**Appeal no.: UKSC/2025/0119**

**IN THE SUPREME COURT OF THE UNITED KINGDOM**
**ON APPEAL FROM THE COURT OF APPEAL**
**(CIVIL DIVISION) (ENGLAND AND WALES)**
**COULSON, STUART-SMITH & HOLGATE LJJ**
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**
**(KING'S BENCH DIVISION) (ADMINISTRATIVE COURT)**
**LANG J**

**B E T W E E N :**

**THE KING**

(on the application of **FOODRISE LIMITED**)

**Claimant/Respondent below/Appellant**

**-and-**

**(1) HIS MAJESTY'S TREASURY**

**(2) THE SECRETARY OF STATE FOR BUSINESS AND TRADE**

**Defendants/Appellants below/Respondents**

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**AGREED STATEMENT OF FACTS AND ISSUES**
**in accordance with Supreme Court Practice Direction §5.6**

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## I. Introduction

1. This is the agreed statement of facts and issues, filed in accordance with §5.6 of *Practice Direction 5: Documents for the appeal hearing*.

2. The Appellant, Foodrise Ltd (which, prior to 25 April 2025, was named Global Feedback Ltd),[1] is a charity concerned with environmental protection. In particular, it

[1] The change of name was given effect by the Registrar of Companies for England and Wales on 25 April 2025 pursuant to s.80(2) of the Companies Act 2006. This appeal has been issued in that new name of the Appellant.

advocates for systems of food production that are environmentally sustainable, resilient and fair.

3. This appeal arises in proceedings for judicial review brought by the Appellant, with the permission of Lang J, challenging the lawfulness of the decision of the Respondents, on 22-23 February 2023, to make the Customs Tariff (Preferential Trade Arrangements and Tariff Quotas) (Australia) (Amendment) Regulations 2023 (SI 2023/195) ("**the 2023 Regulations**").

4. The Respondents, HM Treasury ("**the Treasury**") and the Secretary of State for Business and Trade ("**the Secretary of State**"), jointly made the 2023 Regulations in the exercise, (or, on the Appellant's case, in the purported exercise) of powers conferred on them by Part 1 of the Taxation (Cross-border) Trade Act 2018.

5. This appeal concerns whether the Appellant's claim for judicial review is an "*Aarhus Convention claim*" within the meaning of CPR, r.46.24(2)(a), and so subject to the default costs limits under Section IX of CPR Part 46. The sole issue before this Court is whether the claim is "*within the scope*" of Article 9(3) of the Aarhus Convention.[2] If the claim is an "*Aarhus Convention claim*", the High Court has determined the costs limits which would apply to the underlying claim for judicial review.

6. In the High Court, Lang J determined the claim was within the scope of Article 9(3) of the Aarhus Convention and therefore was an "*Aarhus Convention claim*". Her decision was reversed by the Court of Appeal (Coulson, Stuart-Smith & Holgate LJJ). The Appellant appeals to the Supreme Court against the Court of Appeal's decision.

7. The judicial review claim from which this appeal arises remains to be determined. Permission to apply for judicial review having been granted by Lang J, the claim has been stayed pending determination of proceedings before the Court of Appeal and this Court by Order of Lang J dated 28 June 2024.

## II. Statement of facts

[2] The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, done at Aarhus, Denmark on 25 June 1998, Treaty Series No.24 (2005), Cm 6856. The UK ratified the Aarhus Convention on 23 February 2005, and it entered into force for the UK on 24 May 2005.

*(a) Background and context to the claim*

8. On 17 June 2020, the DIT published the UK's strategic approach to negotiations for a proposed free trade agreement ("**FTA**") between the UK and Australia. This set out the then Government's negotiating objectives, which reflected the Government's response to a public consultation that ran between 20 July 2018 and 26 October 2018, which was published in the same document.[3]

9. This document stated that a "*full impact assessment will be published prior to implementation*" and that "*[o]nce the provisions of the agreement have been negotiated, the Government will publish a full Impact Assessment based upon the provisions of the agreement.*"[4] The effect and relevance of these statements is a matter in issue between the parties in the underlying claim for judicial review, and their relevance (if any) to the appeal will be addressed by the parties in their Written Cases.

10. On 16 and 17 December 2021, the UK and Australia signed the FTA.[5] The FTA was subject to ratification and did not, therefore, enter into force on signature. Among other things, it establishes a free trade area between the two countries.[6] It provides, in summary, for the progressive reduction or elimination of import duty on originating goods in accordance with each Party's Schedule to Annex 2A.[7]

11. The tariff schedule of the UK is set out in Section 2B of Annex 2A. This provided for a number of customs duties on certain originating goods to be eliminated on the FTA's entry into force. Customs duties on originating goods within other staging categories are eliminated or reduced more gradually. Where customs duties are not eliminated immediately, the goods may be subject to a tariff rate quota ("**TRQ**"). A TRQ allows a specified volume of the goods, known as "in quota goods", to be subject to a reduced (or nil) rate of duty. "Out of quota goods" are subject to the customs duty that would otherwise apply.

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3 DIT, *UK-Australia Free Trade Agreement: The UK's Strategic Approach*, (17 July 2020).
4 DIT, *UK-Australia Free Trade Agreement: The UK's Strategic Approach*, (17 July 2020), pp.34-35.
5 FTA between the United Kingdom of Great Britain and Northern Ireland and Australia, done at London on 16 December 2021 and Adelaide on 17 December 2021, Treaty Series No.37 (2023), CP 936.
6 FTA, Article 1.1.
7 FTA, Article 2.5(2).

12. In the case of beef meat in particular, the FTA provides for customs duties to be eliminated on 1st January of the eleventh year of the FTA being in force. Until that date, "out of quota" goods do not benefit from any reduction in customs duty. "In quota goods", by contrast, are not subject to customs duty. The volume of the TRQ for beef meat rises progressively each year following the entry into force of the FTA until customs duties are eliminated.[8]

13. On 16 December 2021, *i.e.* the day the UK signed the FTA, the DIT published an Impact Assessment ("**the IA**").[9] This set out DIT's assessment of the economic, social, and environmental impacts of the agreement.[10] Its stated aim was "*to provide Parliament and the public with a comprehensive assessment of the potential long run impacts of the negotiated agreement*".[11]

14. Chapter 6 of the IA addressed "*Impacts on the environment*". This was divided into a number of sections, one of which was headed "*Carbon leakage risk*".[12] It is the Appellant's case in the underlying claim for judicial review that the analysis in this section was vitiated by a number of public law errors, which vitiated the Respondents' subsequent decision to make the 2023 Regulations. The Respondents contend that this section of the impact assessment was not vitiated by any error of law, and, in any event, that any such error would not have invalidated their later decision to make the 2023 Regulations.

15. The then Government decided to make a number of legislative changes to implement the FTA. In particular, the Respondents made the 2023 Regulations to give effect to the UK's tariff commitments under the FTA. Regulation 1(2) of the 2023 Regulations provided that they were to come into force when the FTA entered into force under international law.

16. The 2023 Regulations were signed on 22 February 2023 by the then Minister of State for International Trade, Mr Nigel Huddleston MP under the authority of the Secretary

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8 See paragraphs 1-4 (TRQ 1- Beef) of Subsection 2B-2-2: Product Treatment of Part 2B-2 of Section 2B of Annex 2A to the FTA.

9 DIT, *Impact assessment of the FTA between the UK and Australia*, 16 December 2021 (subsequently updated 10 May 2022).

10 IA p.2.

11 IA, p.10.

12 IA, pp.47-48.

of State. The Respondents in their pre-action protocol response letter dated 28 April 2023 stated that, in deciding to make the 2023 Regulations, "*the Minister had regard to the DIT's impact assessment published on 16 December 2021.*" The relevance (if any) of this to the appeal will be addressed by the parties in their Written Cases.

17. The 2023 Regulations were also signed by Mr Scott Mann and Mr Steve Double, two of the Lords Commissioners for the Treasury, on 23 February 2023.

18. The 2023 Regulations were laid before the House of Commons on 24 February 2023.

19. The FTA entered into force under international law on 31 May 2023 and the 2023 Regulations entered into force at the same time.

*(c) The judicial review claim and procedural history to date*

20. This claim was both filed and issued on 22 May 2023. The Appellant stated in section 7.1 of the Claim Form that its claim was an Aarhus Convention claim. The Appellant also applied in the alternative for a judicial review costs capping order ("**CCO**") under ss.88-89 of the Criminal Justice and Courts Act 2015 ("**CJCA**").

21. The Respondents acknowledged service of the claim on 14 June 2023, denied that the claim was an Aarhus Convention claim, and opposed the Appellant's alternative application for a CCO. On 5 July 2023, the Appellant filed and served a Reply. There then followed some 8 months' delay (which was not the fault of any of the parties), which prompted the Appellant to apply on 26 January 2024 for expedited consideration of permission. By Order dated 6 February 2024, Choudhury J granted the Appellant permission to rely on the Reply and ordered that permission be determined at a rolled-up hearing.

22. By applications dated, respectively, 8 and 9 February 2024, the Respondents and the Appellant sought to vary certain provisions of that Order. The parties also agreed that the Order dated 6 February 2024 ought to be stayed pending the determination of those applications. Further to those applications, by Order dated 21 March 2024, Sir Duncan Ouseley, sitting as a High Court Judge, ordered that the directions of Choudhury J be stayed and a hearing be listed.

23. On 19 June 2024, the Appellant applied to amend its Statement of Facts and Grounds.

24. The hearing ordered by Sir Duncan Ouseley took place before Lang J on 26 June 2024. Lang J granted the Appellant permission (i) to amend its SFG; (ii) to apply for judicial review on all grounds relied upon; and (iii) to rely on parts of the expert evidence it had filed: see her *ex tempore* judgment [2024] EWHC 1810 (Admin).[13]

25. The hearing was adjourned to 28 June 2024. Lang J decided that the claim was an Aarhus Convention claim[14] for reasons given in her *ex tempore* judgment of the same date: [2024] EWHC 1943 (Admin); [2024] Costs LR 1107.

26. The hearing on 28 June 2024 was adjourned in order to determine the Respondents' alternative application to vary the default costs limit for Aarhus Convention claims. In a confidential ruling on 24 July 2024, Lang J dismissed the Respondents' application to vary the cost limits.[15]

27. Lang J did not determine whether to grant a CCO in the alternative.[16]

28. On 28 June 2024, Lang J refused the Respondents' application for permission to appeal to the Court of Appeal against her decision that the claim was an Aarhus Convention claim, but (having been invited to do so by agreement and to avoid the Appellant being exposed to the risk of adverse costs while the point remained outstanding) stayed the claim pending the conclusion of proceedings on appeal from her decision.[17] Accordingly, the Respondents have not yet filed Detailed Grounds of Resistance and evidence in response to the claim.

29. By an Appellants' Notice filed on 19 July 2024 and issued on 30 July 2024, the Respondents sought permission to appeal to the Court of Appeal, which was granted by Arnold LJ on 6 September 2024. The Respondents' appeal was heard by that Court (Coulson, Stuart-Smith & Holgate LJJ) on 7 March 2025 and judgment was reserved. Following the hand-down of judgment on 13 May 2025 [2025] EWCA Civ 624; [2025] 4 All ER 187; [2025] Costs LR 841; [2026] JPL 17; [2025] 10 CL 28, the Court of Appeal (i) by Order dated 13 May 2025 allowed the Respondents' appeal, and (ii) by

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13 Paras. 1, 8-11 of Lang J's Order sealed on 1 July 2024.
14 Para. 2 of Lang J's Order sealed on 1 July 2024.
15 Para. 1 of Lang J's Order dated 24 July 2024.
16 This application remains before the High Court, in the event that the Appellant's appeal is dismissed.
17 Paras. 4 and 5 of Lang J's Order sealed 1 July 2024.

Order dated 12 June 2025, refused the Appellant's application for permission to appeal to the Supreme Court.

30. The Appellant sought permission to appeal to the Supreme Court on 9 July 2025. The Court (Lord Hodge, Lord Leggatt and Lady Simler JJSC) granted permission to appeal on 30 October 2025. The appeal is listed to be heard on 11 June 2026.

*(d) Legislation in relation to the limitation of costs recovery in Aarhus Convention claims*

31. Article 9(3) of the Aarhus Convention provides that:

"*In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment*."

32. Article 9(4) of the Aarhus Convention provides that:

"*In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. …*"

33. Section IX of CPR Part 46[18] gives effect in the present context to the UK's obligations under Article 9(4) of the Aarhus Convention. Where Section IX applies to a claim, the Court has no jurisdiction to make a CCO. This is because s.90(1) CJCA provides that "*[t]he Lord Chancellor may by regulations provide that sections 88 and 89 do not apply in relation to judicial review proceedings which, in the Lord Chancellor's opinion, have as their subject an issue relating entirely or partly to the environment*." Regulation 2 of the Criminal Justice and Courts Act 2015 (Disapplication of Sections 88 and 89)

[18] This is headed 'Limit on costs recoverable from a party in an Aarhus Convention claim'. Section IX was introduced, replacing the previous Section VII of CPR Part 45, by r.16 of the Civil Procedure (Amendment No.2) Rules 2023 SI 2023/572 ("**the 2023 Rules**") with effect from 1 October 2023. The amendments made by r.16 of the 2023 Rules applied to pending claims: see r.2(3) of the 2023 Rules.

Regulations 2017 SI 2017/100 was made in exercise of this power. It provides that ss.88-89 CJCA do not apply to an "*Aarhus Convention claim*".[19]

34. Under Section IX of CPR Part 46:

(1) CPR, r.46.24(2)(a) contains the definition of an "*Aarhus Convention claim*":

> "*a claim brought by one or more members of the public by judicial review or review under statute which challenges the legality of any decision, act or omission of a body exercising public functions, and which is within the scope of Article 9(1), 9(2) or 9(3) of the [Aarhus Convention]*".

(2) CPR, r. 46.25(1) provides that where a claimant who is a member of the public has stated in the claim form that the claim is an Aarhus Convention claim and has filed and served with the claim form a schedule of its financial resources, CPR, rr.46.26-46.28 apply to the proceedings. However, under CPR, r.46.25(2), rr.46.26-46.28 do not apply where the claimant has stated in the claim form that the claim is an Aarhus Convention claim but that they do not wish those rules to apply.

(3) Subject to immaterial exceptions, CPR, r.46.28(1)(a)(i), provides that CPR, r.46.26 applies unless the defendant denies that a claim is an Aarhus Convention claim in its Acknowledgment of Service. In that event, the Court must determine the issue at the earliest opportunity (CPR, r.46.28(2)).

(4) CPR, r.46.26 sets out the default costs caps for an Aarhus Convention claim.[20] CPR, r.46.27 makes provision for either party to apply to vary or remove altogether those default caps. If such application is made, CPR, r.46.27(5)(c) requires the Court to determine it at the earliest opportunity.

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19 Regulation 2(2) defines an "*Aarhus Convention claim*" as having the same meaning as in Section VII of CPR Part 45. It is common ground this should be read as a reference to Section IX of CPR Part 46 following the amendments made by r.16 of the 2023 Rules.

20 The usual costs limits recoverable from a party in an Aarhus Convention claim presently stand at £5,000 where the claimant is an individual and claiming as such, £10,000 for other types of claimant, and £35,000 for defendants. As for the position where there are multiple claimants and/or defendants, see CPR, rr.46.25(3) and 46.26(4).

## III. Statement of issues

35. The sole issue in the appeal is whether the Court of Appeal erred in construing Article 9(3) of the Aarhus Convention too narrowly, and accordingly erred in concluding that the Appellant's claim for judicial review did not fall within Article 9(3).

## IV. Chronology

36. A chronology is provided in the annex to this statement.

| **Counsel for the Appellant** | **Counsel for the Respondents** |
|---|---|
| Victoria Wakefield KC | Sir James Eadie KC |
| Sarah Love | Malcolm Birdling |
| Conor McCarthy | Richard Howell |
| Ben Mitchell | Adam Riley |

**9 March 2026**

**Appeal no.: UKSC/2025/0119**

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**-and-**

**(1) HIS MAJESTY'S TREASURY**

**(2) THE SECRETARY OF STATE FOR BUSINESS AND TRADE**

**Defendants/Appellants below/Respondents**

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**ANNEX TO THE AGREED STATEMENT OF FACTS AND ISSUES:**

**AGREED CHRONOLOGY**

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| Date | Event |
|---|---|
| 20 July 2018 | DIT published an information pack for a consultation on a proposed FTA between the UK and Australia, and the public consultation on the proposed FTA began |
| 26 October 2018 | Consultation closed |
| 18 July 2019 | DIT published a summary of responses to the public consultation |

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| 17 June 2020 | DIT published the UK's "Strategic Approach" to negotiations with Australia for an FTA |
| 17 June 2020 | Negotiations between the UK and Australia commenced |
| 16 June 2021 | UK and Australia reach agreement in principle as to FTA |
| 16 December 2021 | UK signs FTA; DIT publishes Impact Assessment |
| 17 December 2021 | Australia signs FTA |
| 15 June 2022 | FTA laid before Parliament by command |
| 28 October 2022 | Appellant sent the Respondents a pre-action protocol letter |
| 22 November 2022 | The Respondents respond to the Appellant's pre-action letter |
| 22-23 February 2023 | 2023 Regulations signed |
| 30 March 2023 | Appellant sends the Respondents a further pre-action letter |
| 28 April 2023 | Respondents responded to further pre-action protocol letter |
| 22 May 2023 | Appellant's claim for judicial review filed and issued |
| 31 May 2023 | FTA entered into force under international law; 2023 Regulations came into force |
| 14 June 2023 | Respondents acknowledged service of the Appellant's claim |
| 5 July 2023 | Appellant filed and served a Reply |
| 26 January 2024 | Appellant applied for expedited consideration of permission |
| 6 February 2024 | Choudhury J granted the Appellant permission to rely on the Reply and ordered that permission be determined at a rolled-up hearing |
| 8-9 February 2024 | Appellant and the Respondents sought to vary certain provisions of, and to stay, the Order of 6 February 2024 |
| 21 March 2024 | Sir Duncan Ouseley, sitting as a High Court Judge, ordered that the Order of 6 February 2024 be stayed and a hearing listed |
| 19 June 2024 | Appellant applied to amend its Statement of Facts and Grounds |
| 26 June 2024 | Directions hearing before Lang J at which the Appellant was granted permission (i) to apply for judicial review, (ii) to amend its Statement |

| | |
|---|---|
| | of Facts and Grounds, and (iii) to rely on expert evidence. The directions hearing is adjourned until 28 June 2024 to deal with other matters, including costs protection |
| 28 June 2024 | Continuation of hearing before Lang J. The Judge determines the claim is an Aarhus Convention claim, refuses the Respondents permission to appeal against that decision, adjourns the Respondents' application to vary the default Aarhus costs limits, and stays the Appellant's claim for judicial review pending any appeal on the question of whether the claim is an Aarhus Convention claim |
| 19 July 2024 | Respondents file an Appellant's Notice (issued on 30 July 2024), seeking permission to appeal to the Court of Appeal against Lang J's decision that the claim was an Aarhus Convention claim |
| 24 July 2024 | Order of Lang J dismissing the Respondents' application to vary the default Aarhus cost limits |
| 6 September 2024 | Order of Arnold LJ granting the Respondents permission to appeal to the Court of Appeal |
| 7 March 2025 | Hearing before the Court of Appeal (Coulson, Stuart-Smith & Holgate LJJ); judgment reserved |
| 13 May 2025 | Judgment of the Court of Appeal handed down. The Court of Appeal makes an Order allowing the Respondents' appeal to that Court, and determines that the claim is not an Aarhus Convention claim |
| 10 June 2025 | Appellant applies to the Court of Appeal for permission to appeal to the Supreme Court |
| 12 June 2025 | Order of the Court of Appeal refusing the Appellant permission to appeal to the Supreme Court |
| 9 July 2025 | Appellant applies to the Supreme Court for permission to appeal |
| 31 October 2025 | Supreme Court (Lord Hodge, Lord Leggatt and Lady Simler JJSC) grants Appellant permission to appeal |
| 11 June 2026 | Appeal listed before the Supreme Court |