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AGRICULTURE & HORTICULTURE DEVELOPMENT BOARD

The WTO and its implications for UK Agriculture

Contents

INTRODUCTION

AHDB's series of Horizon reports has previously looked at some of the issues that will be critical in shaping the agri-food sector following Brexit. At the forefront of these are policy decisions on trade and agriculture. The CAP has determined farming policy for British farmers for the last four decades, while the evolution of the single market means that other EU countries are currently our prominent trading partners.

Brexit, of course, provides an opportunity to develop regulatory and policy measures that fit the UK's unique needs and play to our strengths. However, it is important to recognise that the UK does not have the proverbial blank piece of paper when it comes to trade or agricultural policy. Instead, in the absence of continuing EU single market participation, the UK will have to contend with an existing international trade framework operated by the World Trade Organisation (WTO). While Brexit means we are all familiarising ourselves with new phrases and acronyms, the WTO is perhaps one of the most frequently mentioned. Many commentators have spoken about 'falling back on to WTO rules' or the 'WTO default'. In practice, international trade is one of the most complex areas that policy-makers will need to navigate and it will set the parameters for what is and isn't possible.

In this issue of Horizon, we start by providing some essential background on the WTO, its development and its role in trade regulation. We then move on to examine the potential effect that the WTO rules and principles might have on UK agriculture, our policy options and the challenging issues that we may encounter.

> *"Regardless of whether we strike a trade deal with the EU or not, the UK will be bound by WTO rules and regulations for all its international trade"*

PART 1: WTO – THE ESSENTIAL BACKGROUND

The WTO – What is it?

The World Trade Organisation (WTO) is an international membership organisation for trading countries that agree to abide by its rules. The WTO currently has 164 members that between them are responsible for 95% of world trade. The WTO came into existence on 1 January 1995, replacing GATT (General Agreement on Tariffs and Trade), which had been in existence since 1947, as the organisation overseeing the multilateral trading system.

What does the WTO do?

The WTO provides a forum for its members to create international trade rules and oversees how these rules are implemented. The WTO has three key areas to its work. It is:

- an organisation for liberalising trade
- a forum for governments to negotiate trade agreements
- a place for them to settle trade disputes

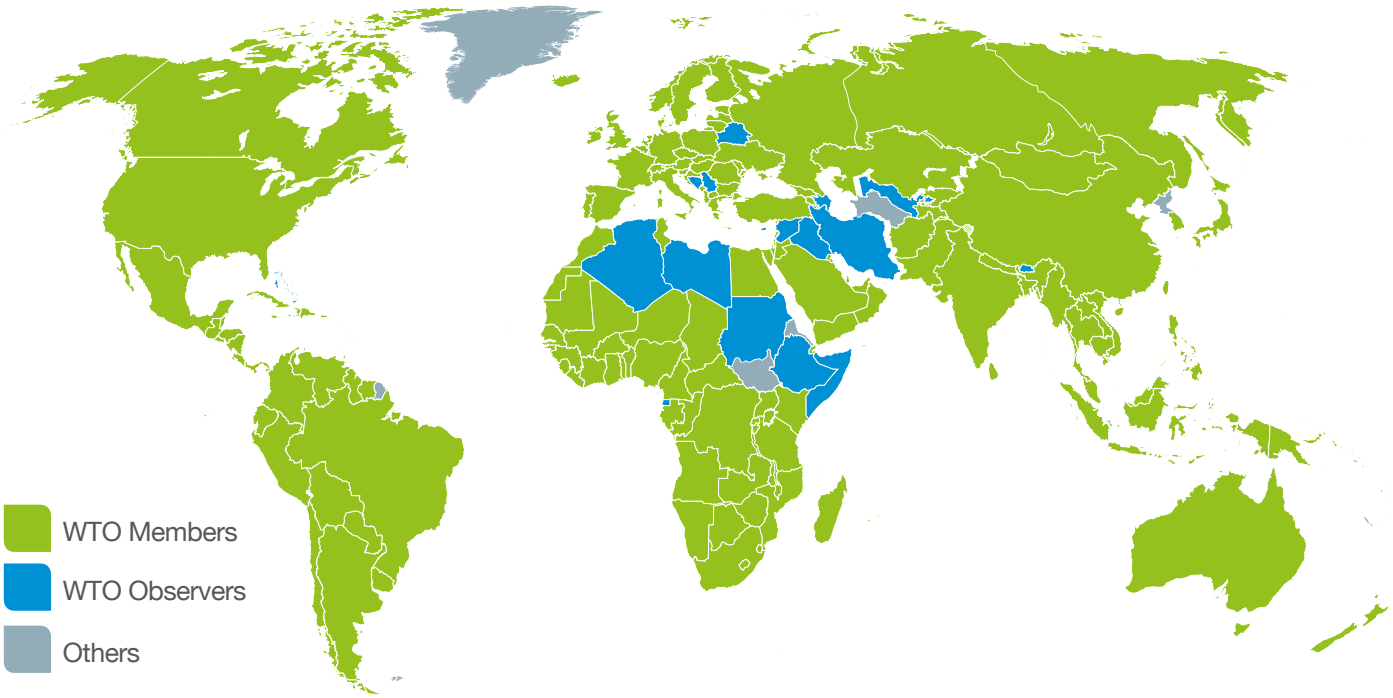
How does the WTO operate?

There are five key principles that underpin the work of the WTO. These principles are the foundation of the multilateral trading system

1. Trade without discrimination
   (typified by the most-favoured nation and national treatment principles)
2. Freer trade through progressive liberalisation
3. Predictability through transparency
4. Promoting fair competition
5. Encouraging development and economic reform

These principles are detailed further on pages 5–6. As we consider our post-Brexit trading relationships, these principles should shape our expectations of Brexit in respect of any UK regulatory proposals to restrict imports, favour our exports or advocate some trading relationships over others.

Figure 1
Map of WTO members and observers



Source: WTO

How important is the WTO?

WTO agreements provide the legal ground rules for international commerce. Negotiated and signed by the bulk of the world's trading nations, the main purpose of these agreements is to help trade flow as freely as possible. That partly means removing obstacles to trade. It also means ensuring that the rules are transparent and predictable. However, the WTO is not just about liberalising trade. In some circumstances its rules support maintaining trade barriers, for example to protect consumers, public morals, human, animal and plant life or health or otherwise to prevent the spread of disease.

How active is the WTO in pushing for trade liberalisation?

Much of the WTO's current work comes from the 1986-94 negotiations called the Uruguay Round and earlier negotiations under the General Agreement on Tariffs and Trade (GATT). The WTO is currently the host to new negotiations, under the 'Doha Development Agenda' launched in 2001. However, it is fair to say that multilateral trade agreements (between all WTO members) have become increasingly challenging to initiate, develop and ultimately conclude (as indicated by the timeframes for the Uruguay and Doha Rounds). By comparison, countries and trading blocs have found bilateral and regional trade agreements easier and quicker to agree and implement, hence the increased significance of preferential trading agreements between two or more countries. The WTO issues relating to trade agreements are explored further in Part 4 of this report.

What is the UK situation with regard to WTO membership?

The UK is listed as a Member of the WTO (since 1 January 1995) having automatically acceded to WTO through previous membership of GATT from 1 January 1948.

Fundamental Principles of the WTO

1. Trade without discrimination

Most-favoured-nation (MFN) principle

The most-favoured-nation principle means that the UK must extend any advantage granted to one WTO Member country to all other Member countries. In other words, countries cannot normally discriminate between their trading partners. Grant someone a special favour (such as a lower customs duty rate for one of their products) and you have to do the same for all other WTO members. Some exceptions are allowed. For example, countries can set up a free trade agreement that applies preferentially to goods traded within the group of states, thus offering advantages compared to goods produced outside the group of states. The EU single market or free trade agreements such as CETA or NAFTA are examples of such groups. Further exceptions to the MFN principle are the possibilities to give developing countries special access to markets, or to raise barriers against products that are considered to be traded under unfair conditions (eg due to unfair subsidies). However, the WTO agreements only permit these exceptions under strict conditions.

National treatment principle

Under the national treatment principle, domestic taxes and regulations must treat imported and domestic products equally. National treatment only applies once a product (eg a good, service, or item of intellectual property) has entered the market. This means that importing countries cannot use discriminatory domestic taxes or regulations. Put simply, countries cannot have a different set of rules for imported goods and domestically produced goods.

WTO case law is well-established to catch any state measures that have an effect on the conditions of competition between domestic and foreign goods. Examples of a breach of these rules would include restrictions on foreigners' participation in company boards, prohibition of foreign land ownership or discriminatory minimum capital or minimum reserve requirements. Similarly, as we saw in the EC – Bananas III case (a trade preference regime for ACP States under the Lome Convention successfully challenged by Ecuador), quota or tariff quota restrictions on imports (in the unlikely circumstances where such restrictions are allowed) must be used in the least-trade distorting manner possible (as is the case with all quantitative trade restrictions).

2. Freer trade through progressive liberalisation

Lowering trade barriers is one of the most obvious means of encouraging trade. Those barriers include customs duties or tariffs, as well as measures such as import bans or quota restrictions.

3. Predictability through binding and transparency

In the WTO, when countries agree to open their markets for goods or services, they 'bind' their commitments. For goods, these bindings amount to ceilings on customs tariff rates. The country has an obligation not to impose a tariff on any listed product at a rate higher than the specific bound rate.

A country can change its bindings (raise a tariff above the bound rate), but only with difficulty. To do so they have to negotiate with the countries most concerned and that could result in compensation for trading partners' trade losses. One of the achievements of the WTO Uruguay Round (see page 7) of multilateral trade talks was to increase the amount of trade under binding commitments. In agriculture, 100% of products now have bound tariffs. Because tariffs and duties are clear, this has resulted in a substantially higher degree of market security for traders, investors and other market participants.

4. Promoting fair competition

The rules on non-discrimination — MFN and national treatment — are designed to secure fair conditions of trade. So too are those on dumping (exporting at below cost to gain market share) and subsidies. The issues are complex as are the rules for determining what is fair or unfair, and how governments can respond, in particular by charging additional import duties calculated to compensate for damage caused by unfair trade (or to use the trade jargon, antidumping measures).

5. Encouraging development and economic reform

A ministerial decision adopted at the end of the Uruguay Round says better-off countries should accelerate implementing market access commitments on goods exported by the least-developed countries and it seeks increased technical assistance for them. More recently, developed countries have started to allow duty-free and quota-free imports for almost all products from least-developed countries.

PART 2:
UNDERSTANDING THE IMPLICATIONS FOR AGRICULTURE

What does the WTO mean for agriculture specifically?

The WTO has a set of rules designed specifically for the agricultural sector. The Agricultural Agreement, which came into force in 1995, is a set of WTO rules designed to liberalise trade in the sector and to make policies more market-oriented. Governments started to close agricultural loopholes in WTO agreements by binding and reducing tariffs, removing import bans or restrictions, and cutting subsidies that distort trade, both in domestic markets and on exports. As such, 'Country Schedules' of market access and national treatment commitments for products form an important legally binding component of WTO Membership.

What impact does the WTO have on agricultural trade?

Although more than twenty years old, its importance and significance cannot be understated. It has improved market access and facilitated trade. For example, before the Uruguay Round, some agricultural imports were restricted by quotas and other non-tariff measures. These have been replaced by tariffs that provide more-or-less equivalent levels of protection — if the previous policy meant domestic prices were 75% higher than world prices, then the new tariff could be around 75%. Converting the quotas and other types of measures to tariffs in this way is called 'tariffication'. The tariffication package also ensured that quantities imported before the Agreement came into force could continue to be imported and the package guaranteed that some new quantities of products were charged duty rates that were not prohibitive. This was achieved by a system of tariff rate quotas (TRQs) — lower tariff rates for specified quantities and higher (sometimes much higher) rates for quantities that exceed the quota. In summary, the WTO has meant improved transparency for the global agri-food trade and, in turn, facilitated the growth of that trade.

How has the WTO shaped agricultural policy?

The Agriculture Agreement places restrictions on the amount of support governments can provide to businesses. This distinguishes between support programmes that stimulate production directly and those that are considered to have no direct effect. Key WTO Member concerns include those over policies which supported domestic prices or subsidised production. The frequent result of such policies is that they encourage over-production. This squeezes out imports or leads to export subsidies and low-priced dumping on world markets, often to the detriment of the poorer WTO Members' own agricultural sectors. These factors undermine a level playing field in agricultural trade though they do not all have to be present in order to constitute a subsidy. The WTO Appellate Body in the Canada – Dairy dispute (a case confirming milk price management as an export subsidy) highlighted that within the meaning of the Agriculture Agreement, a subsidy arises where a grantor makes a 'financial contribution' which 'confers a benefit' otherwise unavailable in the market place. This financial contribution should be interpreted widely as constituting any one of a range of beneficial measures for selected businesses.

The distinctions made in The Agriculture Agreement are commonly known as the Amber, Blue and Green boxes (see Figure 2) for more information including examples of subsidies).

Figure 2
WTO Agriculture Agreement support boxes

Green Box

Measures which have no, or at most minimal trade distorting effects or effects on production.

These payments are not restricted under WTO rules.

Green box:

Measures with minimal impact on trade which can be used freely. They include government services such as research, disease control, infrastructure and food security. They also include payments made directly to farmers that do not stimulate production, such as decoupled support payments, assistance to help farmers restructure agriculture, and direct payments under environmental and regional assistance programmes, eg:

- Agri-environmental schemes operating on an income forgone basis
- Rural infrastructure spending
- Research and disease control
- Decoupled payments not linked to production eg Basic Payment

Blue Box

Measures which provide direct payments under programmes which limit the level of production.

Also unrestricted under WTO rules.

Blue box:

Measures which include certain direct payments to farmers where the farmers are required to limit production, certain government assistance programmes to encourage agricultural and rural development in developing countries and other support on a small scale ("de minimis") when compared with the total value of the product or products supported (5% or less in the case of developed countries), eg:

- Payments made on fixed area or numbers. Production needs to take place but payment not linked to output
- Payments made on 85% or less of production in a defined base period

Amber Box

All other agricultural support payments.

The amount of support provided is limited, with reductions required from historic levels.

Amber box:

Measures, or policies that do have a direct effect on production and trade that are limited and cannot be increased from current bound levels. WTO Members calculated how much support of this kind they were providing per year for the agricultural sector (using calculations known as total aggregate measurement of support (or AMS)) in the base years of 1986-88. Developed countries agreed to reduce these figures by 20% over six years starting in 1995. Examples of this type of support include intervention buying and the building of buffer stocks in order to maintain domestic prices and headage payments (payments made per head of livestock) and coupled payments.

Scotland uses coupled payments to provide additional support to the beef sector. The level of coupled support in Scotland is currently small (at below 2% of Scottish Direct Payments) and this is also diluted within the UK's total envelope. At this level WTO rules in relation to AMS and amber box will not restrict policy formation. However, the WTO rules in this area could act as a restricting factor if Scotland, or other countries in the UK, wanted significantly increase this type of support post-Brexit, eg:

- Direct payments that are coupled to production
- Headage payments
- Price support mechanisms
- Buffer stock schemes

What about the future direction of travel?

Although the Doha Round of negotiations has been slow moving, the WTO Agriculture Agreement recognises that the long-term objective of substantial, progressive reductions in support and protection in agriculture is an ongoing process. For example, in 2015, WTO Members adopted a commitment to abolish subsidies for farm exports. Developed countries will immediately remove export subsidies, except for a handful of agriculture products and developing countries will do so by 2018, with a longer time-frame in some limited cases.

What does this mean for the UK?

WTO rules have set the direction of travel in farming policies around the world towards liberalisation, coincidentally driving reform of the EU's Common Agricultural Policy.

As a WTO member, the UK faces restrictions on its future farm policy choices and it would have to operate within the confines of the support boxes of the Agriculture Agreement and surrounding WTO cases interpreting the Agriculture Agreement and the WTO Agreement on Subsides and Countervailing Measures. This would govern the UK's policy options. It rules out a widespread return to a support system that is heavily focused on coupled payments, for example. Similarly, a support structure based on deficiency payments (as existed in the UK prior to our EU membership) would not be a feasible option.

In addition, as the UK and EU Country Schedules are currently fundamentally intertwined, a hard Brexit would leave the content of a UK Country Schedule up for negotiation in a WTO context. In principle, replacing the EU Schedule with a UK Country Schedule would provide a short-term solution. However, as a hard Brexit would entail the use of WTO rules as a floor for regulation, WTO Agriculture Agreement-related tariffs would, in the absence of explicitly agreed UK and EU regulatory measures to the contrary, result in WTO tariffs rather than current single market rules governing the trade in agricultural products as between the UK and EU nations. Therefore, the Brexit negotiations should ideally be accompanied by at least interim agreements as to the level of reciprocity and content of (at least provisional) agricultural trade measures as between the EU and UK. In this way the rules of the game for the agricultural sector will be known in advance of actual UK secession from the EU.

As well, it is worth noting that any proposed tariff rise suggested by the UK in a WTO context would be subject to a GATT Article XVIII procedure which is to be agreed by the affected WTO Members and would generally require compensating measures so as to allow a rebalancing of trade concessions that are not less favourable than the previous status quo. In practice, upward revisions of tariffs upon any agricultural imports into the UK as regulated by the WTO would be subject to correcting measures, leaving potential horse trading between production sectors in the UK economy (within and beyond the agricultural sector). As we can see, unilateral approaches to tariffication are frowned upon in the face of this procedure.

PART 3:
LEAVING THE EU

Implications of our WTO membership

Once the UK leaves the EU it becomes a member of the WTO in its own right and must abide by WTO rules and regulations. One underlying principle of the WTO is that members must not discriminate against one another. This means that if the UK does not have a Free Trade Agreement (FTA) agreed with the EU by the time it leaves, then the EU must apply the same tariff on UK goods as it does to all other WTO Members in the same position. Equally, the UK would have to apply the same tariffs levels on EU goods as those from other countries with whom we do not have a preferential trade agreement. The main way to reduce tariffs between trading partners is to agree a comprehensive FTA between countries or trading blocs.

The UK as a WTO Member. What is required?

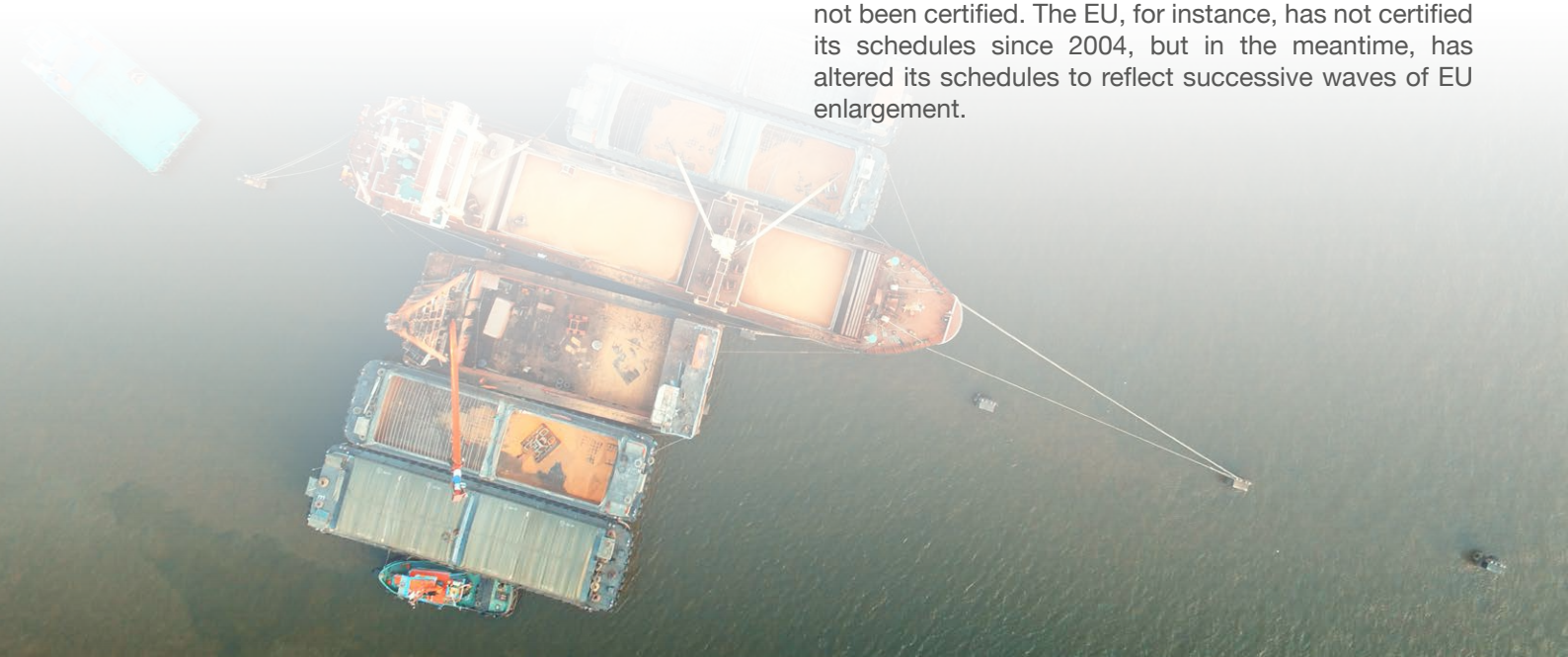
The UK's status as a WTO Member is beyond doubt but it needs to establish its own schedules of concessions and commitments separate from the EU's schedules. This involves first setting maximum tariff levels. Second, it involves setting upper limits for Tariff Rate Quotas and Aggregate Measurement of Support (AMS). Trading under WTO rules is not optional. Even if an FTA is agreed between the UK and the EU within the timescale available, WTO rules will still apply both to that agreement (respecting any UK-EU intra-trade benefits) and to UK trade with all other countries. The WTO rules will also apply to post-Brexit domestic agricultural policy.

Dividing the EU's WTO commitments: What is required?

As a result of Brexit, the EU's **Bound Total AMS commitments will need to be divided between the UK and the EU**. At the moment, the EU28 does not make full use of its Bound Total AMS, and its Current Total AMS is well below its bound ceiling. The apportionment of the AMS is unlikely to prove contentious as the UK is not likely to want to increase its use of trade-distorting support after Brexit. Some method of allocation such as the relative shares in the value of gross agricultural output is likely to be used and are unlikely to meet with objection at the WTO.

Notification obligations: How it works in practice?

All members must notify the Committee on Agriculture of the extent of their domestic support measures. This requires a listing of all measures that fit into the exempt categories: the Green Box, developmental measures, Blue Box direct payments under production limiting programmes and de minimis (minimal) levels of support. Post-Brexit the UK would need to provide a notification showing that non-exempt support is within the relevant de minimis levels, as well as a schedule of tariffs. Once the UK has a draft of its schedules and once it has left the EU, it can trade on the basis of these schedules. The WTO does have a formal process for approving schedules – known as 'certification' – which requires unanimous approval from every WTO Member. However, WTO Members can still trade from schedules that have not been certified. The EU, for instance, has not certified its schedules since 2004, but in the meantime, has altered its schedules to reflect successive waves of EU enlargement.



PART 4:
NAVIGATING THE TECHNICAL DETAIL OF THE WTO

The technicalities: what's relevant to agriculture?

In section one of this report, we highlighted that the agreements comprising the WTO system provide the legal ground rules for international trade. By definition, this means that a wide array of technical issues must be accounted for by the WTO. There are a number of trade topics that are particularly important when it comes to trade in agri-food products as regulated by the following:

- The Sanitary and Phytosanitary (SPS) Measures Agreement
- The Technical Barriers to Trade Agreement
- 'Like' products and Processes or Production Methods (PPM)
- The Dispute Settlement Understanding
- Regional Trading Agreements and Free Trade Agreements
- Rules of Origin Agreement
- The Anti-Dumping Agreement

This section considers these areas in turn.

The Sanitary and Phytosanitary (SPS) Measures Agreement

Why is there a Sanitary and Phytosanitary Agreement?

WTO SPS Agreement rules discipline the manner in which governments apply food safety and animal and plant health measures. In short, the SPS Agreement tackles the twin challenges of ensuring consumers are being supplied with safe food and checking that strict health and safety regulations are not being used as an excuse for protecting domestic producers or otherwise restricting trade.

What does the SPS Agreement cover?

For the purposes of the SPS Agreement, sanitary (human and animal health) and phytosanitary (plant health) measures are defined as any measures applied:

- to protect human or animal life from risks arising from additives, contaminants, toxins or disease-causing organisms in their food
- to protect human life from plant- or animal-carried diseases
- to protect animal or plant life from pests, diseases, or disease-causing organisms
- to prevent or limit other damage to a country from the entry, establishment or spread of pests

It is important to note that measures for environmental protection, consumer interests, or for the welfare of animals (other than as linked to the above-mentioned scope) are not covered by the SPS Agreement.

In practice, SPS measures can take many forms, such as requiring: products to come from a disease-free area; inspection of products; specific treatment or processing of products; allowable maximum levels of pesticide residues; or permitted use only of certain additives in food.

Can this constrain countries from developing SPS measures?

Countries are able to set their own SPS standards. However, the WTO requires that any regulations are based on sound science. That said, it does permit a government to take precautionary measures when sufficient scientific evidence does not exist. It also permits measures to be taken in emergency situations. Equally, the SPS Agreement states that standards should be applied only to the extent necessary to protect human, animal or plant life or health. A key principle here is that the standards introduced should not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail.

How does the SPS Agreement impact on trade?

The SPS Agreement may result in restrictions on trade. All governments accept that some trade restrictions may be necessary to ensure food safety and animal and plant health protection. The SPS Agreement is very clear that countries should not use these as protectionist measures.

Due to their technical complexity, SPS measures can absorb considerable time if they are challenged with outcomes that can take years to resolve. An example would be the outbreak of BSE in the UK when the UK found itself unable to export to a number of countries for an extended period of time, in order to protect those countries from potential spread of disease. Another example is the EU ban on hormone treated beef from the United States, a long running dispute between the US and the EU that we discuss in more detail later, highlighting just how complex these issues are in practice. As this specific case illustrates, risk assessments and questions of evidence concerning health impacts of products are of vital importance.

What is the scope for individual countries to define SPS measures?

Governments can vary their SPS requirements based on knowledge of differences in climate, existing pests and diseases or food safety conditions in different countries. They can also recognise disease free areas and adapt their requirements to products from these areas. However, unjustifiable discrimination is not allowed. There are examples from case law that support this. For instance, in the Japan – Agricultural Products II case, Japan sought to prohibit continental United States of America imports of fresh apricots, cherries, plums, pears, quince, peaches, walnuts and apples into Japan because they were potential hosts for the coddling moth. In that case the WTO Appellate Body concluded that Japanese varietal testing for some of the products was not based upon sound science and that Japan had failed to conduct a proper risk assessment justifying trade restricting measures.

Governments must choose the least-trade distorting SPS measures to achieve an acceptable level of protection and must accept the measures taken by other countries, provided they achieve the same level of protection. This is the principle of equivalence. It ensures that protection is maintained while providing the greatest quantity and variety of foodstuffs for consumers, safe inputs for producers and healthy economic competition. In summary, non-discrimination, equivalence, scientific justification, risk assessment and consistency of approach are key determinants when setting national measures.

How does 'equivalence' work in practice?

Following the decision in United States – Poultry (China) [a case concerning import restrictions on (allegedly contaminated) poultry from China], the SPS Committee Decision on equivalence, states that the importing Member should explain its SPS measures by identifying the risk and provide a copy of the risk assessment or technical standard on which the measure is based. Further, it requires the importing Member to analyse the science-based and technical information provided by the exporting Member with respect to that Member's own SPS measure(s) to examine if the measure achieves the importing Member's Appropriate Level of Protection (ALOP). This is the procedure supported by the Panel in said case, seen as generally binding in application.

Still, in practice, it can prove hard to reach agreement on equivalence. The SPS Agreement allows countries to use different standards and different methods of inspecting products. If an exporting country can demonstrate that the measures it applies to its exports achieve the same level of health protection as in the importing country, then the importing country is expected to accept the exporting country's standards and methods. A high profile example of non-agreement on equivalence is the ban on hormone treated beef being imported into the EU. It is, at best, unclear what scientific evidence is being used to support the ban. However, the EU continues to uphold the ban, offering TRQs of hormone-free beef in compensation. This continues to be an area of dispute between the US and the EU, and may well have implications for any future UK/US trade deal. There are other agri-related examples, including bovine spongiform encephalopathy (BSE), foot-and-mouth disease, and avian influenza. It is apparent that in a growing number of situations, countries do not accept imports on the basis of the international standards but it is also important to state the required scientific justification.

The issue of equivalence has major implications for UK agriculture if we choose to adopt different standards of production (and therefore possibly for importation) from the EU after Brexit. In those circumstances, we may find that the equivalence of such production standards

is not immediately recognised and accepted by our trading partners. This would be disruptive to trade both with the EU and with other nations with whom we have agreed equivalence based on EU standards. In this case, we will need to seek agreement on equivalence with such countries. As long as there is no agreement on equivalence, other countries may implement domestic SPS measures that might negatively affect the UK's agricultural exports.

What is the WTO's role in SPS issues?

The WTO itself does not and will not develop SPS standards on its own. However, most of the WTO's Member governments (132 at the date of drafting) participate in the development of these standards in other international bodies. The standards are developed by leading scientists in the field and governmental experts on health protection and are subject to international scrutiny and review. If a government chooses to adopt standards higher than the international standard they may be asked for scientific justification as to why they feel that the international standards would not provide the required level of protection. The WTO does require governments to be transparent on the SPS measures they apply and to notify other countries of any new or changed sanitary and phytosanitary requirements which affect trade. This includes setting up offices to respond to requests for more information on new or existing measures.

The WTO also has a role when it comes to resolving trade disputes relating to sanitary or phytosanitary measures. The normal WTO dispute settlement procedures are used and advice from appropriate scientific experts can be sought. There have been ten complaints formally lodged since the SPS agreement provided greater clarity in this area. The challenges have concerned issues as varied as inspection and quarantine procedures, animal diseases, 'use-by' dates, the use of veterinary drugs in animal rearing and disinfection treatment for beverages.

If the WTO finally rules that a country is in breach of the rules of the SPS agreement, the respective state must comply with the ruling. In case of non-implementation of the ruling, the WTO may as an initial step, authorise the use of retaliatory tariffs in compensation for trade losses with stronger remedies for non-compliance to follow for a continuing infringement of WTO rules or rulings.

The Technical Barriers to Trade (TBT) Agreement

Why a TBT Agreement?

This Agreement seeks to ensure that regulations, standards, testing and certification procedures do not create unnecessary obstacles to trade. In this sense, the TBT Agreement has the same objective as the SPS Agreement. In terms of the relationship between the two agreements, the TBT Agreement covers all technical regulations, except when these are sanitary or phytosanitary measures as defined by the SPS Agreement.

The TBT Agreement recognises countries' rights to adopt the standards they consider appropriate — for example, for human, animal or plant life or health, for the protection of the environment or to meet other consumer interests. Moreover, WTO Members are not prevented from taking measures necessary to ensure their standards are met providing the regulations they use do not discriminate.

Example of WTO ruling that animal welfare issues **cannot** be used as a trade barrier
The case of US – Mexico Tuna-Dolphin I (1991, ongoing)

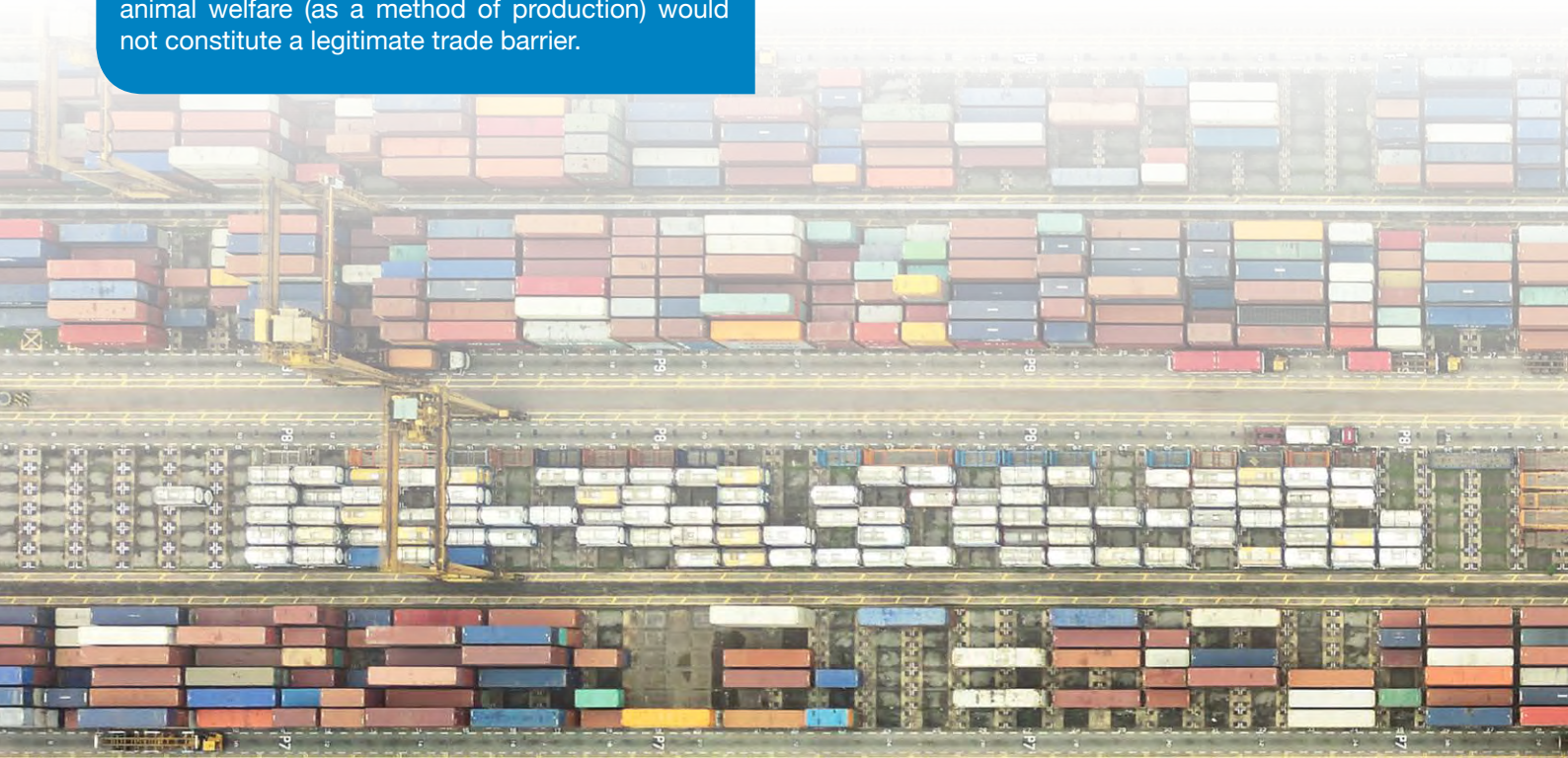
This concerned a ban by the USA on imports of tuna from Mexico caught by using methods which have resulted in a high number of dolphin kills. In its decision, the GATT Panel found that import bans are not allowed on the basis of the production methods for the product, which would mean that animal welfare (as a method of production) would not constitute a legitimate trade barrier.

What does the Agreement cover?

The Agreement states that the procedures used to decide whether a product conforms to relevant standards have to be fair and equitable. It discourages any methods that would give domestically produced goods an unfair advantage. It also encourages countries to recognise each other's procedures for assessing whether a product conforms to relevant standards. Without such recognition, products might have to be tested twice, first by the exporting country and then by the importing country.

Under the TBT Agreement, a WTO Member's technical regulations have to be applied in a non-discriminatory manner (between foreign and domestic products). In addition they should not be more trade restrictive than necessary to fulfil legitimate objectives.

TBT measures could cover any subject, from car safety to energy-saving devices. Most measures related to human disease control are under the TBT Agreement, unless they concern diseases which are carried by plants or animals. In terms of food, labelling requirements, nutrition claims and concerns, quality and packaging regulations are generally not considered to be SPS measures and hence are normally subject to the TBT Agreement.



Animal welfare issues and agriculture

Following the Brexit vote there has been a great deal of debate in the industry on whether the UK will adopt higher animal welfare standards, than those currently across the EU. In addition, there has be debate on whether the UK could use these higher standards, if adopted, as a barrier to restrict trade in below-standard products.

Within the WTO rules and regulations, animal welfare measures are likely to be seen as falling under the TBT Agreement or Processes or Production Methods (PPM) which we discuss later. Though their joint application with SPS should not be discounted. This means that the UK is able to define its own animal welfare standards. Further, there are circumstances where the UK would be able to use these standards as a technical barrier to trade. However, the UK could face challenges from other WTO members if these standards did not meet two basic obligations of WTO law:

1. Apply any measures consistently both to domestic and to imported products from all countries.
2. Not to be more trade restrictive than necessary to fulfil a legitimate objective.

As the UK has been accepting imports produced to given international standards of animal welfare, any raising of standards could be challenged on the second of these points. Raising standards in order to create a barrier to trade would not be considered a legitimate objective in itself. As we see below, there have been WTO legal cases where animal welfare both has and hasn't been allowed as a barrier to trade.

Example of WTO ruling that animal welfare issues can be used as a trade barrier

The case of EU – Greenland Seal Products (2014)

This case concerned the EU prohibiting the importation of seal products due to public moral concerns on how the seals are killed. Because of this decision, animal welfare concerns are now accepted as being an aspect of public morals. The decision also indicates that animal welfare might qualify as one of the already mentioned legitimate objectives under the TBT Agreement which refers to the protection of "animal or plant life or health". It is worth recalling that the EU Seals case reiterates that a measure shall not discriminate between imported and domestic products, or between the same products from different third countries.

'Like' products and Processes or Production Methods (PPM)

If trade related or health measures such as SPS's and TBT's are to comply with WTO rules, they must not discriminate against 'like' products. In WTO case law, certain criteria have been used in determining whether products are 'like'. These criteria include the product's end-uses in a given market; consumers' tastes and habits; and the product's properties, nature and quality. However, the WTO has repeatedly affirmed that these criteria are only a list of non-exhaustive and indicative criteria and the like-product analysis must be done on a case-by-case approach.

A related issue is whether products may be treated differently because of the way in which they have been produced, even if the production method used does not leave a trace in the final product. When comparing two products, different processes or production methods (PPMs) used in the manufacture of these products do not automatically make them 'unlike'. Therefore, the role of PPMs in determination of likeness assumes great significance.

Example of WTO ruling where PPM grounds were allowed as a barrier to trade.
The dispute in India etc. vs USA – prawn harvesting (1998)

This case provides an interesting example of a justifiable discrimination between products on the basis of PPMs. The dispute concerned the manner in which fishermen harvested prawns. Certain production methods, involving the use of fishing nets and prawn trawl vessels, resulted in a high rate of incidental killing of sea turtles, as turtles can be trapped and drowned by the nets. The United States aimed to reduce the killing of turtles by imposing an import ban on prawns harvested by methods which may lead to the incidental killing of sea turtles. In order to avoid the ban, exporters were required to demonstrate the use approved nets which limit the catch of sea turtles. The Appellate Body viewed the United States' measure as directly connected to the policy of conservation of sea turtles. The measure was thus considered to be justified.

Effectively, the Appellate Body's decision permitted members to discriminate against products based on non-product related PPMs. It recognised that under WTO rules governments have every right to protect human, animal or plant life and health and to take measures to conserve exhaustible resources.

Example of WTO ruling where discrimination of 'like' products was challenged.
The case Canada vs EU – asbestos (2001)

This dealt with measures imposed by France prohibiting the import, sale and use of asbestos in order to address the dangers posed to human health from an exposure to asbestos and products containing asbestos, Canada — the complainant — had to prove that products (containing asbestos) imported from Canada to France were like French domestic substitutes (PVA, cellulose and glass fibres) and that the French regulation accorded imported products less favorable treatment than like domestic products.

In fact, in this case, the Panel found that domestic and imported products were 'like'. However, the Appellate Body reversed this finding and explained that several criteria should have been taken into account by the Panel in the determination of likeness, including the competitive relationship between products, but also the risk to health posed by the two products, due to their different physical characteristics. In this instance it was ruled that France was entitled to discriminate against 'like' products from Canada on the grounds of the risk to health posed by asbestos.

PPMs that do not change the physical characteristics of a product, which are of great interest to consumers and policy makers include labour, environmental and animal welfare standards, organic and other forms of sustainable production or harvesting. The issue as to what extent PPMs can be used to differentiate between otherwise like products is likely to an area of ongoing debate within international trade.

The Dispute Settlement Understanding (DSU)

What is the DSU?

This is the main WTO agreement on settling disputes and was introduced in 1995. WTO Members have agreed that if they believe fellow-members are violating trade rules, they will use the multilateral system of settling disputes instead of taking action unilaterally. In practice, that means abiding by the agreed procedures and respecting judgements.

What happens in case of a dispute?

The General Council convenes as the Dispute Settlement Body (DSB) to deal with disputes between WTO Members. It monitors the implementation of the rulings and recommendations and has the power to authorise retaliation when a country does not comply with a ruling. Appeals are handled by the permanent seven-member Appellate Body, which is set up by the Dispute Settlement Body and broadly represents the range of WTO membership. The Uruguay Round Agreement emphasises that prompt settlement is essential if the WTO is to function effectively. If a case runs its full course to a first ruling, it should not normally take more than about one year — 15 months if the case is appealed. The priority is to settle disputes, through consultations if possible. It is this quasi-judicial characteristic — a blend of political flexibility and legal integrity — which makes this a unique, generally effective process for settling international disputes peacefully.

How do disputes occur?

A dispute arises when one country adopts a trade regulatory measure or takes some action that one or more fellow-WTO Members consider to be breaking one or more of the WTO agreements. A third group of countries can declare that they have an interest in the case and enjoy some rights of participation in the dispute.

How prevalent are disputes?

The third year of the Dispute Settlement Understanding in 1997 saw the biggest number of disputes so far, with a total of 50 requests for consultation, the first step in a dispute. Over time, the number of disputes brought to the WTO has generally declined – in 2013, there were 20 requests for consultations, and in 2014 there were 14. Of the 500 disputes brought to the WTO, only 282 proceeded to the litigation phase. Of the others, 110 were resolved bilaterally or withdrawn. For the remainder, no outcome was notified to the WTO. The authorisation for a member to retaliate once another member has been found to be in violation of its WTO obligations has been given 18 times. The compliance rate with dispute settlement rulings is very high, at around 90 per cent, noting that compliance is a legal requirement of WTO Membership.

Why does this matter to agriculture?

Disputes can obviously centre on agricultural products. In addition, retaliation measures can also impact on agri-food products. For example, the US recently challenged the level of agricultural support in China across a range of products. This case highlights the importance of adhering to the WTO framework for agricultural support when formulating a domestic agricultural policy. Another high profile example of a trade dispute was the EU ban on hormone treated beef from the US. This was initially resolved between the US and EU via the provision of TRQs of hormone free beef, but has recently been reopened as it would appear that the TRQ was not made exclusive to the US. As the EU is a significant producer of beef, this case is obviously relevant to the UK. Following Brexit, this may take on even greater significance. Given that this case is currently unresolved, would the UK have the scope to defend a ban on hormone treated beef? Would it result in a dispute settlement case being taken to the WTO? Given the potential importance of this, the history of the EU/US dispute is discussed on page 18.

The US – EU Beef Hormone Dispute

The Beef Hormone Dispute is one of the most intractable agricultural controversies since the establishment of the World Trade Organisation.

In 1989, the European Union banned the importation of meat that contained artificial beef growth hormones approved for use and administered in the United States. Originally, the ban covered six such hormones but was amended in 2003 to permanently ban one hormone – estradiol-17β.

Canada and the United States opposed this ban, taking the EU to the WTO Dispute Settlement Body. In 1997, the WTO ruled against the EU. The EU appealed the ruling.

At the heart of the Beef Hormone Dispute was the fact that all risk analysis is statistical in nature, and thus unable to determine with certainty the absence of health risks or the appropriate level of risk. This fuelled the consequent disagreement between the US and Canada beef producers on the one hand, who believed that a broad scientific consensus existed that beef produced with the use of hormones was safe and the EU on the other, which asserted that it was not safe.

The use of these hormones in cattle farming had been studied scientifically in North America for 50 years prior to the ban and there had been widespread long-term use in more than 20 countries. Canada and the United States asserted that this provided empirical evidence both of long-term safety and of scientific consensus.

The scientific evidence for health risks associated with the use of growth hormones in meat production was, at best, scant. However, consumer lobbyist groups were far more able to successfully influence the European Parliament to enact regulations in the 1980s than producer lobbyist groups were, and had more influence over public perceptions and acceptance of risk. This is in contrast with the US at the time, where there was little interest from consumer organisations in the subject prior to the 1980s, and regulations were driven by a well-organised coalition of export-oriented industry and farming interests, who were only opposed by traditional farming groups.

The WTO Appellate Body affirmed the original WTO Panel conclusion in a report adopted by the Dispute Settlement Body on 13 February 1998.

In 2013 the EU made a scientific claim that the hormones used in treating cattle, specifically the hormone, estradiol-17β remain in the tissue. However, despite this evidence the EU declared there was no clear quantifiable link to health risks in humans. The EU has also found high amounts of hormones in areas where there are dense cattle lots. This increase in hormones in the water has affected waterways and nearby wild fish. Contamination of North American waterways by hormones would not, however, have any direct impact on European consumers or their health.

This evidence was introduced. The WTO upheld the earlier decision. The WTO authorised the US and Canada to apply tariffs against products from the EU, equivalent to a maximum of $116.8 million for the US and $11.3 million for Canada. The prevailing evidence in the dispute was from the US Food and Drug Administration, in which they declared that the level of hormones used was not high enough to be unsafe to humans.

In May 2009, the US and the EU signed a Memorandum of Understanding (MOU) that saw the EU make phased increases in market access by adopting a tariff-rate quota (TRQ) for 'high quality' beef produced without growth-promoting hormones, in exchange for the US making phased reductions in additional duties the US had imposed consistent with WTO authorisation.

On 11 May 2011, the US Trade Representative (USTR) terminated all additional duties on EU products.

Under the second phase of the MOU, starting in August 2012, the EU increased the tariff-rate quota (TRQ) to 48,200 tonnes, including an extra 3,200 tonnes agreed with Canada.

Initially reserved for US suppliers, the quota was subsequently opened up to Canada, Australia, Uruguay, Argentina and New Zealand who compete with the US to fill quarterly allocations of 12,050 tonnes. The US Meat Export Federation (USMEF) have stated that 'US beef increasingly has been crowded out of the quota by countries that were not parties to the MOU. For the US beef industry, this is an untenable situation; we simply cannot agree to our competitors taking an ever-expanding share of a quota that was created to compensate the US industry.' [1]

The US beef industry filed a written request on December 9, 2016, urging the reinstatement of action against the EU over its "unfair" sanctions against US beef. In response to that petition, the USTR said in early January it would consider reinstating tariffs on a range of EU agri-food products.

This dispute remains ongoing.

Regional Trading Agreements and Free Trade Agreements (RTAs and FTAs)

How do WTO rules impact trade agreements between two or more countries?

Non-discrimination among trading partners is one of the core principles of the WTO; however, RTAs constitute one of the exemptions and are authorised under the WTO, subject to a set of rules. What all RTAs in the WTO have in common is that they are reciprocal preferential trade agreements between two or more partners. The WTO provides that if a free trade area or customs union is created, duties and other trade barriers should be reduced or removed on substantially all sectors of trade in the group. Non-members should not find trade with the group any more restrictive than before the group was set up.

Why rules for trade agreements are increasingly important

Regional trade agreements (RTAs) have risen in number and reach over the years, including a notable increase in large plurilateral agreements under negotiation. All WTO Members now have at least one RTA in force. As of 10 March 2017, 270 RTAs were in force. These correspond to 433 notifications from WTO Members, counting goods, services and accessions separately. At the same time, efforts to negotiate a new multilateral trading round (since the Uruguay Round was completed in 1993) have been unsuccessful. As such RTAs are in the ascendancy for the time being.

How does this work in practice?

In reality, assessing whether RTAs meet WTO rules has been challenging. This is because the interpretation of the rules remains open to debate. Proposals for clarifying and improving the disciplines on RTAs have been made. At present, members of an RTA have little incentive to challenge those RTA rules in the WTO as this can undermine the purpose of the RTA. One focus area was how to define the phrase “substantially all the trade” which states that customs unions and free trade areas are permitted if they eliminate tariffs and other restrictive regulations of commerce on substantially all the trade between the parties. These proposals are still under consideration.

Why does this matter to the UK?

The UK would likely be aiming to develop a number of preferential trade deals around the world, once the UK has formally left the EU. Several countries have been mentioned as enthusiastic to negotiate a trade deal with the UK. These include some major agricultural producers, such as New Zealand, Australia and the USA. Farmers are understandably concerned about this, with these producers potentially given preferential access to British markets. This has resulted in calls not to trade-off UK agricultural goods market access against other goods and services. In practice, however, our scope to be selective in the aspects of trade deals that are on the negotiating table may be restrained.

It is important to stress that the advantage of RTAs for UK agriculture is that they may offer easier access to other markets for exports. Without trade agreements with key target markets for UK agricultural products the UK would have to trade under standard WTO rules. This might include higher tariffs and non-tariff trade barriers such as product standards, which would make our products less competitive on world markets. Thus, UK government choices for bilateral and regional trade agreement partnerships and the terms of those agreements will be key to shaping the future of UK agriculture. This includes the continuing question of trade regulation and associated relationships between the UK and the EU.

Rules of origin

What are rules of origin?

Rules of origin are the criteria used to define where a product was made (ie its national source). They are an essential part of trade rules because a number of policies regulate imports on the basis of rules of origin including but not limited to: quotas, preferential tariffs, anti-dumping actions and countervailing duties (charged to counter export subsidies). Rules of origin are also important because WTO rules can enable the application of preferential tariffs on the basis of where a product is made.

What is required?

The Rules of Origin Agreement requires WTO Members to ensure that:

- their rules of origin are transparent
- they do not have restricting, distorting or disruptive effects on international trade
- they are administered in a consistent, uniform, impartial and reasonable manner
- they are based on a positive standard (in other words, they should state what does confer origin rather than what does not)

Why do they matter?

Regulations and rules of origin are also very often a difficult part of FTA's to agree and enforce. For example, it is relatively easy to ascertain the country of origin for primary agricultural goods. For manufactured goods that may be processed in several countries this becomes far more challenging. For the longer term, the agreement aims for common (harmonised) rules of origin among all WTO Members. Although work has been ongoing for a number of years, the outcome will be a single set of rules of origin to be applied under non-preferential trading conditions by all WTO Members in all circumstances.

Why is this important to the UK?

Rules of origin will become increasingly important to the UK once it leaves the EU. The EU single market allows free movement of goods within its boundaries, once a product has entered its market. The EU has several FTAs in place with other countries and once goods have been imported from these countries, they enjoy the same freedom of movement. This creates a potential problem for the UK, in that if some sort of trade agreement is agreed between the UK and the EU, the UK would need to ensure that any goods imported from the EU originated from within the EU and not from one of its trading partners, who could potentially use the EU as a 'back door' to UK markets. The same issue applies to any country with whom the UK strikes an FTA post-Brexit. Here, the rules of origin would ensure that preferential market access is limited to the beneficiary parties of the relevant FTA. Verifying the origin of products is costly, and this cost would be borne by the UK.

Anti-dumping regulations

What are anti-dumping regulations?

The WTO principle of promoting fair competition lies behind work on anti-dumping issues. WTO rules place requirements on countries and companies not to export their products at below domestic market price. These rules implement Article VI of the original GATT and are otherwise known as the Anti-Dumping Agreement. The Anti-Dumping Agreement applies to agricultural products.

What constitutes anti-dumping?

If a company exports a product at a price lower than the price it normally charges on its own home market, it is said to be 'dumping' the product. The Anti-Dumping Agreement does not regulate the actions of companies engaged in 'dumping'. Its focus is on how governments can or cannot react to dumping — it disciplines anti-dumping actions.

WTO rules govern the application of anti-dumping measures by members of the WTO. Anti-dumping measures are unilateral remedies which may be applied by a member after an investigation and determination by that member, in accordance with the provisions of the Anti-Dumping Agreement, that an imported product is 'dumped' and that the dumped imports are causing material injury to a domestic industry producing the like product. As such, the purpose of an anti-dumping measure is to offset the material injury caused to the domestic producer of the dumped imported product. One such remedy is to require the relevant exporter to guarantee that it will raise prices to an appropriate level.

Why does this matter to agriculture?

Dumping a product may be used as a strategy to support domestic prices or to damage a competitor in another country. In recent history, average price levels for dumped agricultural products have been in the range of 30-40% lower than domestic market prices. Fruit, sugar, pasta and meat-based products have tended to be more predominant in respect of anti-dumping complaints even though trade in agricultural goods is less prone to anti-dumping claims.

The Anti-Dumping Agreement ensures that a country can protect its own industry if it is proven that another country is acting in breach of these regulations. For instance, in a dispute between Brazil and the Philippines over coconut imports, the Anti-Dumping Agreement (specifically Article VI of the GATT) was seen, in principle, as the basis for protecting domestic firms from export subsidies. In this regard, the Anti-Dumping Agreement and the WTO Subsidies Agreement are closely aligned in respect of disciplining export subsidies that favour agricultural exports (eg to the UK). Taken together, these Agreements will have value in protecting UK farmers from unfair competition from foreign exports to the UK.

Similarly, the United States has successfully invoked the Anti-Dumping Agreement to defend its beef and long grain rice industries from illegal anti-dumping measures imposed by Mexico against said American agricultural goods.

As a member of the WTO, UK agriculture will be protected from other countries dumping any excess product at below market prices. While the WTO rules on levels and types of agricultural support have reduced the amount of agricultural products being ‘dumped’ or subsidised in respect of entry to other markets, there are few signs that these practices have slowed down in recent years.

PART 5:
IMPLICATIONS OF WTO RULES AND AGREEMENTS ON FUTURE UK AGRICULTURAL POLICY AND TRADE

The UK has a new opportunity to develop agricultural policy measures that fit the UK's needs and play to our strengths rather than the compromised approach that required balancing the differing interests of the 28 countries that currently make up the EU. Naturally, adherence to WTO rules and norms will continue after Brexit. The previous sections of this report have provided a review of the international trade framework that the UK will have to contend with as we develop those new policies. This focus on specific areas also highlighted some of the implications that there may be for agriculture and for the UK. This section takes account of those aspects and outlines four key ways in which the WTO rules will affect agriculture.

Complying with WTO rules in the UK interest

As a member of the WTO the UK will continue to abide by all WTO rules and agreements.

These will impact on a range of domestic policies. Generally, they encourage a more liberal approach to trade which is something that the UK Government has indicated it is keen to achieve. The Government appears confident that it will reach agreement with the EU27 by 2019 because such an outcome will be in the interests of both parties. However, the Government has also stated categorically that ''no deal for the UK is better than a bad deal for the UK'. Consequently if no UK-EU FTA, or set of transitional arrangements, is in place by 2019, the UK will have to trade with the EU and the rest of the world (where FTAs are not in place with the UK) under WTO rules alone.

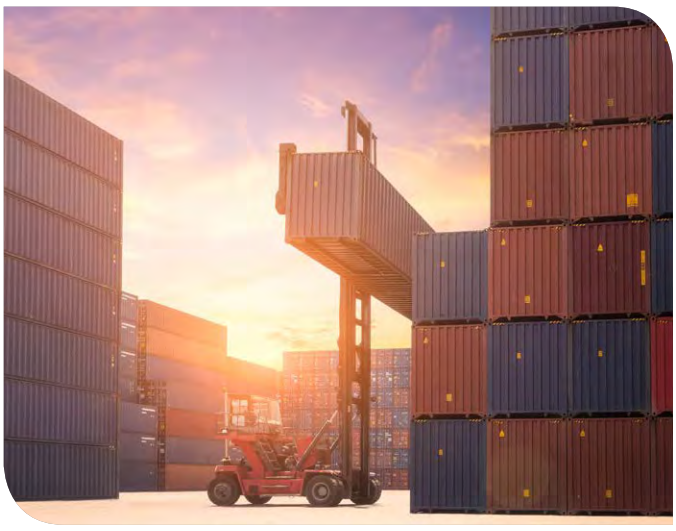
The UK will have its own tariff schedule

The UK will need to set its own tariff schedule and notify the WTO as such.

The UK would most likely inherit the EU's bound tariffs which for most tariff lines are also the EU's applied tariffs (see appendix for schedule of tariffs). This is not likely to be controversial in a WTO context. The UK could of course set its future applied most favoured nation (MFN) tariffs below this level but it could not exceed them. This will impact UK agriculture arguably more than any other UK industry since tariffs are higher for agricultural products than for other goods and services. The impact will also vary by sector, with grazing livestock sectors likely to be affected most. For instance the tariff on sheep meat is around 46% (depending on cut), which would mean exports of sheep meat to the EU (mainly France) would become uncompetitive. The loss of tariff-free access to the EU is likely to precipitate a restructure of UK agriculture, particularly in those sectors most dependent on EU trade, and those facing the highest tariffs. (See our earlier Horizon report on UK/EU trade)

It should also be noted that the imposition of tariffs would entail interposing a customs border between the UK and the EU, again raising the prospect of a hard border between Northern Ireland and the Republic of Ireland, although HMRC officials have stated in evidence to the House of Commons International Trade Committee that preparations were in hand for the use of electronic systems which would minimise friction at the border resulting from such a substantial increase in customs checks.

It is quite clear that 'no deal' is in effect a deal to trade with the EU under WTO tariffs. The Prime Minister has said that it is her ambition to seek a tariff-free trade with the EU and frictionless customs arrangements. It is clear that WTO rules would not permit this under its MFN principle, without a free trade agreement between the EU and the UK in place.



The UK will have its own Tariff Rate Quotas (TRQs)

The UK will need to divide WTO-agreed TRQs that are currently shared with the EU or negotiate new TRQs.

The EU has around 100 TRQs including, for example, lamb from New Zealand (NZ). The EU quota for this lamb is around 230,000 tonnes per year. This is a WTO commitment and not part of an EU-NZ preferential trade agreement. Aside from any bilateral agreements, there are also 23 regional trade agreements (RTAs) involving the EU that feature TRQs. As it is unlikely that the TRQs in these RTAs will be split between the UK and the remaining EU Member States in the context of the Brexit negotiations, there will be a period in which the UK is likely to have to re-negotiate comprehensive new RTAs with these countries. As a consequence, what happens to TRQs post-Brexit is one of the many questions for which we do not yet know the answer. The first step would be for the UK and EU to seek to negotiate bilaterally on how they would divide these TRQs. The two parties would then need to bring their agreements to the WTO where they would be scrutinised by WTO Members. Whether or not they would be accepted by all Members is not yet possible to predict. Realistically, negotiations on some elements of a Brexit Agreement (as it concerns international trade) are likely to be subject to separate negotiations with WTO Members.

After Brexit the EU's Bound Total AMS commitments will need to be divided between the UK and the EU. How this will be divided is yet to be agreed, but the division itself is unlikely to be contentious since the EU does not use much of its Bound Total AMS. It is unlikely, given the direction of travel of agricultural policy that the UK total AMS would limit the amount or type of support that the government would want to spend on agriculture. These constraints are more likely to come from the Government's own spending priorities.

The UK will have its own Domestic Agricultural Policy

The UK will need to develop its own domestic agricultural policy in line with WTO rules.

Brexit means that the UK will no longer be part of the Common Agricultural Policy and can design its own domestic agricultural policy, with scope for the devolved administrations to implement their own agricultural policies, under an overarching domestic agricultural policy. Once the UK knows its Total Bound Aggregate Measures of Support (understood under the WTO Agriculture Agreement as all supports for specified products together with supports that are not for specific products, in one single figure), it can then decide how to allocate it within a domestic agricultural policy. Although Total Bound AMS is unlikely to be a limiting factor in determining the overall level of support, it does illustrate the point that the UK does not have a completely 'free rein' when designing a domestic policy on agricultural supports.

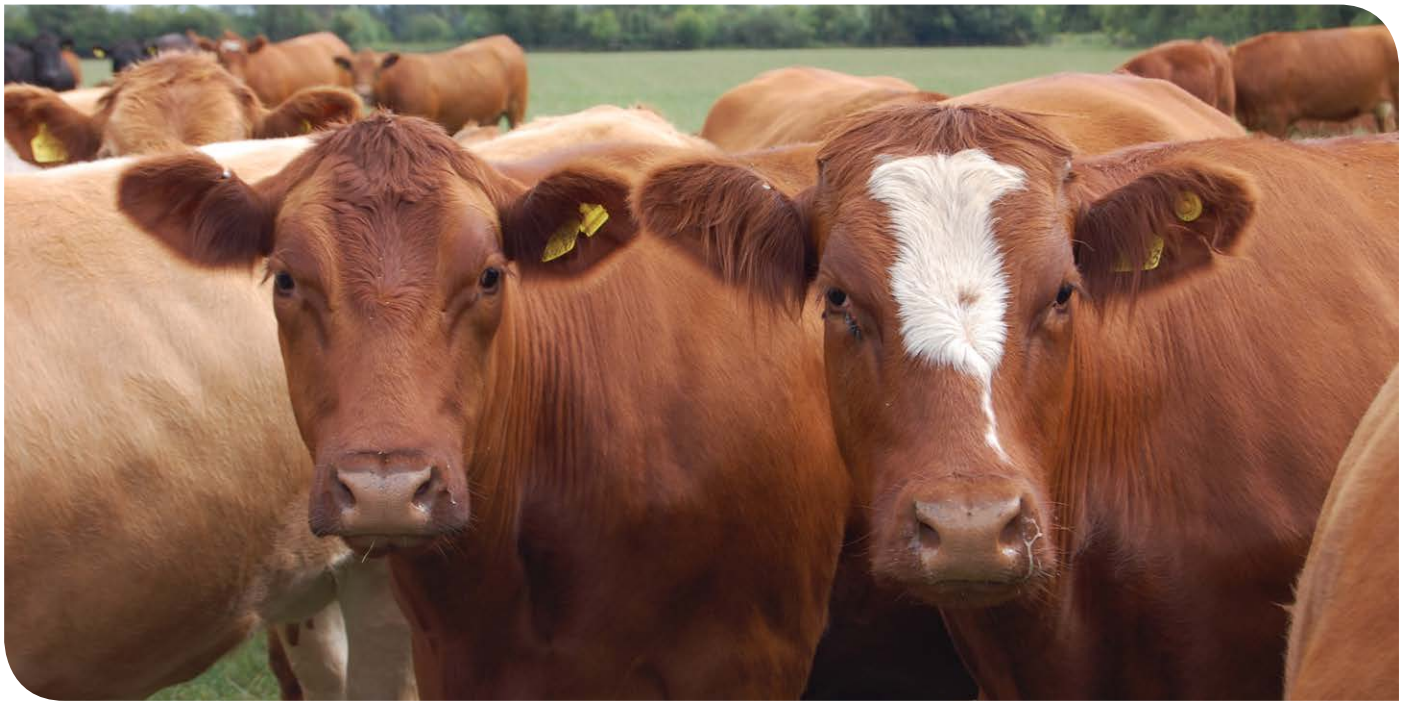
CONCLUSION

Trading under WTO rules should not be viewed as an alternative to an FTA with the EU and only applicable under a so called 'Hard Brexit'. Regardless of whether we strike a trade deal with the EU or not, the UK will be bound by WTO rules and regulations for all its international trade. These rules are shaped by the WTO agreements and are constantly evolving, driven by new negotiations and by new case law.

WTO rules and their evolution need to be carefully monitored and understood, in particular in the areas surrounding SPS, TBT and PPN's and like products in order to better inform UK trade and agricultural policy and the policies of the devolved nations post-Brexit.

REFERENCES

[1] **Request to Reinstate Action Taken in Connection with European Union Measures Concerning Meat and Meat Products,** January 2017



APPENDIX
COMPARATIVE ADVANTAGE

This is arguably the single most powerful insight into economics.
Suppose country A is better than country B at making automobiles, and country B is better than country A at making bread. It is obvious (the academics would say “trivial”) that both would benefit if A specialised in automobiles, B specialised in bread and they traded their products. That is a case of **absolute advantage**.

But what if a country is bad at making everything? Will trade drive all producers out of business? The answer, according to classical economist David Ricardo, is no. The reason is the principle of **comparative advantage**.

It says, countries A and B still stand to benefit from trading with each other even if A is better than B at making everything. If A is much more superior at making automobiles and only slightly superior at making bread, then A should still invest resources in what it does best — producing automobiles — and export the product to B. B should still invest in what it does best — making bread — and export that product to A, even if it is not as efficient as A. Both would still benefit from the trade. A country does not have to be best at anything to gain from trade. That is comparative advantage. The theory dates back to Ricardo. It is one of the most widely accepted among economists. It is also one of the most misunderstood among non-economists because it is confused with absolute advantage.

APPENDIX
SCHEDULE OF EU TARIFFS

Within a report of this kind, it is impractical to list tariff rates for all agricultural products. The tables below, therefore, cover a selection of the main raw and processed agricultural products exported by the UK to the rest of the EU. This will give an idea of the barriers which will face UK exporters in the event that exports to the EU are subject to these tariffs.

Meat

Code	Product	Tariff rate	Effective ad valorem rate (2015 prices)
02011000	Fresh/chilled cattle carcases	12.8% + €176.8 / 100kg	84%
02013000	Fresh/chilled beef, boneless	12.8% + €303.4 / 100kg	65%
02023090	Frozen beef, boneless	12.8% + €304.1 / 100kg	87%
02031110	Fresh/chilled pig carcases	€53.6 / 100kg	50%
02031955	Fresh/chilled pork, boneless	€86.9 / 100kg	43%
02041000	Fresh/chilled lamb carcases	12.8% + €171.3 / 100kg	46%
02042100	Fresh/chilled sheep carcases	12.8% + €171.3 / 100kg	45%
02042290	Fresh/chilled sheep meat, bone-in, excluding short forequarters, chines/best ends	12.8% + €222.7 / 100kg	51%
02071310	Fresh/chilled chicken, boneless	€102.4 / 100kg	27%
02071460	Frozen bone-in chicken legs	€46.3 / 100kg	41%

Dairy

Code	Product	Tariff rate	Effective ad valorem rate (2015 prices)
04012099	Milk & cream, fat content 3-6%, not concentrated or sweetened	€21.8 / 100kg	74%
04015039	Milk & cream, fat content 21-45%, not concentrated or sweetened	€109.1 / 100kg	50%
04021019	Milk & cream in solid forms, unsweetened, fat content <=1.5%	€118.8 / 100kg	63%
04022919	Milk & cream in solid forms, sweetened, fat content 1.5-27%	€1.31 / kg of lactic material + €16.8 / 100kg net	n/a
04041002	Whey in solid forms, unsweetened, protein content <=15%, fat content <=1.5%	€7.0 / 100kg	6%
04051019	Natural butter, fat content <=85% in packs of >1kg	€189.6 / 100kg	63%
04059010	Fats & oils derived from milk, fat content >=99.3%	€231.3 / 100kg	63%
04061030	Fresh mozzarella	€185.2 / 100kg	41%
04061080	Unripened or uncured cheese, fat content >40%	€212.2 / 100kg	68%
04069021	Cheddar cheese (not grated or for processing)	€167.1 / 100kg	42%

Vegetables

Code	Product	Tariff rate
07011000	Seed potatoes	4.5%
07019090	Fresh/chilled potatoes, excluding new, seed and potatoes for manufacture of starch	11.5%
07032000	Fresh/chilled garlic	9.6% + €120 / 100kg
07041000	Fresh/chilled cauliflowers and broccoli	9.6% - 13.6%
07051900	Fresh/chilled lettuce	10.4%
07061000	Fresh/chilled carrots and turnips	13.6%
07101000	Frozen potatoes, uncooked or steamed/boiled	14.4%
07102100	Frozen peas, uncooked or steamed/boiled	14.4%
07108095	Various frozen vegetables, uncooked or boiled/steamed (not elsewhere specified)	14.4%
07142010	Whole fresh sweet potatoes	3.8%

Cereals

Code	Product	Tariff rate	Effective ad valorem rate (2015 prices)
10011900	Durum wheat (excl. seed)	€148 / t	63%
10019120	Seed of wheat	€95 / t	50%
10019900	Wheat (excl. seed and durum wheat)	€95 / t	53%
10031000	Seed of barley	€93 / t	44%
10039000	Barley (excl. seed)	€93 / t	53%
10041000	Seed of oats	€89 / t	49%
10049000	Oats (excl. seed)	€89 / t	30%
10059000	Maize (excl. seed)	€94 / t	49%
10063067	Milled long grain rice (parboiled)	€175 / t	23%
10063098	Milled long grain rice (excl. parboiled)	€175 / t	12%

Processed food and vegetables

Code	Product	Tariff rate
20041010	Frozen cooked potatoes	14.4%
20041099	Other frozen potato products	17.6%
20052020	Crisped potatoes	14.1%
20052080	Other non-frozen potato products	14.1%
20055100	Processed non-frozen beans	17.6%
20059950	Processed non-frozen mixed vegetables	17.6%
20059980	Other non-frozen mixed vegetables	17.6%
20079997	Jams, jellies and marmalades	24%
20081110	Peanut butter	12.8%
20091200	Orange juice	12.2%

Processed meat

Code	Product	Tariff rate	Effective ad valorem rate (2015 prices)
16010099	Cooked sausages (excluding liver sausages)	€100.5 / 100kg	36%
16023211	Uncooked processed chicken (>=57% meat)	€276.5 / 100kg	66%
16023219	Cooked chicken (>=57% meat)	€102.4 / 100kg	27%
16023230	Processed chicken (25-57% meat)	€276.5 / 100kg	88%
16023290	Processed chicken (<25%)	€276.5 / 100kg	88%
16023929	Other cooked poultry meat (>=57% meat)	€276.5 / 100kg	51%
16024110	Processed hams	€156.8 / 100kg	27%
16024950	Processed pig meat (<40% meat)	€54.3 / 100kg	26%
16025010	Uncooked processed beef	€303.4 / 100kg	71%
16025095	Cooked bead (excluding corned beef)	16.6%	n/a

GLOSSARY

Abbreviation	Definition
AB	WTO Appellate Body (hears appeals from an initial Dispute Settlement Panel decision)
AD Agreement	Anti Dumping Agreement
ALOP	Appropriate Level of Protection (in an SPS Agreement context – SPS Committee Decision on Equivalence)
Amber box	Supports considered to distort trade and therefore subject to reduction commitments
AMS	Aggregate Measurement of Support
Blue box	Permitted supports linked to production, but subject to production limits and therefore minimally trade-distorting
CAP	Common Agricultural Policy – The EU's comprehensive system of production targets and marketing mechanisms designed to manage agricultural trade within the EU and with the rest of the world
CETA	Comprehensive Economic and Trade Agreement (as between Canada and the EU)
Country Schedule	A list of specific commitments to provide market access and national treatment for the products on the terms and conditions specified in the schedule
DSB	Dispute Settlement Body — when the WTO General Council meets to settle trade disputes
DSU	The Uruguay Round Understanding on Rules and Procedures Governing the Settlement of Disputes
Dumping	occurs when goods are exported at a price less than their normal value, generally meaning they are exported for less than they are sold for in the domestic market or third-country markets, or at less than production cost
EC/EU	European Communities and European Union are used interchangeably in this Report but they refer to the same entity
FTA	Free Trade Agreement
GATS	The WTO's General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade, which has been superseded as an international organisation by the WTO. An updated GATT is now one of the WTO's agreements
Green box	Supports considered not to distort trade and therefore permitted with no limits

Abbreviation	Definition
Internal support	Encompasses any measure which acts to maintain producer prices at levels above those prevailing in international trade; direct payments to producers, including deficiency payments, and input and marketing cost reduction measures available only for agricultural production
MFN	Most-favoured-nation treatment, the principle of not discriminating between one's trading partners
NAFTA	North American Free Trade Agreement
National treatment	The principle of giving foreign trading partners the same treatment as one's own nationals
NTMs	Non-tariff measures such as quotas, import licensing systems, sanitary regulations, prohibitions, etc
Nullification and impairment	Damage to a country's benefits and expectations from its WTO membership through another country's change in its trade regime or failure to carry out its WTO obligations
RTA	Regional trade agreement
SPS	Sanitary and Phytosanitary measures — government standards to protect human, animal and plant life and health, to help ensure that food is safe for consumption
Tariffs	Customs duties on merchandise imports. Levied either on an ad valorem basis (percentage of value) or on a specific basis (eg £7 per 100 kg). Tariffs give price advantage to similar locally-produced goods and raise revenues for the government
TBT	Technical Barriers to Trade
TRQ	Tariff Rate Quota
Uruguay Round	Multilateral trade negotiations launched at Punta del Este, Uruguay in September 1986 and concluded in Geneva in December 1993. Signed by Ministers in Marrakesh, Morocco, in April 1994
USMEF	United States Meat Export Federation
USTR	United States Trade Representative

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