



Law Society
of Scotland

Call for Evidence

Trade and Agriculture Commission

November 2020



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

The Trade and Agriculture Commission is an independent advisory board that has been set up by the Department for International Trade to advise and inform the government's trade policies. Our Trade Policy Working Group welcomes the opportunity to consider and respond to the Commission's call for evidence on various aspects of its work and has the following comments to put forward for consideration.

1. How could we address trade barriers to improve UK business competitiveness?

We agree with the general principle set out in recent DIT documents on the UK approach to current trade negotiations that “an FTA ...needs to work for...UK consumers, producers and companies” and that it must “[uphold] our high environmental, labour, food safety and animal welfare standards.”

We note that the idea of a net positive result should not be a purely economic analysis. COVID-19 has reinforced the fact that factors such as promoting health including mental health, wellbeing, trust and equality are all vital aspects of society, although they are difficult to quantify in economic terms. For example, in the context of trade, issues such as standard-setting, regulation and intellectual property protection should be understood in terms of wider policy implications. It is important to ensure that the qualitative aspects of a net positive result are taken into account, alongside important economic considerations.

We support the assertion that trade deals are not solely about economic benefits. We are aware that numerous concerns have been raised in particular in relation to US food standards and the potential for any trade agreement – with the US or other countries – to lead to reduced product standards. These relate not only to the standard of food products and food processing mechanisms themselves, but also to the animal welfare standards which provide safeguards throughout the production process.

Similarly, environmental and land management regulations to ensure protection of soil, water etc and help to tackle climate change can help to ensure responsible food production. We note that farmers in Scotland have higher environmental and land management standards even than those in other parts of the UK and Europe. Scottish systems of agriculture are in general sustainable and in fact provide environmental benefits, rather than causing harm - for example hill farms are a haven of biodiversity due to the positive nature of low-impact sensitive grazing regimes. Grazed permanent pasture and peat bogs also serve to

sequester carbon dioxide from the atmosphere¹.

Asymmetry in these regulatory areas could lead to an imbalance in production costs, which would put UK producers at a competitive disadvantage. In this case, the important issue of standards also correlates to an economic policy issue and negative impact on UK farmers and food producers. The UK is seen as a world leader with gold standard animal welfare provisions and is recognised for strong environmental protections, both important ends in their own right, which should not be compromised by any trade deal. Furthermore, the COVID-19 crisis demonstrates the importance of animal welfare and food standards as a critical issue of public health.

2. How could UK trade policy best advance the UK's agriculture and food interests? What outcomes would you seek?

See response to question 1 above.

From a UK perspective, we note that affording additional protection for particular products, which are currently protected by the EU's geographical indications (GI) system, would be beneficial. We have previously advocated for the creation of a domestic UK regime which replicates EU protections following withdrawal from the EU and welcome the draft SI, which has been laid before Parliament². We note that systems in other countries often do not offer such robust protections and the specifics of the domestic GI protection system in other countries will therefore need to be carefully considered in determining negotiating lines for particular agreements.

3. How could we balance protection of consumer and business interests, whilst also offering consumers greater choice, availability and affordability?

See response to question 1 above.

We note that UK regulations are aimed at ensuring quality for consumers, while not being overly burdensome to businesses and as such the balance of protections and interests should already be considered as a matter of routine.

There are other mechanisms in this space which can usefully be employed to boost trade. The first of these is in exploring opportunities for regulatory cooperation to better understand regulatory approaches in other jurisdictions to better identify where equivalent standards have been obtained or a common approach could be taken. Reducing regulatory friction by aligning systems can provide cost-savings which potentially benefit all stakeholders. This does not and should not necessitate a fall in standards.

¹ <https://www.nature.scot/professional-advice/land-and-sea-management/carbon-management/managing-nature-carbon-capture>

² <https://www.legislation.gov.uk/ukdsi/2020/9780348214109/contents>

Another important consideration may be found in the field of competition law. Increasingly trade agreements contain obligations on negotiating partners to implement or maintain a competition law system. Where a market is not currently open and competitive, introducing competition reforms may give UK businesses greater opportunities to enter that market.

Lastly, improving cooperation around customs processes in the technological and administrative cooperation sense may drive cost efficiencies which in turn benefit both consumers and businesses.

In all of these areas, effort may be needed to encourage businesses to pass on benefits to consumers.

4. How could we positively support both ethical trade practices and the interests of developing countries, through our trade negotiations?

We support an approach to trade which supports ethical trade practices and the interests of developing countries. We do not have detailed comments to offer on this topic at this stage.

5. How could we ensure that animal welfare and environmental priorities are integral to our trade policy?

The UK is bound by a series of international commitments on environmental protection and climate change. Our trade deals must align with these commitments and the ability of the UK Government and devolved administrations to achieve their targets under the net zero policy. This can be achieved by ensuring any treaty leaves scope for regulation to be justified on environmental protection grounds, even if it would otherwise constitute a non-tariff barrier to trade.

An obvious way to ensure that animal welfare and environmental priorities are integrated into the UK's trade policy would be to include specific provisions on those topics within trade negotiations. Some provisions, for examples restating Paris Agreement Climate Change commitments and relevant future commitments, could be standardised across all agreements but in other areas, bespoke provisions may be appropriate and would depend on factors specific to the negotiating partner(s) in question.

Environmental regulations, as with other regulation, may be viewed as a non-tariff barrier to trade, but trade rules and agreements recognise the importance of regulation so, to the extent any agreement sought to achieve an equalisation of regulation rather than simply conceding each party's right to regulate, that should focus on bringing standards elsewhere up to UK standards and not vice versa. As noted above, it is well recognised that differing environmental standards between trade partners can significantly disrupt any "level playing field", so that seeking observance with consistently high standards is an economic as well as an environmental issue.

We previously commented upon the interaction between trade and climate and environment and are looking to explore this issue further in the run-up to COP26. As a general principle, we consider that all government policies must be aligned and work in concert to ensure that overarching objectives (such as

net-zero) are pursued in a co-ordinated manner, rather than being championed in one area and frustrated by actions in another.

6. How could we advance global agri-food standards and what can we learn from other countries?

We have no comment on this question.



For further information, please contact:

Carolyn Thurston Smith

Policy Team

Law Society of Scotland

DD: 0131 476 8205

CarolynThurstonSmith@lawscot.org.uk