

4th November 2020

Tim Smith,
Chair of the Trade and Agriculture Commission

Dear Tim,

Thank you for your letter of 8 September and for the meeting we held with members of the Commission on 11 October - they were both constructive and stimulating. I am also glad to see that the Commission is to be given a statutory footing.

I thought it would be useful to set out in writing my thoughts on the challenges relating to standards that you face in the first phase of your work and also how you might judge if you have been successful in meeting those challenges.

In the Conservative Party's manifesto, the Government pledged that "in all of our trade negotiations, we will not compromise on our high environmental protection, animal welfare and food standards".¹

I want to address four questions related to that pledge:

- 1. What would it mean to "compromise" on environmental protection, animal welfare or food standards?**
- 2. What standards are referred to?**
- 3. How does the government ensure these standards are not compromised?**
- 4. How will the Commission know if it has been successful?**

I think we agree on the answer to question 1. There is work to do on the answers to questions 2 and 3. Answering those questions, it seems to me, is a core task of the Commission – its success will be judged on the answers it gives.

These are complex subjects and I apologise in advance for the length of this letter. It is in addition to what I wrote in Part One of the National Food Strategy (NFS), focusing instead on our subsequent discussions. I hope it proves a useful reference for you and your commissioners.

- 1. What would it mean to "compromise" on environmental protection, animal welfare or food standards?**

"Not compromising" on our standards implies protecting them not just from direct alteration by trade deals (an unlikely event) but ensuring producers exporting to the UK

¹ This was slightly rephrased in your Terms of Reference as making "sure that animal welfare and environmental standards in food production are not undermined."

cannot undercut domestic production *as a result of* producing food to lower standards. As I said in the NFS, there is no point in having high standards here and allowing the import of food produced to lower standards. Producers of this lower-standard imported food are likely to use the cost advantage they enjoy to take a larger share of the UK market. The harm our standards are intended to prevent – to the environment, our climate, and animals – would therefore still take place elsewhere in the world, rendering the legislation pointless. In the process, significant harm would be done to British farming.

2. What standards are referred to?

The devil, as always, is in the detail. There has been extraordinarily little national debate about which standards exactly are to be defended.

In our discussion, we were agreed that a complete legal ban on any imports produced to standards below ours – such as envisaged by the amendment to the Agriculture Bill proposed by Neil Parish – would not work as it would make trade deals, most importantly one with the EU, all but impossible.

Such a blanket ban would theoretically prevent the import of food that did not comply to standards which are specific to the UK. It would compel farmers in other countries to maintain hedgerows and dry-stone walls as our farmers are required to do. Some environmental requirements, appropriate here, are not appropriate overseas. We do not even consider some to apply to farms in all parts of this country: farmers in designated nitrate vulnerable zones, for example, have to comply with stricter rules on the use and storage of manure than those outside such zones.

More practically, such a legal ban would make it practically impossible to roll over existing trade agreements. Like it or not, we import food into this country today which could not have been produced legally here. For example, Danish bacon could have been reared on farms that use sow stalls, while chicken from the EU could have been produced on farms with the EU's maximum stocking density of 42 kg/m² rather than ours of 39 kg/m². Most of this food comes from members of the European Union; some from developing countries with which we have economic partnership agreements (originally negotiated by the EU and now being transitioned by the Department for International Trade). Many of those countries could not comply with all UK production standards; the EU certainly *would* not. Prohibiting imports from those countries or requiring them to take place on WTO terms would disrupt existing trade flows. Given the UK's high level of dependence on imports from the EU, it could even threaten our food security. The harm done would be greater than the harm averted.

It might be argued that the government would never enforce such protections, but imports of this nature would be subject to legal challenge by any organisation that was minded to take the government to court. In the face of such jeopardy, it is unlikely that any country would sign a trade deal with us.

So what are the standards on which we are seeking not to compromise?

As I mention above, there is little agreement on the standards which we should be protecting - those things that we should require of countries with which we are currently negotiating free trade agreements. I would see developing a definitive list - to recommend to Ministers - as a core task of the Commission.

For the discussion below on how to ensure those standards I think it helps to have some specific things in mind. So as a starter for ten, and in addition to the standards (such as the ban on hormone-treated beef) that already exist in UK law, I would suggest that, among other things, British people should be able to have confidence that:

- the eggs they buy – and, ideally, every product containing those eggs – come from chickens that were not reared in barren battery cages;
- the chicken they see on the supermarket shelves and in fast food establishments did not spend its life in an unacceptably crowded environment;
- the beef in their Sunday roasts and in their hamburgers (or indeed the soy grown to feed them) was not reared on land recently cleared of rainforest (note this is a protection above what would be required under Neil Parish’s amendment);
- the animals they eat are not subject to inhumane surgical procedures, or dosed with antibiotics for non-therapeutic reasons or in ways that exacerbate the problem of antimicrobial resistance.

These, to me, are the kind of things that fundamentally the Government’s manifesto promises. This is what not compromising on our standards is about. But as I have said, there will be others. Coming up with a clear and widely accepted list is, I think, the Commission’s **first key objective**.

3. How does the government ensure these standards are not compromised?

The Commission’s **second objective** is to find a way of making sure these standards aren’t compromised. In Part One, I set out the dual-tariff approach as my favoured means of doing that. I’m not wedded to this idea: I just think it presents the best chance of securing the objective. In your letter and our subsequent discussions, we touched on some challenges to that approach and some other potential options. I wanted to set out some thoughts on these issues to feed into your ongoing discussions.

Standards and tariffs

You say in your letter that “cutting tariffs only when products meet UK core standards could be problematic... because it could adversely impact trade liberalisation”. This, in turn, could “result in a lack of market access for the UK’s agricultural sector in new markets of opportunity, as well as other sectors important to the UK economy”. It is, of course, difficult to know in advance how any individual policy position would affect the UK’s negotiations. But I do not think it is by any means certain that countries such as New Zealand or Australia would reject out of hand a requirement to meet a small and carefully selected number of core standards – most of which they will already be

meeting themselves – in exchange for massive increases in access to one of the world's most valuable markets for agricultural exports.

I am also not sure that we should reject a proposal purely because it could adversely impact trade liberalisation. Free trade is not a good in itself: it is a way in which we seek to deliver other goods, such as lower prices and greater choice for consumers and higher productivity across the whole economy – national and global. As I note in the NFS, it has proved a very effective way of delivering those goods over the last two centuries, but that does not mean that all other goods must give way to it. People want a strong economy and low prices in the shops, but they also want to know that the food they eat is not worsening climate change or the treatment of animals.

You also suggest that the approach I put forward in the NFS “is not consistent with WTO rules, as it discriminates on the basis of production methods”. As you might expect, I don't agree with this. I accept that WTO jurisprudence *generally* does not support discrimination on the basis of production methods – though even here there are numerous exceptions. The import of products of prison labour has been prohibited in Britain for over a century, even if those products are entirely indistinguishable from those made by free workers.² This obvious example of discrimination on the basis of production methods is specifically authorised by Article XX(e) of the General Agreement on Tariffs and Trade. Other restrictions on products based on methods of production have also been found to be compatible with WTO law.³

More importantly, though, I do not agree that the general WTO law of process and production methods is applicable in this case. I would not propose to apply these restrictions to goods imported at the UK's most-favoured nation tariff. (Given the tariff levels set out in the UK Global Tariff, many agricultural products are unlikely to be able to enter the UK at these rates.) Compliance with core UK standards would be required only of goods claiming a preferential tariff under an FTA. Given that the right to that preferential tariff would be conferred not by WTO law but by the FTA, I do not understand why WTO law would prevent the FTA from making that right conditional.

The situation is quite different from that in the case of *Peru—Agricultural Products*, in which Peru unsuccessfully sought to use an FTA to prevent its trading partners from exercising their rights under WTO law.⁴ It is more similar to the condition in the EU's recently agreed FTA with the Mercosur bloc of South American countries, which makes access to a tariff-rate quota for eggs contingent on compliance with welfare standards.

Systems for verifying compliance with standards other than those of the country of production already exist. For example, the US Agriculture Department guarantees that US beef sold to the EU is free of hormones, while EU authorities ensure that organic products exported to the US comply with its stricter rules for organics. I think it would

² Foreign Prison-Made Goods Act 1897

³ Perhaps most famously in the “Shrimp/Turtle” case

⁴ *Peru—Additional Duty on Imports of Certain Agricultural Products—Report of the Appellate Body* (20 July 2015) WT/DS457/AB/R

be easier to adapt such mechanisms to our needs in a bilateral context than to attempt to turn around the multilateral trading system.

That said, I appreciate that these questions are exceptionally complex both legally and technically and would be happy to discuss them in more detail as you investigate them further.

Sanitary and phytosanitary (SPS) issues and technical barriers to trade (TBTs)

You suggested in your letter that it “might be more appropriate to vigorously pursue, and promote, the mutual recognition of SPS safeguards and outcomes with the proper level of checks and balances applied up and down the whole supply chain”. Members of your committee during our discussion also raised the possibility of pursuing these issues further in the context of the Agreement on Technical Barriers to Trade (TBT Agreement).

I found this interesting and would love to discuss it further. I was particularly intrigued by the suggestion of exploring “equivalence in approach or outcomes... in relation to broader issues such as animal welfare, ethical trading, environmental issues or climate change”.

The object of regulations on animal welfare is to reduce animal suffering. If the same reduction in the level of suffering can be achieved by means other than those required by UK regulations, I do not see any obvious reason why we should not recognise equivalence in such cases. The same is true of environmental issues. Such a policy could conceivably give the guarantees British consumers require.

There would be a lot of work to do here. Currently, I am not aware of existing work on equivalence frameworks for regulations that are motivated by concerns for animal welfare and the environment, rather than food safety and animal/plant health. Developing such a framework from scratch would be complex. I am not sure it could be achieved within the timescales that the Government has said it wishes to conclude its FTA negotiations, though it would be a valuable project in the long-term.

I am sceptical that multilateral forums for SPS and TBT issues – notably the “Three Sisters”,⁵ which came up in our conversation – can provide the necessary guarantees for our standards. Working within those organisations is important. It is good to see the representation of UK nationals in them growing (such as through the appointment a few years ago of Steve Wearne of the Food Standards Agency as vice-chair of Codex). But as I noted in Part One of the strategy, they have broad membership and operate by consensus. It would be unreasonable to expect them to make immediate and radical changes to their standards so as to bring them in line with British values. They will not be able to provide the guarantees British consumers need at any time in the foreseeable future.

⁵ The World Organisation for Animal Health (OIE), the International Plant Protection Convention (IPPC) and the Codex Alimentarius Commission

In addition, the issues these organisations deal with are narrowly defined. Codex only considers questions of food safety, while IPPC works to make sure that trade in plant products does not introduce new pests and diseases that could harm the plant life of importing countries. Similarly, while the OIE has recently developed some guidelines relating to animal welfare, those guidelines are broadly drawn, non-binding and nowhere near British standards. The overwhelming majority of its work is concerned with preventing the spread of animal diseases such as BSE or foot-and-mouth disease. These diseases are also the centrepiece of most bilateral agreements on SPS issues. While the EU has recently begun to integrate animal welfare into the SPS chapters of its FTAs to a very limited extent, it has come up against stiff resistance from other trading partners, such as the United States. I have some sympathy with this argument: animal welfare issues are not, in truth, SPS issues and it is probably unhelpful to deal with them in that context. Environmental issues are not in the scope of SPS issues or the missions of the “Three Sisters” at all.

The WTO will certainly be an important way for us as a nation to drive positive change in global standards for the environment and animal welfare over the long-term. We should be exploring ways to build alliances with likeminded countries and influence those which are not yet likeminded. But in the immediate term which the Commission is looking at, the challenges which trade policy is presenting for the UK food system are largely related to the Government’s ambition to negotiate new *bilateral* FTAs, not to the multilateral trading environment. Without those FTAs, the very high MFN tariffs the Government has chosen to adopt will exclude most agricultural imports and so solve the problem by default. Since the challenge has been created by bilateral FTAs, it strikes me that the solution must also lie in bilateral FTAs. The Commission’s task is, in effect, to find a way of reconciling the Government’s ambitious FTA agenda with the strong manifesto commitment not to compromise UK standards. Too much focus on the WTO might prove a distraction.

Scrutiny

I am glad to hear that you plan to address the issue of impact assessments. I was pleased to learn recently that the Government has decided to have its impact assessment scrutinised by the independent Regulatory Policy Committee. It will still be important to make sure that the impact assessment process takes a broad view of the impacts of trade deals. As I say in the NFS, the object of the assessment should be to reveal not just the impact of the deal on the UK economy, but also on the environment, animal welfare, labour rights and so on – both in this country and in our trading partner. This is the only way we will be able to know in advance whether the deal in fact provides the guarantees I describe above.

As you say, parliamentary scrutiny brings helpful transparency to this process, ensuring that trade deals are genuinely in the UK’s interests and reflect the concerns and values of people across the country. I think the concerns you express regarding “unacceptable delays” arising from parliamentary scrutiny can be overcome. Trade deals seldom come into force immediately after signature. Negotiations on the EU-Japan economic partnership agreement, for instance, concluded in July 2018, but the agreement did not

come into force until February 2019 – which is still one of the swiftest ratification processes in the history of EU trade policy. Many of the partners with which the UK is negotiating – notably the United States – also have rather drawn-out processes for ratifying and implementing trade deals. This will provide Parliament with more than enough time to carry out thorough scrutiny of the agreement and its impacts.

And, as I pointed out in the NFS, the trade deals the UK concludes over the next couple of years are likely to be with us for a long time to come. It is of paramount importance that we get them right. If the Government is not able to carry through on the manifesto commitment not to compromise on UK standards in those deals, the consequences could be disastrous – not just for the farming sector, in pure economic terms, but also for the public's faith in the integrity of the UK's food system and in the value of free trade. The Trade and Agriculture Commission has a vital role to play in making sure that does not happen. I look forward to continuing to work with you in your important task.

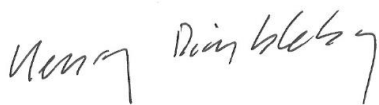
4. How will the commission know if it has been successful?

I always think it helps to have a set of “acid test” questions to help ascertain if the job in hand has been done. With respect to standards, I would suggest just two:

- **Has the Commission set out clearly which specific standards are to be protected?**
- **Is the Commission confident the measures it has proposed to protect those standards will prevent food produced below them from undercutting food produced domestically that exceeds them?**

* * *

Thank you for being so generous with your time, do let me know if I can help further in any way.



Henry Dimbleby

Independent Reviewer.
Lead Non-Executive Director, Defra.

CC. Liz Truss, Secretary of State for International Trade and President of the Board of Trade

CC. George Eustice, Secretary of State for Environment, Food and Rural Affairs

CC. Members of the Trade and Agricultural Commission