pdf](https://chemtrust.org/wp-content/uploads/2019_06_04-CHEM-Trust-Pre-Action-Protocol-Letter.pdf);

S2.2 Letter from D Lynch, DEFRA Information Rights Team, to Mr T Short, Leigh Day, 28 August 2019, REQUEST FOR INFORMATION: CHEM Trust v Secretary of State

S3 Hansard – Exiting the European Union (Pesticides), 1 October 2019:

[https://hansard.parliament.uk/Commons/2019-10-01/debates/44819D8C-6620-4C82-A901-2C269C30E335/ExitingTheEuropeanUnion\(Pesticides\)](https://hansard.parliament.uk/Commons/2019-10-01/debates/44819D8C-6620-4C82-A901-2C269C30E335/ExitingTheEuropeanUnion(Pesticides))

S4 Joe Tomlinson, Public Law Statement, Witness Statement number 1, (*R (on the application of Miller) (Appellant) v The Prime Minister (Respondent) Sir John Major, the Lord Advocate, on behalf of the Scottish Government and others* [2019] EWHC (QB)

<https://publiclawproject.org.uk/wp-content/uploads/2019/09/190904-statement-of-Dr-Joe-Tomlinson.pdf>

S5 *R (on the application of Miller) (Appellant) v The Prime Minister (Respondent) Cherry and others (Respondents) v Advocate General for Scotland (Appellant) (Scotland)* [2019] UKSC 41, 24 September 2019, para. 60:

<https://www.supremecourt.uk/cases/docs/uksc-2019-0192-judgment.pdf>

S6 Agricultural Bill sources: S6.1 Hansard – Agriculture Bill, 28 July 2020

<https://hansard.parliament.uk/search/Contributions?startDate=2015-10-06&endDate=2020-11-30&searchTerm=emily%20lydgate&partial=False>;

S6.2 Lords proposed Amendment to the Agriculture Bill, Amendment 18, 21 October 2020 <https://publications.parliament.uk/pa/bills/cbill/58-01/0202/200202.pdf>;

S6.3 HM Government amendment in lieu to the Agriculture Bill, 2 November 2020

[https://publications.parliament.uk/pa/bills/cbill/58-01/0202/amend/agriculture\\_rm\\_cclm\\_1102.pdf](https://publications.parliament.uk/pa/bills/cbill/58-01/0202/amend/agriculture_rm_cclm_1102.pdf)

## Impact case study (REF3)

S7 EU-UK Trade and Cooperation Agreement, 24 Dec 2020

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/948119/EU-UK Trade and Cooperation Agreement 24.12.2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf)

S8 [text removed for publication]

S9 Oral and written evidence for UK Parliamentary inquiries, June 2016-Dec 2020

S10 [text removed for publication]

S11 [text removed for publication]

S12 [text removed for publication]