



tawwc
Trade & Animal Welfare Coalition

Animal Welfare in the EU-UK Trade and Cooperation Agreement

On 24 December 2020, the EU and the UK concluded a Trade and Cooperation Agreement (TCA); which covers not only Trade but also other areas of cooperation like transport, fisheries and law enforcement.

At present, the UK has incorporated all 44 EU animal welfare legislative standards into law under the European Union (Withdrawal) Act 2020¹. During the transition period (January 31 - December 31 2020), these standards could not be changed and the trade between the EU-27 and the UK was tariff-free, as if the UK was still part of the EU Customs Union and Single Market.

The EU-UK TCA² introduces the new rules that will apply to trade between the EU and the UK as of 1 January 2021, or more accurately between the EU and Great Britain. Northern Ireland remains in the EU's Single Market and Customs Union under the Withdrawal Agreement and will therefore continue to follow regulations and standards drawn up by the EU. Great Britain is free to set its own rules on animal welfare and the environment.

The main impacts of the EU-UK TCA on animal welfare are summarised below.

Advantages

- Great Britain, and its constituent nations, gained the ability to ban live exports, as they are now outside of the Single Market, and to diverge from the Common Agricultural Policy when defining their subsidy policy. This will allow Great Britain and its constituent nations to divert more resources into higher animal welfare standards. There are already proposals on the table on these two topics, and others are expected, like on method of production labelling.
- The agreement ensures tariff-free and quota-free trade in all farm primary products and many processed products. This is welcome as it means the level of farm imports originating from the EU can be maintained, given that animal products from third partners, most often produced under lower animal welfare standards, will not become cheaper than EU products. In addition, the absence of tariffs also ensured that most exports of animal products from GB did not drop abruptly, which could have led to the massive culling of animals in the impacted sectors.

¹ <https://www.legislation.gov.uk/ukpga/2020/1/contents/enacted>

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf

- The animal welfare section recognises the link between animal welfare and sustainable food production. This is a positive step forward, as it is the first time this link is recognised by a trade agreement.
- The TCA sets up a yearly Civil Society Forum (CSF) to allow civil society stakeholders to discuss the implementation of the EU-UK TCA, and makes it mandatory for the UK to consult once a year with a dedicated civil society body.
- The rise in checks and certification now required by GB may allow for an increase of biosecurity and aid enforcement on non-compliant movements of animals.

Disadvantages

- The agreement does not list animal welfare in its chapter on Level Playing Field, and provisions on animal welfare cooperation do not include a commitment to non-regression. Great Britain and its constituent nations are thus allowed to set new animal welfare standards that would be either lower or higher than the EU's. While we expect that Great Britain and its constituent nations will not downgrade animal welfare standards, only improve them, it's worth noting that the UK is unlikely to be allowed to use "rebalancing measures" to claim back any cost disadvantages from lower animal welfare standards in the EU in the form of tariffs, if the divergence between EU and UK standards has an impact on trade.
- The Chapter on animal welfare, whilst welcome, could have been stronger; there is no explicit mention of a standing Working Group on animal welfare to feed in priority areas for the EU and UK to work collaboratively in fora, such as the OIE.
- The rise in checks and certification now required as GB is not in the Customs Union or in the SPS area could increase border waiting times for animals and animal products going to the EU and Northern Ireland. The checks and documentation requirements are already creating tremendous issues for GB exports of fish and crustaceans, as well as significant suffering when it comes to crustaceans that are transported alive to the continent.
- The increase in SPS certification needed will require more veterinarians and it is unclear if that capacity presently exists.
- The lack of mutual acceptance of qualifications for veterinarians could lead to a shortage of vets - for instance 96% of vets in slaughterhouses are EU nationals.
- The EU-UK TCA calls on the parties to establish rules to avoid duplicative testing on vertebrate animals. Yet, if there is no further discussion on the matter, the UK leaving the European Chemicals Agency and the lack of mutual acceptance of tests will probably result in double testing of chemicals leading to a rise in animal tests in the UK.

1. A tariff-free, quota free trade

The EU-UK TCA confirms that no tariff or quota will apply to trade between the EU and the UK (*Goods.5* and *Goods.10*). This is good for animal welfare, particularly for farm animal standards.

The UK imports more than it exports for all animal derived products other than milk. The UK and EU have similarly high most-favoured-nation (MFN) tariff rates for commonly imported food - such as dried egg products, sheepmeat and beef - of 40-70%. At the moment, the UK exports 16% of its beef production, of which 92% goes to EU countries, and 32% of its sheep production, of which 94% goes to the EU. If the EU had had to impose such MFN tariff on GB exports (which would have been the case in the absence of a trade deal), there would have been significant consequences. Both export flows would probably have halted under such a scenario, due to the high tariffs.

The TCA, by agreeing to keep all tariffs at zero, has ensured that both the EU and the UK can continue to favour another partner displaying relatively higher animal welfare standards. Otherwise, as the EU and the UK do not impose their animal welfare standards on imported goods (apart from those related to slaughter), both partners could have witnessed in the near future vast changes in the structure of their food imports, with the level of lower welfare imports likely to increase as they would have become cheaper than the EU or the GB products.

This status quo is thus also helpful to assist the UK in maintaining its comparatively higher animal welfare standards, by lowering the pressure exerted by lower welfare imported products.

It is also important to underline that the Parties have confirmed (*EXC.1*) that no provision adopted in this section (*Chapter I - national treatment and market access for goods*) prevents them from adopting measures in conformity with article XX of the GATT (which lists the exceptions on the basis of which trade can be restricted). This is positive as the WTO Dispute Settlement Mechanism (DSM) has recognised that trade can be restricted on the basis of animal welfare, as it is seen as an issue linked to public morals (EC Seals case). The preamble of the TCA also recognises animal welfare as a legitimate policy objective for the Parties. Constituent nations of Great Britain could rely on such an exception to ban live exports in the future. It is unfortunate, however, that the Parties have not referred to this understanding of GATT article XX(g) in the following provisions.

2. Measures related to import licensing procedures

The TCA foresees that the parties shall only adopt or maintain licensing procedures “if other appropriate procedures to achieve an administrative purpose are not reasonably available”. Such import licensing procedures must be fair and transparent (*Goods 13*).

The introduction of such procedures could result in an increase in paperwork, which could, in turn, lead to delays at ports, notably at the Channel ports. This risk is particularly high at the start of 2021, due to bedding in the new processes that will be needed to move live animals and products between Great Britain and both the EU and Northern Ireland. These new administrative procedures include transporter authorisations, registration on relevant import notification systems, animal health certificates and veterinary checks, customs declarations and checks, and entry and exit declarations.

Non commercial and commercial trade in cats and dogs are not covered by the TCA but by the existing Agreement in Regulation 2020/2016 between the UK and EU on the UK being a Part 2 listed 3rd country permitting trade under certain conditions³.

3. Sanitary and Phytosanitary Measures

The TCA’s SPS chapter does not mention explicitly the precautionary principle. This is not unusual, looking at the EU practice in other FTAs, but this is a missed opportunity for the UK, and its constituent nations, to take a position on how it will approach food safety in the future. The chapter mostly refers to the respect of the SPS agreement (risk-based assessment) and several EU measures benefitting animal welfare - which are currently applied by the UK - have been deemed in violation of these rules (ie ban on hormone-fed beef) or have been strongly contested (i.e. chemical rinsing of meat, restrictions on the use of antibiotics in animal production). Language located in other parts of the agreement (see cooperation on antimicrobial resistance) and the SPS provision indicating that the parties should not create additional authorisation requirements compared to those in place at the end

³ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2020.415.01.0039.01.ENG&toc=OJ%3AL%3A2020%3A415%3ATOC

of the Transition Period hint at the UK's acceptance to maintain such standards. Yet, a stronger statement in the SPS chapter would have been welcome.

The provisions on audits and controls reflect trust between the partners. The chapter puts responsibility on the exporting party to check whether exports fit the importing party's requirements. The exporting party is also responsible for keeping the list of establishments approved to export, with no prior checks by the importing party. It remains, of course, possible to reject the imports but justifications should be provided.

The SPS chapter also contains provisions on cooperation on animal welfare, antimicrobial resistance and sustainable food systems:

- **Animal welfare:** the parties recognise animals as sentient beings⁴ and, for the first time in a trade document, the link between improved animal welfare and the sustainability of food production systems. They will exchange information, experiences and expertise, cooperate in international fora “to promote the development of the best possible animal welfare practices and their implementation”, and on research. While the scope of the exchange of information, experiences and expertise does not exclude the welfare of animals other than farmed ones, the cooperation on research is restricted to farmed animal welfare. While the language is better than in other UK FTAs, it still remains weak and narrow given the track record of both partners in this field.
- **Antimicrobial resistance (AMR):** the provisions recognise that misuse of antibiotics in animal agriculture is a threat to human and animal health. They underline the importance of the One Health approach, but not of One Welfare, and set an objective for both parties to “work towards the cessation of the use of antibiotics as growth promoters internationally” . The provisions also refer to “good farming practices” as a topic within the scope of the dialogue on AMR, which is important to ensure animal welfare is taken into account in these discussions.
- **Sustainable Food systems:** this provision indicates that food safety authorities will cooperate to promote sustainable food systems. We regret, however, that the explicit reference to sustainable fisheries and aquaculture that could be found in the EU proposals has been omitted.

The SPS chapter does not foresee explicitly the setting up of a specific working group on animal welfare but as it tasks the Trade Specialised Committee on Sanitary and Phytosanitary Measures (SPS committee) with exchanging views “with respect to the cooperation activities on protecting animal welfare”, it is likely that such group could be set up. It's interesting to note that there is no mention of sustainable food systems in that list of topics handled by the SPS committee.

4. Technical Barriers to Trade

This chapter impacts technical regulations, such as labelling schemes. Contrary to the EU-Japan and EU-Mercosur FTA, the chapter still allows for labelling schemes to be imposed on imported products if the information provided is relevant for the consumers or users of the product. This is positive for animal welfare as our movement is pushing for the imposition of a method-of-production labelling scheme on animal source food, including imports.

⁴ Since 1 January 2021, article 13 of the TFEU (which recognises animals as sentient beings) no longer applies in the UK. It has yet to be replaced with an equivalent legislation that would apply in GB.

The TBT chapter requires the parties to refer where possible to international standards, “except when it can demonstrate that such international standards would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued”. The international standards listed explicitly are ISO, ITU and Codex, none of which address animal welfare. One could argue that the World Organisation for Animal Health (OIE) Guidelines fit the definition of international standards established in *TBT.4*, but the fact that they are not explicitly mentioned will make the argument less weighty in disputes. In addition, the parties can still argue that referring to OIE standards, which are often low and not properly enforced, would not allow the fulfilment of the legitimate objectives pursued.

These provisions should leave enough flexibility for the UK to set up a labelling scheme based on animal welfare standards higher than the ones contained in the OIE guidelines.

5. Rules of Origin

The Rules of Origin under the TCA imply that an animal product will be seen as wholly originating in a country if the product is a live animal born and raised in the country; if it originates from live animals raised in the country or it is obtained from slaughtered animals that were born and raised in the said country, or from aquatic animals raised in the country or caught by a country’s vessel. There is also a tolerance if the products in which the weight of non-originating components does not exceed 15%.

Such rules of origin discourage the import of live animals only to slaughter them. They also ensure that if a product is labelled as originating from the EU or the UK, it can be expected that animals from which they originate have been raised and slaughtered under EU or UK animal welfare standards.

6. Level Playing Field

The LPF provisions are essential to ensure fair competition, as both parties have agreed on a tariff-free and quota-free trade.

The initial provisions of this chapter reiterate the necessity that “trade and investment take place in a manner conducive to sustainable development”. Harmonisation of standards is not the objective of the TCA but “the Parties are determined to maintain and improve their respective high standards in the areas covered by [the LPF] Title”, which include environment and climate. The parties also reaffirm their ambitions to reach climate neutrality by 2050, and their acceptance of the precautionary approach allowing the Parties, “where there are reasonable grounds for concern that there are potential threats of serious or irreversible damage to the environment or human health”, to adopt measures even if full scientific certainty is lacking. This language is better than what the EU has included in the EU-Mercosur agreement, especially as the provision does not impose the revision of the measure as soon as possible.

The section on environment and climate includes in its scope “the management of impacts on the environment from agricultural or food production, notably through the use of antibiotics and decontaminants.” That could, to a certain extent, allow for discussion of intensive animal agriculture, as it is a source of significant pollution, but not directly animal welfare. The Parties commit to “strive to increase their respective environmental and climate protection levels” and to promote environment-friendly practices. However, within the list of such practices, there is no mention of any in relation to agriculture (while there were in EU proposals). The provisions on wildlife trafficking are similar to the ones contained in the EU-Mexico agreement, and the ones on the promotion of sustainable aquaculture and fisheries do not mention fish welfare, nor refer to OIE standards.

The specific DSM attached to this chapter is similar to the one linked to Trade and Sustainable Development (TSD) chapters in other EU FTAs: in case of a dispute, the Parties can request the setting up of a panel that will produce a report on the matter. If the Party found in violation of the TCA by the Panel does not want to take any measure, there are no further procedures available. However, there is an additional provision in the DSM section providing for “rebalancing measures”. It allows for the Parties to impose measures (such as tariffs) in the case where a divergence in environmental or labour standards that arose after the conclusion of the TCA has an impact on trade between the Parties. If a Party does so, the other has the right to start an arbitration process to assess the compliance of such rebalancing measures with the TCA. This section is the one based on which many politicians have ensured that there will be a possibility to retaliate in case of unfair competition. Interestingly, even though animal welfare is not listed in the fields covered by the LPF rules, it is the example that Prime Minister Johnson chose to explain the “rebalancing procedure”⁵. This is encouraging as we believe that when the UK imposes stricter animal welfare standards, it will be important to impose them on imported goods, or at least to condition better tariffs to their respect.

However, these provisions are weaker than the upward dynamic alignment that we were pushing for, where the EU would have been obliged to gradually align with our future higher standards. With the TCA, there will be an obligation to demonstrate that the new divergence between our standards is impacting the EU-GB trade or investments, which - as the experience has shown - is rather difficult.

The TCA also contains the possibility for a Party to ask for a review after at least four years to assess whether there is any level playing field issue. The assessment could lead to the renegotiations of certain parts of the agreement and in case the Parties cannot agree on this renegotiation, to the termination of the Trade part of the agreement (as well as others).

7. Involvement of Civil Society

The TCA commits the Parties to consult civil society - a newly established or existing domestic advisory group - on the implementation of the entire agreement (and any future supplementing agreement). The parties must meet at least once a year with their Domestic Advisory Group (DAG), and interactions between DAGs is encouraged.

The parties must also organise a Civil Society Forum to discuss the implementation of Title II of the Agreement (Trade, Aviation, Road Transport, Social Security Coordination and Visas for Short-Term Visits, Fisheries), at least once a year. This Forum is open to any independent civil society organisation established in the EU or the UK.

This is positive as the UK had not included this monitoring of the implementation of trade agreement in the Trade Bill. Animal Welfare Organisations will be either able to apply to join the UK DAG⁶ or to participate in the yearly Civil Society Forum.

8. Other relevant provisions

Good Regulatory Practices

The provision reasserting the right of the Parties to regulate includes animal welfare in the list of the policy fields that it covers. This is an improvement compared to EU draft proposals. It is positive that

⁵ <https://www.rev.com/blog/transcripts/u-k-pm-boris-johnson-brexit-trade-deal-speech-transcript-december-24>

⁶ If the UK decides to rely on existing mechanisms, animal welfare organisations are part of the Trade and Agriculture Committee and would thus aim to feed in on the issues at stake using this body.

animal welfare is specifically mentioned as an issue where a Party can set its own standards and thresholds. This would allow the UK to implement bans on live exports or to improve standards in farming, as long as the measures adopted are WTO compliant.

Intellectual Property Rights

In its provisions on the “ Protection of data submitted to obtain marketing authorisation for plant protection products or biocidal products” (IP.36), the TCA includes a commitment that “each Party shall establish rules to avoid duplicative testing on vertebrate animals.” This is not a novelty in EU practice (such a provision is already found in CETA), and UK rolled-over FTAs have maintained such provision where available (in agreement with Mexico, but not with Japan).

Agricultural Subsidies

Rules on subsidies contained in the LPF section of the agreement do not apply to agricultural subsidies. This is positive as it leaves the GB and its constituent nations free to set its own subsidy levels for farm support systems. The Agriculture Act 2019 has already set a good direction for farm support systems to promote higher animal welfare standards in England, while the Welsh Government has now published a White Paper on a future Agriculture (Wales) Act.

About the Trade and Animal Welfare Coalition

The following organisations work together in a coalition to protect and advance animal welfare as the new relationship between the UK and the EU develops.



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