



## **A UK Trade Policy for Free Trade Agreements that protects the Animals**

### **BACKGROUND**

In the aftermath of the UK leaving the EU the importance of the UK regaining control of its trade policy has often been underlined. However, at the moment, the strategy that the UK will follow in this policy field has not been defined yet, though the Trade Bill contains an Article that the Department of Trade would need to get permission from both Houses before a negotiating mandate is agreed. Official negotiations have started with the USA, New Zealand and Australia and due to start with CPTPP (Trans-Pacific agreement) this year. The Board of Trade has been established but unfortunately without any representative of either animal welfare or environmental organisations. It will thus be important for the government to set the right priorities, to ensure full transparency from the preparation of the negotiating mandate to the formal conclusion of the negotiations, and to allow for effective parliamentary scrutiny.

Leaving the EU's Common Commercial Policy, the UK must absolutely ensure from the onset that protecting and even improving animal welfare standards, in the UK and abroad, is central to its trade policy. The UK has moved towards this by agreeing in the Trade Bill, which governs negotiations on existing FTAs, that there will be no lowering of animal welfare standards in existing FTAs. Any UK trade policy will then have to enact this to address the challenges that trade liberalisation poses to the UK's higher animal welfare standards and to ensure it serves as a vehicle to promote higher animal welfare standards in partner countries. The UK will also place the Trade and Agriculture Commission on a statutory footing in order that it can advise on animal welfare standards in new FTAs.

This note presents our vision for a UK trade policy that fully integrates an animal welfare dimension and recognises the link between improved animal welfare standards and sustainable food production systems.

### **TRADE & ANIMAL WELFARE**

Trade liberalisation has a massive impact on animal welfare, particularly because of the requirement, under WTO rules, to liberalise trade in 'substantially all products' when negotiating non-multilateral agreements. This means that agricultural products will virtually almost always be included in the discussions. As most of the UK's higher animal welfare standards impacted by trade concern farmed animals and, to a lesser extent, animals used in laboratories, this means that any FTA concluded by the UK with a third partner can impact these standards.

Most animal-based products imported into the UK, except European ones, will not meet animal welfare standards equivalent to those applicable in this country. As the UK aims to improve several standards above the current EU level, such as chicken and pig standards, this discrepancy between local and imported goods is likely to increase. At the moment, the EU and the UK are interlinked on farm standards and farm trade - most of the EU's 18 farm standards are replicated in the UK, ensuring a level playing field, and most of the UK's farm exports and imports are to and from the EU. 40% of the pig meat produced in the UK is exported to non-EU

countries, making it the UK's largest agri-food exported product, and 31% of the chicken imported into the UK comes from non-EU countries, making it the first imported agri-food. Further opening the UK market to poorer welfare imports will have consequences for animals, both within and outside the UK, especially in the absence of an effective labelling system based on methods of production. Firstly, these imports negatively impact the competitiveness of UK producers who must comply with higher animal welfare standards. Under pressure, farming lobbies will not want further costly regulation of their production. At the most extreme, this may even put the existing UK standards at risk or, at least, their effective enforcement. This pressure on competitiveness contributes to a chilling effect on animal welfare regulations. This has already been witnessed in the EU and the UK, where no new farm animal welfare regulation was adopted in the past 10 years. Secondly, providing more market access to poorer welfare products means that more animals will suffer as production under lower animal welfare standards will continue in Third Countries and, most likely, increase to meet the higher demand generated by a lower price in the UK.

On the more positive side, trade agreements could be one effective tool for the UK to cooperate and assist other countries with issues such as animal welfare. Trade policy represents a unique opportunity for the UK to positively influence animal welfare abroad and ensure its place as a world leading force for higher welfare standards. Because the UK has some of the best animal welfare legislated standards in the world, it will be possible for the UK to use its trade agreements as a means to help other countries to raise their animal welfare standards, notably by offering cooperation and technical assistance. This was outlined in the report from the Trade and Agriculture Commission (TAC). The UK can also use conditional access to its market to incentivise states and producers to improve their animal welfare standards. Again, this was a recommendation from the TAC.

## **A BILATERAL TRADE POLICY THAT PROTECTS THE ANIMALS**

The Trade & Animal Welfare Coalition argues for both animal welfare and conservation issues to be consistently included in all UK Trade Agreements under a stand-alone comprehensive chapter, giving the topic the attention it deserves. The UK should consider the following tools to ensure animal welfare standards applied in the UK are protected, and that the full potential of trade agreements is used to promote improved standards abroad:

- **Conditional liberalisation for higher welfare animal-based products based on preferential tariffs, tariff rate quotas or non-tariff measures**
- **More detailed provisions on animal welfare cooperation based on meeting and enforcing at least the OIE's 15 animal welfare global standards and preferably providing assistance in meeting standards equivalent to those of the UK**
- **Inclusion of Trade and Sustainable Development chapters recognising the link between animal welfare and sustainable development, with last-resort sanctions**
- **A transparent negotiation and implementation process, providing continuous engagement with civil society at all stages**

### ***Animal Welfare: beyond cooperation mechanisms***

We argue in favour of conditional liberalisation, which would permit imports into the UK only if the products meet standards of animal welfare equivalent to those applicable in the UK. Such a principle would be in line with the results displayed by the most recent Eurobarometer on animal welfare which showed that 94% of British citizens want imported animal products to respect all domestic rules, and not only those related to

slaughter (as is the case at the moment). Such trade restriction, if imposed unilaterally, could be justified under WTO law based on the exception regarding public morals contained in the General Agreement on Tariffs and Trade, Article XX (a), as confirmed by the WTO Dispute Settlement Body in the EC - Seal Products case. The measure should be origin-neutral and should require an equivalence of results, rather than methods, as recognised in the US Shrimp and Tuna-dolphin II cases.

However, where UK law prohibits the use of a particular system such as barren battery cages or sow stalls – and perhaps at a future point, enriched cages and farrowing crates - the UK should prohibit the import of meat and eggs that have been produced in such systems. To simply require an equivalence of results would be cumbersome and imprecise; it would, for example, entail defining all the behavioural and health benefits of not housing hens in barren cages. It would be much simpler - and clearer for all concerned - to prohibit the import of battery eggs. This could be justified by:

- Challenging the notion that production methods cannot be taken into account in determining that products are not 'like' each other and so can be treated differently in marketing regulations, and;
- if that proposition is not accepted, arguing under the Article XX(a) public morals exception that certain close confinement systems are inherently detrimental to good welfare and so do not have the potential to provide satisfactory outcomes, and that accordingly a WTO member is entitled to require imports not to have been produced in such systems.

A second-best option would be for the UK to only grant additional trade preferences to animal-based products which respect animal welfare standards equivalent to those applied in the UK. This can take the shape of a conditional tariff-rate quota. If conditional liberalisation is negotiated with a partner in a trade agreement (in the form of preferential access being provided to higher welfare products), it should not lead to any conflict under WTO rules.

Another principle that should be protected in any UK FTA is the right to regulate. As explained above, this protection should not only come in words but also by setting the right legal environment avoiding any pressure against higher standards, for instance by imposing conditional access to the market based on the respect of equivalent animal welfare standards.

### ***Strengthened cooperation mechanisms resulting in clear welfare improvements***

Trade Agreements should still also include mechanisms for increased cooperation and technical assistance on animal welfare with the partners. Cooperation and technical assistance are the primary means through which the UK will be able to assist Third Countries to improve their animal welfare standards, thereby making its request in this field more bearable. These provisions on animal welfare cooperation should explicitly cover all sort of animals that are affected by trade (farmed animals, animals used in science, wild animals, and companion animals), recognise animal sentience, call for upward regulatory alignment at least based on OIE standards as a baseline, and establish concrete objectives with the partner, underlining key issues.

### ***Trade and Sustainable Chapter, adding animal welfare to conservation issues***

As is already common practice for several important trade players, the UK should include in its trade agreements a chapter covering issues related to sustainable development. In this framework, it is important that the UK adopts a comprehensive definition of this term recognising the interlinkages existing between animal welfare and sustainable development. The UK Farm Animal Welfare Committee (FAWC) already partly confirmed this approach in 2012 that "the concept of sustainability must include the welfare of farm animals.

Indeed, livestock agriculture cannot be considered sustainable if an animal's life is not worth living.”<sup>1</sup> Food production systems with detrimental conditions for animals, such as industrial farms where animals are highly confined, are also detrimental to the achievement of many UN Sustainable Development Goals. However, systems that have the potential for higher animal welfare standards are also more likely to positively benefit the SDGs.

These chapters should not be deprived of effective enforcement mechanisms. They must contain clear commitments and their violation should lead, as a last resort, to sanctions. This would ensure better tackling of issues usually mentioned in such chapters, such as wildlife trafficking or unsustainable fishery operations. With sanctions being only a last-resort option, it will be important to write such chapters in a result-oriented manner, so that the implementation phase can deliver concrete progress.

### ***Involvement of Civil Society and Parliamentary Scrutiny***

Trade policy impacts citizens and it is therefore important to create mechanisms that will allow for effective involvement of civil society throughout the trade negotiations and during implementation. At the moment, the most advanced trade policy in that field is the EU's. The UK should ensure draft mandates for negotiations are made public, are discussed and agreed in Parliament, allowing for feedback from stakeholders. During negotiations, it should apply full transparency and update civil society and Parliament on a regular basis, publishing proposals they make to partners. Once the agreement is concluded, the ratification process should imply parliamentary consent. This approach will ensure the UK trade policy is fair and inclusive, reflecting the wishes of its citizens. It will thus be better understood and more supported. .

The UK should create specific civil society mechanisms that will be in charge of monitoring the implementation of the agreement. To ensure effectiveness, sufficient resources should be allocated. Representatives of civil society could be involved in Parties' committees devoted to the implementation of each chapter. This would again ensure sufficient transparency and that the impact of trade agreements is better conveyed to the public. Indeed, the US Mandate for the UK trade negotiations has several demands for such a transparent process involving civil society and other stakeholders<sup>2</sup>.

### **ACTING AT WTO LEVEL FOR MORE RECOGNITION OF ANIMAL WELFARE CONCERNS**

International trade rules are managed by the World Trade Organisation. Trade rules are often brandished to justify the difficulties to improve animal welfare standards at national level. However, over the past decades, the WTO's receptiveness towards higher animal welfare has been improving. Even if WTO agreements do not cover explicitly animal welfare, several disputes brought by members addressed the issue. While older rulings were not encouraging, the decision adopted on the EC Seal case in 2014 has demonstrated that, if a measure is well crafted and non-discriminatory, trade can be restricted to protect animal welfare based on the 'public morals' exception contained in the GATT. This positive trend has been recently reinforced by the positive WTO ruling on US Tuna II, which confirmed the acceptance of using different labelling criteria to reflect the welfare status of the animals. It is also worth noting that the preamble of WTO agreements implies that trade policy should be led in accordance with the objective of sustainable development.

Considering the new momentum to discuss trade and environment at the WTO, It is crucial for the UK to raise in these debates the issue of animal welfare standards, and more generally non-product related process and production methods (NPR-PPM). With the global challenges that humanity has to fight, such as climate change

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<sup>1</sup> FAWC, [advice on sustainable intensification of livestock agriculture](#), 3 February 2012

<sup>2</sup> [https://ustr.gov/sites/default/files/Summary\\_of\\_U.S.-UK\\_Negotiating\\_Objectives.pdf](https://ustr.gov/sites/default/files/Summary_of_U.S.-UK_Negotiating_Objectives.pdf)

or antimicrobial resistance, these characteristics (such as animal welfare but also environmental or labour standards) have become crucial and countries cannot shy away from this debate for too long: should products made under different animal welfare standards still be considered alike when one look at all the implications a method of production can have?

## **RECOMMENDATIONS**

The UK should adopt a trade policy that:

- **Works with other countries to improve animal welfare at a WTO level and ensure its trade, aid and animal welfare policies work collaboratively particularly in developing countries**
- **Puts animal welfare at the heart of its trade policy, seeking conditional liberalisation for higher welfare animal-based products based on preferential tariffs, tariff rate quotas or non-tariff measures**
- **Include in Trade and Sustainable Development chapters the link between animal welfare and sustainable development, with last-resort sanctions**
- **Sets out a transparent negotiation and implementation process, providing continuous engagement with civil society at all stages**