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UK Government Sued Over Inadequate Assessment of Environmental Impacts of the UK-Australia Free Trade Agreement

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In May 2023, Global Feedback, an environmental advocacy group based in the UK and the Netherlands, **announced** that it had filed legal proceedings against the UK government, claiming that it failed to adequately assess the environmental impacts of the UK-Australia Free Trade Agreement (the UKAFTA). The UKAFTA allows Australian producers access to the UK market in order to sell beef, lamb, mutton and dairy. Such imports will become tariff-free after a number of years and in the transition period until then, certain products will be subject to a specific tariff-free quota.

The UKAFTA, signed in December 2021 and effective at the end of May 2023, was one of the UK's first post-Brexit bilateral free trade agreements. It has come under criticism in the UK for being rushed through and offering significant concessions without securing appropriate benefits in return. According to Global Feedback, the UKAFTA will allow the UK market to be flooded with meat and dairy products, leading to an increase in consumption against recommendations made by, among others, the Climate Change Committee that reductions in meat and dairy consumption are essential to achieving climate change goals.

Global Feedback has issued its claim under judicial review. This judicial process under the law of England and Wales allows a claimant to challenge the lawfulness of a decision made by a government authority. In its claim, Global Feedback has alleged that the UKAFTA will ultimately have a negative material impact on the UK's ability to meet publicly-stated emissions reductions targets, including its legally-binding requirement, pursuant to the Climate Change Act 2008 (CCA), to reach net zero emissions by 2050, and its commitment under the Paris Agreement to reduce emissions by 68% by 2030 compared with 1990 levels. To prevail in its

action, Global Feedback will have to show that the UK government's decision to enter into the UKAFTA was unlawful on one of the following three grounds:

1. **Illegality:** a decision, action or inaction was beyond the powers available to the government authority or contrary to the Human Rights Act 2008.
2. **Irrationality:** a decision, action or inaction was so unreasonable that no reasonable person acting reasonably could have made it.
3. **Procedural Impropriety:** a decision, action or inaction was taken improperly i.e. without a fair hearing, with bias or against legitimate expectations.

However, court permission is required in order to proceed with a judicial review hearing, a result obtained in relatively few cases. Permission will be refused if Global Feedback is unable to convince the Court that there is an arguable ground for the review which has a realistic prospect of success. The UK government maintains that the emissions impact of the UKAFTA is unmeasurable, **despite a report** commissioned by the government in 2021, which found that the carbon footprint of Australian beef was 50% higher than in the UK. If Global Feedback's judicial review application reaches a full hearing and is ultimately successful, the Court has the power to grant a number of remedies, including a mandatory order (requiring the government body to carry out its legal duties), a prohibitory order (preventing the government body from acting beyond its powers), a declaration by the court of what the law actually is or, as is likely in this case, a quashing order which would set aside the government's decision. In that case, the challenged decision would no longer have legal force and the government would be required to reconsider the matter and reach a fresh decision.

Taking the Temperature: This is not the first time Global Feedback has filed legal proceedings against the UK government. In 2022, the group sought judicial review of the government's food strategy, claiming it failed to take into account advice that cutting meat and dairy consumption is essential in achieving its net zero targets. The court refused Global Feedback's application for permission to proceed with that review although the group is appealing this decision.

The action regarding the UKAFTA is the latest in a series of legal proceedings filed against the government in the UK on environmental issues. In July 2022, the High Court ruled in favor of ClientEarth and others holding that the government's net zero strategy was legally insufficient as it failed to satisfy the relevant provisions under the CCA. Activist groups are increasingly taking legal action to hold the government accountable for a perceived mismatch between net zero targets and the UK's progress towards achieving them.

The UKAFTA action will increase calls for legislators to carry out more comprehensive impact assessments when negotiating bilateral trade agreements with other countries. The UK government's priorities in 2023 include progressing negotiations with India, Canada, Mexico, Israel and the Gulf Cooperation Council, and its net zero targets will likely be a topic of extensive consideration.

Beyond the UK, activist groups are also increasingly exercising the right to challenge the decisions of public bodies when it comes to ESG-related matters. This is in line with a report commissioned by the EU Forum of Judges for the Environment in 2022, which found a surge in administrative law challenges to policies and projects by environmental

groups and predicted that the prevalence of such actions would only increase in the future.