INQUIRY INTO TRADE POST-BREXIT

BRIEFING PAPER

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The APPG on Agroecology for Sustainable Food and Farming conducted an inquiry in March 2017 into the ways Brexit trade negotiations could impact UK agriculture and food production, with special emphasis on areas of practice and legislation most likely to impact producers working to sustainable, agroecological standards. This inquiry was held as part of the APPG on Agroecology’s ongoing Brexit work programme, and follows its October 2016 report Farming Post Brexit and Farmers in Parliament event.

Evidence was heard across two oral evidence sessions from the following expert witnesses:
Professor Michael Cardwell, Agricultural Law, Leeds University
Professor David Barling, Director of the Centre for Agriculture, Food and Environmental Management, University of Hertfordshire
Peter Stevenson, Chief Policy Advisor, CIWF
Catherine Fookes, Campaign Manager for the Organic Trade Board
Dr Steve Webster, Pasture-Fed Livestock Association (PFLA)
Vicki Hird, Sustainable Farm Campaign Coordinator, Sustain

The following submitted written evidence into the inquiry:
David Bowles, Assistant Director, Public Affairs, RSPCA
Steven Jacobs, Business Development Manager, Organic Farmers & Growers
Samuel Lowe, Trade Campaigner, Friends of the Earth
Claire Peeters, Head of Operations and Development, Sustainable Food Trust
Jyoti Fernandes, policy team, Land Workers Alliance
Georgina Downs, UK Pesticides Campaign
Laura MacKenzie, Head of Policy (farming and land use), Soil Association

The inquiry panel was drawn from members of the APPG on Agroecology and included the following who put questions to the witnesses:
Jeremy Lefroy MP
Kerry McCarthy MP
Baroness Miller of Chilthorne Domer
Baroness Young of Old Scone
Countess of Mar

This summary is based on the evidence heard during the inquiry as well as additional information provided to the panel, with additional context provided by the rapidly changing events surrounding Brexit.

You can also download the report at https://agroecology-appg.org/

The APPG on Agroecology wishes to note that the final briefing reflects a collective opinion and not necessarily the views of any one organisation.
Agriculture and trade in the age of Brexit and Trump: a race to the top or the bottom?

Brexit's impact on our food and farming

Britain’s exit from the EU and the subsequent new trade agreements raise a great many issues: food security, health and environmental protection, food safety and animal welfare standards (and human welfare in terms of employment) sustainable production, individual and sector-wide economic resilience.

If these discussions are not handled by a negotiating team ready to support our agriculture industry in its entirety – not just the largest businesses, or those with capacity to lobby loudest – then the government is severely hampering its own ability to make good on its election manifesto promises to farmers, and will run the very real risk of permanently damaging our leading role in setting and improving food standards for current and future generations.

The APPG is determined that this sector should not become a bargaining chip or something that can easily be traded. Rather the government should use the opportunity to further strengthen and enhance environmental and health standards.

Should we find ourselves in a ‘hard Brexit’ scenario, leaving the EU, the customs union and the single market will mean entering new trade agreements with developed and developing countries, all the while negotiating from a highly vulnerable position. ([i])

As observed by Peter Stevenson at Compassion in World Farming (CIWF), there are two scenarios to be considered and not to be conflated by politicians:

• Where the UK is negotiating a new trade agreement, there is potential for a very broad scope of discussions
• Where we don’t have a trade agreement, our trade relationships with other countries will be governed by WTO rules where separate considerations apply

The UK must take the moral high ground and set the standards both for existing and any new trade partners. This sentiment should not be dismissed as a worldview, but rather seen for what it really is: a vital cornerstone of our ability to improve and protect current standards and resist backsliding during any WTO negotiations, in the pursuit of new bilateral trade agreements.

Ensure Defra is up to the task

For Brexit to avoid damaging our vital food and farming sector, Defra needs to rapidly stocktake and update its existing understanding of this complex industry.

After his appointment as Secretary of State for Environment, Food and Rural Affairs, Michael Gove MP stated that ’Brexit offers an “historic” chance to reshape agricultural policy for farmers and consumers’; and ‘pledged to listen to and learn from the industry as the Brexit process unfolded’ and be their “energetic champion” in government’. ([ii])

For the APPG on Agroecology, this requires a meaningful, transparent consultation with the industry at large, rather than going through the standard channels which often favour big agribusiness over the types of business and farms that operate to the values that British consumers hold dear, and give us a unique standing in the world.

Another key part of the puzzle, that must be delivered soon is the long-overdue 25 Year Plan for the Environment, which has been in development since 2015 and has lost much of its farming focus along the way. ([iii]) The Agriculture Bill consultation must be undertaken in good time, and cut across the entire UK food and farming sector, including civil society for it to be meaningful. ([iv])
Negotiating away our future?

The inquiry aired the overriding concern that issues such as food security, environmental protection and welfare standards may be significantly weakened by the UK’s exit from the EU. Furthermore, that the economic resilience of the food and farming sector and its sustainability would be secondary to any perceived gains in a broader trade deal with new or existing country agreements.

The negotiations on the terms of the UK’s withdrawal deal (v) concluded in mid-December 2017 (vi), and now the negotiations for the future framework for our relationship with the EU will begin in January 2018 (vii), in the form of a transition deal and beyond. (viii) This is the point where we can discuss trade relations with Europe and thus this report is highly relevant and timely reading.

The Department for International Trade currently has three key priorities: resolving the UK’s status at the WTO; ‘carrying over’ existing EU free trade agreements (FTA); and assisting DExEU in its preparations for a future EU-UK FTA. It is also laying the groundwork for new FTAs, while acknowledging it can’t begin negotiations until exit, and exploring trade facilitation measures that can be taken unilaterally in the near-term.

As such, the APPG on Agroecology views the audience for this inquiry to include Defra, DExEU and The Department for International Trade.

The House of Commons vote on 13 December 2017 in favour of Dominic Grieve’s amendment to the EU Withdrawal Bill, calling for a “meaningful vote” on the terms of the UK’s final Brexit agreement, in theory should allow Parliament greater scrutiny and control over the terms of our exit. (ix) Some media outlets are reporting that the vote ‘may also make the House of Lords more confident about insisting on their own changes to the bill.’ (x) The APPG suggests that this inquiry and its findings are of interest to many politicians, particularly those with concerns over the terms of any trade deals, not just with the EU but also further afield.

Vulnerable sectors

Given the concerns over the potential fall in legal standards post-Brexit, all producers and farmers that make up the APPG’s core demographic are uniquely vulnerable to and threatened by post Brexit trade deals. As the Pasture-Fed Livestock Association (PFLA) rightly points out, the livestock sector will certainly be one of the most vulnerable, as countries like Ireland and the US look for opportunities to export much more to the UK. Defra ministers have said they want to use Brexit as an opportunity to improve animal welfare, which is likely to be of a higher standard in agroecological and organic systems of farming. This has been followed by Gove’s recent draft bill that seeks to enshrine animal sentience in UK law. (xi)

But in doing this, Defra must be very careful to make sure that in all new agreements British farmers are protected and not undermined by lower welfare imports (such as from the US), because those countries will oppose any improvements and want standards reduced. These concerns would apply to environmental standards, which again would harm agroecological producers more than any other sector.

Most farming in the UK outside of the East of England, would struggle to compete at world market prices with upland farmers being particularly vulnerable. Professor David Barling from the University of Hertfordshire’s Centre for Agriculture, Food and Environmental Management stated that beef and lamb sectors will be exposed for a combination of reasons. Their core export markets are on the European continent and if tariffs are incurred, the price of their produce will go up, making them less competitive.

The horticultural sector is also vulnerable, as it is highly dependent on migrant, seasonal labour from other EU countries, and failure to secure this labour source could add substantially to the cost of producing. Even if a suitable immigration agreement is reached, the Brexit vote already has resulted in decreased interest from migrant workers to come to the UK. (xii)

In terms of geography, the most vulnerable areas and most marginal farms currently have fairly entrenched provisions of subsidies. Additionally, marginal upland farms are used to subsidies. There is likely to be popular demand for these types of subsidies to be maintained in some form, so these producers can continue to operate. However, this will have to be incorporated expressly into UK agricultural policy post-Brexit, and proactively brought into the framework discussions with the EU for them to be included. It should not be assumed that this would happen by default.

UK-EU trade

The most important trade arrangement for the UK to resolve is with the EU. According to Defra’s 2016 report Agriculture in the United Kingdom, in 2016 60% of UK food, feed and drink exports were to countries in the European Union (EU). In comparison, exports to Asia and North America were 16% and 14% respectively, and 70% of UK imports of food, feed and drink during the same period were from the EU. After the EU came Asia and North America - but their imports accounted for only 8% and 6% respectively.

Currently, as a member of the EU, the UK is part of the EU single market and the customs union. This means no tariffs or quotas on trade between Member States. It also means elimination of non-tariff barriers, such as differing technical specifications and rules on labelling of products. Given that average tariffs are now generally low (with the exception of some agriculture sectors where tariffs remain very high), these non-tariff barriers are considered to be a more important barrier to trade. (xiii)

An exit from the single market, which will happen if the Brexit process comes to a conclusion as currently envisaged by the Government, has generated concern from all who gave evidence, over higher costs for exports and imports, uncertainty, increased price volatility, and difficulty in forward planning.
WTO restrictions

Where the UK does not conclude a trade agreement, trade will be governed by the WTO rules. Here the common assumption is that the WTO rules do not permit trade restrictions on animal welfare or environmental grounds. However, this ignores WTO case law of the last sixteen years. This indicates that countries can require imports to meet welfare standards equivalent to their own provided that there is no element of discrimination that favours domestic producers and no discrimination between different would-be exporting countries. (xiv)

According to the CIWF and RSPCA, if challenged a country can seek to defend its requirement under the WTO’s public morals exception.

In EC Seal Products the Appellate Body ruled that in the EU, animal welfare is a concern that comes within the field of public morals. WTO dispute panels and the Appellate Body have stated on several occasions that member countries have the right to determine the level of protection that they consider appropriate to achieve a given policy aim for example as regards public health, conservation, prevention of deceptive practices or public morals. (xv, xvi, xvii)

For example, the EU requires imported meat to be derived from animals slaughtered to welfare standards at least equivalent to its own (xviii) and this has not been challenged under the WTO rules.

The significance of these rulings has been recognised by Minister of State George Eustice MP who has said: “there are legal precedents and case law to support the use of ethical bans on certain practices and the reflection of animal welfare in trade agreements. I do not believe that anything along the lines that we would propose will cause any difficulty whatever with WTO rules.” (xxix)

Professor Michael Cardwell of Leeds University stated that WTO rules tend to be treated with some trepidation with good reason, but they are not always the barrier they are perceived to be. If policy is carefully designed so that it does not restrict trade or disguise protectionism, there is a surprising amount that can be achieved that would be considered more positive than not.

UK-US bilateral deals

Parallels have been drawn between our potential UK-US trade deals and the widely-opposed TTIP agreement between the US and the EU, where one of the primary issues was the concept of the investor-state dispute settlement (ISDS) procedure. It was so unpopular a clause that it heavily contributed to the demise of TTIP and delays to the Canada-EU free trade agreement, CETA.

Worryingly, an ISDS clause could be included in the UK-US trade agreement. This procedure would allow a US corporate investor to initiate proceedings against the UK for alleged breaches of the trade agreement. The ISDS provisions could present a de facto barrier to future improvements in UK animal welfare, environment and human health legislation. It is suggested that an investor could claim damages arguing that such an improvement has a discriminatory effect on their business; this potential threat would act as a strong deterrent to the introduction of new regulations in the UK.

Another key sticking point in the EU-TTIP negotiations was the requirement for regulatory terms like harmonisation, coherence, alignment standards.

CIWF states that when it comes to animal welfare and the environment, the US at federal level has minimal farm animal welfare legislation other than some inadequate legislation on welfare during transport and slaughter, and it is far less detailed than our own. Some states encourage higher standards but they are in the minority.

The APPG believes it seems absurd at best to have regulatory harmonisation with a country lacking any comparable regulations on the national level. There is for example, some existing federal legislation around the organic industry, but given the small percentage it occupies in the domestic US market, it is unlikely to hold much sway during negotiations.

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Future Scenarios

Maintaining current standards

It should be made abundantly clear that maintaining current standards is well within our gift, and the very least we should be considering in terms of our farming and environmental stewardship. Our current trade agreements as a member of the EU means that our legislation and environmental, public health, land stewardship, and animal welfare standards are all accounted for and reflected to some degree within existing agreements, both externally and within the EU.

Evidence submitted to this inquiry reiterates the fact that officials and ministers must be much more robust than they have been to date when it comes to discussing agriculture, trade and the WTO. They should recognise that the WTO would allow us to require imports to meet our current or new standards, provided there is no discrimination in the way that scheme is put together, or any disguised restriction on international trade.

There is already an indication that it will not be easy to reach an agreement between the EU and the UK that will satisfy other WTO members regarding rates of tariffs and shares of tariff rate quotas. Regarding standards, if we wish to trade them away for a bilateral deal, then that is a separate matter, but it should not be pinned solely on the WTO.

The UK is at quite a reasonable threshold in terms of standards at the moment. Defra ministers recognise we have high quality food compared to many other countries and they wish to keep to these standards.

Vicki Hird of the Sustain alliance agreed that current standards must not be weakened and that in many cases our food and farming standards and regulation need strengthening and require better enforcement. There is nothing that will necessarily force the UK to abandon the precautionary principle – again this would be a political choice.

Any such moves should be resisted strongly, and negotiators reminded that – in the environmental sphere at least – this is enshrined in international law, via the Rio Declaration.

The private standards of companies are also vitally important, having been recently ratcheted up in animal welfare and other ethical areas; in response in part to interest pressures from animal welfare groups, fair trade and development NGOs and organisations, but crucially also from consumers. Catherine Fooks of the Organic Trade Board made the point that we need to be moving with the tide of where food consumption is moving.

A race to the bottom

If the UK is unable to protect its farmers from being undermined by lower welfare imports, farmers are likely to resist improvements and may even press for UK standards to be lowered. The biggest risk posed by harmonisation is where it is used as a reason to set the level very low. There is a real danger that enhanced compatibility of regulations would make it very difficult for the UK to improve its standards in areas such as animal welfare, food safety and pesticide use and residues.

There is also a danger that the US will put pressure on the UK to dilute its existing regulations in order to make them more compatible with the very limited US federal regulations in this field.

In negotiating a trade agreement with the US, we could press for the agreement to allow the UK to refuse to import chlorine washed chicken and ractopamine treated pork. However, the US is unlikely to agree to this as it will probably wish to use the agreement to open the UK market to these products. If the UK does not conclude an agreement with the US, these issues will be dealt with under the WTO rules, which will be difficult for us to defend if we are not robust enough in determining considered levels of protection.

It is understood that free-trade agreements smooth the way for foreign direct investment, including by transnational agribusinesses. There is a very real risk that this could encourage farmers to adopt input-heavy, intensive systems, or systems which are not suited to local environmental or cultural conditions. All of this may have a detrimental impact on soil health, local biodiversity and broader ecosystem health, and move the UK ever further away from sustainable ways of producing food and managing land.

As Steve Webster of the FLEA notes, the import of cheaper foods that are produced to lower safety and welfare standards would place UK producers at a competitive disadvantage. To compete with these lower prices, domestic farmers could seek to tighten their margins and therefore cut corners with regards to environmental regulations, or may choose to abandon commitments to agri-environment or other schemes in order to push up production or drive down costs.

All of this would have a further deleterious effect on British wildlife and the wider environment and could tip the scales away from the adoption and utilisation of sustainable agroecological farming systems.

The only barrier to this scenario of - at least - maintaining standards, and the biggest risk factor for triggering our race to the bottom, is one of political will, and the degree to which our food and farming systems are understood and valued by negotiators and politicians.
Recommendations

The UK now has the chance to affirm an agenda-setting approach to its food and farming legislation and governance. Government should look to post-Brexit trading relationships that truly protect, or ideally enhance, the current standards that we have on food safety, human health, animal welfare and environmental protection. Here we profile the key policy recommendations from the inquiry that we believe offers government the best chance to do just that.

Agriculture within the wider Brexit negotiations:
• UK negotiators must not allow the time pressures of the Brexit process and political pressure to quickly conclude trade deals with countries outside of the EU, to impact the importance with which British agriculture should be treated within trade discussions, nor should time be an excuse to deny parliamentary scrutiny.

Free trade under WTO rules should no agreements be in place once we have left the EU:
• Protect UK farmers with trade regulations that ban the imports of food produced to lower environmental, animal welfare and workers’ rights standards. Our regulations should follow the precautionary principle in banning harmful pesticides and food products.
• The UK should include specific language in any FTA on animal welfare equivalence to ensure its own standards are protected.
• The UK should enshrine the precautionary principle in any FTA it negotiates on the animal health issues i.e. beef-hormone, pig-ractopamine, and chlorine-chicken.
• The UK should not unilaterally reduce or remove tariffs on imported products so as to outcompete domestically produced products produced to a higher standard.
• The UK should negotiate in its EU FTA zero tariffs on all farm products to ensure export possibilities still exist, particularly for lamb and pig products and ensure that imports meet UK standards.
• The UK should ensure that any tariff rate quotas given in a FTA are for those products produced to UK standards e.g. free-range eggs.
• The UK should agree equivalence rules on farm welfare standards - this should not be difficult as the UK implements all the EU current farm standards at present.

Animal welfare and environmental standards, labelling and consumer demand:
• The protracted WTO dispute between the EU and the US regarding the EU ban on imports of beef from cattle treated with certain growth promoting hormones was finally resolved by a Memorandum of Understanding between the US and the EU. Under this the EU is able to retain its ban on hormone treated beef in exchange for providing substantial market access for US hormone-free beef at a zero tariff rate. (xxx) The UK would probably need to make a similar arrangement with the US if it wants to prevent the import of hormone-treated beef.
• The UK should continue with its current country of origin requirements regarding the labelling of meat (these are those of EU law) or could introduce new ones provided that there was no de jure or de facto element of discrimination.
• The government should support voluntary labelling initiatives, such as LEAF, PFLA, RSPCA assured and organic, and their widespread adoption throughout the food chain - as a precursor to the swift adoption of mandatory method of production labelling, as advocated for by the Labelling Matters coalition.

UK-EU existing standards:
• In negotiations, the UK must insist on the inclusion of a clause in the agreement that allows it to require imports to meet UK animal welfare, food safety or environmental standards.
• Any trade policy after Brexit must ensure that we retain positive EU standards and regulations on pesticides, wildlife protection, and the environment and on animal welfare at a minimum, as EU legislation and policy is currently the main driver of UK law and policy on agriculture, fisheries, external trade, and the environment. (xxxiii)

Homogenisation of agricultural standards in bilateral trade deals:
• The UK must avoid a scenario where it confidently defaults to WTO rules in trade negotiations without first exposing them to full and thorough parliamentary and public scrutiny, and instead work proactively to ensure we can protect and maintain our current standards.

A Brexit agricultural consultation reflective of the position of agroecology:
• Defra must conduct a regional level listening exercise with representatives of all within the sector, in order to fully represent the issues and concerns, not just those of big business.
• The process should include the opportunity for stakeholders to comment and a transparent and accountable process for taking views into account.
• Defra, DExEU and the DTI should take advantage of the expertise offered by civil society and farmers in the agroecological sector as we move through the Brexit negotiations and construction of the European Union (Withdrawal) Bill.

Farmers in the role of countryside stewardship: public money for public good:
• All agricultural support should be directed towards achieving public benefits.
• The principal role for public funding should be to provide financial support for public goods that the market cannot – or can only partially - deliver such as high environmental and animal welfare standards.
• The government should invest in the UK for diversification for the domestic market.
• The UK government has committed to leaving farm environment and nature in the UK in a better state than it is currently. To achieve this, the Government should support and promote the use of agroecological (including organic) farming methods, which helps increase biodiversity. Any trade agreements must encourage and not undermine such a transition.
• There should be a new UK-wide land use policy embracing environmental security and sustainability, and minimal pesticide use, with agri/environment schemes that incentivise tree planting and reward landowners for good environmental practice.
• The government should encourage through public procurement and through working with the private sector, the maximum possible purchase of high quality British food.
Recommendations continued

Capacity-building Defra for post-Brexit and beyond:
- Defra should prioritise the establishment of an independent Policy Commission to examine future policy for the environment, farming and rural development post-Brexit.

The European Union (Withdrawal) Bill - legislative areas of focus:
- The UK inherits at least four practices prohibited in the EU: bans on certain Genetically Modified Organisms, BST, other hormones in beef and chlorine washed chicken, all of which the USA in particular will want to overturn. It will need to decide where it places consumer confidence in farm products as it could face WTO challenges on these issues unless it agrees them in FTAs.
- In England, the growing of certain Genetically Modified Organisms (GMO) is permitted, but not in Scotland, Northern Ireland and Wales, and this will be a difficult area of discussion within the devolved administrations and Westminster. (axxii)

References

(2) http://www.bbc.co.uk/news/uk-politics-40348965
(6) http://www.bbc.co.uk/news/uk-politics-42380467
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(9) https://www.independent.co.uk/news/2017/12/12/michael-gove-says-brexit-means-higher-animals-welfare-standards/
(17) George Eustice speaking in Westminster Hall debate on 24 January 2017 https://hansard.parliament.uk/commons/2017-01-24/debates/7EED8D-C08D-4429-99C5-37D5732CA0/6/LeavingTheEUAnimalWelfareStandardInFarming
(19) Revised Memorandum of Understanding with the United States of America regarding the Importation of Beef from Animals Not Treated with Certain Growth-Promoting Hormones and Increased Duties Applied by the United States to Certain Products of the European Union, 30 January 2014
(20) https://fullfact.org/europe/uk-law-what-proportion-influenced-eu/

[axxii] The EU introduced an "opt out" proposal to be able to fast track GM crops into pro-GM countries whilst allowing other EU countries to opt out. The opt out has now been adopted and is being used by Scotland, Wales and Northern Ireland, allowing England to potentially start growing GM crops if they are first approved by the EU. No crops suitable for growing in England have yet been approved. http://www.genowatch.org.uk/sb-556517