



Department for  
International Trade

# **Report pursuant to Section 42 of the Agriculture Act 2020**

UK-New Zealand Free Trade Agreement





# **Report pursuant to Section 42 of the Agriculture Act 2020: UK-New Zealand Free Trade Agreement**

Presented to Parliament pursuant to Section 42 of the Agriculture  
Act 2020

July 2022



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## Ministerial Foreword

Our UK-New Zealand Free Trade Agreement (FTA), our second negotiated from scratch, strengthens the already close economic relationship between our two nations and will benefit businesses, families and consumers across the UK.

Further, the FTA moves us a step closer towards accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), a free trade area worth £8.4 trillion in GDP.

Enhanced transparency and scrutiny of new FTAs is vital to the public and Parliament and allows us to demonstrate that the benefits of FTAs will never come at the expense of the UK's high statutory protections.

This Report sets out in clear, concise language what the UK-New Zealand FTA means for the maintenance of UK levels of statutory protections in the areas of human health, animal and plant life or health, animal welfare and the environment.

The Report confirms that this agreement is consistent with maintaining our domestic statutory protections, supported by the advice of the independent Trade and Agriculture Commission, the Food Standards Agency and Food Standards Scotland.

With two FTAs under our belt, we look forward to continuing to progress our open and ambitious trading policy.



**The Rt Hon Anne-Marie  
Trevelyan MP**

**Secretary of State for  
International Trade and  
President of the Board of Trade**



**The Rt Hon George Eustice MP**

**Secretary of State for  
Environment, Food and Rural  
Affairs**

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# Background

The UK-New Zealand Free Trade Agreement (FTA) was signed on 28 February 2022.

1. Prior to ratification, the FTA will be formally laid before Parliament for scrutiny under the Constitutional Reform and Governance Act 2010 (CRaG). Ahead of this, and in order to support Parliamentary scrutiny, two reports must be laid before Parliament relating to any full, new FTA. Under Section 42 (1) of the Agriculture Act 2020, a Government report (henceforth referred to as the S.42 Report) must be laid. The S.42 Report must consider whether, or to what extent, measures in that specific Free Trade Agreement applicable to trade in agricultural products<sup>1</sup> are consistent with the maintenance of UK levels of statutory protection in relation to the following areas:
  - (a) human, animal or plant life or health,
  - (b) animal welfare, and
  - (c) the environment.
2. Under Section 42 (4), the Secretary of State can seek advice from independent, expert sources of advice in preparing the S.42 Report. This must include the Trade and Agriculture Commission (TAC).
3. The TAC's remit is to produce advice on whether, or to what extent, the measures in the FTA which are applicable to trade in agricultural products are consistent with the maintenance of UK levels of statutory protection in relation to:
  - a) animal or plant life or health
  - b) animal welfare, and
  - c) the environment
4. As with the S.42 Report, the advice of the TAC must be laid before Parliament prior to the FTA being laid for the purposes of scrutiny under CRaG. The TAC's advice on the UK-New Zealand FTA was laid on 30<sup>th</sup> June 2022<sup>2</sup>.
5. For this report, on the UK-New Zealand agreement, advice has also been sought from the Food Standards Agency (FSA) and Food Standards Scotland (FSS). The FSA and FSS are statutory bodies which collectively have responsibility for human health in relation to food safety and nutrition related matters across the UK. The Department of Health and Social Care, as the department responsible for human health, has also been consulted on the main body of this report.

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<sup>1</sup> "Agricultural products" means products of a kind which, at the time this section comes into force, is listed in—

- a) Annex 1 to the Treaty on the Functioning of the European Union;
- b) Annex 1 to [Regulation \(EU\) No 510/2014](#) of the European Parliament and of the Council of 16 April 2013 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products and repealing Council Regulations [\(EC\) No 1216/2009](#) and [\(EC\) No 614/2009](#);
- c) the first two columns of Annex 2 to that Regulation;

<sup>2</sup> Further information can be found at: <https://www.gov.uk/government/publications/uk-new-zealand-fta-advice-from-trade-and-agriculture-commission>

## S.42 Report scope and conclusions

This report considers the impact of the UK-NZ FTA on relevant UK statutory protections. Legislation that relates to UK levels of statutory protection in human, animal or plant life or health, animal welfare, and the environment is wide ranging and has varying territorial extent and application, based on the legislation in question. The UK is obliged to continue to apply in Northern Ireland the body of EU law set out in Annex 2 of the Protocol on Ireland/Northern Ireland<sup>3</sup>.

The scope of this report extends to all measures within the FTA that are applicable to trade in agricultural products. Accordingly, the following Chapters in part or in whole are in scope of this Report:

- Chapter 5: Sanitary and Phytosanitary Measures (which also includes cooperation on Antimicrobial Resistance)
- Chapter 6: Animal Welfare
- Chapter 7: Technical Barriers to Trade
- Chapter 22: Environment
- Chapter 31: Dispute Settlement
- Chapter 32: General Exceptions and General Provisions

Additionally, this report considers the impact of tariff liberalisation on sensitive sectors and the consistency of these measures with the maintenance of UK levels of statutory protection.

For each of these Chapters, this report assesses whether the measures within it are consistent with the maintenance of relevant UK statutory protections, with reference to the advice of the independent TAC, and the independent advice of the FSS and FSA where appropriate. This report also summarises what each measure does to aid clarity and understanding of the effect of the FTA.

### S.42 Report criteria

The following criteria have been used to determine whether, or to what extent, measures are consistent with the maintenance of UK levels of statutory protections:

- With reference to the implementation of the FTA, whether any changes to primary or secondary legislation are required for (a) human, animal or plant life or health, (b) animal welfare, and (c) the environment.
- Whether there are any measures in the FTA that affect the right to regulate of the UK Government and Devolved Administrations.

### S.42 Report conclusions

The Chapters above identified as within scope of Section 42 (1), are consistent with the maintenance of UK levels of statutory protection in relation to human, animal or plant life or health, animal welfare, and the environment. Secondary legislation will be required on wine and spirits labelling, but this legislation does not adversely impact human health. There are no changes to legislation required in relation to animal or plant life or health, animal welfare and the environment

Further, no measures change the right to regulate of the UK Government and Devolved Administrations in these areas. The non-derogation measures in the Environment Chapter, and non-regression and non-derogation measures in the Animal Welfare Chapter, support the maintenance of statutory levels of protection in these areas.

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<sup>3</sup> Further information can be found at: <https://www.legislation.gov.uk/eut/withdrawal-agreement>



## TAC advice criteria and conclusions

The TAC's full advice was laid in Parliament and published in full on 30 June 2022.

The TAC addressed three questions, in accordance with their terms of reference:

### **1. Does the FTA require the UK to change its levels of statutory protection in relation to (a) animal or plant life or health, (b) animal welfare, and (c) environmental protection?**

The TAC concluded that *"the FTA does not require the UK to change its existing levels of statutory protection in relation to animal or plant life or health, animal welfare and environmental protection"*.

### **2. Does the FTA reinforce the UK's levels of statutory protection in these areas?**

The TAC concluded that *"the FTA reinforces the UK's statutory protections in the areas covered for two reasons. First, it contains environmental obligations that require the UK to maintain its statutory protections in the areas covered. Second, these obligations also ensure that New Zealand will not gain a trade advantage by lowering its standards of protection or not properly implementing its domestic laws in the areas covered"*.

### **3. Does the FTA otherwise affect the ability of the UK to adopt statutory protections in these areas?**

The TAC concluded that *"the FTA does not otherwise affect the ability of the UK to adopt statutory protections in the areas covered"*.

*In particular, the FTA does not restrict the UK's WTO rights to regulate in these areas, and even enhances these rights in some respects. In relation to the concerns raised, we concluded that, in most cases, practices did not differ at all (or more than insignificantly) in New Zealand and the UK, and that even where they did, except in one case (pesticides) this did not involve products likely to be imported to the UK at an increased rate under the FTA, or give a cost advantage to New Zealand producers. Even in the one remaining case where we agree with the concerns raised, concerning pesticides used in New Zealand that are prohibited in the UK, we concluded that the FTA did not reduce the UK's existing rights under WTO law to regulate imports. The UK continues to be able to restrict imports of products in order to protect human, animal or plant life or health in the UK, and it has enhanced rights under the FTA to ensure that New Zealand does not fail to 'endeavour' to maintain high levels of environmental protection. We did not however consider it likely that New Zealand's existing pesticide rules would put it in breach of this obligation."*

Finally, the TAC noted that *"the UK is able to adopt decisions under the agreement, together with New Zealand, that may constrain its freedom to regulate in the future. It is also important to note that increased imports under the FTA may increase the workload of UK border control agencies"*.

This report considers conclusions from the TAC report in the relevant sections below.

## FSA and FSS advice conclusions

The FSA and FSS' advice is annexed to this report.

- In summary, the advice concludes that the measures in the UK-New Zealand FTA are consistent with the maintenance of UK levels of statutory protection in relation to human health. It notes that: The UK-New Zealand FTA maintains existing food safety and nutrition statutory protections in accordance with UK laws and regulations.
- No changes to the UK food regulatory system are required to give effect to this FTA at the point of entry into force.
- The FTA text preserves the regulatory autonomy of the UK Government and devolved administrations with respect to food safety and nutrition related matters and will not prejudice any future decisions in this regard, which will continue to be taken by health ministers across

the UK informed by transparent advice on science and evidence from the FSA, FSS, and other expert bodies where appropriate, including the UK Nutrition and Health Claims Committee. This is key to upholding statutory protections in the future.

## Free Trade Agreement Measures

### FTA Chapter 5: Sanitary and Phytosanitary Measures

#### Chapter summary & conclusion

This Chapter sets out the application of SPS (Sanitary and Phytosanitary) measures to trade between the UK and New Zealand. The UK and New Zealand have an existing Sanitary Agreement which covers and facilitates trade in animal products, so the Chapter focuses on trade in plants, plant products, and processed plant-based foods. The Chapter also sets out mutual commitments to cooperate on combatting antimicrobial resistance (AMR).

The FTA does not create any new permissions or authorisations for imports from New Zealand. All products imported into the UK must, as they do now, comply with our import requirements. Nor does the Chapter require the UK to change its existing levels of statutory protection.

In relation to human health, the FSA and FSS concluded the following:

*“The SPS chapter text agreed with New Zealand is of fundamental importance when it comes to reserving the UK’s right to maintain existing laws and regulations to protect human life and health, including food safety and nutrition. It is also important that the agreed text has not impinged on the way food law regulation and enforcement is implemented in the UK.”*

It is the view of the Government that this Chapter is consistent with the maintenance of UK levels of statutory protection in relation to human, animal or plant life or health; furthermore, nothing in the Chapter changes or restricts the right to regulate of the UK or Devolved Administrations.

#### Scope

The majority of Chapter 5, except for the Articles listed below, is within the scope of this report, in that it applies to the maintenance of UK levels of statutory protection on human, animal or plant life or health.

Articles 5.5, 5.15, 5.16, 5.18 are outside the scope of this report. These primarily relate to cooperation or governance measures of the FTA, with no impact on UK statutory protections.

Article 5.19 (Dispute Settlement) is covered under Chapter 31: Dispute Settlement in this report

#### Articles

**Article 5.1-Definitions:** This Article sets out that the definitions of the WTO SPS Agreement (as set out in Annex A to that agreement), and the definitions adopted under the Codex Alimentarius, World Organisation for Animal Health (OIE), and International Plant Protection Convention (IPPC) shall apply to the Chapter. These provisions support an interpretation of the language used in this Chapter that is consistent with the definitions that are used in WTO SPS Agreement and these international organisations.

**Article 5.2-Scope:** This Article sets out the scope of the Chapter. Whilst it specifies that all SPS measures that may directly or indirectly affect trade between the Parties can be considered under the Chapter, it does not apply to measures covered under the UK-New Zealand Sanitary Agreement<sup>4</sup>, which covers trade in live animals and animal products. In practice, this means the SPS Chapter applies primarily to trade in plants, plant products, and other regulated Articles. Separately, the Chapter also applies to cooperation on antimicrobial resistance (AMR).

**Article 5.3-Objectives:** This Article establishes the objectives of the Chapter, and whilst they have no direct effect on the UK levels of statutory protection, they signal the intention of the Chapter and may affect its interpretation.

**Article 5.4-Affirmation of the SPS Agreement:** The Parties have existing rights and obligations towards each other under the WTO SPS Agreement.

This Article affirms that the Parties will continue to have these rights and obligations<sup>5</sup>. The SPS Chapter cannot take away those WTO rights and obligations, which, where applicable, must be observed when the UK establishes or modifies its levels of statutory protection.

**Article 5.6-Equivalence:** This Article sets out that the UK shall recognise New Zealand's SPS measures as equivalent, even where they differ from ours, provided New Zealand can objectively demonstrate that these measures achieve the same levels of protection within the UK as our own measures.

As the Chapter primarily applies to phytosanitary measures, the text requires the UK and New Zealand to apply the principles of the IPPC by following International Standard for Phytosanitary Measures (ISPM) No. 24 in determining equivalence. Provisions for the recognition of equivalence for sanitary measures applying to animals and animal products are set out in the UK-New Zealand Sanitary Agreement. No new recognitions of equivalence have been made as part of the FTA negotiations.

**Article 5.7-Recognition of Pest Freedom:** This Article sets out the provisions on regionalisation as it applies to plants, plant products, and other regulated Articles. Provisions on regionalisation as it applies to animals and animal products are set out in the UK-New Zealand Sanitary Agreement.

Regionalisation is where WTO members adapt their SPS measures to the characteristics of the area where the product originated and of where it is destined. It sets up a framework for assessing the safety of imports where the exporting country has a localised pest or disease outbreak. This article applies exclusively to plants and plant products and recognises, for example, the concept of pest-free areas and sets out the rights and responsibilities of both Parties in managing pest outbreaks.

This Article underlines the importance of domestic legislation aimed at protecting plant health, as the UK Government can make an evidence-based decision to prohibit or allow specific product imports or imports from a specific region or location.

**Article 5.8-Risk Analysis:** This Article sets out that the Parties shall base their SPS measures on a risk analysis in accordance with the WTO SPS Agreement, if they are not based on relevant international standards, guidelines, or recommendations.

The Chapter makes reference to Article 5 of the WTO SPS Agreement, which includes the UK's right under Article 5.7 to adopt provisional measures on the basis of pertinent information where there is insufficient scientific evidence.

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<sup>4</sup> Further information can be found at :<<https://www.gov.uk/government/publications/cs-new-zealand-no12019-uknew-zealand-agreement-on-sanitary-measures-applicable-to-trade-in-live-animals-and-animal-product>>

<sup>5</sup> Further information can be found at: [https://www.wto.org/english/tratop\\_e/sps\\_e/spsagr\\_e.htm](https://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm)

The TAC's advice (p.16) noted that:

*"It is not entirely clear from Article 5.8 of the FTA whether the UK's right to adopt provisional measures along these lines has been maintained in the FTA."*

The Government's position is that the FTA maintains the UK's right to take provisional or precautionary measures for human and animal health purposes and does not interfere with our existing WTO rights to take such an approach.

The FTA states that SPS measures should be "based on a risk analysis carried out in accordance with relevant provisions, including Article 5 of the SPS Agreement." As noted above, we are clear that this includes taking provisional measures where scientific evidence is insufficient, which is detailed in Article 5 of the SPS Agreement.

**Article 5.9-Audit:** This Article sets out the role of audits. The Article sets out how such audits shall be conducted, and how measures can be taken in consequence of an audit.

**Article 5.10-Trade Conditions:** This Article sets out the various requirements that each country's import regime needs to comply with, with the intention of facilitating trade. These include that import requirements shall be made available; unnecessary or unduly burdensome information requests shall be avoided; risk assessments shall be made available within a reasonable period of time; and establishments or facilities approved by the exporting party, in accordance with the requirements of the importing Party, shall be accepted without subsequent processes.

**Article 5.11-Emergency measures:** The SPS Chapter does not place any restrictions on the UK's ability to enact emergency SPS measures where there is a particular risk to animal, plant or human life or health. The Article introduces a notification requirement and, given that emergency measures affect existing trade flows, sets out how technical consultations can be requested. It obliges the UK to consider information provided promptly by New Zealand when deciding whether to apply the measure to goods in transit, to commence a science-based review of the measure as soon as possible, review the measure as required and, on request, to share the justification for maintaining the measure, if it remains in place. This is consistent with preserving the UK's freedom to set and maintain its levels of statutory protection in response to new emerging risks.

**Article 5.12-Import Checks and Fees:** This Article sets out that the UK has the right to carry out import checks, as defined in article 5.1.3(b), based on the SPS risk associated with imports, to ensure products comply with our import requirements and meet statutory protections. The UK can take action on the grounds of non-compliance if products do not meet import requirements, but this has to be based on an assessment of the risk involved and not be more trade-restrictive than required to achieve our appropriate level of protection.

**Article 5.13-Certification:** This Article sets the principles that apply to phytosanitary certification, and that both countries will apply the international standards in ISPMs No 7 and No 12. Specifically, both Parties recognise the status quo that certification is not currently required for trade in low-risk food commodities within the scope of this Chapter, and that the introduction of a new certification requirement for trade in these low-risk foods would be based on a risk assessment.

However, the Chapter is clear that nothing shall preclude the UK or New Zealand from requiring phytosanitary certification for trade in food within the scope of this Chapter.

**Article 5.14-Cooperation on Antimicrobial Resistance:** Both the UK and New Zealand recognise that AMR is a serious threat to human and animal health. This Article focuses on bilateral and multilateral cooperation, including surveillance and monitoring of antimicrobial use and the exchange of information and expertise useful to addressing AMR. The Article commits both Parties to exploring initiatives to promote the reduction or prohibition of unnecessary use of antibiotic agents in the rearing of animals for food production. "Unnecessary use" means any use of antibiotic agents in animals other than use which is necessary for safeguarding animal health, when there is no effective

alternative option. The UK and New Zealand also recognise that protecting the efficacy of critical antibiotic agents is a core focus of our respective AMR strategies.

This Article also focuses on bilateral and multilateral cooperation, including the exchange of information, expertise, data, and experiences useful to combatting AMR, with a view to supporting the implementing of each country's national action plan.

**Article 5.17-Technical consultations:** This Article sets out that if a Party considers that an SPS measure or draft measure within scope of the Chapter, or its implementation, is inconsistent with the Chapter it may request technical consultations. The purpose of technical consultations is to share information and increase mutual understanding, with a view to resolving any concerns about the specific measure that is the subject of the consultations within a reasonable period of time.

## FTA Chapter 6: Animal Welfare

### Chapter summary & conclusion

This Chapter contains measures that recognise the importance of the welfare of farmed animals, including reaffirming the commitment from both the UK and New Zealand to improving and advancing the animal welfare protection contained in their respective laws and regulations.

There are no changes required to statutory protections across the UK and the Chapter explicitly underlines the right of the UK to regulate in this area.

Thus, this Chapter is consistent with the maintenance of UK levels of statutory protection in relation to animal welfare.

### Scope

Articles 6.1-6.3 are within the scope of this report, in that they apply to the maintenance of UK levels of statutory protection on animal welfare. In particular, Article 6.3 affirms the UK's right to regulate and establishes non-regression and non-derogation clauses on animal welfare.

While Article 6.4-Cooperation does not fall directly within the scope of this report, it is considered in brief, as both Parties commit to collaboration and information sharing with a view to improving animal welfare standards.

Article 6.5 is out of scope of this report as this Article relates to inter-governmental cooperation on the measures in this Chapter and thus has no impact on statutory protections.

Article 6.6 (Dispute Settlement) is covered under Chapter 31: Dispute Settlement in this report.

### Articles

**Article 6.1-Objectives:** This Article sets out the objective of the Chapter, which is to enhance cooperation between the Parties on the welfare of farmed animals.

**Article 6.2-General Provisions:** This Article sets out that both Parties recognise animals as sentient beings and recognise the connection between improved animal welfare and food production systems. It also establishes that the protection and improvement of animal welfare may form part of a Party's trade objectives.

**Article 6.3-Right to Regulate and Improvement of Farmed Animal Welfare:** This Article affirms the right of each Party to regulate on matters pertaining to animal welfare, in a manner consistent with international commitments, including the UK-New Zealand FTA.

We are building on the precedent set in the Australia FTA by having a dedicated animal welfare chapter which includes commitments on non-regression and non-derogation. Each Party recognises that it is inappropriate to encourage bilateral trade or investment by weakening or reducing its levels of protection for animal welfare. Each Party also reaffirms their commitment to improving and advancing the protection afforded to the welfare of farmed animals in its animal welfare laws and regulations. It also sets out that each Party shall use its best endeavours to not weaken or reduce the protection afforded to the welfare of farmed animals and that neither Party shall waive, or derogate from, its laws and regulations in a manner that materially affects trade or investment between the Parties.

Further, the Parties recognise that their farming practices are substantively different but that each Party affords a high priority to animal welfare in its farming practices and that in multiple areas their respective animal welfare laws, regulations, and policies provide comparable outcomes. This does not pre-suppose any recognition of equivalence of animal welfare standards between the Parties.

**Article 6.4-Cooperation:** This Article set out strong commitments on continued collaboration and cooperation, including through the exchange of information, expertise and experiences to improve mutual understanding and enhance animal welfare standards. Although these commitments have no direct effect on UK levels of statutory protection, they help facilitate both the UK and New Zealand in going further to develop and improve animal welfare standards, as well as promoting animal welfare standards in international fora.

## FTA Chapter 7: Technical Barriers to Trade

### Chapter summary and conclusion

This Chapter sets out measures on Technical Barriers to Trade (TBT). TBT covers non-tariff measures relating to technical regulations, standards and conformity assessment (testing whether a product complies with the rules).

TBT covers trade in all products (both agricultural and industrial), except Government Procurement or SPS measures. Examples of TBT regulations include standardised packaging of tobacco products and minimum cocoa requirements for chocolate.

This Chapter builds on commitments in the WTO TBT Agreement.<sup>6</sup> It recognises each country's right, under that Agreement, to introduce new regulations to fulfil legitimate policy objectives, such as the protection of human, animal and plant life or health and the environment. At the same time, the parties commit that any regulations they introduce are non-discriminatory and do not create unnecessary barriers to trade.

Annex 7A of the TBT Chapter contains measures: to reduce or avoid barriers associated with oenological (production) practices; on labelling for consumer information on wine and spirits; and on wine certification. Secondary legislation will be required on wine and spirits labelling, including permitting more specific information on alcohol percentage. These changes do not adversely impact human health and so are consistent with the maintenance of statutory protections.

This Chapter does not require any changes to UK levels of statutory protections in relation to human, animal and plant life or health and the environment.

### Scope

The majority of Chapter 7, except for Annex 7A and the Articles listed below, is within scope of this report, given the relation of TBT to the areas specified in Section 42.2(a) of the Agriculture Act.

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<sup>6</sup> The WTO TBT Agreement can be found at: [https://www.wto.org/english/tratop\\_e/tbt\\_e/tbt\\_e.htm](https://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm)

Articles 7.5, 7.10 - 7.13 and 7.15 - 7.17 are outside the scope of this Report. These relate to pure cooperation or governance measures and include some non-agricultural products such as human medicinal products, with no impact on UK statutory protections as they relate to Section 42.2(a).

Dispute settlement is covered under Chapter 31: Dispute Settlement in this Report.

## Articles

**Article 7.1-Scope:** This Article states that relevant definitions found in Annex 1 of the TBT Agreement apply and sets out additional definitions relevant to this Chapter.

**Article 7.2-Objectives:** This Article sets out the objectives of the Chapter, which are to increase and facilitate trade in goods by eliminating unnecessary technical barriers to trade and other measures such as good regulatory practice.

**Article 7.3-Scope:** This Article sets out the application of the measures in this Chapter. It states that technical regulations, standards and conformity assessment procedures at central government level are within scope. The exceptions to this are Government Procurement or SPS measures.

7.3.4 provides that nothing in this Chapter prevents the Parties from developing regulation in line with their international rights and obligations, thereby underlining the UK's right to regulate in TBT matters.

**Article 7.4- Incorporation of Certain Provisions of the TBT Agreement:** In this Article both Parties affirm their rights and obligations under the TBT Agreement, which are covered in brief in the Chapter Summary. Articles 2 and 5, Annex 1 and paragraphs D to F of Annex 3 of the WTO TBT Agreement are incorporated into the TBT chapter of this FTA.

**Article 7.6- International Standards, Guides, and Recommendations:** In line with existing WTO commitments, the UK and New Zealand agree to base technical regulations on relevant international standards where they exist. In determining whether a standard is international, both parties will apply the relevant definitions as they are set out and referred to in Annex 1 to the TBT Agreement and follow the principles and procedures set out in the WTO TBT Committee Decision on International Standards.

**Article 7.7-Equivalency of Technical Regulation:** The UK and New Zealand will consider, upon request, whether product regulations of the other country are equivalent to their own domestic regulations.

Where regulations differ, there is scope to agree equivalence but only if each country is satisfied that the other country's regulations meet the objectives of domestic regulations.

**Article 7.8-Conformity Assessment:** This Article sets out that various mechanisms exist to enable each country to recognise the results of conformity assessment procedures conducted in another country. There is no obligation on either country to use any of these mechanisms. Both the UK and New Zealand will exchange information on conformity assessment procedures.

There is also acknowledgement of the existing UK and New Zealand Mutual Recognition Agreement, and the parties agree that, if they wish, they may extend the coverage of that Agreement.

The conformity assessment article also includes a future review mechanism, whereby within 1 year of entry into force, the UK and New Zealand will consider whether or not to amend the article to include a commitment on national treatment of conformity assessment bodies.

Finally, the article includes best-practice provisions on how the UK and New Zealand should conduct conformity assessment. These provisions are in keeping with existing UK practice and do not go beyond existing UK commitments in other agreements.

**Article 7.9-Transparency:** This Article sets out measures on ensuring the development of technical regulations, standards and conformity assessment procedures is transparent and accessible, including with respect to notification of measures to the WTO and publication of proposals and final regulations.

**Article 7.14-Marking and Labelling:** This Article provides that, in line with WTO commitments, marking and labelling requirements in the UK and New Zealand must be non-discriminatory and no more trade-restrictive than necessary to fulfil legitimate policy objectives.

The Article specifies further requirements on labelling that are in keeping with existing UK practice and previous commitments in other agreements. These include that the UK and New Zealand will:

1. Allow labelling to take place within its territory but prior to offering the product for sale, unless required for reasons of public health and safety.
2. Endeavour to accept supplementary, non-permanent or detachable labels, provided that this does not undermine the purpose of domestic regulation.
3. Allow additional information to be included on labels, beyond what is required by domestic regulation, provided that it is not confusing or misleading.

## FTA Chapter 22: Environment

### Chapter summary & conclusion

This Chapter affirms the Parties commitments to the Paris Agreement and sets out ambitious measures to promote mutually supportive trade and environment policies, high levels of environmental protection and effective enforcement of environmental laws. It also includes commitments on cooperation across a range of environmental issues including sustainable forest management, the circular economy, and climate change.

There are no changes required to existing levels of statutory protection. Thus, this Chapter is consistent with the maintenance of UK levels of statutory protection in relation to the environment. Further, the Chapter recognises the right of the UK and New Zealand to establish their own statutory protections on the environment and climate change and to take action to meet related objectives.

Importantly, under Article 22.4 (3, 4), neither Party shall waive, derogate from, or fail to enforce their environmental laws, in a way which weakens respective domestic statutory protections, to encourage trade and investment. The UK and New Zealand also recognise that it is inappropriate to encourage trade or investment by weakening or reducing domestic statutory protections.

This is supported by the following conclusion in the TAC's advice (p.26, 36-37):

*'...the FTA preserves the legality of any UK statutory protection of the environment that can be justified under WTO law and, in relation to climate change measures, makes it easier in practice to justify such measures.'*

*'First, the UK not only has a right to maintain its statutory protections, but it has an obligation to do so, in certain cases. The UK has a soft obligation to provide for high levels of environmental protection [...], an obligation not to derogate from or waive certain of its domestic environmental laws [...] if this has the purpose of encouraging trade or investment between the parties (environment) [...] and an obligation not to fail to enforce certain of its environmental laws so as to encourage trade and investment.'*

*'Second, the UK is able to protect its levels of statutory protection indirectly by ensuring that New Zealand does not gain an economic advantage by lowering its standards of protection, in certain cases, or not properly implementing its domestic laws. In particular, the UK is able to*



*commence dispute settlement proceedings if New Zealand fails to abide by its obligations in the environmental chapter’.*

## Scope

The majority of Chapter 22, except for the Articles listed below, is within scope of this report, in that it applies to the maintenance of UK levels of statutory protection on the environment.

Articles 22.17 – 22.25 are outside the scope of this report. They relate to measures on corporate social responsibilities, or cooperation and public engagement, with no impact on the maintenance of UK statutory protections.

Article 22.26- Dispute Resolution is covered under Chapter 31: Dispute Settlement in this report.

## Articles

**Article 22.1- Definitions:** This Article sets out definitions of environmental law and multilateral environmental agreements to which the UK and New Zealand are party. In addition, the article defines relevant multilateral agreements (e.g., Montreal and CITES).

**Article 22.2- Māori Environmental Concepts:** This Article sets out definitions of Māori environmental concepts that both Parties recognise as important to the environment in New Zealand.

**Article 22.3- Context and Objectives:** This Article outlines the context of this Chapter, in which both Parties recall the international agreements listed in 22.3.1. The Article also sets out the objectives of the Chapter which include promoting mutually supportive trade and environmental policies, promoting high levels of environmental protection and addressing the urgent threat of climate change.

**Article 22.4- General Commitments:** This Article sets out multiple statements and commitments on environmental protection, such as recognising the right of each Party to regulate on matters pertaining to environmental protection, including climate change and committing to endeavour to improve its respective levels of environmental protection.

22.4.3-4 specifies that neither the UK or New Zealand shall waive, derogate from, or fail to enforce their environmental laws, in a way which weakens respective domestic statutory protections, to encourage trade and investment.

**Article 22.5- Multilateral Environmental Agreements:** This Article affirms both UK and New Zealand’s commitment to implement multilateral environmental agreements to which they are a party.

**Article 22.6- Climate Change:** This Article affirms both the UK and New Zealand’s commitment to address climate change, including under the 2015 Paris Agreement. It sets out that both Parties commit to cooperation on addressing climate change and that the FTA does not prevent the Parties from taking measures to fulfil their commitments under the Paris Agreement and the UNFCCC, provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination against the other Party or a disguised restriction on trade.

**Articles 22.7-22.9 and 22.11-22.16- Specific Articles on environmental issues:** These Articles focus on commitments and bilateral cooperation in various areas, including reduction of air pollution, transition to clean energy, sustainable forest management and encouraging trade in environmental and low emissions technologies through eliminating tariffs on certain environmental goods.

These Articles do not affect statutory protections and highlight the depth of UK and New Zealand commitments in the Chapter to addressing climate change and areas of environment in our trade deals.

**Article 22.10- Sustainable Agriculture:** This Article sets out that both Parties recognise the importance of implementing and strengthening policies that contribute to the development of more

productive, sustainable, inclusive and resilient agricultural systems. Accordingly, the UK and New Zealand commit to take measures to reduce greenhouse gas emissions from agricultural production and promote sustainable agriculture and associated trade.

## Other Chapters

### Chapter 31 – Dispute Settlement

This Chapter contains provisions that commit both Parties to effective and timely dispute settlement. This will provide a clear avenue to arbitration if required.

The Dispute Settlement Chapter applies to the Trade in National Treatment and Market Access for Goods Chapter, the Environment Chapter, Technical Barriers to Trade and the General Provisions and Exceptions Chapter.

The Dispute Settlement Chapter does not apply to the SPS Chapter (Article 5.19) or the Animal Welfare Chapter (Article 6.6).

### Chapter 32 – General Provisions and Exceptions

Chapter 32 includes a series of exceptions which provide conditions under which a Party can take non-conforming measures should they be required. Those exceptions relevant to the scope of this report are included by way of the General Exceptions Article that incorporates Article XX of the General Agreement on Tariffs and Trade (GATT) 1994<sup>7</sup> (which forms part of the WTO legal framework). The General Exceptions Article applies to multiple Chapters, as listed, including the SPS, Animal Welfare and TBT Chapters. Subject to the specific conditions stipulated within the chapeau of Article XX, such as avoiding arbitrary or unjustifiable discrimination, these general exceptions allow the UK to take measures to protect legitimate policy objectives.

Measures that are within scope of the General Exceptions include measures necessary to protect public morals, human, animal or plant life or health, including measures necessary to mitigate against climate change and measures relating to the conservation of living and non-living exhaustible resources. The inclusion of this language helps to protect the UK's sovereign 'right to regulate' domestically on a number of issues, including the environment. This is important as the UK looks to meet its international commitments on the environment, nature and biodiversity.

## Impact of tariffs

### Tariff liberalisation in the UK-New Zealand FTA

The UK-New Zealand FTA will liberalise trade in goods between the two countries. This includes the removal of all tariffs on UK and New Zealand imports, subject to rules of origin, making it cheaper to trade originating products between the UK and New Zealand. In 2021, total trade in goods between the UK and New Zealand was £1.6bn, with £863m being exports from the UK.<sup>8</sup>

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<sup>7</sup>Further information can be found at:

[https://www.wto.org/english/docs\\_e/legal\\_e/gatt47\\_02\\_e.htm#ArticleXX](https://www.wto.org/english/docs_e/legal_e/gatt47_02_e.htm#ArticleXX)

<sup>8</sup> Trade data sourced from the latest ONS publication of UK total trade: [all countries seasonally adjusted](#) data.

New Zealand agreed to eliminate tariffs on 100% of tariff lines on the day of entry into force of the agreement. The UK agreed to eliminate tariffs on 100% of tariff lines, with 96.7% being removed on the day of entry into force. The remainder will be staged over a maximum of 15 years.

In addition to staging, for certain sensitive agricultural products, the volume of duty-free imports to the UK from New Zealand in a year will be limited by Tariff Rate Quotas (TRQ) and Product Specific Safeguards (PSS). Products subject to TRQs include beef, sheep meat, butter, cheese and apples<sup>9</sup>, whilst beef is also subject to a PSS. For beef and sheep, these measures will apply for up to 15 years.

A general bilateral safeguard mechanism<sup>10</sup> will provide a temporary safety net for industry if it faces serious injury, or threat thereof, from increased imports as a result of tariff elimination under the FTA. A bilateral safeguard measure can take the form of a reversal of tariff liberalisation or the suspension of further tariff liberalisation for up to 4 years and can be reapplied more than once on the same product, if necessary. Bilateral safeguard measures can be applied provisionally for up to 200 days and may be applied to any product. This protection will last for a product's tariff liberalisation period plus five years in order to allow domestic industries time for readjustment, providing a 15-year period and 20-year period of protection for beef and sheep meat respectively from entry into force of the FTA.

### The impact of tariff liberalisation on UK statutory protections

The liberalisation of tariffs does not entail changes to statutory protections on human, animal or plant life or health; animal welfare; or the environment. Tariff liberalisation does not restrict the ability of the UK Government and Devolved Administrations to set or revise statutory protections on any of the above in the future.

The UK already imports agricultural products from New Zealand, including sheep meat and beef, which have to meet our stringent import requirements. This includes where products from New Zealand are produced to requirements that are different from ours, although the Government notes that in multiple areas UK-New Zealand animal welfare laws, regulations, and policies provide comparable outcomes. The FTA will not result in new permissions or access for products which are otherwise not permitted or present in the UK market prior to the agreement coming into force.

Further, both the UK and New Zealand have agreed a non-regression and non-derogation clause on animal welfare, as well as reaffirming mutual commitments to improving the protection afforded to the welfare of farmed animals in animal welfare laws and regulations.

Tariff liberalisation could improve the price competitiveness of New Zealand products in the UK market. New Zealand is a globally competitive exporter (accounting for 5% of global beef exports, for example). The potential increase in imports of such products could bring benefits to consumers, with more choice and lower prices, but would also compete with domestic producers in these sectors. The aforementioned TRQs and PSS' have been introduced to afford additional protections to help protect sensitive sectors if needed, in addition to the bilateral safeguard mechanism which applies to all products.

As part of the FTA, the government has conducted an Impact Assessment<sup>11</sup>, which considers potential impacts on UK sectors and provides the government's best estimates of how UK imports from New Zealand might change.

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<sup>9</sup> Further information can be found at: <https://www.gov.uk/government/publications/uk-new-zealand-fta-chapter-2-national-treatment-and-market-access-for-goods>

<sup>10</sup> Further information can be found at: <https://www.gov.uk/government/publications/uk-new-zealand-fta-chapter-8-trade-remedies>

<sup>11</sup> The Impact Assessment can be found at: <https://www.gov.uk/government/publications/uk-new-zealand-fta-impact-assessment>

## Concerns raised by the TAC

We welcome the positive conclusions of the TAC with respect to concerns raised on the FTA by stakeholders from their public call for evidence. We consider the concerns on pesticides and livestock transport conditions below.

### Pesticides

The TAC concludes the following in relation to pesticides (p. 42):

*“New Zealand does not authorise certain pesticides for uses that are prohibited by the UK. A distinction needs, however, to be drawn between the potential harmful effects of such pesticides within the UK, and within New Zealand. In principle, the UK is permitted to protect its own environment, animals and plants (as well as humans), in accordance with the WTO SPS Agreement, as affirmed in the SPS chapter of the FTA. The FTA does not change this. On the other hand, the UK is not, in principle, permitted under WTO law to prohibit imports of products that are produced in a manner that might cause harm to New Zealand’s environment. That is fundamentally a matter for New Zealand to regulate, in the absence of any effect on the UK. That said, the FTA goes further than WTO law in this respect, requiring New Zealand to ‘endeavour to ensure’ that its environmental laws provide for high levels of protection. Given its soft wording, this provision would protect the UK against serious failures to maintain environmental laws providing for a high level of protection in New Zealand. While we cannot make a definitive assessment, it is unlikely that the approved uses of pesticides discussed here would rise to that level.”*

This agreement does not create any new permissions or authorisations for imports from New Zealand. All agri-food products imported into the UK under this agreement, as now, must comply with our import requirements including Maximum Residue Levels (MRLs).

UK legislation has retained the statutory requirements of the EU regime relating to standards of protection for pesticides, including the MRL regime.

### Livestock transport conditions

The TAC concludes the following in relation to livestock conditions (p.51):

*“Livestock transport conditions in New Zealand and the UK in are in practice very similar, even though the two countries have different regulatory approaches to achieving this end. The key difference is that the UK takes a more prescriptive approach, with a focus on detailed regulatory standards and processes, while New Zealand’s regulations and code of practice focus on whether a given animal is fit for transport.*

*The FTA does not restrict the UK’s rights to regulate imports of beef if this is necessary to protect UK public morals. Given the similarity in practices between the two countries, and New Zealand’s overall approach to animal welfare in its rules on transport conditions, it is difficult to imagine that this will be the case.”*

Under current UK legislation, there are maximum journey times set for both calves and cattle; maximum journey times are set only for calves in New Zealand. However, both the UK and New Zealand have the same requirement for journeys to be minimised, that animals are fit for the intended journey, and that journeys to slaughter should be to the nearest available slaughterhouse.<sup>12</sup>

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<sup>12</sup> The Government’s response to our consultation on improvements to animal welfare in transport can be found at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1011728/animal-welfare-in-transport-consultation-response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1011728/animal-welfare-in-transport-consultation-response.pdf)

# Annex A-FSA and FSS Advice

## FOOD STANDARDS AGENCY AND FOOD STANDARDS SCOTLAND JOINT SECTION 42 ADVICE – UK-NEW ZEALAND FREE TRADE AGREEMENT

### 1.0 INTRODUCTION

1.1 As the UK's Food Safety Authorities with a statutory duty to protect food and feed safety<sup>13</sup> and consumers' interests in relation to food, the Food Standards Agency (FSA) and Food Standards Scotland (FSS) were asked by the Department for International Trade (DIT) on the 13<sup>th</sup> May 2022 to provide joint advice on the UK-New Zealand Free Trade Agreement (FTA), as signed on the 28<sup>th</sup> February 2022. Specifically, FSA and FSS were asked, in accordance with section 42(4) of the Agriculture Act 2020, to provide advice on whether, or to what extent, the measures in the UK-New Zealand FTA are consistent with the maintenance of UK levels of statutory protection for human health for the areas within FSA/FSS statutory remit. This response represents our advice to DIT's request.

1.2 In summary, the FSA/FSS advice is that:

- The UK-New Zealand FTA maintains existing food safety and nutrition statutory protections in accordance with UK laws and regulations.
- No changes to the UK food regulatory system are required to give effect to this FTA at the point of entry into force.
- The FTA text preserves the regulatory autonomy of the UK Government and devolved administrations with respect to food safety and nutrition related matters and will not prejudice any future decisions in this regard, which will continue to be taken by health ministers across the UK informed by transparent advice on science and evidence from the FSA, FSS, and other expert bodies where appropriate, including the UK Nutrition and Health Claims Committee. This is key to upholding statutory protections in the future.

### 2.0 SCOPE OF FSA AND FSS ADVICE

2.1 To reflect the FSA and FSS's full statutory remit as organisations with devolved policy interests, we are providing advice on statutory protections for food safety and nutrition<sup>14</sup> related matters. The advice does not cover statutory protections for food standards unrelated to human health which are out of scope of this advice request. The FSA/FSS will continue to consider our approach on broader human health issues related to food for future requests for advice under section 42(4) of the Agriculture Act 2020.

2.2 UK levels of statutory protection<sup>15</sup> are defined in the Agriculture Act 2020 as being the levels of protection, which at the time the report was made, are provided for under any legislation which has effect in, or in any part of, the United Kingdom. Food safety and

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<sup>13</sup> For the purposes of this advice, any reference to food safety includes feed safety where it relates to human health.

<sup>14</sup> "Nutrition" means legislation within scope of appendix II of the [Nutrition Related Labelling, Composition and Standards Provisional Common Framework](#).

<sup>15</sup> "Statutory protections" include provisions in primary legislation, subordinate legislation or retained direct EU legislation as per Section 42(7).

nutrition related matters are a devolved competence, meaning that any extant legislation that has legal effect in any part of the UK is relevant to this assessment. This includes national laws across the UK and retained EU law applicable within Great Britain. EU law that is currently applicable within Northern Ireland by virtue of Annex 2 of the Protocol on Ireland/Northern Ireland is not in scope of this advice – article 1.2(3) of Chapter 1 on Initial Provisions and General Definitions affirms our ability to adopt, maintain and amend measures that provide for the execution of the provisions of EU law that are applicable in the UK in respect of Northern Ireland, whilst the Protocol remains in force. Consequently, although Article 1.2(4) provides a basis for discussion of the impact of any such provisions, the application of laws captured by the Protocol is not affected by the FTA. All references to UK statutory protections in this advice therefore relate to the legislation described as being in scope in this paragraph.

2.3 Given the existing Sanitary Agreement (SA)<sup>16</sup> between the UK and New Zealand on sanitary measures applicable to trade in live animals and products of animal origin, the Chapter in the FTA on Sanitary and Phytosanitary measures does not apply to any measure or good that is covered by the SA. In the same way, the agreement in principle between the UK and New Zealand clarified that composite products will be brought in scope of the SA rather than the FTA. By virtue of this, the chapter therefore focusses on phytosanitary measures applicable to trade in 'plants, plant products and processed plant-based food'. This is taken into consideration in this advice.

### 3.0 CONSUMER AND STAKEHOLDER INTEREST

3.1 In writing this advice, it is important to first set out the relevant wider context in relation to consumer views and stakeholder concerns. Further to the request received from DIT, the FSA and FSS invited submissions on food safety and nutrition statutory protections from a number of interested parties, including those who represent the interests of consumers. With thanks to respondents, evidence received as part of this consultation process relevant to the question our advice is addressing has been cited in our advice.

3.2 Data from recent FSA and FSS consumer engagement surveys has consistently shown that consumers have significantly greater levels of concern about standards in food produced outside the UK compared to domestic production. In the latest wave of the FSA's 'Food and You2'<sup>17</sup> survey, which collected views from consumers in England, Wales and Northern Ireland between April and June 2021, 75% of participants had concerns about food outside the UK being safe and hygienic compared to 54% for food within the UK; 71% were concerned about food produced outside the UK being what it says it is, compared to 51% for food coming from within the UK. The most recent wave of FSS's Food in Scotland survey<sup>18</sup> conducted in December 2021, found that 70% of respondents indicated they were concerned about food standards and the quality of food we eat, and FSS consumer research conducted in September 2020 ahead of EU Exit<sup>19</sup> found 77% of respondents were either 'quite or very concerned' about a drop in standards post 31<sup>st</sup> December 2021. A nationally representative FSA poll conducted in November 2020<sup>20</sup> found that almost eight in ten people (78%) supported the UK maintaining its current food standards, even if food produced in the UK was more expensive and less competitive in the global market.

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<sup>16</sup> "Sanitary Agreement" means the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand on Sanitary Measures Applicable to Trade in Live Animals and Animal Products made in London on 21 January 2019.

<sup>17</sup> [Food and You 2 - Wave 3 | Food Standards Agency](#)

<sup>18</sup> [Food in Scotland Consumer Tracker Survey Wave 13 | Food Standards Scotland](#)

<sup>19</sup> [FSS Brexit survey](#)

<sup>20</sup> [Food in a Pandemic | Food Standards Agency](#)

- 3.3 In June 2021, the consumer organisation Which?<sup>21</sup> conducted research with a nationally representative group of 3,263 consumers to understand their views and attitudes towards international trade. Which? also reported high levels of support for maintaining UK food safety standards. Of the respondents surveyed they reported that 91% thought that the UK government should make sure that when agreeing trade deals the same standards relating to safety and health should apply to imports as to food produced in the UK.
- 3.4 It is clear from this evidence that maintaining food safety and health standards in trade deals is important to consumers and stakeholders. Existing statutory protections, such as the right to regulate for levels of protection appropriate to UK consumers based on science and evidence, and the right to take proportionate precautionary action on a provisional basis to protect consumers, will play a key role in how those standards are maintained in future. FSA and FSS will continue to provide science and evidence-based advice to ministers that takes into account consumers' wider interests in relation to food so that they can have confidence that food is safe and what it says it is as the UK Government takes forward its independent trade policy.
- 3.5 Stakeholders have also been clear on the importance of having robust scrutiny arrangements in place for assessing the impacts on human health. Evidence put forward to the Environment Food and Rural Affairs (EFRA) Committee by the Sustain Alliance underlined the duty under the Agriculture Act 2020 for the Secretary of State to report on human health statutory protections and for such reporting to be subject to the same levels of transparency, evidence gathering and publication as those for animals and plants.

## **4.0 OVERVIEW**

- 4.1 The preamble to the UK-New Zealand FTA legal text sets the tone for a trading agreement which is underpinned by some important themes in the context of maintaining statutory protections for food safety and nutrition. Namely, the Parties recognise each other's respective autonomy and right to regulate within their territories in order to achieve legitimate public policy objectives, including the protection and promotion of public health, public morals and animal welfare.
- 4.2 The initial provisions in Chapter 1 support this theme by setting out that the Parties affirm existing rights and obligations with respect to each other under the World Trade Organisation (WTO) Agreement. In a food safety and nutrition context, these basic international rights allow the UK Government and devolved administrations to continue to take proportionate unilateral measures necessary to protect the health of consumers across the UK.
- 4.3 Given that regulatory autonomy is underlined as important to both Parties in this FTA, it follows that no new permissions or authorisations were agreed 'up-front' for agri-food products that are not already authorised for import to the UK or New Zealand. In order to access each other's market for any new agri-food exports, each Party must submit an application via each other's respective market access processes. In the UK, such applications are received, coordinated and risk assessed by the Defra-led UK Office for Sanitary and Phytosanitary (SPS) Trade Assurance, with input from FSA/FSS, Defra agencies and other government departments as appropriate. Access for any new agri-

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<sup>21</sup> [Which? consumer priorities and trade deals Dec 21](#)

food products would only be permitted following a robust assessment to confirm a trading partner is able to meet UK import requirements. Such assessments would also look at food production standards and controls in the exporting country, which could differ without impacting on food safety. The FTA does not include provisions that affect the existing UK ban on certain growth promoters used in meat production such as hormone treated beef, which applies to both domestic and imported foods.

- 4.4 In the same way, should a business from New Zealand wish to market a new product in Great Britain (GB) such as a novel food, food additive, feed additive or genetically modified food or feed, an application would need to be made through the regulated products application service and undergo risk analysis by FSA/FSS to determine the safety of the product before it could be authorised by GB Ministers for use as an ingredient in foods or feed imported into GB<sup>22</sup>.
- 4.5 Implementation of this FTA will not require any new food safety legislation, nor any changes to domestic regulatory food safety policy to be brought forward by the FSA or FSS in order to meet the obligations at the point of entry into force. Likewise, this FTA will not require any new nutrition legislation to be brought forward by the responsible UK competent authorities<sup>23</sup>. Furthermore, article 33.5 in the Final Provisions chapter sets out explicitly that where reference in the FTA is made to laws and regulations, that includes any future amendments or successor laws or regulations (unless stated otherwise).
- 4.6 Both under WTO terms, and under the terms of this FTA, nothing would prevent the UK Government or devolved administrations from maintaining or introducing science and evidence-based measures, or from taking provisional action on the basis of pertinent information to impose controls or prohibitions on imported food and feed in order to meet the level of food safety protection deemed appropriate for consumers across the UK. This applies also to a potential risk posed by substances added to food for nutritional purposes.
- 4.7 Imported food not of animal origin (FNAO) is considered higher risk where it may be contaminated with aflatoxins (such as nuts), pesticides, microbiological contamination or radiocaesium and must therefore be imported through a designated port with appropriate facilities. These commodities are subject to an increased frequency of checks which include examination and testing. There are currently no higher risk FNAO commodities entering the UK from New Zealand.
- 4.8 Pesticide Action Network (PAN) UK has concerns that *“the FTA might facilitate trade in foodstuffs containing pesticide residues that are not currently allowed to appear in UK food because they pose a risk to human health”* and this concern is shared by Sustain. New Zealand already exports a range of agri-food products to the UK. In 2019, for example, New Zealand exported 44,450 tonnes of meat and meat offal, 19,140 tonnes of vegetables and certain roots and tubers, 42,335 tonnes of fruit, nuts, peel of citrus fruit or melons and 79,046 tonnes of beverages, spirits and vinegar.<sup>24</sup> Crucially, food and feed imports from New Zealand will continue to have to meet UK food safety and nutrition legislative requirements including, for example, complying with any existing prohibitions for unauthorised substances or for vitamins and supplements, as well as

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<sup>22</sup> [GB Regulated Products Application Service](#)

<sup>23</sup> Responsibility for nutrition related matters falls to DHSC in England, FSA in Northern Ireland, Welsh government in Wales and FSS in Scotland.

<sup>24</sup> UK Trade Info from HMRC (<https://www.uktradeinfo.com/>), as summarised in the FSA trade tool: <https://foodstandards.shinyapps.io/TradeDataVis/>



complying with maximum residue limits for pesticides and maximum levels for contaminants set by the UK.

4.9 PAN UK also has concerns that *“international standards for pesticides come from Codex. Maximum Residue Levels set by Codex tend to be higher than those set by UK.”* Nothing in this FTA affects the UK’s existing right under article 3 in the WTO SPS Agreement which allows WTO members to apply import controls which deviate from international standards set by Codex or other World Trade Organisation reference bodies, where justified by risk analysis. In the pesticide example, this means that UK maximum residue limits may be lower (more strict) than those set by Codex where scientifically justified.

4.10 Animal products imported to the UK from New Zealand only do so on the basis that New Zealand is listed as an approved country by the UK and listed for that particular commodity. Such commodities must come from establishments that meet UK requirements. The listing process is now managed by the UK Office for SPS Trade Assurance and involves, amongst other things, audit and assessment of a country’s system of official controls and the country’s residue monitoring plan. Further assurances that consignments are meeting UK import requirements are provided by the official certification accompanying the consignment that attests that the product has been produced to UK standards. Consignments are subject to official controls at the UK border which includes documentary and identity checks and a percentage are subject to physical checks which may include testing for contaminants such as heavy metals or veterinary residues. Nothing in the FTA removes any of these requirements and assurances with regards to ongoing trade.

## 5.0 RELEVANT CHAPTER ANALYSIS

5.1 In assessing the maintenance of existing statutory protections for food safety and nutrition, the following chapters are particularly relevant:

Chapter 4 – Customs Procedures and Trade Facilitation  
Chapter 5 – Sanitary and Phytosanitary (SPS) Measures  
Chapter 7 – Technical Barriers to Trade (TBT)  
Chapter 20 – Consumer Protection

### **Chapter 4 – Customs Procedures and Trade Facilitation**

5.2 There are several articles in this chapter which contain provisions relating to the customs procedures for goods, in particular articles 4.8 on Expedited Shipments, article 4.9 on Release of Goods and article 4.10 on Perishable Goods. In all cases, exemptions have been included in the text and footnotes which ensures that where regulatory checks by competent authorities at border control posts (including food safety import checks) are required, these can still be conducted as they are now without any time constraints. This means that where documentary, identification or physical checks including sampling and testing, are required for the purposes of public health protection, the release times stipulated in these articles would not apply.

5.3 Article 4.11 on Risk Management is also pertinent to official controls carried out by competent authorities at border control posts. Nothing in the article prevents the relevant authorities from continuing to conduct risk-based imported food and feed checks and surveillance as is the case now.

## **Chapter 5 – Sanitary and Phytosanitary (SPS) Measures**

- 5.4 The SPS chapter text agreed with New Zealand is of fundamental importance when it comes to reserving the UK's right to maintain existing laws and regulations to protect human life and health, including food safety and nutrition. It is also important that the agreed text has not impinged on the way food law regulation and enforcement is implemented in the UK – the following key articles outline how the text achieves this:

### **Article 5.4 Affirmation of the SPS Agreement**

- 5.5 Affirmation of rights and obligations under the WTO SPS Agreement means that the Parties recognise that WTO terms have primacy when it comes to the application of measures that protect human health and life. Nothing in the SPS Chapter with New Zealand will affect that and this is significant as the WTO SPS Agreement provides both Parties with important rights that allow us to respectively set our own level of public health protection appropriate to the population in line with the relevant science and evidence, socio-economics and technical feasibility (Art 5, WTO SPS Agreement<sup>25</sup>).

### **Article 5.6 Equivalence**

- 5.6 Article 4 of the WTO SPS Agreement on Equivalence<sup>26</sup> obliges WTO Members to accept the SPS measures of other Members as equivalent even if these measures differ from their own if the exporting Member objectively demonstrates that its measures achieve the importing Member's appropriate level of protection. The WTO SPS Committee developed specific guidance<sup>27</sup> to help Members implement this article. Such equivalence determinations are trade facilitative and can result in smoother trade in the products affected by the laws and regulations that have been deemed as equivalent.
- 5.7 Noting that we already have long-standing equivalence arrangements in place with New Zealand for a number of animal products under the SA, no new equivalence determinations for agri-food products were agreed as part of this FTA. High level principles re-affirming WTO terms on the approach each Party will have to future equivalence determinations were agreed. FSA and FSS will play a key role alongside other government departments in assessing the risk in any future equivalence requests and recommending any special conditions of trade (which could include particular requirements for processing, packaging etc.) that may be required to meet the UK's level of protection with regard to food safety. It is important to note that equivalence agreements do not remove the requirement for exporters to comply with the importing country's maximum residue limits for pesticides and maximum levels for contaminants in food. Such determinations would also not restrict the UK from making changes to our SPS regime in future in the interests of consumers across the UK, in which case any determination would be reviewed. Importantly, the determination of equivalence rests with the importing party.

### **Article 5.8 Risk Analysis**

- 5.8 This article reaffirms the importance of ensuring that SPS measures are based on relevant international standards, guidelines or recommendations, or where they deviate, are based on risk analysis that has been conducted in accordance with relevant

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<sup>25</sup>[The WTO Agreement on the Application of Sanitary and Phytosanitary Measures](#)

<sup>26</sup> Equivalence is defined by the WTO as "the state wherein sanitary or phytosanitary measures applied in an exporting country, though different from the measures applied in an importing country, achieve, as demonstrated by the exporting country and recognized by the importing country, the importing country's appropriate level of sanitary or phytosanitary protection".

<sup>27</sup> [WTO SPS Committee's Decision on Equivalence](#)

provisions, which includes domestic provisions. It also directly references the article 5 WTO SPS Agreement provisions on risk assessment which includes the ability to adopt provisional SPS measures on the basis of pertinent information where relevant scientific evidence is insufficient. These international rules underpin the UK's own framework for food safety regulation – for example, UK general food law includes a precautionary principle that can be adopted where the possibility of harmful effects on health is identified but scientific uncertainty persists. Nothing in this article restricts the way in which the FSA and FSS carry out risk analysis for food and feed matters.

#### **Article 5.9 Audit**

- 5.9 Whether in the context of UK audit in New Zealand or hosting an inward mission from New Zealand here in the UK, this article sets a helpful framework for conducting audits with a view to minimising burdens on the Parties and ensuring that the parameters of an audit are clearly communicated and agreed in advance. Nothing in the article prevents the UK from conducting an audit where justified for the purpose of seeking assurances on New Zealand's food safety control systems, nor does it prevent the UK from taking emergency food safety measures as appropriate (see para 5.11 below).

#### **Article 5.10 Trade Conditions**

- 5.10 Nothing in this article affects the ability of FSA and FSS to carry out its role and develop risk management advice and implement food law as we do now.

#### **Article 5.11 Emergency Measures**

- 5.11 The emergency measures text respects both Parties' right to take rapid action to protect human life and health and lays down some parameters for how the Parties would engage in such instances and for conducting science-based reviews to justify either continuance or lifting of the measures.

#### **Article 5.12 Import checks and fees**

- 5.12 This article does not constrain the UK's right to carry out risk-based import checks and to take appropriate enforcement action where non-compliance is identified, in line with existing UK laws and regulations.

#### **Article 5.13 Official Certification**

- 5.13 This article preserves the UK's right to require official certification of imported foods from New Zealand where deemed necessary in order to receive assurances on a consignment-by-consignment basis that UK import requirements have been met. Paragraph 4 of this article recognises that neither the UK nor New Zealand currently require certification for low risk foods within the scope of the chapter and that introduction of such would be on a risk basis. This is in keeping with the proportionate and risk-based approach taken to food safety certification in the UK.

#### **Article 5.14 Cooperation on Antimicrobial Resistance (AMR)**

- 5.14 AMR is a national strategic priority for the UK Government and devolved administrations which has led to the development of a 20-year Vision for AMR and the current 5-year National Action Plan, which runs until 2024. Outputs from the FSA's and FSS's AMR research programme and cross-government partnership activity is contributing to the National Action Plan as well as improving our ability to undertake AMR food safety risk assessments to ensure that future work meets important and

emerging challenges. The FTA text on AMR promotes exchange of information, expertise and data on AMR surveillance which is supportive of our own AMR research programmes and surveillance agenda. There is also recognition that the issue of AMR requires a transnational and multidisciplinary approach and that there are interdependencies between animal health, human health, food safety, food security and the environment. This is aligned with the 'One Health' approach FSA and FSS are taking in relation to surveillance activities under the Global Action Plan.

- 5.15 The Sustain Alliance raised concerns over a number of antibiotics used as growth promoters in animals reared for food production in New Zealand which, whilst not currently of medical importance, have potential human health implications in the future. Nothing in this article or in the FTA requires the UK to change existing levels of statutory protection, including that imported products must comply with UK prohibitions or residue limits for veterinary medicines, including antimicrobials, and nor does the FTA affect the ability of the UK government to strengthen controls in these areas in the future as it has committed to do.

#### **Article 5.15 Transparency, Notification and Information Exchange**

- 5.16 This article obliges New Zealand to promptly notify the UK of any significant food safety issue related to food or feed traded with the UK, and vice versa. This complements the good relationships the FSA and FSS already have with the Emergency Contact Points in the New Zealand Food Safety Authority and as members of the International Food Safety Authorities Network (INFOSAN). Information relating to any significant food safety issue affecting Northern Ireland would additionally be communicated by FSA Northern Ireland via the EU Rapid Alert System for Food and Feed, as Northern Ireland is within the EU regulatory zone.

#### **Articles 5.16 Technical Working Groups and 5.18 SPS Measures Sub-Committee**

- 5.17 These articles establish fora through which UK and New Zealand can consider any matter related to the SPS Chapter. This includes, for example, periodically reviewing the implementation of the chapter by the Parties, exchanging relevant information and identifying opportunities to work collaboratively. Notably, the Committee's activities may include discussion of proposed SPS measures being considered by either Party as well as resolution of SPS issues that affect trade between the two countries. It is important to highlight that these structures will be working to resolve trade issues within the confines of the existing regulatory frameworks with a focus on phytosanitary matters. They will sit alongside the existing structures under the Sanitary Agreement which provides a similar forum to discuss trade in animal products. These committee structures are not intended to replace or usurp the separate decision-making mechanisms and processes through which trading partners, including New Zealand, can, for example, apply to export a new product to the UK, or be formally consulted on proposed new regulations etc. The forum will help signpost to these dedicated channels and facilitate communications between us. This is crucial to the fundamental commitment made by both sides in this FTA to recognise each other's respective autonomy and sovereign right to regulate within their territories and will be key to upholding statutory protections in the future.

#### **Article 5.19 Dispute Settlement**

- 5.18 Neither Party has recourse to dispute settlement under Chapter 31 (Dispute Settlement) for any matter arising under the SPS chapter. Non-application of dispute settlement to the SPS chapter means that neither the UK nor New Zealand have recourse to dispute settlement under the FTA for SPS matters. Any dispute would instead need to be raised

via WTO mechanisms as is the case now. However, Parties may make use of the FTA provisions on technical consultation to try to resolve issues bilaterally.

## **Chapter 7 - Technical Barriers to Trade (TBT)**

- 5.19 The TBT chapter is relevant to the maintenance of statutory protections in relation to human health, including food safety and nutrition related matters, insofar as it preserves the UK's right to regulate in line with international WTO rights and obligations and with respect to specific marking and labelling provisions, as detailed below. Any disputes that may arise between the Parties under this chapter would be subject to the dispute settlement process set out in Chapter 31 (Dispute Settlement) of the FTA.

### **Article 7.4 Incorporation of Certain Provisions of the TBT Agreement**

- 5.20 Affirmation of rights and obligations under the WTO TBT Agreement<sup>28</sup> means that the Parties recognise the primacy of WTO terms in applying technical regulations, standards and conformity assessment procedures. The agreed text therefore re-affirms the right of the UK to implement technical measures to achieve legitimate policy objectives, including the protection of human health and food safety (Art 2, WTO TBT Agreement), and incorporates certain provisions of the TBT Agreement into the FTA.

### **Article 7.6 International Standards, Guides and Recommendations**

- 5.21 This article reaffirms WTO commitments to base TBT measures on relevant international standards where they exist. This does not affect the UK's right to regulate or require changes to existing food safety or nutrition related statutory protections.

### **Article 7.7 Equivalency of Technical Regulation**

- 5.22 Article 2.7 of the WTO TBT Agreement obliges WTO members to give positive consideration to accepting as equivalent, technical regulations of other members, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfil the objectives of their own regulations.
- 5.23 This article reaffirms this WTO commitment, and obliges the UK and New Zealand to give positive consideration to any request to develop further arrangements or agreements for achieving the equivalence of technical regulations. As such, it does not change existing UK statutory protections insofar as it may relate to technical regulations on food and feed safety or nutrition related matters.

### **Article 7.14 Marking and Labelling**

- 5.24 This article builds on the general rights and obligations contained within the WTO TBT Agreement with specific reference to marking and labelling, which includes marking or labelling measures required for food or feed safety and nutrition related purposes. In line with WTO commitments, the text of this article therefore safeguards the UK's right to regulate for the purpose of food and feed safety and nutrition labelling and does not require changes to existing statutory protections in the UK. Both the UK and New Zealand must ensure such measures are non-discriminatory and are no more trade-restrictive than necessary to fulfil legitimate policy objectives (Article 2, WTO TBT Agreement).

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<sup>28</sup> [Agreement on Technical Barriers to Trade](#)

5.25 The article obliges the UK and New Zealand to accept that labelling and corrections to labelling may take place at the point of entry or inland, prior to the product being offered for sale, subject to national rules and customs procedures, other than for labelling that is required for public health or safety. The article also provides some flexibility to allow information to be provided on imported product labelling in addition to that required by national rules. Where additional labelling is provided it must not be misleading, contradictory, inconsistent or confusing or compromise domestic requirements which is consistent with food information rules. It also allows for marking or labelling information to be provided on detachable labels or accompanying documentation, where legitimate policy objectives are not compromised. These flexibilities do not change the need for imported products from New Zealand to meet existing UK food safety and nutrition related marking and labelling rules.

## **Chapter 20 - Consumer Protection**

5.26 This chapter aims to promote transparent and effective consumer protection measures, and their enforcement, to enhance consumer trust and welfare. It includes a specific article placing obligations on the Parties to maintain consumer protection measures against fraudulent, deceptive, misleading or unfair commercial activities, including making false claims or advertising (Article 20.2). This aligns with existing consumer protection measures in the Food Safety Act 1990, that food offered for sale should be of the nature or substance or quality demanded, and should not be falsely described or presented.

5.27 It also places an obligation on the Parties to provide consumers engaged in online commercial activities with a level of protection no less than that provided for other forms of commerce (Article 20.3). This is consistent with domestic requirements on the distance selling of food, insofar as they relate to food safety or nutrition statutory protections.

## **6.0 CONCLUSIONS**

6.1 We have set out the FSA and FSS's advice on the text of the UK-New Zealand FTA and its impact on statutory protections for food safety and nutrition. In summary, our conclusions are:

- The UK-New Zealand FTA maintains existing food safety and nutrition statutory protections in accordance with UK laws and regulations.
- No changes to the UK food regulatory system are required to give effect to this FTA at the point of entry into force.
- The FTA text preserves the regulatory autonomy of the UK Government and devolved administrations with respect to food safety and nutrition related matters and will not prejudice any future decisions in this regard, which will continue to be taken by health ministers across the UK informed by transparent advice on science and evidence from the FSA, FSS and other expert bodies where appropriate, including the UK Nutrition and Health Claims Committee. This is key to upholding statutory protections in the future.



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