

# Trade and Agriculture Commission: Advice to the Secretary of State for Business and Trade on the UK's Accession Protocol to CPTPP

December 2023



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Presented to Parliament by the Secretary of State for Business and Trade by Command of His Majesty

December 2023



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### Trade and Agriculture Commission

# Advice to the Secretary of State for Business and Trade on the Accession Protocol of the UK to CPTPP

#### 30 November 2023

#### I. Executive Summary

On 17 July 2023, the Rt Hon Kemi Badenoch MP, the Secretary of State for Business and Trade & President of the Board of Trade, requested us to advise her on UK's agreement to join CPTPP (the Comprehensive and Progressive Agreement for Trans-Pacific Partnership). We were tasked to advise on the extent to which those provisions of the CPTPP that 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) environmental protections.

The Secretary of State asked us three questions, which we answer as follows.

Question 1: Does CPTPP 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?

Answer: No. CPTPP does not require the UK to change its levels of statutory protection in relation to (a) animal or plant life or health, (b) animal welfare, or (c) environmental protection.

CPTPP incorporates a number of WTO trade liberalisation obligations and also adds some additional trade liberalisation obligations, in particular the obligation not to charge customs duties on most imports (subject to time limited quotas and safeguards). All of these trade liberalisation obligations are, however, subject to exceptions which are at least as extensive as under WTO law (Article 29.1 CPTTP) and, in the case of environmental laws, more extensive than under WTO law (Chapter 20 CPTPP). Therefore, on the basis that CPTPP does not constrain the UK's right to regulate compared to WTO law and even enhances such a right for certain environmental matters, it can be concluded that CPTPP does not require the UK to change its existing levels of statutory protection in relation to animal or plant life or health, animal welfare, or environmental protection.

### Question 2: Does CPTPP reinforce the UK's levels of statutory protection in these areas?

# Answer: Yes. CPTPP strengthens the UK's ability to maintain its levels of statutory environmental protection.

It does this in two main ways. First, it not only gives the UK a right to maintain its statutory protections, but it also gives it certain obligations to do so. 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, and an obligation not to fail to enforce certain of its environmental laws in a manner affecting trade and investment between the parties. The UK also has certain specific obligations to implement several multilateral environmental

agreements and to eliminate certain forms of harmful fisheries subsidies (except when such subsidies take the form of tax breaks). Second, the UK is able to protect its levels of statutory protection *indirectly* by ensuring that other CPTPP parties do not gain an economic advantage by not properly implementing or enforcing their domestic environmental laws. In particular, the UK is able to commence dispute settlement proceedings if other CPTPP parties fail to abide by their obligations in the environment chapter.

# Question 3: Does CPTPP otherwise affect the ability of the UK to adopt statutory protections in these areas?

# Answer: No. CPTPP does not otherwise affect the ability of the UK to adopt statutory protections in these areas.

In this context, we considered several issues. First, we examined the process of decisionmaking under CPTPP, and how that might affect the UK's statutory protections. In this respect, we noted that CPTPP foresees that the contracting states may agree on several types of decisions, including on interpretations of the agreement. Such decision may affect the scope of the agreement in the future. These decision-making powers do not, as such, affect the ability of the UK to adopt statutory protections in the areas at issue, but they could be used to reach decisions that do have such an effect. We note in this respect that these decisions are not necessarily subject to parliamentary scrutiny in the same way as amendments to the agreement, although any implementation of these decisions in domestic law would follow ordinary parliamentary procedures.

Second, we considered the impact of increased imports under CPTPP on the UK's border controls. We noted that CPTPP does not itself undermine the UK's statutory protections in this regard, nor are imports from CPTPP parties likely to place undue pressure on the capacity of the UK's border control regimes to handle any new threats that might emerge. Indeed, it is worth noting that the UK already imports most of the same agricultural products from CPTPP parties, either under WTO law or under FTAs. Nonetheless, we also noted that the UK is introducing a new Border Target Operating Model (BTOM), which will be tasked with responding to risks arising from worldwide imports, and, for the first time, from the EU. This will inevitably require additional capacity and we are conscious that in this context it remain essential that CPTPP imports be properly subject to UK border controls.

Third, we considered the extent to which CPTPP might affect the ability of the UK to regulate in response to concerns, raised during our consultations, about the potential effects of CPTPP on statutory animal or plant life or health, animal welfare and environmental protections. We asked four questions in relation to each concern: (a) whether there is a practice in CPTPP parties that would not be permitted in the UK; (b) whether this practice, if any, might affect agricultural products that are likely to be imported into the UK at an increased rate under CPTPP (for example, because of tariff reductions); (c) whether this practice, if any, results in a cost saving for CPTPP producers compared to UK producers; and (d) whether CPTPP would prevent the UK from regulating imports of products affected by this practice.

On the first question, we determined that, in some cases, the practice at issue was not materially different from UK practices, for example in the context of pork production. However, in several areas practices differed. For example, Canada and Mexico both permit

HGPs in beef production, and ractopamine in pork production, and Mexico allows caged hens, all of which is prohibited in the UK. Many CPTPP countries also permit the use of pesticides that are prohibited in the UK, as well as genetically modified organisms. In some cases, it was difficult to compare situations. For example, deforestation as a result of palm oil production is a risk in Malaysia, but it is in the process of being addressed by mandatory Malaysian standards applicable to the palm oil industry.

On the second question, in most cases we did not find that there is a risk that products resulting from the practices at issue would enter the UK at increased rates under CPTPP, or that an increase in UK imports would significantly encourage those practices. Unless the UK amends its ban on imports of animal products produced using HGPs and ractopamine, the risk that such products would be imported legally is exceedingly low. In relation to caged hens, we found that it was unlikely that eggs from CPTPP parties (especially Mexico or Canada) would be imported into the UK, simply because the UK does not represent an attractive market for these products. The risk that CPTPP would lead to an increase in imports of palm oil from deforested land was low for a variety of reasons: the vast majority of importers are committed to using the RSPO standard, which is deforestation-free; and for the remainder Malaysia operates a mandatory deforestation-free standard that is at least equal to the standard applied in Indonesia, which Malaysia is to some extent likely to supplant as a supplier of palm oil to the UK. It is, on the other hand, likely that there would be some increase in imports of plant products produced using pesticides prohibited in the UK, and genetically modified products, but such products are already permitted to be sold in the UK, so any such increase is only a matter of degree.

As to the third question, there are certainly cost advantages in producing plant products using pesticides and genetic modification (which often has the advantage of reducing the need for pesticide use). It was somewhat different with other concerns. For example, given labour costs, there is no cost advantage to longer journey times for cattle. In some cases, it was difficult to compare practices, as the products at issue do not exist in the UK. Palm oil is an example.

Perhaps the most important question is the fourth, which is whether, if CPTPP does lead to an increase in imports of products produced using practices not permitted in the UK, CPTPP also constrains the ability of the UK to impose import restrictions. The answer to this question was always the same: CPTPP does not limit the UK's existing WTO rights to enforce its statutory protections, and in some cases, it even enhances these rights, even if that does not mean that the UK is necessarily able to act in these situations. The point is not that the UK can always act under CPTPP; it is that CPTPP does not prevent it from acting in a way that it could otherwise do.

#### II. Our mandate

#### A. Terms of reference and request for advice

Our terms of reference, which we adopted on 6 December 2021, state as follows:

The TAC's purpose is to provide advice under section 42 of the Agriculture Act 2020. In particular, the TAC will provide advice on whether, or to what extent, the measures provided for by new free trade agreements (FTAs) that 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) environmental protections.

On 17 July 2023, the Rt Hon Kemi Badenoch MP, the Secretary of State for Business and Trade & President of the Board of Trade, requested us to advise her on UK's agreement to join CPTPP as follows:

In line with the TAC Terms of Reference, which can be found on gov.uk, I request your advice on whether, or to what extent, the measures in the UK-CPTPP accession agreement ("the agreement") that 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) environmental protections.

Please produce this advice on a chapter-by-chapter basis. The TAC is welcome to include additional sections as it sees fit. In producing its report, I would envisage that the TAC would:

- conduct an initial assessment of which chapters it considers to be in/out of scope (ie which contain measures relating to trade in agricultural products);
- consider all relevant measures within in-scope chapters;
- regarding relevant measures within in-scope chapters, consider the following questions:
  - does the agreement require a change to UK domestic statutory protections in relation to animal or plant life or health; animal welfare; and the environment?
  - does the agreement affect the UK Government's ability to set statutory protections in these specified areas?
  - does the agreement underline any existing UK domestic statutory protections – or in some instances go beyond them – in relation to: animal or plant life or health; animal welfare; and the environment?

The TAC should also:

- Consider the landscape of statutory protections across the UK, reflecting on all parts of the UK.
- Consult those it considers may assist in the preparation of this advice and note in the advice where relevant those whom the TAC consulted.
- Given the Government's trade agenda is of interest to many, consider how to make its advice accessible and readable to a non-technical audience.

#### B. Our approach

Reading our terms of reference and the request from the Secretary of State together, we consider that our mandate requires us to address three questions.<sup>1</sup> First, we consider (1) whether the CPTPP agreement requires 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.<sup>2</sup> Second, we consider (2) whether the agreement reinforces the UK's levels of statutory protection in these areas. In this context, we consider obligations in the agreement which require the UK and other CPTPP parties to maintain, or improve, standards of protection in the relevant areas. Third, we consider (3) whether the agreement otherwise affects the ability of the UK to adopt statutory protections in these areas.

In this context, we consider several issues: how decisions are made under the agreement and how that might affect the UK's statutory protections, the potential resource implications of increased imports on border controls, and the extent to which the agreement affects the ability of the UK to respond to concerns, raised during our consultations, about the potential effects of the agreement on animal or plant life or health, animal welfare and environmental protections.

#### C. Our approach in detail

We consider how the UK's accession to CPTPP, insofar as it relates to trade in agricultural products, relates to relevant UK statutory protections in relation to animal or plant life or health, animal welfare and the environment. We must therefore identify the relevant provisions of the agreement and explain how these relate to the relevant UK statutory protections in these areas.

<sup>&</sup>lt;sup>1</sup> For analytical clarity, we answer these questions in a different order than posed.

<sup>&</sup>lt;sup>2</sup> Our mandate does not include consideration of the effects, if any, of the FTA on the maintenance of UK statutory protections in relation to human health. That is being considered separately by the Food Standards Agency.

# 1. The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) is a regional trade agreement which entered into force on 30 December 2018,<sup>3</sup> and is presently in force for the following 11 other countries:<sup>4</sup>

- Australia
- Brunei Darussalam
- Canada
- Chile
- Japan
- Malaysia
- Mexico
- New Zealand
- Peru
- Singapore
- Viet Nam

The UK currently has FTAs with all of these countries except Malaysia and Brunei Darussalam. The FTAs with Australia and New Zealand were signed as newly negotiated FTAs in 2022; the others were continued from pre-existing EU FTAs, with some amendments.<sup>5</sup>

The UK's accession to CPTPP resulted in mutual commitments on trade liberalisation as between the UK and the other CPTPP parties, though Australia and New Zealand both made an undertaking not to seek additional market access beyond that obtained in their FTAs with

<sup>&</sup>lt;sup>3</sup> CPTPP incorporates the text of the Transpacific Partnership Agreement (TPP), which was signed on 4 February 2016 by all original 11 CPTPP parties as well as the United States. When the US 'unsigned' TPP in 2017, the remaining 11 TPP parties concluded CPTPP as an agreement that incorporates almost all the text of TPP, but with some exceptions concerning treaty law aspects (Article 1 of the CPTPP incorporating text) and suspending certain other substantive provisions (Article 2 and the Annex to the CPTPP incorporating text). For ease of reference, the numbers used for the TPP provisions are used for CPTPP.

<sup>&</sup>lt;sup>4</sup> CPTPP entered into force on 30 December 2018 for Australia, Canada, Japan, Mexico, New Zealand and Singapore, on 14 January 2019 for Viet Nam, on 19 September 2021 for Peru, on 29 November 2022 for Malaysia, on 21 February 2023 for Chile, and on 12 July 2023 for Brunei Darussalam.

<sup>&</sup>lt;sup>5</sup> UK-Australia FTA (signed 17 December 2021; in force 31 May 2023); UK-Canada Trade Continuity Agreement (signed 8 December 2020; in force 1 April 2021); UK-Chile Association Agreement (signed 30 January 2019; in force 1 January 2021); UK-Japan Economic Partnership Agreement (signed 23 October 2020; in force 31 December 2020); UK-Mexico Trade Continuity Agreement (signed 15 December 2020; in force 1 June 2021); UK-New Zealand FTA (signed 28 February 2022; in force 31 May 2023); UK- Peru Trade Agreement (signed 15 May 2019; in force 31 December 2020); UK-Singapore FTA (signed 10 December 2020; in force 11 February 2021); UK-Viet Nam (signed 29 December 2020; in force 1 May 2021).

the UK.<sup>6</sup> In addition, the UK concluded several side letters and other documents with CPTPP parties, including a 'Joint Statement on Climate Change, the Environment, and Sustainable Trade' with a subset of CPTPP parties, namely Australia, Canada, Chile, Japan, and New Zealand.<sup>7</sup>

#### 2. The WTO and existing FTAs as a baseline

CPTPP does not exist in isolation. It assumes, incorporates and, in some cases, goes beyond WTO rights and obligations which already apply to trade between the UK and CPTPP parties in their capacity as WTO Members. CPTPP must also be seen against the background of preexisting FTAs between the UK and other CPTPP parties.

Our approach is to focus on the differences (if any) that the agreement makes to the existing legal framework, which comprises the WTO agreements and these free trade agreements. In particular, where CPTPP simply replicates the UK's legal position under these agreements, we do not consider that the agreement has any added effect on the UK's maintenance of statutory protections. We explain where this is the case below.

In this context, there is also a particular – and technically difficult – issue that needs to be discussed, which is that CPTPP provides for rights that may be less extensive than those in pre-existing FTAs. In particular, CPTPP does not contain an animal welfare chapter, which was included in the UK-Australia and UK-New Zealand FTAs. CPTPP also lacks the provisions set out in the UK-New Zealand FTA expressly permitting measures to combat climate change.<sup>8</sup>

What would happen, for example, if the UK adopted a measure that would be permitted under the FTA with New Zealand but not permitted under CPTPP, and New Zealand chose to litigate the measure under CPTPP, ignoring the UK-New Zealand FTA?<sup>9</sup> We do not suggest that this is a likely outcome. We are of the view that New Zealand would consider itself bound by the FTA regardless of the legal position. However, as the answer to this question is not straightforward and it is legally relevant to the UK's statutory protections, we address it here.

<sup>&</sup>lt;sup>6</sup> UK-Australia FTA negotiations: agreement in principle, 17 June 2001, at

<sup>&</sup>lt;u>https://www.gov.uk/government/publications/uk-australia-free-trade-agreement-negotiations-agreement-in-principle/uk-australia-fta-negotiations-agreement-in-principle;</u> UK-New Zealand FTA negotiations: agreement in principle, 20 October 2021, <u>https://www.gov.uk/government/publications/uk-australia-free-trade-agreement-negotiations-agreement-in-principle/uk-australia-fta-negotiations-agreement-in-principle/uk-australia-fta-negotiations-agreement-in-principle.</u>

<sup>&</sup>lt;sup>7</sup> Joint statement on climate change, the environment, and sustainable trade, 16 July 2023, <u>https://www.gov.uk/government/collections/the-uk-and-the-comprehensive-and-progressive-agreement-for-trans-pacific-partnershipcptpp</u>.

<sup>&</sup>lt;sup>8</sup> Articles 22.6.1 and 32.1.3 UK-NZ FTA.

<sup>&</sup>lt;sup>9</sup> This presupposes that there is an 'inconsistency' between treaties when one prohibits what another permits. See Joost Pauwelyn, *Conflict of Norms in Public International Law* (Cambridge University Press, 2003), Ch 4.

CPTPP deals with other trade agreements in Article 1.2, and Article 1.2.1(b) in particular, as follows (underlining added):

Article 1.2 (Relation to Other Agreements)

1. Recognising the Parties' intention for this Agreement to coexist with their <u>existing international agreements</u>, each Party affirms:

(a) in relation to <u>existing international agreements</u> to which all Parties are party, including the WTO Agreement, its existing rights and obligations with respect to the other Parties; and

(b) in relation to <u>existing international agreements</u> to which that Party and at least one other Party are party, its existing rights and obligations with respect to that other Party or Parties, as the case may be.

2. If a Party considers that a provision of this Agreement is inconsistent with a provision of <u>another agreement</u> to which it and at least one other Party are party, on request, the relevant Parties to the other agreement shall consult with a view to reaching a mutually satisfactory solution. This paragraph is without prejudice to a Party's rights and obligations under Chapter 28 (Dispute Settlement).

The reference to 'existing international agreements' might imply that all the UK's FTAs will prevail over CPTPP in the event of any inconsistency.<sup>10</sup> However, Article 1.3 states that 'existing', for the purposes of CPTPP, means 'in effect on the date of entry into force of this Agreement'. To understand this date, one needs to turn to Article 3 of the CPTPP incorporating text,<sup>11</sup> which states as follows (underlining added):

# Article 3 (Entry into force)

1. <u>This Agreement shall enter into force</u> 60 days after the date on which at least six or at least 50 per cent of the number of signatories to this Agreement, whichever is smaller, have notified the Depositary in writing of the completion of their applicable legal procedures.

2. For any signatory to this Agreement for which this Agreement has not entered into force under paragraph 1, this Agreement shall enter into force 60 days after the date on which that signatory has notified the Depositary in writing of the completion of its applicable legal procedures.

The two paragraphs of Article 3 distinguish between the entry into force of CPTPP as an agreement and the entry into force of CPTPP for any individual party. The question, then, is which of these concepts is relevant for the meaning of the word 'existing' which, as stated, is

<sup>&</sup>lt;sup>10</sup> Both the UK-Australia and the UK-New Zealand FTA also say that '[t]he Parties affirm their existing rights and obligations with respect to each other under existing international agreements to which both Parties are party, including the WTO Agreement' (Article 1.2.1 of each FTA). This clause does not however apply to CPTPP, which was not an 'existing' international agreement at the time those agreements came into force (on which see Article 1.4 of each FTA).

<sup>&</sup>lt;sup>11</sup> Article 1 of the CPTPP incorporating text does not incorporate Article 30.5 of TPP (entry into force), replacing this with Article 3 of the CPTPP incorporating text.

defined in Article 1.3 as 'in effect on the date of entry into force of this Agreement'. The bare words of this phrase would indicate that it is the first of these concepts, namely entry into force of CPTPP as an agreement. Moreover, the UK's Accession Protocol specifically defines 'existing' *for the UK* (the equivalent of Article 3.2 of the CPTPP incorporating text) for several CPTPP provisions, but not Article 1.2 (concerning 'existing international agreements'). That further indicates that the concept of 'existing' in Article 3.1 of the CPTPP incorporating text applies to Article 1.2.1(b), and not that of Article 3.2 of the CPTPP incorporating text. If this is the case, then Article 1.2.1(b) would not apply to any of the UK's FTAs, as these were all concluded after 30 December 2018,<sup>12</sup> and CPTPP takes priority over these agreements in all cases.

Is there any possibility that 'existing' might mean something different, at least for the purpose of Article 1.2? It might, for example, be argued that 'existing' for this purpose means when CPTPP enters into force for all of the parties to the other international agreement (following the logic of Article 3.2 of the CPTPP incorporating text). That would make more sense of the likelihood that, for example, the negotiators of the UK-Australia and UK-New Zealand FTAs would not have imagined that UK accession to CPTPP would nullify the effect of the climate change and animal welfare provisions in these FTAs. One cannot rule out such an interpretation. On the other hand, there are obstacles to such an interpretation, as just explained.

It might be thought that none of this matters, because the question can be determined in favour of the UK's post-2018 FTAs on the basis of general international law on treaty conflict. In part this is true, because the rule is that a successive treaty between the same parties on the same subject matter takes priority<sup>13</sup> and for these purposes the relevant date is when a treaty's text was adopted, not when it came into force for a given party.<sup>14</sup> As the CPTPP text was adopted in 2018, that would mean that the UK's post-2018 FTAs are 'successive' agreements, and take priority.<sup>15</sup>

But even this does not dispose of the issue, and this is because of the last sentence of Article 1.2 concerning the parties' rights and obligations under CPTPP's dispute settlement chapter. Relevantly, Article 28.12 ('Function of Panels') states as follows (underlining added):

3. ... The findings, determinations and recommendations of the panel <u>shall not add to</u> <u>or diminish the rights and obligations of the Parties under this Agreement</u>.

The problem is that a CPTPP panel has the function of interpreting and applying CPTPP, not any other FTA between CPTPP parties (just as a panel under one of those FTAs has the function of interpreting and applying that FTA, and not CPTPP). The question, then, is whether a CPTPP panel would be adding to or diminishing the rights and obligations of the

<sup>&</sup>lt;sup>12</sup> See n 5 above.

<sup>&</sup>lt;sup>13</sup> Article 30 of the Vienna Convention on the Law of Treaties.

<sup>&</sup>lt;sup>14</sup> Ian Sinclair, *The Vienna Convention on the Law of Treaties*, 2<sup>nd</sup> ed (Manchester University Press, 1984), at 98.

<sup>&</sup>lt;sup>15</sup> In any event, it might be argued that the *lex specialis* rule would apply such that the FTAs' 'specific' rules on a particular subject matter, such as climate change or animal welfare, would prevail over the more 'general' rules contained in CPTPP.

CPTPP parties under CPTPP if it did *not* apply CPTPP to the facts of a particular dispute when there is no reason in CPTPP itself not to do so. This would happen, for example, if a CPTPP panel decided that even though under CPTPP a particular measure (say, a climate change measure) would not be permitted, that did not matter because that same measure was permitted under the UK-New Zealand FTA. Would a failure to apply one treaty (CPTPP) to a measure on the basis of another treaty (the UK-New Zealand FTA) be adding to or diminishing the parties' rights and obligations set out in the first treaty (CPTPP)?

In answering this question, one needs to note that the underlined phrase is taken verbatim from Articles 3.2 and 19.2 of the WTO Dispute Settlement Understanding, where it has been read by the WTO Appellate Body as precluding the disapplication of any WTO rule on the basis of a non-WTO rule.<sup>16</sup> The answer to the question would therefore ordinarily be that, yes, a failure to apply CPTPP on the grounds of a provision in another FTA would be adding to or diminishing CPTPP rights and obligations. Moreover, what the Appellate Body has said is relevant for CPTPP panels: Article 28.12.3 states that '[w]ith respect to any provision of the WTO Agreement that has been incorporated into this Agreement, the panel shall also consider relevant interpretations in reports of panels and the WTO Appellate Body adopted by the WTO Dispute Settlement Body.'

Based on the foregoing, a CPTPP panel has three interpretive options. First, it can find that Article 1.2 of CPTPP applies to post-2018 UK FTAs. Second, it can 'consider' but disregard WTO Appellate Body interpretations of the phrase 'add to or diminish rights and obligations under [this agreement]' and determine that it is permitted to disapply CPTPP rights and obligations on the basis that general international law gives priority to the UK's post-2018 FTAs over CPTPP. Or, third, it can follow WTO interpretations, which would mean ignoring what has been negotiated in post-2018 FTAs. It is very difficult to predict which choice a CPTPP panel would make. That said, we reiterate that this problem will arise only to the extent that the parties choose to litigate under CPTPP, as opposed to the bilateral FTAs. If the UK chose to litigate under the FTAs, we consider it unlikely that Australia or New Zealand (the relevant parties here) would seek to defend on the basis that the CPTPP confers fewer obligations because of reputational risk, and because this would nullify the relevant provisions of the bilateral FTAs.

#### **3. CPTPP**

We identify four main categories of CPTPP provisions that are relevant to imports of agricultural products under this agreement: (a) trade liberalisation obligations, (b) rights to restrict trade, (c) obligations to maintain standards, and (d) institutional provisions.

<sup>&</sup>lt;sup>16</sup> Lorand Bartels, 'Jurisdiction and Applicable Law in the WTO and Free Trade Agreements' in Daniel Bethlehem et al (eds), *Oxford Handbook of International Trade Law*, 2<sup>nd</sup> ed (Oxford University Press, 2020), at pp 956-7. The WTO Appellate Body has also said that WTO members are able to 'relinquish their rights' to WTO dispute settlement (on which see WTO Panel, *US – Tariff Measures on Certain Goods from China*, WT/DS543/R, circulated 15 September 2020, not yet adopted, at paras 7.7-7.9) but this is not at issue where a complainant chooses, entirely properly under both CPTPP and the two FTAs, to litigate an issue under CPTPP.

#### (a) Trade liberalisation obligations

CPTPP contains provisions that create enhanced market access opportunities to the UK for CPTPP agricultural products. This is done in three main ways.

The first way that this is done is via the UK's **obligation to reduce customs duties** beyond WTO commitments on certain products.<sup>17</sup> In line with our mandate, we do not quantify the extent to which these tariff reductions are likely to result in increased imports of these products. However, we do consider the UK's duty reductions in order to identify the products that are likely to be imported at an increased rate under CPTPP, so that we can consider the likely effect of CPTPP on UK statutory protections relevant to these particular products and any related (ie downstream or upstream) products or services.

This is not the only way that CPTPP can result in increased imports. A second way that this can be done, both under CPTPP (but also under WTO law), is via rules on non-tariff barriers, good regulatory practice, customs and trade facilitation. A particularly relevant means of reducing trade barriers is by means of **equivalence determinations** by which the UK can permit CPTPP products to enter the UK market when they are produced according to standards that are deemed equivalent to UK standards, even if these two sets of standards differ. Where this involves a cost saving for CPTPP party production, this could have a bearing on their competitive position in the UK market. We consider this issue below.

A third way in which CPTPP can increase trade in a given product is by **reducing the burden of UK import controls**, instead delegating part of this process to exporters or exporting countries prior to export. This can be done by various means, from pre-listing to so-called 'mutual recognition agreements' on conformity assessment procedures (eg accepting the results of inspection, testing and certification performed in the other contracting state).<sup>18</sup> CPTPP does not require any such reductions in the UK import control regime, but we consider below the options under CPTPP for such arrangements in the future. It bears noting that it is possible for the UK to do this under WTO law; CPTPP merely sets out a more detailed mechanism for how this can be done in practice.

### (b) Rights to restrict trade in products that do not meet domestic standards

Obligations that enhance market access for products from CPTPP parties – which include rules on tariff reductions, non-tariff barriers, good regulatory practice, equivalence and customs and trade facilitation – are the core of every FTA. However, these obligations are always subject to exceptions and other rules which *permit* the parties to protect non-trade interests, including plant or animal life or health, animal welfare and environmental

<sup>&</sup>lt;sup>17</sup> This is done in several ways. For many products, duties are eliminated on CPTPP's entry into force. For others, duty reductions take place over time, often via tariff rate quotas, which sometimes have a maximum quota size. See Annex B.

<sup>&</sup>lt;sup>18</sup> A point on terminology: in this context, 'mutual recognition agreements' refer to agreements on conformity assessment procedures rather than agreements on the 'mutual recognition' of the parties' underlying standards. The term used for the latter is 'equivalence'. But there are exceptions. For example, the Trans-Tasman Mutual Recognition Agreement is an agreement on the mutual recognition of the underlying standards.

protection. Accordingly, our advice considers those provisions in CPTPP which permit the UK to restrict imports of CPTPP agricultural products that do not meet UK standards on animal or plant life or health, animal welfare and environmental protection. The key chapters in this regard are Ch 7 (Sanitary and Phytosanitary Measures (SPS)), Ch 8 (Technical Barriers to Trade), Ch 20 (Environment), Ch 25 (Regulatory Coherence), and Ch 29 (Exceptions and General Provisions).

### (c) Obligations to maintain statutory protections

CPTPP also establishes certain obligations that *require* the parties to maintain (or even improve) statutory protections in certain areas, most notably in Ch 20 (Environment). This chapter has two important functions in respect of trade in agricultural products. First, it reinforces the UK's ability to maintain its statutory environmental protections, both directly (by requiring the UK to continue certain protections) and indirectly (by serving as interpretive context to other provisions that give the UK a right to maintain statutory protections). Second, these obligations require other CPTPP parties to enforce their statutory protections, thereby preventing them from obtaining cost and trade advantages by not applying certain of their own environmental laws. We consider how these provisions relate to relevant UK statutory protections (identified below).

#### (d) Institutional provisions

A separate set of provisions relates to the way that CPTPP is administered. This involves the mechanisms by which CPTPP parties are able to discuss concerns arising under the agreement, but also the mechanisms by which the parties are able to agree on enhanced market access. Most importantly, this concerns future decisions on the equivalence of standards. Another important institutional provision is the chapter on dispute settlement, which applies to most (but not all) CPTPP obligations. We consider how these institutional provisions relate to the UK's ability to maintain, adopt and enforce relevant UK statutory protections and its ability to ensure that other CPTPP parties do the same.

### 4. UK statutory protections at issue

We consider that we should not address CPTPP in the abstract but, rather, as it is likely to have an impact on trade in agricultural products, in reality. This means that we focus on UK statutory protections relevant to those agricultural products likely to be affected by increased trade under CPTPP.

### (a) 'UK levels of statutory protection'

Our mandate requires us to consider the likely effect of the agreement on the maintenance of 'UK levels of statutory protection'. We therefore need to distinguish between rules, standards and practices that fall within the definition of 'statutory protection' and those that do not.

In this respect, we consider that this definition covers *mandatory* rules, standards, and practices, whatever their legal form. We consider UK levels of statutory protections to include mandatory rules, standards and practices adopted at all levels of government

including, importantly, the devolved jurisdictions. We also consider, where relevant, statutory protections that are not yet in force, but are going through the parliamentary process.

However, we do not consider that 'UK levels of statutory protection' covers *voluntary* standards and practices, which may be followed by producers and retailers, and which are usually advertised to consumers by labels, for example the Red Tractor, LEAF Marque and RSPCA Assured labels, and which typically involve higher standards.<sup>19</sup>

That does not mean that such voluntary standards lack value. On the contrary, they have value, first of all to consumers, who are interested in whether products are made according to these conditions and, secondly, to producers (and others in the value chain), who may have a commercial incentive to produce according to these standards. We also note that UK agricultural products are, in many cases, almost entirely produced in accordance with such voluntary standards and these enjoy widespread public recognition. In addition, producers complying with these voluntary standards are routinely subjected to more frequent independent inspections than is required by law.

#### (b) Products likely to be imported under CPTPP

Accordingly (and taking into account the Government's impact assessment, tariff and quota reductions and previous traded quantities) we focus on statutory protections relevant to those products which we believe will be imported in greater quantities as a result of CPTPP. This required us to investigate which products are likely to be imported in greater quantities, which we do in Annex B.

In so doing, we have taken into account the fact that, even with tariff reductions, for a variety of reasons it may be unlikely for some agricultural products to be imported at increased rates under CPTPP. This could be because the UK already imports large amounts of a CPTPP product under existing WTO quotas, because CPTPP countries do not produce the product in commercial quantities, or their production is close to their limits, because there is no UK market for the product, or because importers choose not to import products, either because of an absence of consumer demand or for reputational reasons.

In brief, we expect the following imports to increase:

- Fish, crustaceans, molluscs and aquatic invertebrates and products made with them
- Vegetables and products made with them
- Fruit and products made with fruit

<sup>&</sup>lt;sup>19</sup> Voluntary standards go beyond UK legislation in several areas, for example, mutilations (castration, dehorning, disbudding and tail docking), herd health planning and antibiotic use. In addition, producers complying with these voluntary standards are routinely subjected to independent inspection by ISO accredited bodies at higher rates than would be required by law. See United Kingdom Accreditation Service, *Food Sector Accreditation*, <u>https://www.ukas.com/accreditation/sectors/food/</u>.

- Non-alcoholic beverages and sweetened waters
- Cereals not limited by quota and milling industry products

We expect small increases in imports of:

- Milk based dairy products and honey
- Beef, pork and chicken meat limited by quota
- Rice limited by quota
- Sugars limited by quota
- Some oil seeds and pressed seed oils
- Some alcoholic beverages
- Cocoa butter and cocoa paste

We do not expect to see an increase in overall imports of:

- Palm oil
- Eggs or preserved eggs
- Preparations of meats
- Sauces and condiments
- Biscuits and cakes

We also expect to see import substitution in favour of CPTPP parties and away from highercost non-CPTPP parties especially where existing tariffs are high and CPTPP parties are costcompetitive. This is particularly important in relation to palm oil.

#### III. Does CPTPP require the UK to change its levels of statutory protection?

#### D. Introduction

All trade agreements, including the WTO agreements, contain a mix of trade liberalisation obligations and exceptions to those obligations. These exceptions give the parties to these agreements (in this case, the UK, which includes its devolved jurisdictions) a right to regulate, subject to certain conditions, in order to protect important policy interests, including animal or plant life or health, animal welfare and the environment.

As noted, we consider that CPTPP may have an effect on UK levels of statutory protection when it changes the legal position of the UK *vis-à-vis* other CPTPP parties when compared to WTO law, or to other relevant UK FTAs. This will occur when, in respect of any given UK statutory protection, each of two conditions is fulfilled: first, the UK has assumed more extensive trade liberalisation obligations under CPTPP than under WTO law or other relevant UK FTAs; and second, the exceptions that apply to these obligations under CPTPP are more restrictive than they would be under WTO law or other relevant UK FTAs.

If, for example, CPTPP *does not* reduce tariffs on a given product or facilitate trade in that product by other means, then it cannot have any causal impact on imports of that product and hence not on any statutory protections that might be affected by imports of that product. If, alternatively, CPTPP *does* reduce tariffs on a given product or facilitates its trade by some other means, but this obligation is subject to an exception that is no more restrictive than under WTO law or other relevant UK FTAs, then CPTPP cannot have any causal impact on the UK's statutory protections.

#### E. Obligations to liberalise trade in goods

### 1. Border restrictions

The UK's tariff schedule sets out the UK's key trade liberalisation obligation in relation to imports of goods from other CPTPP parties,<sup>20</sup> which is an obligation not to impose **customs duties** on their imports, subject to certain time-limited quotas and safeguard measures.<sup>21</sup>

In addition, Chapter 2 of CPTPP prohibits all other border restrictions on imports and exports, in the same terms as WTO law.<sup>22</sup> This does not, however, apply to border restrictions which are enforcing domestic law and they do so in a non-discriminatory manner, such as ban on sales of unsafe products. Again, this is the same as in WTO law.<sup>23</sup>

<sup>&</sup>lt;sup>20</sup> In this advice, the term 'trade liberalisation obligation' is taken to refer only to trade in goods.

 <sup>&</sup>lt;sup>21</sup> Article 3 ('Provisions Relevant to Chapter 2 ('National Treatment and Market Access for Goods')') and Annex
 2-D ('Tariff Schedule of the United Kingdom') of the UK Accession Protocol.

<sup>&</sup>lt;sup>22</sup> Article 2.10 ('Import and Export Restrictions').

<sup>&</sup>lt;sup>23</sup> Article 2.3 ('National Treatment').

#### 2. Internal laws

Chapter 2 further provides that, once a product has been imported into the UK, it cannot be subject to any discrimination *vis-à-vis* 'like' domestic products.<sup>24</sup> So, for example, the UK cannot impose a higher sales tax on imported beef than on domestic beef or require food manufacturers only to use raw materials originating in the UK. This 'national treatment' obligation is identical to an obligation in WTO law, so including it in CPTPP does not change anything for imported CPTPP products.

There are two chapters that contain rules targeted at a subset of internal measures. Chapter 7 ('Sanitary and Phytosanitary Measures') applies to 'SPS measures', which are directed at risks caused by pests and diseases, as well as from additives, contaminants, toxins or disease-causing organisms in foods and feedstuffs, as well as other damage caused by pests.<sup>25</sup> Chapter 8 ('Technical Barriers to Trade') applies to technical regulations, technical standards and conformity assessment procedures.<sup>26</sup> These chapters are largely based on their WTO equivalents, the WTO SPS and TBT Agreements respectively, and their obligations generally incorporate, repeat or elaborate on existing WTO rules.

There is nothing in the SPS Chapter that limits the UK's rights under the SPS Agreement. Article 7.4.2 of CPTPP states that '[n]othing in this Agreement shall limit the rights and obligations that each Party has under the SPS Agreement' and this is carried through into its provisions. For example, Article 7.9.3 expressly states:

Recognising the Parties' rights and obligations under the relevant provisions of the SPS Agreement, nothing in this Chapter shall be construed to prevent a Party from: (a) establishing the level of protection it determines to be appropriate; (b) establishing or maintaining an approval procedure that requires a risk analysis to be conducted before the Party grants a product access to its market; or (c) adopting or maintaining a sanitary or phytosanitary measure on a provisional basis.

This last reference to measures adopted or maintained 'on a provisional basis' is particularly important. This is the term used in Article 5.7 of the WTO SPS Agreement for measures adopted when there is insufficient scientific basis for a risk assessment and is a reflection within WTO law of the precautionary principle.

It is true that certain concepts are phrased differently from the SPS Agreement. For example, the SPS Chapter refers to 'risk management', while the SPS Agreement does not. But this is

<sup>&</sup>lt;sup>24</sup> Article 2.3 ('National Treatment'). In the WTO, the 'most favoured nation' obligation in Article I:1 of GATT 1994 prohibits discrimination between imports from different countries. This rule is subject to an exception, in Article XXIV:5 of GATT 1994, for free trade agreements.

<sup>&</sup>lt;sup>25</sup> Article 7.1 ('Definitions'), referring to the definitions in Annex A of the WTO SPS Agreement.

<sup>&</sup>lt;sup>26</sup> Technical regulations are mandatory rules based on product characteristics or their related process and production methods. Technical standards are voluntary rules based on product characteristics or their related process and production methods. Conformity assessment procedures involve testing and certification to demonstrate that products meet the conditions set out in technical regulations and technical standards.

unlikely to be of material significance.<sup>27</sup> Another difference concerns the treatment of the equivalence of an exporting country's SPS measures, a technique that is intended to reduce the burden of border controls on importers and thereby facilitate trade.

Article 4.1 ('Equivalence') of the WTO SPS Agreement states (emphasis added):

Members shall accept the sanitary or phytosanitary measures of other Members as equivalent, even if these measures differ from their own or from those used by other Members trading in the same product, if the exporting Member objectively demonstrates to the importing Member that its measures <u>achieve the importing</u> <u>Member's appropriate level of sanitary or phytosanitary protection</u>. For this purpose, reasonable access shall be given, upon request, to the importing Member for inspection, testing and other relevant procedures.

Article 7.8.6 of CPTPP is slightly different. It states that:

The importing Party shall recognise the equivalence of a sanitary or phytosanitary measure if the exporting Party objectively demonstrates to the importing Party that the exporting Party's measure:

- (a) achieves the same level of protection as the importing Party's measure; or
- (b) has the <u>same effect in achieving the objective</u> as the importing Party's measure.

The difference between a measure's 'level of protection' and that measure's 'effect in achieving the [party's] objective' is not entirely clear, given that, in both cases, the reference point is what is achieved by the measure itself.<sup>28</sup> In any event, the first option appears in WTO jurisprudence<sup>29</sup> and the second has been endorsed by the WTO SPS Committee.<sup>30</sup> That said, Article 7.8.6(b) is not subject to dispute settlement,<sup>31</sup> and Article 7.8.9 states that the only consequence of a failure by an importing party to make a positive equivalence determination is that 'the importing Party shall provide the exporting Party with the rationale for its decision.'<sup>32</sup>

At present, there are no ongoing equivalence discussions between the UK and other CPTPP parties, and we are not aware of any discussions taking place during accession negotiations.

<sup>&</sup>lt;sup>27</sup> Yuka Fukunaga, 'The SPS Chapter under the TPP Agreement and its Implications' in Jorge Huerta-Goldman and David Gantz (eds), *The Comprehensive and Progressive Trans-Pacific Partnership: Analysis and Commentary* (Cambridge University Press, 2021), at 271-272.

<sup>&</sup>lt;sup>28</sup> Perhaps the second option applies in relation to objectives that reflect a lower level of protection than those actually achieved by the importing party's measure.

<sup>&</sup>lt;sup>29</sup> WTO Appellate Body Report, *Australia – Salmon*, WT/DS58/AB/R, adopted 6 November 1998, paras 199-207.

<sup>&</sup>lt;sup>30</sup> Recommendation (f), paragraph 9 adopted by the WTO SPS Committee in 'Clarification of Paragraph 7 of the Decision on Equivalence', Note by the Secretariat, WTO Doc G/SPS/W/128/Rev.3, 2 July 2003, referring to the WTO SPS Committee Decision on Equivalence, WTO Doc G/SPS/19, 26 October 2001 (which has since been revised).

<sup>&</sup>lt;sup>31</sup> Note 2 to Article 7.8.6.

<sup>&</sup>lt;sup>32</sup> This, incidentally, is less strict than Article 4.1 of the WTO SPS Agreement.

While a framework does exist for these discussions, it is unlikely that any such discussions will conclude, even if they were to take place, in the near future. Equivalence discussions tend to take many years while regulators engage in regulator-to-regulator dialogues, until the importing party fully accepts that the exporting party's regulatory system achieves the goals that the importing party's regulatory system does.

# 3. Regulatory coherence

Chapter 25 ('Regulatory coherence') concerns the way that regulations are made and is designed to facilitate good regulatory practice with a view to avoiding unnecessary barriers to trade. Article 25.3 states that it is up to the UK to determine which of its regulatory measures fall under the scope of this chapter.

In relation to these measures, this chapter does not limit the choices that can be made by domestic regulators. Article 25.2.2(b) specifically affirms 'each Party's sovereign right to identify its regulatory priorities and establish and implement regulatory measures to address these priorities, at the levels that the Party considers appropriate'. Chapter 25 is essentially directed at ensuring that regulations are made fairly, transparently and on the basis of proper considerations. For example, Article 25.5 encourages the parties to conduct regulatory impact assessments. Beyond these matters, Chapter 25 also foresees various types of regulatory cooperation activities between different CPTPP parties' regulators, including on issues which could cover animal welfare and environmental protection, such as information exchanges and training programmes.

In practice, it is difficult to imagine that Chapter 25 would require the UK to do more than it does currently in terms of its regulatory systems. In any event, Article 25.11 makes it clear that this Chapter is not subject to dispute settlement.

# F. The UK's right to regulate under CPTPP

# 1. Outline

Importantly, all of these trade liberalisation obligations (except for Chapter 25 on regulatory coherence) are fully covered by general exceptions, taken from WTO law, ensuring that the UK can regulate to protect animal or plant life or health, to protect public morals (including animal welfare) and to conserve exhaustible (living and non-living) natural resources, provided that certain conditions are met.

In addition, CPTPP contains several rules in its environment chapter that expand on these rights to regulate, which gives the UK more leeway to override its trade liberalisation obligations than it would have under WTO law. In short, even to the extent that CPTPP imposes greater trade liberalisation obligations on the UK as it does, for example, by reducing customs duties, the UK not only has the same rights as it would under WTO law to maintain and adopt protections in the areas covered by this advice, but in relation to certain environmental issues, the UK has even greater rights than under WTO law.

#### 2. The general exceptions

#### (a) Human, animal or plant life or health

#### (1) Measures protecting human, animal or plant life or health

Article 29.1 ('General Exceptions') permits the UK to adopt measures that are necessary to protect the life or health of humans, animals, and plants. It does this by incorporating the relevant exception in Article XX(b) of the WTO GATT 1994, which is stated in these terms. In addition, Article 29.2 clarifies that:

The Parties understand that the measures referred to in Article XX(b) of GATT 1994 include environmental measures necessary to protect human, animal or plant life or health ...

Nothing is added to Article XX(b) by describing measures covered by this provision as 'environmental' measures: so long as the measures at issue address a risk to human, animal or plant life or health, it is irrelevant if they are described as 'environmental' or as something else.

In practice, these changes to Article XX(b), as incorporated, are very unlikely to have any importance. The reason is that all environmental measures will almost certainly be defended under Article XX(g), as incorporated. This is because, as described below, there is a relatively strict 'necessity' test in Article XX(b), which does not exist for Article XX(g). Accordingly, every 'environmental' measure litigated in the WTO has been defended primarily on the basis of Article XX(g), not Article XX(b), with the exception of *EC – Seal Products*,<sup>33</sup> which was defended on the basis of Article XX(a), for measures 'necessary' to protect public morals. This was most likely because of uncertainty as to whether Article XX(g) permits measures to protect living resources within the territory of another WTO Member.<sup>34</sup>

### (2) Conditions on measures

For a UK measure to fall within the terms of this exception, it needs to meet four conditions.<sup>35</sup> The first requires the measure to be at least *minimally effective* in achieving its objective (here, protecting animal or plant life or health); the second requires it to be the *least trade restrictive measure* reasonably available to achieve that objective; the third requires it to be the *least discriminatory measure* reasonably available to achieve that objective that objective; and the fourth requires it not to be for a *protectionist purpose* (or other illegitimate purpose).

<sup>&</sup>lt;sup>33</sup> WTO Appellate Body Report, *EC – Seal Products*, WT/DS400/DS401/AB/R, adopted 18 June 2014.

<sup>&</sup>lt;sup>34</sup> This may also have been because the seals at issue were not endangered, and hence not 'exhaustible'.

<sup>&</sup>lt;sup>35</sup> The analysis here and below is based on WTO jurisprudence. Article 28.12 ('Function of Panels') states that '[t]he panel shall also consider relevant interpretations in WTO panel and Appellate Body reports adopted by the Dispute Settlement Body of the WTO.'

### (3) Effectiveness

First, the measure must be likely to be at least *minimally effective* in achieving the objective. The test for this is whether the measure is apt to make a contribution to the protection of the relevant interest (for present purposes, the life or health of animals or plants).<sup>36</sup>

#### (a) Trade restrictiveness

Second, the measure must be 'necessary' to achieve that objective. That requires a comparison between the measure adopted and a hypothetical alternative measure (typically suggested by a complaining party). The measure will be 'necessary' when there is no alternative measure that: (a) is reasonably available to the regulating party, (b) achieves the same level of protection as the actual measure, and (c) is less trade restrictive than the measure that was adopted. Thus, for example, it might be that the objectives of an import ban could equally be achieved by a less trade restrictive measure, such as a labelling scheme.

In the WTO, the WTO SPS Agreement elaborates on this 'necessity' test in several ways and a measure that conforms to the WTO SPS Agreement is presumed to conform to Article XX(b) of GATT.<sup>37</sup> It is highly likely that, in the same way, a measure that complies with CPTPP's SPS Chapter would be presumed to comply with its general exceptions. However, and unlike the situation in WTO law, the SPS Chapter is *itself* subject to Article XX(b) (as incorporated by Article 29.1). This means that a measure that violates the SPS Chapter might still be justified under the CPTPP general exceptions. It is difficult to envisage when this might be the case, but the possibility that this does become important cannot be excluded.

#### (b) Unjustifiable discrimination

The third and fourth conditions are set out in the so-called 'chapeau' (introductory paragraph) of Article XX of GATT 1994 and apply to all measures justified under this Article.<sup>38</sup> The third condition requires that the measure does not constitute unjustifiable or arbitrary discrimination between countries where the same conditions prevail. This condition is incorporated by reference into CPTPP.

In this phrase, the 'conditions prevailing' in different countries are to be understood in terms of the purpose of the measure adopted. For example, an import restriction on dolphinunsafe tuna does not need to be extended to tuna from a country in which there are no dolphins (eg because it is landlocked), because the 'conditions prevailing' between the different countries will not be the 'same'. However, if that country has dolphins and they are at some risk from tuna fishing, even if this risk is lower, the 'conditions prevailing' in the different countries will be the 'same'. Likewise, in assessing a prohibition on imports of apples carrying a particular disease, the 'conditions prevailing' depend on whether the

<sup>&</sup>lt;sup>36</sup> WTO Appellate Body Report, *Brazil – Retreaded Tyres*, WT/DS322/AB/R, adopted 17 December 2007, paras 150-51; WTO Panel Report, *Brazil – Taxation*, WT/DS472/R, adopted 11 January 2019, paras 7.526-7.528 and 7.921.

<sup>&</sup>lt;sup>37</sup> Article 2.4 of the WTO SPS Agreement.

<sup>&</sup>lt;sup>38</sup> This is a complicated area of law. See Lorand Bartels, 'The Chapeau of the General Exceptions in the WTO GATT and GATS Agreements: A Reconstruction' (2015) 109 American Journal of International Law 95.

disease exists in the exporting country, but not its overall prevalence where it does exist. In short, 'conditions prevailing' are the 'same' when there is any relevant risk in the relevant countries, without quantifying that risk.<sup>39</sup>

The next question is whether the measure at issue discriminates between these countries, in which the 'conditions prevailing' are the same. This will often be the case, as almost all obligations in trade agreements involve discrimination, either between imports or between imports and domestic products. It is only when a measure violates one of these obligations that it becomes necessary to determine whether the measure needs justification under an exception. An import ban on dolphin-unsafe tuna will necessarily discriminate against imports on countries where there are fewer (or no) at-risk dolphins than a country in which there are more at-risk dolphins. An import ban on diseased apples will necessarily discriminate against apple exporting countries where the disease exists and in favour of those where the disease does not exist. But this does not mean that conditions are the same in these countries, so there is no need for a discrimination analysis under the 'chapeau' in these scenarios.

Where conditions *are* however the same, because some degree of risk exists in the relevant countries, the most important question under this 'chapeau' condition is whether that discrimination is 'arbitrary or unjustifiable'. What this means, in practice, is whether there is a legitimate reason for the discrimination and whether that discrimination is necessary. This is where it is important to calibrate the measure to the degree of risk at issue. An import ban on dolphin-unsafe tuna will not be 'justifiable' if it does not take into account the degree of risk that tuna fishing poses to dolphins in a given country, thereby permitting a less discriminatory measure to be adopted; and an import ban on diseased apples will not be 'justifiable' if a lower risk of disease in a given country can be addressed in a less discriminatory meanner.<sup>40</sup>

#### (c) Disguised restriction on international trade

The fourth condition is that the measure adopted cannot be a 'disguised restriction on international trade'. This essentially means that the measures cannot be a 'disguise' for

<sup>&</sup>lt;sup>39</sup> Bartels, ibid. WTO Appellate Body Report, *US* – *Tuna II (Mexico* – *Art 21.5)*, WT/DS381/AB/RW, adopted 3 December 2015, para 7.308; WTO Appellate Body Report, *EC* – *Seal Products*, above at n 33, para 5.300. It is unsettled whether the 'conditions prevailing' in a given 'country' are to be understood in the presence or absence of that country's regulatory interventions. Most likely, the answer is not, as this question (like that of risk prevalence) can be addressed in a more nuanced manner while questioning, later, whether any discrimination is 'arbitrary or unjustifiable'.

<sup>&</sup>lt;sup>40</sup> A further complication arises when the policy reason for the discrimination is different from the policy underlying the measure. In WTO Appellate Body Report, *EC – Seal Products*, above at n 33, for example, the EU's prohibition on seal products discriminated against Canada and in favour of Greenland because of an exception in the measure for seal products deriving from Inuit hunts, and there were proportionately fewer Inuit hunted seal products from Canada than from Greenland. In principle, the EU's basis for this form of discrimination was justifiable, although the EU's measure was still held to be overly discriminatory (and hence unjustifiable) vis-à-vis Canadian Inuit seal products. See Bartels, above at n 38, and Gracia Marín Durán, 'Measures with Multiple Competing Purposes after *EC – Seal Products*: Avoiding a Conflict between GATT Article XX-Chapeau and Article 2.1 TBT Agreement' (2016) 19 Journal of International Economic Law 467.

protectionism, but in 25 years of WTO practice this has never been a burden for any government seeking to justify its measures.<sup>41</sup>

# (4) Summary

CPTPP incorporates the WTO exception for measures necessary to protect human, animal or plant life or health. As a result, CPTPP preserves the legality of any UK statutory protection of animal or plant life or health that can be justified under WTO law.

# (b) Public morals (animal welfare)

Article 29.1 also permits the UK to adopt measures necessary for the protection of its public morals. Again, this is done by incorporating a WTO exception to this effect, in this case Article XX(a) of the GATT 1994. For a measure to be justified on these grounds, it needs to be concerned with the protection of the 'public morals' of the regulating party, and it also needs to be 'necessary' for that purpose.

# (1) Measures protecting public morals (animal welfare)

In principle, a concern for animal welfare can be considered a matter of public morals in the regulating party. In *EC – Seal Products*,<sup>42</sup> a WTO dispute brought by Canada and Norway against the EU, the Appellate Body determined that the EU was permitted to prohibit imports and sales of seal products on the grounds that this was necessary to protect EU public morals concerning 'animal welfare' and, in particular, the manner in which seals are hunted. It did not matter that the animals being protected were outside of the EU's territorial jurisdiction. This ruling would need to be taken into account in any interpretation of 'public morals' in CPTPP.<sup>43</sup> It follows that the 'public morals' exception in the CPTPP permits the UK to prohibit the sale and importation of products that are produced in a manner that violates UK public morals on animal welfare regardless of where the animals at issue are located. However, a concern for animal welfare must be shown to be part of the UK's public morals in any given case. Not every concern about animal welfare will rise to the level of the UK's 'public morals'.

There are two main ways to determine what constitutes 'public morals' for any given treaty party. One is based on evidence of what the public thinks. In *EC – Seal Products,* such relevant evidence included the fact that numerous members of the public had written to the European Commission asking for a prohibition on seal products. Public petitions would therefore serve as good evidence. The second type of evidence, which is more commonly used in WTO disputes on public morals, is a pattern of legislation and other policies adopted by the country seeking to rely on the public morals exception.

<sup>&</sup>lt;sup>41</sup> An open question, and an important one, is whether a mixed measure for both environmental and protectionist purposes would fail this test.

<sup>&</sup>lt;sup>42</sup> WTO Appellate Body Report, *EC – Seal Products*, WT/DS400/AB/R, adopted 18 June 2014.

<sup>&</sup>lt;sup>43</sup> Article 28.12.3.

In practice it has proved to be comparatively easy to demonstrate that a concern constitutes 'public morals'. However, this would be more difficult where there is an inconsistent application of UK laws on the same issue, for example, between different devolved jurisdictions, and in particular if products from one of these UK jurisdictions can be sold in the other UK jurisdictions. In addition, not every difference in treatment of animals can be objected to on grounds of public morals. If the UK allows a particular procedure to be performed on an animal up to 3 years of age and another country allows that procedure to be undertaken up to 4 years of age, this regulatory difference may not necessarily offend the UK's public morals. The situation is not comparable to *EC – Seal Products*, where the choice was binary, as between clubbing and not clubbing seals.

# (2) Conditions on measures

Even if a measure is adopted for the protection of public morals, several other conditions must be satisfied, which are similar to those discussed above for Article XX(b) GATT.

### (a) Minimal effectiveness

First, the measure must be *minimally effective* in achieving the objective of protecting public morals (ie apt to make a contribution to that objective).<sup>44</sup>

### (b) Trade restrictiveness

Second, the measure must be 'necessary' to the protection of public morals. As noted already, this 'necessity' condition requires a comparison between the measure adopted and a hypothetical alternative measure and there must be no alternative measure that: (a) is reasonably available to the regulating party, (b) achieves the same level of protection as the actual measure and, (c) is less trade restrictive than the measure that was adopted. In *EC* – *Seal Products*, the EU was able to demonstrate that its measure was the only reasonably available measure that would achieve its desired level of protection. Canada suggested an alternative of seal welfare certification and labelling requirements, but this would not have achieved the same level of animal welfare protection as the EU's sale and import ban.

### (c) Unjustifiable discrimination

Third, a measure that is necessary to protect the UK's public morals must be no more discriminatory than necessary as between countries where the same conditions prevail. This was discussed above.

### (d) Disguised restriction on international trade

Finally, the measure may not be a disguised restriction on international trade. This condition was also discussed above.

<sup>&</sup>lt;sup>44</sup> WTO Appellate Body Report, *EC – Seal Products*, above at n 33, paras 5.213-5.214 and 5.289; WTO Panel Report, *Brazil – Taxation*, WT/DS472/R, adopted 11 January 2019, paras 7.526-7.528.

# (3) Summary

CPTPP incorporates the WTO exception for measures necessary to protect public morals, including several conditions applicable to such measures under WTO law.

The conclusion is that the CPTPP preserves the legality of any UK statutory protection in relation to animal welfare that can be justified under WTO law.

# (c) Conservation of living and non-living exhaustible natural resources (environmental protection)

Article 29.1 also permits the UK to adopt measures relating to the conservation of exhaustible natural resources, including non-living resources (such as hydrocarbons, minerals, and clean air) and living resources (such as plants and animals). It does this by incorporating Article XX(g) of the WTO GATT 1994.

# (1) Measures to protect living and non-living exhaustible natural resources

Article 29.1.2 adds one clarification to the WTO definition of measures to protect exhaustible natural resources. It states:

The Parties understand that ... Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

This clarification is a codification of existing WTO caselaw. It has been established, for example, that Article XX(g) applies to living exhaustible natural resources<sup>45</sup> and that 'non-living exhaustible natural resources' includes clean air.<sup>46</sup>

# (2) Conditions on measures

Again, several conditions must be met for a measure to be justified on this basis.

### (a) Minimum connection with the objective

First, the measure must 'relate' to the protection of the natural resource at issue.<sup>47</sup> This does not mean that any particular effect needs to be demonstrated; rather, the measure must have a minimum connection with the objective at issue, whether now or in the future.

<sup>&</sup>lt;sup>45</sup> Article 31.1, para 2. This clarification reflects the interpretation of 'exhaustible natural resources' by the WTO Appellate Body in *US – Shrimp*, WT/DS58/AB/R, adopted 6 November 1998, para 131.

<sup>&</sup>lt;sup>46</sup> WTO Panel Report, *US* – *Reformulated Gasoline*, WT/DS2/R, adopted 20 May 1996, para 6.37. This finding was not appealed, and assumed by the Appellate Body to be correct: see WTO Appellate Body Report, *US* – *Reformulated Gasoline*, WT/DS2/AB/R, adopted 20 May 1996, at 14.

<sup>&</sup>lt;sup>47</sup> In WTO Appellate Body Report, *China – Rare Earths*, WT/DS431/AB/R, adopted 29 August 2014, para 5.117, the Appellate Body said that 'relating to' did not require (nor preclude) a demonstration of a causal effect between the measure and an objective; it was sufficient for a panel to consider the 'general design and structure' of the measure. The Appellate Body often uses the terms 'design,' structure' and even 'architecture' when it seems to have presumed causal effects in mind. It is likely that in this instance the Appellate Body meant that there was no need to find an *actual* effect, but that a potential effect would suffice.

# (b) Domestic restrictions

In contrast to the first two exceptions discussed, concerning animal or plant life or health and public morals, this exception has no 'necessity' test. Hence, in WTO dispute settlement practice, environmental measures are typically justified under this exception rather than the exception for animal or plant life or health. This gives governments more policy discretion in how to protect environmental resources, as there is no need for the measure to be the least trade restrictive measure that could have been adopted to achieve the level of protection sought by the regulating party.

However, there is a different condition. A measure must be adopted in conjunction with restrictions on domestic production or consumption. This ensures that the regulating party is genuine about conserving natural resources and requires that effective restrictions be imposed on domestic production or consumption, even though the burden of conservation does not need to be evenly distributed between foreign and domestic producers (or consumers).<sup>48</sup>

# (c) Unjustifiable discrimination

As with the other two exceptions, this exception is also subject to the third and fourth conditions, under the 'chapeau' to Article XX of the WTO GATT 1994. The third condition is that the measures must not constitute unjustifiable discrimination between countries where the same conditions prevail. This has been discussed above.

# (d) Disguised restriction on international trade

The fourth condition is that the measure cannot be a disguised restriction on international trade. This condition has also been discussed above.

# (3) Summary

CPTPP incorporates the WTO exception for measures relating to the conservation of exhaustible natural resources, under the same conditions as in WTO law.

# (d) Environment chapter

Chapter 20 slightly expands the UK's rights to adopt measures to protect the environment beyond its rights under the general exceptions in Article 29.1. For this purpose, one can divide Chapter 20 into two types of provisions: obligations with respect to domestic 'environmental laws' (Article 20.3) and obligations to implement certain multilateral environmental agreements (MEAs) (Articles 22.4-6 and 20.17.

The obligations set out in Chapter 20 are discussed in the next section, but they are relevant to the establishment of rights to regulate. The logic is that obligations with respect to

<sup>&</sup>lt;sup>48</sup> See WTO Appellate Body Report, *China – Rare Earths*, WT/DS431/AB/R, ibid, para 5.136.

'environmental laws' must imply rights to do what is necessary to comply with such obligations.<sup>49</sup>

The question, then, is whether these implied rights are subject to any limitations. There is one blanket limitation. Article 20.2.3 requires the parties not to establish or use their environmental laws in a manner that would constitute a disguised restriction on international trade (or investment) between the parties. But there is no equivalent limitation in relation to unjustifiable discrimination, which is a limitation on rights under the general exceptions in Article 29.1. By implication, the parties therefore have a *right* to adopt environmental laws that are necessary to comply with the obligation to maintain environmental protections, provided that these measures do not constitute a disguised restriction.

Chapter 20 also contains obligations to implement MEAs which, for the reasons given, imply that the parties have rights to adopt measures necessary to perform those obligations. Two examples are obligations to restrict trade in accordance with the 1973 Convention on Trade in Endangered Species<sup>50</sup> (CITES) and the 1987 Montreal Protocol on Ozone-Depleting Substances.<sup>51</sup> Article 20.2.3, which prohibits measures constituting a 'disguised restriction on international trade', also applies to these measures, which are included in the definition of 'environmental law' in Article 20.1.

What this means for the right of the UK to adopt measures to protect the environment can be stated as follows. The UK has an implied right to maintain its existing environmental statutory protections,<sup>52</sup> and the UK has an implied right to adopt measures necessary to implement certain listed MEAs, in both cases provided that these measures do not constitute a disguised restriction on trade or investment between CPTPP parties.

#### 3. Conclusion

CPTPP incorporates a number of WTO trade liberalisation obligations and also adds some additional trade liberalisation obligations, in particular the obligation not to charge customs duties on most imports (subject to time limited quotas and safeguards). All of these trade liberalisation obligations are, however, subject to exceptions which are at least as extensive as under WTO law (Article 29.1 CPTTP) and, in the case of environmental laws, more extensive than under WTO law (Chapter 20 CPTPP). Therefore, on the basis that CPTPP does not constrain the UK's right to regulate compared to WTO law and even enhances such a right for certain environmental matters, **it can be concluded that CPTPP does not require** 

<sup>&</sup>lt;sup>49</sup> As discussed below, Article 22.1 gives a precise definition to 'environmental law', the term used throughout Article 22.4.

<sup>&</sup>lt;sup>50</sup> Article 20.17.

<sup>&</sup>lt;sup>51</sup> Article 20.5.

<sup>&</sup>lt;sup>52</sup> Article 20.1 ('Definitions') defines 'environmental law' as a statute or regulation that has the primary purpose of protecting the environment through (a) the prevention, abatement or control of: the release, discharge or emission of pollutants or environmental contaminants; (b) the control of environmentally hazardous or toxic chemicals, substances, materials or wastes, and the dissemination of information related thereto; or (c) the protection or conservation of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas (including the protection or conservation of biological diversity).

the UK to change its existing levels of statutory protection in relation to animal or plant life or health, animal welfare, or environmental protection.

#### IV. Does CPTPP reinforce the UK's levels of statutory protection?

In considering this question, we look at the obligations that CPTPP imposes on the UK and the other CPTPP parties, in particular those set out in Chapter 20 of CPTPP, concerning the parties' respective levels of statutory protection in the area of environmental protection. These obligations reinforce the UK's levels of statutory protection in two ways. First, directly, these obligations require the UK, in certain cases, to maintain (or even improve) these protections. Second, indirectly, these obligations ensure that other CPTPP parties will, in certain cases, maintain their own levels of statutory protection. In doing so, these obligations address the theoretical possibility that CPTPP partners might lower their environmental standards to give their producers a competitive advantage over UK producers.

#### A. Scope and enforceability of the environment chapter

Several obligations in the environment chapter are described in terms of domestic 'environmental laws', which are defined as those statutes and regulations primarily aimed at protecting the environment in three ways: (a) the prevention, abatement or control of the release or emission of pollutants or environmental contaminants; (b) the control of environmentally hazardous or toxic chemicals, materials or wastes; and (c) the protection or conservation of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas.<sup>53</sup> For the UK, such environmental laws apply to all levels of government (central and regional),<sup>54</sup> whereas for most other CPTPP parties only those adopted at central level of government are covered.<sup>55</sup> In some cases, this is an important limitation.<sup>56</sup>

Obligations in the environment chapter are enforceable by means of dispute settlement, including binding Panel proceedings if initial inter-governmental consultations fail to resolve the matter.<sup>57</sup>

#### B. Obligations in the environment chapter

The environment chapter contains general obligations with respect to the parties' environmental laws, as well as specific obligations on certain environmental issues, including obligations to implement several multilateral environmental agreements.

<sup>&</sup>lt;sup>53</sup> Article 20.1.

<sup>&</sup>lt;sup>54</sup> Article 1.2 of the UK Accession Protocol.

<sup>&</sup>lt;sup>55</sup> Article 20.1.

<sup>&</sup>lt;sup>56</sup> Eg, for Australia, environmental laws are defined as meaning only 'an Act of the Commonwealth Parliament, or a regulation made by the Governor-General in Council under delegated authority under an Act of the Commonwealth Parliament, that is enforceable at the central level of government'. Under Australia's federal system, however, most environmental legislation is at state and territory level: see TAC, *Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement* (April 2022), p 29, at https://www.gov.uk/government/publications/uk-australia-fta-advice-from-trade-and-agriculture-commission.

<sup>&</sup>lt;sup>57</sup> Article 20.23 and Chapter 28.

#### 1. Obligations to implement/enforce domestic environmental laws

The environment chapter sets out obligations requiring the Parties to implement and enforce domestic environmental laws if failure to do so would have the effect of gaining a competitive advantage over the other, for example by relieving a domestic industry of regulatory costs.

One such obligation is about *waiving and derogating* from domestic environmental laws. Article 20.3.6 states:

[A] Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental laws in a manner that weakens or reduces the protection afforded in those laws in order to encourage trade or investment between the Parties.

A breach of this environmental obligation is subject to demonstrating two conditions. The first is not particularly onerous as a mere *offer* to waive or derogate from an environmental law (rather than an *actual* waiver or derogation) would be enough for a violation. The second demands that the partial application of environmental laws must be done with the *intention* ('in order to') of encouraging trade or investment between the parties, regardless of any actual (trade or investment) effect.

The second obligation is about *non-enforcement* of domestic environmental laws. Article 20.3.4 provides:

No Party shall fail to effectively enforce its environmental laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties, after the date of entry into force of this Agreement for that Party.

A breach of this obligation is again subject to showing two conditions. First, the nonenforcement of environmental laws must be through a 'sustained or recurring course of action or inaction', which has been interpreted by an FTA panel to mean; '(i) a repeated behavio[u]r which displays sufficient similarity, or (ii) prolonged behavio[u]r in which there is sufficient consistency in sustained acts or omissions as to constitute a line of connected behavio[u]r by a labo[u]r law enforcement institution, rather than isolated or disconnected instances of action or inaction.'<sup>58</sup> Second, the non-enforcement of environmental laws (through a sustained or recurring course of action) must have actual *effects* on trade or investment - ie, it must change the conditions of competition between domestic and foreign products, rather than intend to do so as under the first obligation discussed above.<sup>59</sup> It is usually easier to demonstrate effect than intention. A certain measure of *bona fide* discretion in the allocation of enforcement resources is permitted.<sup>60</sup>

<sup>&</sup>lt;sup>58</sup> CAFTA-DR Panel Report, In the matter of Guatemala – Issues relating to the obligations under article 16.1.1(a) of the CAFTA-DR, Final Report of the Panel, 14 June 2017, paras 190-192.

<sup>&</sup>lt;sup>59</sup> Ibid, para 148.

<sup>&</sup>lt;sup>60</sup> Article 20.3.5.

#### 2. Best endeavours obligations to maintain/improve domestic environmental laws

The environment chapter also has obligations with respect to the parties' levels of protection. In other words, they go beyond the implementation or enforcement of domestic environmental laws, as discussed in the previous section. That said, there is some overlap insofar as a failure to implement or enforce a domestic environmental law necessarily also reduces levels of protection. The main difference is that the obligations to be discussed here concern *overall* levels of protection, not *partial* levels of protection. Article 20.3.3 states:

Each Party shall strive to ensure that its environmental laws and policies provide for, and encourage, high levels of environmental protection and to continue to improve its respective levels of environmental protection.

A key difference between this obligation and the partial implementation/non-enforcement obligations examined above is that the former is legally softer. The parties are *not* obliged to *ensure* 'high levels' of environmental protection, but rather to 'strive to ensure' such levels of protection. This means that, in principle, the parties are able to reduce these protections. However, even a soft obligation to strive to ensure high levels of environmental protection is an obligation and it would not be correct to state that this obligation can never be breached. A 'best-endeavours' obligation might, for example, require the parties not to reduce their levels of protection without good reason; it might also amount to a procedural obligation to consider ensuring high and improved levels of protection. In short, it is not entirely clear what this best-endeavours obligation means. It is not as stringent as the hard obligations concerning partial implementation/non-enforcement, but it still an obligation.

#### 3. Specific environmental obligations

The environment chapter also contains a set of specific obligations to implement a number of MEAs, such as CITES,<sup>61</sup> the Montreal Protocol<sup>62</sup> and the International Convention for the Prevention of Pollution from Ships (MARPOL).<sup>63</sup> Besides obligations under MEAs, Chapter 20 sets out commitments on a range of environmental issues, and notably marine capture fisheries. It requires CPTPP parties to operate sustainable fisheries management systems<sup>64</sup> and prohibits certain harmful fisheries subsidies, namely those that contribute to illegal, unreported and unregulated (IUU) fishing or fishing of overfished stocks.<sup>65</sup> This prohibition must be seen in the context of the WTO Agreement on Fisheries Subsidies, adopted on 17

<sup>&</sup>lt;sup>61</sup> Article 20.17.2.

<sup>&</sup>lt;sup>62</sup> Article 20.5.1.

<sup>&</sup>lt;sup>63</sup> Article 20.6.1.

<sup>&</sup>lt;sup>64</sup> Article 20.16.3.

<sup>&</sup>lt;sup>65</sup> Article 20.16.5(a)-(b). Article 20.16.7 further provides that 'taking into consideration a Party's social and developmental priorities, including food security concerns, each Party shall make best efforts to refrain from introducing new, or extending or enhancing existing, subsidies ... that contribute to overfishing and overcapacity'.

June 2022, which provides for similar subsidy prohibitions.<sup>66</sup> Nonetheless, the CPTPP disciplines remain legally significant, because the WTO Agreement on Fisheries Subsidies has not yet entered into force (acceptance by 2/3 of WTO members is required) and about half of CPTPP parties have not yet accepted the agreement.<sup>67</sup>

However, there is an important carve-out in Article 29.4.2, which states that '[e]xcept as provided in this Article, nothing in this Agreement shall apply to taxation measures.' There are certain limitations on this exception, mainly concerning discrimination,<sup>68</sup> but these are not relevant here. This means that subsidies to the fishing industry that take the form of tax exemptions (including fuel subsidies) are not subject to the prohibition in Article 20.16.5, even if they contribute to IUU fishing or fishing of overfished stocks.

In relation to climate change, the main provision in CPTPP (Article 20.15 'Transition to a Low Emissions and Resilient Economy') is limited to cooperation between the Parties in a number of areas (eg promoting energy efficiency, renewable energy, low-emission technologies, and addressing deforestation and forest degradation), and differs from the climate change provisions in the UK-Australia and UK-New Zealand FTAs. In particular, there is no specific commitment to implement the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement,<sup>69</sup> even though these MEAs were in force at the time CPTPP was signed on 8 March 2018.<sup>70</sup> But this is not so important in practical terms since, under Article 20.4, each Party 'affirms its commitment to implement the UNFCCC and Paris Agreement for all CPTPP parties and this commitment is also made explicit in the Joint Statement on Climate Change, the Environment and Sustainable Trade, adopted by the UK and a subset of CPTPP parties (Australia, Canada, Chile, Japan and New Zealand).

More significant is that, unlike the UK-New Zealand FTA, CPTPP does not provide for an express right to adopt measures to implement these agreements<sup>71</sup> nor obligations to adopt particular climate change measures.<sup>72</sup> As discussed above, the question of which agreement

<sup>&</sup>lt;sup>66</sup> WTO Ministerial Conference, *Agreement on Fisheries Subsidies – Ministerial Decision of 17 June 2022*, WT/MIN(22)/33, 22 June 2022. The agreement lays down three main prohibitions on subsidies to IUU fishing (Article 3), subsidies to fishing of overfished stocks (Article 4) and subsidies to fishing in unregulated High Seas (Article 5). Negotiations are ongoing on outstanding issues, including the prohibition of subsidies that contribute to overfishing and overcapacity.

<sup>&</sup>lt;sup>67</sup> As of 29 November 2023, these are Brunei Darussalam, Chile, Mexico, Malaysia, Viet Nam, and the UK.

<sup>68</sup> Article 29.4.3-8.

<sup>&</sup>lt;sup>69</sup> In contrast, see Article 22.5.1 UK-Australia FTA and Article 22.6.2 UK-NZ FTA.

<sup>&</sup>lt;sup>70</sup> Submission 013 (Centre for International Sustainable Development Law).

<sup>&</sup>lt;sup>71</sup> See Article 22.6.1; and TAC, Advice to the Secretary of State for International Trade on the UK-New Zealand Free Trade Agreement (June 2022), pp 34-35 and 58-62.

<sup>&</sup>lt;sup>72</sup> See eg, Article 22.6.2(c) on 'promot[ing] carbon pricing as an effective policy tool for reducing greenhouse gas emissions efficiently,' and Article 22.7 on 'tak[ing] steps to eliminate harmful fossil fuel subsidies where they exist, with limited exceptions in support of legitimate public policy objectives.'

(CPTPP or the UK-New Zealand FTA) would prevail with respect to rights is legally unsettled.<sup>73</sup>

#### C. Conclusions

CPTPP strengthens the UK's ability to maintain its levels of statutory environmental protection in two main ways. First, it not only gives the UK a right to maintain its statutory protections, but it also gives it certain obligations to do so. 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, and an obligation not to fail to enforce certain of its environmental laws in a manner affecting trade and investment between the parties. The UK also has certain specific obligations to implement several multilateral environmental agreements and to eliminate certain forms of harmful fisheries subsidies (except when such subsidies take the form of tax breaks). Second, the UK is able to protect its levels of statutory protection *indirectly* by ensuring that other CPTPP parties do not gain an economic advantage by not properly implementing or enforcing their domestic environmental laws. In particular, the UK is able to commence dispute settlement proceedings if other CPTPP parties fail to abide by their obligations in the environment chapter.

<sup>&</sup>lt;sup>73</sup> See detailed discussion in section C.2 above.

#### V. Does CPTPP otherwise affect the ability of the UK to adopt statutory protections?

In this section we consider three issues relevant to the application of CPTPP in practice. First, we consider CPTPP's practical operation, in particular via its institutional mechanisms for cooperation between CPTPP parties and its decision-making procedures. Second, we consider the implications for UK border control capability of increased imports into the UK under CPTPP. Third, we consider the extent to which CPTPP affects the UK's ability to respond to concerns that have been raised in consultations about practices that are stated to occur in the territories of CPTPP parties affecting products likely to be imported into the UK.

#### A. The practical operation of CPTPP

As has been described above, CPTPP comprises a set of rights and obligations which are designed, on the one hand, to liberalise trade between the parties and, on the other, to ensure that they are still able to regulate to protect legitimate policy interests. In several cases, these rules are left to be operationalised by future joint action of the parties.

To this end, CPTPP establishes several organs with bilateral representation. The primary organ is the CPTPP Commission, which meets at ministerial or senior official level<sup>74</sup> and has the power to adopt interpretations of the agreement,<sup>75</sup> amend certain trade liberalisation commitments<sup>76</sup> and, in several other ways, consider the implementation and operation of the agreement.<sup>77</sup> These powers can be significant, and, from a transparency perspective, it is worth noting that the exercise of these powers can be taken without the type of parliamentary scrutiny that might be required for a formal amendment of the agreement.<sup>78</sup> Of course, in all cases and as a matter of UK law, to the extent that such decisions require implementation in the UK legal system, Parliament will be involved in the ordinary way.

The CPTPP Commission also supervises the work of subsidiary organs established under CPTPP which, relevantly, include the SPS Sub-Committee<sup>79</sup> and the Environment Committee.<sup>80</sup> In relation to matters covered by the environment chapter, CPTPP also requires the parties to 'make use of existing, or establish new, consultative mechanisms, for example national advisory committees, to seek views on matters related to the implementation of this Chapter [which] may include persons with relevant experience, as appropriate, including experience in business, natural resource conservation and management, or other environmental matters.<sup>81</sup>

<sup>&</sup>lt;sup>74</sup> Article 27.1 ('Establishment of the Trans-Pacific Partnership Commission'). The Commission has since been renamed.

<sup>&</sup>lt;sup>75</sup> Article 27.2 ('Functions of the Commission'), para 2(f).

<sup>&</sup>lt;sup>76</sup> Article 27.2, para 2(c).

<sup>&</sup>lt;sup>77</sup> Article 27.2.

<sup>&</sup>lt;sup>78</sup> Article 30.2 ('Amendments'). See Part 2 of the Constitutional Reform and Governance Act 2010.

<sup>&</sup>lt;sup>79</sup> Article 7.5 ('Committee on Sanitary and Phytosanitary Measures').

<sup>&</sup>lt;sup>80</sup> Article 20.19 ('Environment Committee and Contact Points').

<sup>&</sup>lt;sup>81</sup> Article 20.8.2.

#### **B.** Border controls

A comprehensive system of controls, comprising audits, certification and inspection and testing underpins international trade in agricultural products and provides confidence that all imports into the UK meet relevant statutory protections,<sup>82</sup> including in the areas covered in this advice.<sup>83</sup> These mechanisms are subject to CPTPP rules.

First, CPTPP allows an importing country to require SPS certificates for imports, but provides that these must be applied, in meeting that party's SPS standard(s), 'only to the extent necessary to protect human, animal or plant life or health.'<sup>84</sup> Similarly, import programmes must be 'based on the risks associated with importations', import checks must be 'carried out without undue delay',<sup>85</sup> and an importing party's 'final decision' on non-conformity with a sanitary or phytosanitary measure must be 'limited to what is reasonable and necessary, and [be] rationally related to the available science.'<sup>86</sup> We do not believe that these conditions will require any change to the UK's existing border controls systems. They are in any event very similar to the WTO SPS Agreement.<sup>87</sup>

CPTPP also, however, provides for auditing by an importing country of an exporting country's systems. Article 7.10 states:

Each importing Party shall have the right... to audit the exporting Party's competent authorities and associated or designated inspection systems. That audit may include an assessment of the competent authorities' control programmes, including: if appropriate, reviews of the inspection and audit programmes; and on-site inspections of facilities.

This differs from the WTO SPS Agreement, where such a right only exists to verify the appropriateness of an equivalence determination.<sup>88</sup> The obligations of the auditing (importing) party under CPTPP include bearing the cost of the audit,<sup>89</sup> and to make decisions resulting from the audit on the basis of objective evidence and verifiable data.<sup>90</sup> Again, we do not believe that this conditional right hinders the UK's existing systems. Indeed, by providing a concrete right to audit an exporting party's systems, it enhances them.

In short, in legal terms, CPTPP does not have any adverse bearing on the UK's border control regime. However, the mere fact that CPTPP will increase imports from a variety of countries

<sup>&</sup>lt;sup>82</sup> We note that some highly infectious animal and plant diseases may enter the UK. These are addressed by means of a sensitive national animal and plant health surveillance system.

<sup>&</sup>lt;sup>83</sup> The FSA reports separately on the effects of CPTPP on human health.

<sup>&</sup>lt;sup>84</sup> Article 7.12 ('Certification'), para 2. Similar necessity conditions apply to importing parties' requirements for attestation and the information to be provided.

<sup>&</sup>lt;sup>85</sup> Article 7.11 ('Import Checks'), para 1.

<sup>&</sup>lt;sup>86</sup> Article 7.11, para 5.

<sup>&</sup>lt;sup>87</sup> Article 8 and Annex C ('Control, Inspection and Approval Procedures') of the WTO SPS Agreement.

<sup>&</sup>lt;sup>88</sup> Article 4.1 of the WTO SPS Agreement.

<sup>&</sup>lt;sup>89</sup> Article 7.10.7.

<sup>&</sup>lt;sup>90</sup> Article 7.10.6.

raises the question of whether it will have an impact on that regime. As the UK 2023 Biological Security Strategy said:

Trade with global partners, carries the risk of incursion of novel animal and plant pathogens and pests which are more prevalent in some areas. With changing trade and consumer patterns generally increasing volumes of global trade into the UK, and climate change affecting weather and biodiversity within the UK and around the world, the risk of an outbreak of a new animal or plant pest or pathogen in the UK over the next five years has increased and is likely to continue to do so over the next decade.<sup>91</sup>

We do not believe that CPTPP will, itself, have any negative impact on the UK's border control regime. In terms of new risks, we note that the UK already imports agricultural products from all CPTPP parties, either under the WTO agreements or under FTAs. Nor are the volumes of increased imports from CPTPP parties likely to be sufficiently significant to have any material effect on the UK's capability to operate its regime.

However, we also note that exogenous factors may have a bearing on the UK's capability to operate its border controls with maximum effectiveness. In particular, in August 2023 the Government set out a new risk-based Border Target Operating Model (BTOM),<sup>92</sup> which sets out the principles and high-level structures that will underpin Great Britain's border controls,<sup>93</sup> and this new operating model will also apply to EU imports for the first time in the second half of 2024, at roughly the same time as CPTPP is expected to come into effect for the UK. We note the likely pressure that will be placed on the UK's border control regime as a result of both of these changes and observe that it will also be important for current UK border inspection and laboratory capacity and capability to deal with the anticipated changing trade patterns (volumes) arising from CPTPP.

In this respect, we note the roles of the UK Office for SPS Trade Assurance and the UK Plant Health Inspectorate in addressing risks to the UK. Both agencies will be responsible for undertaking supply chain audits of countries that will wish to gain market access and export into the UK. Overall, CPTPP imports will represent a fraction of the international remit of these agencies, but it is also vital that they have sufficient capacity to execute their functions.

#### C. The ability of the UK to respond to concerns raised in TAC consultations

#### 1. Introduction

In our consultation, we were made aware of several concerns about certain production, environmental and animal welfare practices in CPTPP parties and about the cost advantages

<sup>&</sup>lt;sup>91</sup> UK Government, 'UK Biological Security Strategy', 12 June 2023, p15, accessed 30 November 2023 www.gov.uk/government/publications/uk-biological-security-strategy/uk-biological-security-strategy-html.

<sup>&</sup>lt;sup>92</sup> UK Government, 'The Border Target Operating Model: August 2023', 12 September 2023, accessed 30 November 2023 <u>https://www.gov.uk/government/publications/the-border-target-operating-model-august-2023/the-border-target-operating-model-august-2023</u>.

<sup>&</sup>lt;sup>93</sup> Northern Ireland's border controls are established and administered under the UK-EU Withdrawal Agreement.

that products made according to these practices might enjoy when compared to UK products. We considered the following issues:

- Deforestation linked to palm oil
- Hormonal growth promoter (HGPs) use in cattle
- Ractopamine use in pork production
- Transport times for livestock
- Hot branding
- Pork production systems
- Caged hens
- Pangasius welfare
- Pesticide use
- Genetically Modified Organisms (GMO)
- Antimicrobial resistance

We addressed these concerns by asking the following four questions in respect of each concern:

- whether the practices at issue exist in CPTPP countries in a manner that would not be permitted in the UK
- whether these practices involve products likely to be imported at an increased rate into the UK because of CPTPP
- whether these practices imply any cost savings for CPTPP producers compared to UK producers
- whether CPTPP restricts the UK's rights under WTO law to regulate imports of any products produced by these practices

The following sets out our conclusions on each of these issues. Our analysis of these questions is contained in an Annex A attached to this advice.

#### 2. Preliminary remarks

We introduce our conclusions with some general remarks. In some cases, different agricultural production practices between countries are a function of different climatic, geographical, agronomic, environmental, economic and cultural conditions. It can never be assumed that what is appropriate for one country is appropriate for another. Nor, as a rule, does international law, or trade agreements, entitle one country to determine production practices in another country. The assumption is that States are sovereign and when they cede sovereignty, they do so voluntarily.<sup>88</sup>

Moreover, the international trading system, of which free trade agreements form a part, is predicated upon the understanding that countries should be able to benefit from legitimate

advantages which they enjoy over their trading partners. Trade law, in principle, prohibits countries from restricting imports of products simply based on how they are made, whether this is by using their more abundant sunshine, natural resources, including land, educational skills or lower labour costs. The way to protect against this form of competition is to exclude certain products from trade liberalisation when negotiating a trade agreement. This is common for agriculture, for example in the WTO, although it is more difficult in free trade agreements, which are voluntary, but are subject to a WTO condition that they be almost completely trade liberalising. On the other hand, trade liberalisation does not necessarily trump other policy considerations and States retain the right in trade agreements to protect their own legitimate interests, regardless of any trade liberalisation obligations contained in those agreements.<sup>89</sup> As described above, those interests include the protection of domestic animal or plant life and health, the protection of the environment and the protection of public morals – but also the protection of human life and health, competition law, consumer protection law, intellectual property law and national and international security, among others. But this right to regulate for legitimate reasons is limited: it does not, as a general rule, allow a country to undermine the other country's legitimate production advantages. Moreover, this right to regulate is subject to a set of conditions, which are designed to prevent exception clauses from being used arbitrarily, or in bad faith, or unnecessarily.

Moreover, international agreements are the result of negotiations and countries can – and do – agree, in some cases, that they have a common interest in practices taking place in the territory of the other party. They can also agree that some domestic practices do not constitute fair competition but are, rather, an example of unfair competition. So, for example, the CPTPP parties have agreed that they should endeavour to maintain high standards in their environmental laws and that they should not fail to implement their environmental laws if this gives them an unfair competitive advantage over the other. They can also be held to these obligations by means of dispute settlement.

These introductory remarks are intended to give a context to our conclusions about concerns presented to us about various effects of CPTPP. In some cases, we conclude that the UK has reserved the right to regulate imports from CPTPP parties because of a legitimate interest, for example, the health of its plants, animals and environment, or its public morals. In others, we conclude that the UK is able to prohibit imports of products because it has an agreed interest in certain practices in CPTPP parties, either because they are agreed to be a common interest, or because they are agreed to result in an unfair trade advantage. But in some cases, we conclude that the UK will be unable to restrict imports from CPTPP parties (though CPTPP does not make this more difficult than WTO law), even though this might be of economic interest, or otherwise, to certain constituencies in the UK. That is the inevitable result of the UK's decision to liberalise trade with CPTPP parties. But it is relevant to point out, nonetheless, that countries are different and sovereign, and that some matters are for them to regulate as they see fit.

#### 3. Our conclusions on the concerns raised

 Deforestation linked to palm oil. We have noted that Malaysian Sustainable Palm Oil (MPSO) certification has become a mandatory condition (since January 2020) for the Malaysian palm oil industry to obtain business licences, and that the new 2022 version of the MSPO standard prohibits palm oil cultivation on land cleared after December 2019. Provided this new standard is fully implemented by January 2025 and compliance with it is effectively enforced, there is a low risk that Malaysian palm oil exported to the UK would come from land that was deforested after December 2019. Moreover, the UK may be able to enforce Malaysia's implementation the 2022 MPSO standard if failure to do so has an effect on bilateral trade. The UK may also be able to restrict imports of palm oil grown on deforested land if this leads to climate change or biodiversity loss, and these have an impact on UK interests under international law. The UK could also raise the issue with Malaysia in the CPTPP Environment Committee.

- Hormonal growth promoter (HGPs) use in cattle. It is currently illegal for beef from cattle treated with HGPs to be imported into the UK. CPTPP does not change the WTO legal position on such a prohibition. We note in this respect that the issue has been litigated in the WTO, with inconclusive results. In any event, it is highly unlikely that under WTO law the UK could not adopt a labelling regime to distinguish between HGP and non-HGP products for consumers. Nor does CPTPP change the UK's ability to adopt such schemes.
- Ractopamine use in pork production. CPTPP does not change the WTO legal
  position on the UK's current import prohibition on RAC treated pork. Unless UK
  law changes, due to Canada's existing certification scheme there is no increased
  risk that RAC-treated pork from Canada will enter the UK because of the UK's
  accession to CPTPP. Should Mexico seek to expand exports of pork to the UK, its
  exporters will need to demonstrate compliance with UK import requirements.
- *Transport times for livestock.* Should the issue of journey times arise in practice, the UK could seek to justify an import ban on the grounds that this is necessary to protect its public morals, although this may not be straightforward. In addition, the UK could raise the issue in dialogue with Canada.
- Hot branding. CPTPP does not constrain the UK's rights under WTO law to prohibit imports of beef from branded cattle if it could be shown that this is necessary to protect UK public morals. However, this might be difficult, given that branding of horses is legal in parts of the UK.
- Pork production systems. Should the UK wish to implement an import ban on pork produced in a certain manner on animal welfare grounds, this is in principle possible. However, this is subject to the condition that the UK does not itself permit the same practice, and that it does not allow imports from other countries that engage in this practice. CPTPP does not change the WTO legal position concerning labelling.
- *Caged hens.* Canada is the largest egg and egg product (liquid or powered egg) exporter in CPTPP, but it mainly exports to the United States. Mexico is a net

importer of eggs, mostly from the US, and while the UK has had a trade agreement with Mexico since 2004 which includes eggs and egg products, this quota has never been used. We do not expect to import fresh eggs or egg products under CPTPP. The UK exports more egg products by weight than Canada. In any event, CPTPP does not affect the UK's WTO rights to prohibit imports of eggs from caged hens. This is possible if necessary to protect public morals concerning hen welfare, provided that any import restriction or other measure applies equally to imports from all countries.

- *Pangasius welfare*. CPTPP does not affect the UK's WTO rights to restrict imports of pangasius, should this arise as an issue.
- Pesticide use. CPTPP has no effect on the UK's existing WTO rights to regulate the import of products produced using pesticides that are harmful to UK animals, plants, or the environment. In principle, that does not permit the UK to protect the environment of other CPTPP parties from the negative effects of pesticide use. However, CPTPP also contains several enforceable environmental obligations which could be relevant to pesticide use in other CPTPP countries, namely if those countries fail to strive to ensure that their environmental laws achieve a high standard of environmental protection, or if they fail to implement their environmental laws consistently, and this comes with a trade or investment advantage. This is important, as CPTPP is likely to lead to increased imports of products that have been produced at lower cost by using pesticides in CPTPP parties that would not be permitted in the UK.
- Genetically Modified Organisms (GMO). The CPTPP has no effect on the UK's existing WTO rights to regulate the import of GMO products. However, CPTPP is likely to lead to increased imports of products that have been produced at lower cost by using GM technology that in effect would not be permitted for cultivation in the UK.
- Antimicrobial resistance. The UK's CPTPP accession is unlikely to lead to an increased threat of antimicrobial resistance (AMR) in the UK, largely because it does not provide for a very significant market access for products that would be produced using antimicrobials. In any event, CPTPP does not restrict the UK's WTO rights regulate imports to protect against any harmful effects of antimicrobial use in CPTPP countries.

#### VI. General conclusions

In this advice, in accordance with our mandate, we addressed three questions.

#### Question 1

Does CPTPP 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?

# Answer: No. CPTPP does not require the UK to change its levels of statutory protection in relation to (a) animal or plant life or health, (b) animal welfare, or (c) environmental protection.

CPTPP incorporates a number of WTO trade liberalisation obligations and also adds some additional trade liberalisation obligations, in particular the obligation not to charge customs duties on most imports (subject to time limited quotas and safeguards). All of these trade liberalisation obligations are, however, subject to exceptions which are at least as extensive as under WTO law (Article 29.1 CPTTP) and, in the case of environmental laws, more extensive than under WTO law (Chapter 20 CPTPP). Therefore, on the basis that CPTPP does not constrain the UK's right to regulate compared to WTO law and even enhances such a right for certain environmental matters, it can be concluded that CPTPP does not require the UK to change its existing levels of statutory protection in relation to animal or plant life or health, animal welfare, or environmental protection.

#### **Question 2**

#### Does CPTPP reinforce the UK's levels of statutory protection in these areas?

# Answer: Yes. CPTPP strengthens the UK's ability to maintain its levels of statutory environmental protection.

It does this in two main ways. First, it not only gives the UK a right to maintain its statutory protections, but it also gives it certain obligations to do so. 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, and an obligation not to fail to enforce certain of its environmental laws in a manner affecting trade and investment between the parties. The UK also has certain specific obligations to implement several multilateral environmental agreements and to eliminate certain forms of harmful fisheries subsidies (except when such subsidies take the form of tax breaks). Second, the UK is able to protect its levels of statutory protection *indirectly* by ensuring that other CPTPP parties do not gain an economic advantage by not properly implementing or enforcing their domestic environmental laws. In particular, the UK is able to commence dispute settlement proceedings if other CPTPP parties fail to abide by their obligations in the environment chapter.

#### **Question 3**

### Does CPTPP otherwise affect the ability of the UK to adopt statutory protections in these areas?

### Answer: No. CPTPP does not otherwise affect the ability of the UK to adopt statutory protections in these areas.

In this context, we considered several issues. First, we examined the process of decisionmaking under CPTPP, and how that might affect the UK's statutory protections. In this respect, we noted that CPTPP foresees that the contracting states may agree on several types of decisions, including on interpretations of the agreement. Such decision may affect the scope of the agreement in the future. These decision-making powers do not, as such, affect the ability of the UK to adopt statutory protections in the areas at issue, but they be used to reach decisions that do have such an effect. We note in this respect that these decisions are not necessarily subject to parliamentary scrutiny in the same way as amendments to the agreement, although any implementation of these decisions in domestic law would follow ordinary parliamentary procedures.

Second we considered the impact of increased imports under CPTPP on the UK's border controls. We noted that CPTPP does not itself undermine the UK's statutory protections in this regard, nor are imports from CPTPP parties likely to place undue pressure on the capacity of the UK's border control regimes to handle any new threats that might emerge. Indeed, it is worth noting that the UK already imports most of the same agricultural products from CPTPP parties, either under WTO law or under FTAs. Nonetheless, we also noted that the UK is introducing a new Border Target Operating Model (BTOM), which will be tasked with responding to risks arising from worldwide imports, and, for the first time, from the EU. This will inevitably require additional capacity and we are conscious that in this context it remain essential that CPTPP imports be properly subject to UK border controls.

Third, we considered the extent to which CPTPP might affect the ability of the UK to regulate in response to concerns, raised during our consultations, about the potential effects of CPTPP on statutory animal or plant life or health, animal welfare and environmental protections. We asked four questions in relation to each concern: (a) whether there is a practice in CPTPP parties that would not be permitted in the UK; (b) whether this practice, if any, might affect agricultural products that are likely to be imported into the UK at an increased rate under CPTPP (for example, because of tariff reductions); (c) whether this practice, if any, results in a cost saving for CPTPP producers compared to UK producers; and (d) whether CPTPP would prevent the UK from regulating imports of products affected by this practice.

On the first question, we determined that, in some cases, the practice at issue was not, in reality, materially different from UK practices, for example in the context of pork production. However, in several areas practices differed. For example, Canada and Mexico both permit HGPs in beef production, and ractopamine in pork production, and Mexico allows caged hens, all of which is prohibited in the UK. Many CPTPP countries also permit the use of pesticides that are prohibited in the UK, as well as genetically modified organisms. In some cases, it was difficult to compare situations. For example, deforestation as a result of palm

oil production is a risk in Malaysia, but it is in the process of being addressed by mandatory Malaysian standards applicable to the palm oil industry.

On the second question, in most cases we did not find that there is a risk that products resulting from the practices at issue would enter the UK at increased rates under CPTPP, or that an increase in UK imports would significantly encourage those practices. Unless the UK amends its ban on imports of animal products produced using HGPs and ractopamine, the risk that such products would be imported legally is exceedingly low. In relation to caged hens, we found that it was unlikely that eggs from CPTPP parties (especially Mexico or Canada) would be imported into the UK, simply because the UK does not represent an attractive market for these products. The risk that CPTPP would lead to an increase in imports of palm oil from deforested land was low for a variety of reasons: the vast majority of importers are committed to using the RSPO standard, which is deforestation-free; and for the remainder Malaysia operates a mandatory deforestation-free standard that is at least equal to the standard applied in Indonesia, which Malaysia is to some extent likely to supplant as a supplier of palm oil to the UK. It is, on the other hand, likely that there would be some increase in imports of plant products produced using pesticides prohibited in the UK, and genetically modified products, but such products are already permitted to be sold in the UK, so any such increase is only a matter of degree.

As to the third question, there are certainly cost advantages in producing plant products using pesticides and genetic modification (which often has the advantage of reducing the need for pesticide use). It was somewhat different with other concerns. For example, given labour costs, there is no cost advantage to longer journey times for cattle. In some cases, it was difficult to compare practices, as the products at issue do not exist in the UK. Palm oil is an example.

Perhaps the most important question is the fourth, which is whether, if CPTPP does lead to an increase in imports of products produced using practices not permitted in the UK, CPTPP also constrains the ability of the UK to impose import restrictions. The answer to this question was always the same: CPTPP does not limit the UK's existing WTO rights to enforce its statutory protections, and in some cases it even enhances these rights, even if that does not mean that the UK is necessarily able to act in these situations. The point is not that the UK can always act under CPTPP; it is that CPTPP does not prevent it from acting in a way that it could otherwise do.

#### VII. Annex A - Summary of issues

#### A. Deforestation linked to palm oil

One consultee raised concerns over deforestation in Malaysia, and in particular that the reduction in tariffs on palm oil under CPTPP may lead to an increase of UK imports of palm oil from deforested land.<sup>94</sup>

#### 1. Is this practice permitted in a manner that is not permitted in the UK?

The answer is complex. In the UK, deforestation is regulated through a felling licensing system, whereby a license is legally required for the felling of trees subject to some exemptions. Any deforestation carried out without a felling permission is an offence and can be prosecuted. The power to grant felling licenses rests with the forestry authorities of each devolved nation (ie, Forestry Commission for England; Natural Resources Wales; Scottish Forestry for Scotland).<sup>95</sup> In the case of England, the Forestry Commission states that '[w]e will not normally agree to woodland clearance for conversion to agricultural use. If we do agree to the conversion to agriculture, you will be required to create an equivalent area of replacement woodland.'<sup>96</sup> There is also a general presumption against the conversion of forests to other land under the UK Forestry Standard, which applies as a technical standard for sustainable forest management across the UK.<sup>97</sup>

In Malaysia, palm oil products must be certified under the Malaysian Sustainable Palm Oil (MSPO) certification scheme, which sets out sustainability standards for all operators in the supply chain (palm oil plantations and mills, palm oil processing facilities and palm oil dealers and traders) and is administered by the Malaysian Palm Oil Certification Council. MSPO certification became mandatory in January 2020. Malaysian palm oil operators must be certified to MSPO standard to able to obtain and maintain business licenses from the Malaysian Palm Oil Board (MPOB), which is the government agency responsible for issuing and enforcing licences for the cultivation, production, sale, purchase, transfer, storage, inspection, testing, exportation, importation, and manufacture of oil palm products.<sup>98</sup>

The 2013 version of the MSPO standard, against which about 98% of the Malaysian palm oil industry is currently certified, does not contain any requirement with regards to deforestation, nor environmental protection more generally. However, about 20% of

<sup>&</sup>lt;sup>94</sup> Submission 016 (WWF).

<sup>&</sup>lt;sup>95</sup> UK Forestry Act 1967; Forestry (Felling of Trees) Regulations 1979; Forestry and Land Management (Scotland) Act 2018; The Felling (Scotland) Regulations 2019.

<sup>&</sup>lt;sup>96</sup> Forestry Commission, *Tree Felling: Getting Permission – Updated 2023*, p 14, at <a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/1171225/">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/1171225/</a> FC Tree Felling 4 July 23 WEB.pdf.

<sup>&</sup>lt;sup>97</sup> UK Government, *The UK Forestry Standard* (2023), p 5, at <u>https://www.gov.uk/government/publications/the-uk-forestry-standard</u>.

<sup>&</sup>lt;sup>98</sup> Malaysian Palm Oil Board (Licensing) Regulations 2005; MPOB Licensing Unit, *Criteria and Guidelines on MPOB License Application (2022)*, at <a href="https://e-">https://e-</a>

lesen.mpob.gov.my/document/CRITERIA%20AND%20GUIDELINES%20ON%20MPOB%20LICENSE%20APPLICATI ON EnglishVersion latest.pdf.

Malaysian palm oil industry has been certified under the Roundtable on Sustainable Palm Oil (RSPO) scheme, which is a global voluntary scheme and include a no-deforestation requirement.<sup>99</sup> We received evidence that RSPO-certified palm oil is very well established in the UK market, with the vast majority (at least 86% in 2022) of UK operators committed to importing only RSPO-certified palm oil.<sup>100</sup>

In addition, in 2022 Malaysia adopted a revised MSPO standard, which incorporates new environmental sustainability requirements, including in relation to deforestation, biodiversity and climate change.<sup>101</sup> For deforestation, the MSPO 2022 standard prohibits the conversion of natural forests and other protected and High Conservation Value areas for palm oil cultivation after 31 December 2019.<sup>102</sup> It is expected that most Malaysian palm oil production will be certified against the MSPO 2022 standard by 1 January 2025, which is around the time that the UK Government anticipates the UK will accede to CPTPP.<sup>103</sup> Provided that this is the case and compliance with the MPSO 2022 standard is effectively monitored and enforced, there would be a low risk that Malaysian palm oil exported to the UK would come from land that was deforested after December 2019.

### **2.** Does this practice involve products likely to be imported into the UK at increased rates under CPTPP?

No. Palm oil for human consumption is presently subject to a tariff of 2% (for crude palm oil), up to 12% (for refined palm oil), except for palm oil from developing countries benefitting from the UK's Developing Country Trading Scheme (DCTS), which is imported duty free.

Currently, the UK's main supplier of palm oil is Papua New Guinea (138,000 t in 2022) which is duty free under the DCTS, followed by Indonesia (79,000 mt) and Malaysia (55,000 mt). The UK also imports refined palm oil from Germany (39,000 mt), which was imported as crude palm oil from Malaysia (27%), Indonesia, Papua New Guinea and some Central American countries, and the Netherlands (28,000 mt), which mainly comes from Malaysian crude palm oil.

Palm oil demand in the UK is stable, and even falling slightly as consumers move away from products containing palm oil due to concerns about its environmental impact. Indeed, it is

<sup>&</sup>lt;sup>99</sup> Roundtable on Sustainable Palm Oil, *2018 Principles and Criteria*, Principle 7, Criterion 7.12: 'land clearing since November 2005 does not cause deforestation or damage any area required to protect or enhance High Conservation Values (HCVs) or High Carbon Stock (HCS) forest', at <u>https://rspo.org/resources/</u>.

<sup>&</sup>lt;sup>100</sup> Economics and Climate Environment (Efeca).

<sup>&</sup>lt;sup>101</sup> Department of Standards Malaysia, *Malaysian Sustainable Palm Oil (MPSO) – General Principles*, Part 1, Principle 5.

<sup>&</sup>lt;sup>102</sup> Department of Standards Malaysia, *Malaysian Sustainable Palm Oil (MSPO) - General Principles for Oil Palm Plantations*, Part 3, Principle 1, Criterion 2 (New Planting), Indicator 1: 'no conversion of natural forests, protected areas and High Conservation Value areas after 31 December 2019'.

<sup>&</sup>lt;sup>103</sup> UK Government, 'The UK and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)' accessed 30 November 2023 <u>https://www.gov.uk/government/collections/the-uk-and-the-comprehensive-and-progressive-agreement-for-trans-pacific-partnershipcptpp</u>.

for this reason that some countries that produce palm oil, predominately Indonesia and Malaysia, have developed certification programs to assure their consumers that their palm oil is produced sustainably.<sup>104</sup> As a result, we do not expect the UK's total imports of palm oil to increase, but we do expect to see some UK imports move from Indonesian suppliers to Malaysian suppliers and some refined palm oil imports to move from the Netherlands and Germany to Malaysian suppliers. This will be especially true for palm oil imported for use in UK products that can then be exported duty free under CPTPP to other CPTPP parties.

In summary, it is unlikely that CPTPP will lead to an increase in palm oil being grown on deforested land. Insofar as imports shift from Indonesia to Malaysia, the relevant comparison is with the Indonesian Sustainable Palm Oil (ISPO) standard, which is not stricter than the 2022 MSPO standard. Insofar as imports of refined palm oil shift from the Netherlands and Germany to Malaysia, MSPO 2022 will continue to apply. But, as said, this at most applies to around 14% of UK imports, given that UK importers are overwhelmingly committed to importing only palm oil that is produced to the higher RSPO standard.

#### 3. Does this practice imply cost savings for CPTPP producers vis-à-vis UK producers?

No. The practice of land clearing is costly. The UK has a palm oil refining capacity but does not produce crude palm oil as palm is a tropical tree. The only seed oil the UK produces in significant quantity is rapeseed oil. Rapeseed oil has some potential to replace palm oil for some purposes. However, the UK has not been self-sufficient in rapeseed oil since 2016 and in 2022 UK production supplied only 64% of the UK's needs.<sup>105</sup>

### 4. Does CPTPP prevent the UK from regulating imports of products produced according to this practice?

No. We note in this respect that the Environment Act 2021 UK prohibits the use of forest risk commodities (which we assume include palm oil) in commercial activity unless in relation to these commodities there was compliance with 'relevant local law'.<sup>106</sup> It is our view that the Malaysian Palm Oil Board (Licensing) Regulations 2005, which makes compliance with the MSPO standard mandatory, is for these purposes a 'relevant local law'.

The mandatory 2022 MPSO standard could also qualify as an 'environmental law' for the purposes of the CPTPP environment chapter.<sup>107</sup> This would mean that Malaysia is under an

<sup>&</sup>lt;sup>104</sup> For Malaysia, see question 1 above. It is beyond our mandate to examine the Indonesian Sustainable Palm Oil (IPSO) certification scheme.

<sup>&</sup>lt;sup>105</sup> Defra data:

https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fassets.publishing.service.gov.uk%2Fmedia %2F64ad4ac0c933c10012f9e10a%2FAUK-Chapter7-13jul23.ods&wdOrigin=BROWSELINK.

<sup>&</sup>lt;sup>106</sup> Section 116 and Schedule 17 of the Environment Act 2021 (in force as of 30 September 2022 under the Environment Act 2021 (Commencement No 3) Regulations 2022). Regulations defining 'forest risk commodities' have not yet been adopted, but the relevant Government consultation named palm oil as a concern.

<sup>&</sup>lt;sup>107</sup> Article 20.1(f) states that '[f]or Malaysia, an Act of Parliament, or a regulation promulgated pursuant to an Act of Parliament, that is enforceable by action of the federal government'. The 2005 Malaysian Palm Oil Board (Licensing) Regulations, which were promulgated pursuant to an Act of Parliament and are enforceable at the

enforceable CPTPP obligation to implement this standard when not doing so would impact bilateral trade. The UK could initiate dispute settlement proceedings against Malaysia if it fails to do so under Article 20.3.4 (non-enforcement of domestic environmental laws) and Article 20.3.6 (non-derogation of domestic environmental laws) of CPTPP.<sup>108</sup>

As under WTO law, CPTPP does not ordinarily give the UK a right to protect *Malaysian* resources, including its forests. The situation is, however, different in the event of any net deforestation, if this contributes to climate change or harms biodiversity, a question which is complicated both factually and legally. While this is still untested, it is likely that the UK is entitled under WTO law, and CPTPP, to restrict trade in order to combat climate change or to address biodiversity loss, to the extent that either can be seen as conserving a UK 'exhaustible natural resource' or, perhaps, as part of the global commons.<sup>109</sup> In any event, the UK would be able to raise the issue of deforestation with Malaysia in the CPTPP Environment Committee.

#### 5. Conclusion

We have noted that MPSO certification has become a mandatory condition (since January 2020) for the Malaysian palm oil industry to obtain business licences, and that the new 2022 version of the MSPO standard prohibits palm oil cultivation on land cleared after December 2019. Provided this new standard is fully implemented by January 2025 and compliance with it is effectively enforced, there is a low risk that Malaysian palm oil exported to the UK would come from land that was deforested after December 2019. Moreover, the UK may be able to enforce Malaysia's implementation of the 2022 MPSO standard if failure to do so has an effect on bilateral trade. The UK may also be able to restrict imports of palm oil grown on deforested land if this leads to climate change or biodiversity loss, and these have an impact on UK interests under international law. The UK could also raise the issue with Malaysia in the CPTPP Environment Committee.

#### B. Hormonal growth promoter (HGPs) use in cattle

Five consultees raised concerns that reduced tariffs under CPTPP would lead to an increase in UK imports of beef produced using HGPs from Canada and Mexico, by far the two largest producers of beef in the CPTPP (excluding Australia and New Zealand which do not have new market access conditions under CPTPP).<sup>110</sup> While HGPs in food are primarily seen as a health

federal level, make compliance with the MSPO standard mandatory and enforceable. It is less clear whether these 2005 Regulations would qualify as an 'environmental law' as defined in Article 20.1, according to which an 'environmental law' must have the primary purpose of protecting the environment in relation to the three areas listed therein, even if the MPSO standard itself would likely fall within paragraphs (a) and (c) of Article 20.1.

<sup>&</sup>lt;sup>108</sup> See section III.

<sup>&</sup>lt;sup>109</sup> WTO Panel Report, *US* – *Reformulated Gasoline*, WT/DS2/R, adopted 20 May 1996, para 6.37. This finding was not appealed and assumed by the Appellate Body to be correct: see WTO Appellate Body Report, *US* – *Reformulated Gasoline*, WT/DS2/AB/R, adopted 20 May 1996, at 14.

<sup>&</sup>lt;sup>110</sup> Submission 003 (British Veterinary Association), 004 (Compassion in World Farming), 007 (Four Paws), 011 (NFU), 014 (Trade and Animal Welfare Coalition).

concern, and hence a matter for the FSA, the use of HGPs in cattle can also be seen as an animal welfare concern,<sup>111</sup> and is addressed here on this basis.

#### 1. Is this practice permitted in a manner that is not permitted in the UK?

Yes. Since 1981, the EU has prohibited use of HGPs in farm animals, as well as imports of products, including beef, produced using HGPs,<sup>112</sup> and this prohibition has been maintained by the UK.<sup>113</sup> Thus, products from cattle reared using HGPs cannot currently be imported or sold in the UK.<sup>114</sup> In contrast, both Canada and Mexico permit the use of HGPs in beef cattle.<sup>115</sup>

# 2. Does this practice involve products likely to be imported into the UK at increased rates under CPTPP?

No. As noted, the only significant CPTPP exporters of beef are Canada, Chile and Mexico (aside from Australia and New Zealand, which have no additional market access under CPTPP). These three countries will share a tariff rate quota (alongside Brunei, Chile, Malaysia, and Peru) that will rise incrementally from the date the UK accedes to CPTPP to 13,000 tonnes annually in year 10.

At present, to make use of this quota and export to the UK, all beef exporters need to comply with UK import standards, which prohibit imports of beef produced using HGPs. We heard from Canadian government officials regarding the segregation of hormone treated and non-hormone treated beef for export and applicable certification requirements and are confident that, so long as this prohibition remains, any additional Canadian beef imports under CPTPP will be HGP-free.<sup>116</sup>

Most Mexican beef exports are exported to the United States, with Canada as the second leading destination,<sup>117</sup> which are both markets that permit HGP beef. If Mexico were to seek

<sup>&</sup>lt;sup>111</sup> For example, the RSPCA has suggested that the use of HGPs might have deleterious effects on cattle in extreme heat, that there is a risk of implantation site injury behind the ear and that interaction with natural hormones might increase aggression and nervousness. See RSPCA Knowledge Base, 'What are the animal welfare impacts of using hormone growth promotants in beef cattle?', May 2019,

https://kb.rspca.org.au/knowledge-base/what-are-the-animal-welfare-impacts-of-using-hormone-growthpromotants-in-beef-cattle, accessed 30 November 2023.

<sup>&</sup>lt;sup>112</sup> Article 11(2) of Council Directive 96/22/EC of 29 April 1996.

<sup>&</sup>lt;sup>113</sup> Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (England and Scotland) Regulations 2015 (equivalent rules in Wales and Northern Ireland).

<sup>&</sup>lt;sup>114</sup> We note that the EU and UK HGP import prohibition was for human health reasons, not animal welfare reasons, and that human health is outside our remit.

<sup>&</sup>lt;sup>115</sup> Kersi Latham, 'Different Cattle Production Practices Between Different Countries' (2016) <u>https://r-calfusa.com/wp-content/uploads/2016/05/160829-Kersi-final-paper-FINAL.pdf</u>.

<sup>&</sup>lt;sup>116</sup> Government of Canada, 'The Canadian Program for Certifying Freedom from Growth Enhancing Products (GEPs) for the Export of Beef to the European Union (EU' (November 2022) <u>https://inspection.canada.ca/exporting-food-plants-or-animals/food-exports/requirements/eu-meat-and-poultry-products/annex-r/eng/1462942544704/1462942667141?chap=0</u>.

<sup>&</sup>lt;sup>117</sup> Statista, 'Leading countries of destination of bovine meat exported from Mexico in 2019 (in USD million)' (2023) <u>https://www.statista.com/statistics/1047938/exports-bovine-meat-by-country-mexico/</u>.

to expand beef exports to the UK, it could seek to develop similar certification processes to Canada in order to demonstrate compliance with UK import rules for HGP beef. However, given the limited additional market access provided under CPTPP, ie the 13,000 tonne shared tariff rate quota, that may not be a worthwhile investment (and the same applies to other CPTPP beef producers). If it does not then, as noted, under current UK law such imports will not be permitted. Chile is a smaller producer and is more likely to fill the quota. Chile's largest export market is presently China. As China does not allow HGP beef, we assume Chile already has the infrastructure in place to supply the UK.

#### 3. Does this practice imply cost savings for CPTPP producers vis-à-vis UK producers?

The question does not currently arise, as HGP produced products do not enter the UK.<sup>118</sup> However we note that use of HGPs increases the productivity of beef production and reduces input costs.<sup>119</sup> In Canada, HGPs reportedly contributed to a 10% reduction in the cost of beef production.<sup>120</sup>

### 4. Does CPTPP prevent the UK from regulating imports of products produced according to this practice?

No. CPTPP does not change the legal position under WTO law. The EU ban on HGPs was found by the WTO to be illegal in 1996, on the basis that it was not based on a scientific risk assessment.<sup>121</sup> An EU challenge to this ruling in 2008, in part on a different basis, was inconclusive, with the result that the original findings remain operative.<sup>122</sup> The UK's own import prohibition has not been challenged.

#### 5. Conclusion

It is currently illegal for beef from cattle treated with HGPs to be imported into the UK. CPTPP does not change the WTO legal position on such a prohibition. We note in this respect that the issue has been litigated in the WTO, with inconclusive results. In any event, it is highly unlikely that under WTO law the UK could not adopt a labelling regime to distinguish between HGP and non-HGP products for consumers. Nor does CPTPP change the UK's ability to adopt such schemes.

<sup>&</sup>lt;sup>118</sup> An analysis of any potential cross-subsidisation effects for producers that both use HGPs and export non-HGP beef (if there are any) is outside the scope of the Commission's work.

<sup>&</sup>lt;sup>119</sup> J L Capper and D J Hayes, 'The environmental and economic impact of removing growth-enhancing technologies from US beef production' (2010) 90 Journal of Animal Science 3527-37, https://doi.org/10.2527/jas.2011-4870.

<sup>&</sup>lt;sup>120</sup> Beef Cattle Research Council, 'Hormones and other Growth Promotants in Beef Production' (23 June 2023), <u>https://www.beefresearch.ca/topics/hormones-other-growth-promotants-in-beef-production/</u>, accessed 30 November 2023.

<sup>&</sup>lt;sup>121</sup> WTO Appellate Body Report, EC – Hormones, WT/DS26/AB/R, adopted 13 February 1998.

<sup>&</sup>lt;sup>122</sup> WTO Appellate Body Report, *US – Continued Suspension of Obligations in the EC – Hormones Dispute*, WT/DS320/AB/R, adopted 14 November 2008, para 737. The Appellate Body overruled several Panel findings against the EU, but did not itself complete the legal analysis, due to flaws in the Panel's analysis and the contested nature of the facts: ibid, para 735. For a discussion, see Renée Johnson, *The US-EU Beef Hormone Dispute*, Congressional Research Service Report R40449, 2015, at <a href="https://sgp.fas.org/crs/row/R40449.pdf">https://sgp.fas.org/crs/row/R40449.pdf</a>.

#### C. Ractopamine use in pork production

Four consultees raised concerns over the use of ractopamine in pork production as an animal welfare concern.<sup>123</sup> In particular, there were concerns that reduced tariffs under CPTPP would lead to an increase in UK imports of pork produced using ractopamine from Canada and Mexico, the two largest producers of pork in the CPTPP.

Ractopamine hydrochloride (RAC) is administered via animal feed in the latter stages of rearing of pigs for meat as a growth promoter, to increase the relative proportion of muscle compared to fat. It is not a hormonal growth promoter but a  $\beta$ -adrenergic agonist, which acts to increase the size of muscle fibres.<sup>124</sup> Since RAC leads to a greater feed conversion efficiency, it increases productivity and makes some contribution to reducing the greenhouse gas emissions associated with meat production.

Experimental studies have shown that RAC can cause pathological changes in their tissues albeit without signs of disease.<sup>125</sup> Field studies suggest that pigs which have received RAC are more likely to show signs of aggression during handling and are prone to lameness and injury, especially if they are handled insensitively; and similar findings have been reported for beef cattle.<sup>126</sup> These effects are more pronounced at higher doses, even at 2-4 times the recommended dose.

#### 1. Is this practice permitted in a manner that is not permitted in the UK?

Yes. The EU prohibition on the use of RAC in farm animals, as well as imports of products produced using RAC, has been maintained by the UK, and products reared using RAC cannot currently be imported or sold in the UK.<sup>127</sup> In contrast, the use of RAC is permitted for use in pig production in both Canada and Mexico.

### **2.** Does this practice involve products likely to be imported into the UK at increased rates under CPTPP?

No. In practice, Canada, Chile and Mexico are the only CPTPP parties that are significant exporters of pork. Canada, Chile and Mexico (along with Brunei, Malaysia, Peru, Singapore and Viet Nam) will share a tariff rate quota that increases incrementally over 10 years, capped at 55,000 tonnes from year 10. To make use of this quota and export to the UK,

<sup>&</sup>lt;sup>123</sup> Submissions 004 (Compassion in World Farming), 007 (Four Paws), 014 (Trade and Animal Welfare Coalition), 011 (NFU).

<sup>&</sup>lt;sup>124</sup> M N Sillence, 'Technologies for the control of fat and lean deposition in livestock' (2004) 167 The Veterinary Journal 242.

<sup>&</sup>lt;sup>125</sup> D Catalano et al, 'Physiopathological changes related to the use of ractopamine in swine' (2012) 144 Livestock Science 74.

<sup>&</sup>lt;sup>126</sup> M J Ritter et al 'Review: Effects of Ractopamine Hydrochloride (Paylean) on welfare indicators for market weight pigs' (2017) 1 Transl Anim Sci 533; D U Thomson et al, 'Description of a novel fatigue syndrome of finished feedlot cattle following transportation' (2015) 247 J Am Vet Med Assoc 66-72.

<sup>&</sup>lt;sup>127</sup> Animals and Animal Products (Examination for Residues and Maximum Residue Limits (England and Scotland) Regulations 2015 (equivalent rules in Wales and Northern Ireland).

Canadian, Chilean and Mexican exporters will need to comply with UK import standards, which presently do not permit pork produced using RAC.

We have heard testimony from Canadian government officials regarding the segregation of RAC and non-RAC treated pork for export and the certification therein.<sup>128</sup> We are confident that the Canadian Ractopamine-Free Pork Certification Program (CRFPCP) is robust and that, unless UK law changes, there is no increased risk that RAC-treated pork from Canada will enter the UK as a result of the accession to CPTPP.

If Mexico were to seek to expand pork exports to the UK, unless UK law changes, Mexican pork exporters would need to assure the segregation of RAC and non-RAC treated pork for export to the UK. It might seek to develop a similar certification process to Canada in order demonstrate compliance with UK import rules. However, given the limited tariff rate quota provided under CPTPP, the available UK market may not be large enough to warrant such an investment.

Chile has not approved RAC and as noted for beef, China is also Chile's largest pork export market, by weight, and China does not permit RAC pork imports.

#### 3. Does this practice imply cost savings for CPTPP producers vis-à-vis UK producers?

The question does not currently arise, as RAC-produced products do not enter the UK. However, we note that RAC can 'increase carcass weight and improve feed conversion efficiency in finisher pigs, improving the economic gains pig producers can obtain from the market.'<sup>129</sup> Research in Canada has shown an increased growth of around 13% and improved carcass quality, which for a typical producer at the time of the study was worth \$2 - \$3 per pig sold.<sup>130</sup>

### 4. Does CPTPP prevent the UK from regulating imports of products produced according to this practice?

No. CPTPP does not change the WTO legal position on the UK's RAC pork prohibition. We do not comment on the legality of this prohibition on health grounds, as this is beyond our remit. Were the UK to seek to justify this prohibition on the grounds of public morals, it would need to establish that this prohibition is necessary to protect UK public morals. That would involve evidence, for example, in a legislative practice or from surveys demonstrating that this is the case. It would also need to be established that there is no less trade restrictive or discriminatory means of protecting animal welfare than by means of this prohibition.

<sup>&</sup>lt;sup>128</sup> Animal Nutrition Association of Canada, 'Canadian Ractopamine-Free Pork Certification Program' (November 2021) <u>https://www.anacan.org/feed-industry/public-resources/canadian-ractopamine-free-pork-certification-program/#:~:text=The%20Canadian%20Ractopamine-Free%20Pork%20Certification%20Program%20%28CRFPCP%29%20is,fed%20and%2For%20exposed%20to%20r</u>

actopamine%20hydrochloride%20%28ie%20ractopamine%29.

<sup>&</sup>lt;sup>129</sup>Australian Pork, 'Maximising the cost effectiveness of ractopamine' (2021).

<sup>&</sup>lt;sup>130</sup> J F Patience et al, 'Effect of Ractopamine in Finishing Diets: Economics' (2006 Prairie Swine Centre).

#### 5. Conclusion

CPTPP does not change the WTO legal position on the UK's current import prohibition on RAC treated pork. Unless UK law changes, due to Canada's existing certification scheme there is no increased risk that RAC-treated pork from Canada will enter the UK because of the UK's accession to CPTPP. Should Mexico seek to expand exports of pork to the UK, its exporters will need to demonstrate compliance with UK import requirements.

#### D. Transport times for livestock

Five consultees raised concerns over the length of journey times for cattle and pigs in Canada, on animal welfare grounds.<sup>131</sup> In particular, there were concerns that reduced tariffs under CPTPP would lead to an increase in UK imports of products from animals that had been subjected to journey times longer than would be permitted in the UK.

In responding to this concern, we note that journey time alone is an insufficient measure of animal welfare, since variables including stocking density, trailer design, road type and condition and ambient temperature all affect the transported livestock. One study concerning pigs concluded that many of these factors could be overcome by good vehicle design and animal management during the journey.<sup>132</sup> A study in Ontario reported that intransit losses for pigs reduced as distance travelled increased<sup>133</sup> whilst another study emphasised the necessity to consider pig-level factors in understanding the association between duration and in-transit losses.<sup>134</sup>

#### 1. Is this practice permitted in a manner that is not permitted in the UK?

The answer to this question is complex. Inevitably, transport times are going to differ as between the 11 CPTPP parties, given their size and geography. The UK has strict standards and time restrictions, which in many cases, are stricter than those in the 11 countries.

UK law protects animal welfare during transport. In general, journey time is limited to 8 hours. However, longer journeys are permitted provided the vehicles have been inspected and approved. The maximum duration varies by species and age. For example, weaned ruminants must be rested for one hour after a 9-hour journey and may then be transported for a further 9 hours; pigs may be transported for a maximum of 24 hours provided they are offered water periodically. Transport is not allowed in extreme conditions of heat or cold.

<sup>&</sup>lt;sup>131</sup> Submissions 004 (Compassion in World Farming), 006 (Farmers Union of Wales), 007 (Four Paws), 011 (NFU), 014 (Trade and Animal Welfare Coalition).

<sup>&</sup>lt;sup>132</sup> B L Nielsen et al, 'Road transport of farm animals: effects of journey duration on animal welfare' (2011) 5 Animal 415.

<sup>&</sup>lt;sup>133</sup> C Haley et al, 'Association between in-transit loss, internal trailer temperature, and distance travelled by Ontario market hogs' (2008) 72 Can J Vet Res 385.

<sup>&</sup>lt;sup>134</sup> Kathy Zurbrigg et al, 'Pig-level risk factors for in-transit losses in swine: a review' (2017) 97 Canadian Journal of Animal Science 339.

This is stricter than in Canada, where Canadian cattle can be transported for 36 hours before a water and feed stop, though younger cattle can only be transported for 12 hours.<sup>135</sup> The maximum time limit to transport adult, healthy, fit pigs is 28 hours from the time of feed and water withdrawal on farm until the pigs are next offered feed, water and rest.<sup>136</sup> In practice, the average duration of a long haul trip was 16 hours and more than 90% spent fewer than 30 hours in transit.<sup>137</sup>

### 2. Does this practice involve products likely to be imported into the UK at increased rates under CPTPP?

Yes. Canada is a significant exporter of beef and pork, and tariffs will be liberalised for both commodities from Canada. However, as noted above, the TRQs for both commodities are limited and will be shared with 5 other countries including Mexico.

#### 3. Does this practice imply cost savings for CPTPP producers vis-à-vis UK producers?

Not necessarily. Transport of livestock over long distances costs in time and money, so may not confer a competitive advantage. On the contrary, the longer the distance the higher the cost, with producers keeping distances to a minimum to reduce costs. Overall, the cost of livestock transportation depends on several factors, such as species of animal and the distance travelled. Labour costs account for a significant part of the total transport costs, as well as fuel, equipment, animal health checks and tolls.<sup>138</sup>

### 4. Does CPTPP prevent the UK from regulating imports of products produced according to this practice?

No. CPTPP incorporates the UK's WTO rights to prohibit imports of beef and pork if this is necessary to protect the UK's 'public morals'.

#### 5. Conclusion

Should the issue of journey times arise in practice, the UK could seek to justify an import ban on the grounds that this is necessary to protect its public morals, although this may not be straightforward. In addition, the UK could raise the issue in dialogue with Canada.

#### E. Hot branding

One consultee raised the issue of hot branding of cattle in Canada and Mexico on animal welfare grounds.<sup>139</sup> In particular, there was a concern that reduced tariffs under CPTPP

<sup>&</sup>lt;sup>135</sup> Part XII of the Health of Animals Regulations. See also Canadian Food Inspection Agency, Livestock Transport in Canada: Are you sure that animal is fit for the trip?', <u>https://inspection.canada.ca/DAM/DAM-animals-animaux/STAGING//text-texte/livestock\_transport\_pdf\_1528296360187\_eng.pdf</u>.

<sup>&</sup>lt;sup>136</sup> Government of Canada 'Health of Animals Regulations: Part XII: Transport of Animals-Regulatory Amendment Interpretive Guidance for Regulated Parties' 19.2 (27 November 2023).

<sup>&</sup>lt;sup>137</sup> Beef Cattle Research Council 'Transport' (13 September 2023), https://www.beefresearch.ca/topics/transport/.

<sup>&</sup>lt;sup>138</sup> Coen van Wagenberg, 'The economics of animal transport', OIE presentation (2019), <u>https://edepot.wur.nl/496757</u>.

<sup>&</sup>lt;sup>139</sup> Submission 014 (Trade and Animal Welfare Coalition).

would lead to an increase in UK imports of beef produced using hot branding from Canada and Mexico, the two largest producers of beef in the CPTPP excluding Australia and New Zealand.

Hot branding of cattle is the practice of using a hot iron to make a permanent identification mark on the skin of an animal. It is likely to cause short-term pain to cattle who undergo the practice.

#### 1. Is this practice permitted in a manner that is not permitted in the UK?

Hot branding farm animals is banned in the UK, although freeze branding and tattooing can be used. However, the practice has not been banned for horses,<sup>140</sup> apart from in Scotland<sup>141</sup> and Northern Ireland.<sup>142</sup>

In Canada hot branding is used by a minority of farmers, along with compulsory RFID ear tags, to aid in identifying livestock.<sup>143</sup> Hot branding is allowed in Mexico.<sup>144</sup>

### 2. Does this practice involve products likely to be imported into the UK at increased rates under CPTPP?

Possibly. As noted, Canada and Mexico will share a new tariff rate quota for beef with Brunei, Chile, Malaysia, and Peru, rising incrementally to 13,000 tonnes annually in year 10.

#### 3. Does this practice imply cost savings for CPTPP producers vis-à-vis UK producers?

Possibly. There are two costs associated with animal identification – the cost of the equipment and consumables (tags, applicators, brands etc) and the costs of labour for mustering, handling etc. Tag costs are in the region of £2-4, which may be higher than the cost of a reusable hot iron brand, and pain relief may be necessary for hot-branded animals, bringing further costs. The pain and stress of the procedure may also impact appetite in the short term. This applies to Mexico. For Canada, branding is in addition to ear tag application, so there is no net cost saving.

### 4. Does CPTPP prevent the UK from regulating imports of products produced according to this practice?

No. CPTPP incorporates the UK's WTO rights to prohibit imports of beef and pork if this is necessary to protect the UK's 'public morals'. However, the fact the practice is permitted for

<sup>&</sup>lt;sup>140</sup> The Mutilations (Permitted Procedures) (England) Regulations 2007, <u>https://www.legislation.gov.uk/uksi/</u>2007/1100; The Mutilations (Permitted Procedures) (Wales) Regulations 2007, <u>https://www.legislation.gov.uk/</u>wsi/2007/1029.

<sup>&</sup>lt;sup>141</sup> The Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2010, https://www.legislation.gov.uk/ssi/2010/387/contents/made.

<sup>&</sup>lt;sup>142</sup> The Welfare of Animals (Permitted Procedures by Lay Persons) Regulations (Northern Ireland) 2012, https://www.legislation.gov.uk/nisr/2012/153/contents/made.

<sup>&</sup>lt;sup>143</sup> National Farm Animal Care Council 'Code of Practice for the Care and Handling of Beef Cattle' (2018).

<sup>&</sup>lt;sup>144</sup> We note that hot branding is also compulsory for any live animals being imported from Mexico to the US: Branding Requirements for Bovines Imported Into the United States From Mexico, 83 FR 64223, <u>https://www.federalregister.gov/documents/2018/12/14/2018-27150/branding-requirements-for-bovines-imported-into-the-united-states-from-mexico</u>.

wild horses in the UK may make the prevention of products from livestock that have been hot branded difficult on public morals grounds.

#### 5. Conclusion

CPTPP does not constrain the UK's rights under WTO law to prohibit imports of beef from branded cattle if it could be shown that this is necessary to protect UK public morals. However, this might be difficult, given that branding of horses is legal in parts of the UK.

#### F. Pork production systems

Several consultees raised concerns over pig production systems utilised in CPTPP countries, Consultees noted the use of sow stalls, farrowing crates, use of fully slatted flooring, castration and tail docking, on animal welfare grounds.<sup>145</sup>

#### 1. Are these practices permitted in a manner that is not permitted in the UK?

It is important to note that many pig welfare practices in the UK are the result of voluntary assurance schemes. For example, the UK has a relatively high percentage of pigs finished on some straw, around 60% of weaned pigs<sup>146</sup> compared to 0-12% in other EU countries and other major pig producing countries. However, this is not mandatory and fully slatted floors are in use in the UK and Europe. Consequently, the practice of finishing without straw is permitted in the UK and used.

Farrowing crates are placed within pens to prevent sows from injuring their piglets by lying on them or savaging them, which may occur occasionally in unrestricted pens. The sow is able to stand, lie and move a little back and forth but cannot turn around. Use of farrowing pens is permitted in UK and approximately 60% of sows are confined in them from a few days before parturition until approximately 28 days afterwards. Sows in outdoor systems are not placed in farrowing crates.

Individual sow stalls which prevent sows from turning around are used in some CPTPP countries, including Canada and Mexico, to permanently house sows through their pregnancy. These have been banned in the UK since 1999.<sup>147</sup> However, by the time the CPTPP is expected to enter into force, Canada's 2014 pig Code of Practice<sup>148</sup> will require producers to house mated gilts or sows in groups, individual pens, or stalls. The code further requires the removal of all stalls by 2029. In July 2023 the National Farm Care Council reported that 62% of Canadian pig production had already phased out sow stalls. Sow stalls are permitted in Mexico.

Routine tail docking of pigs is not permitted in UK, with emphasis placed on environmental enrichment and other approaches to prevent tail biting. However, docking may be

<sup>&</sup>lt;sup>145</sup> Submissions 003 (British Veterinary Association), 004 (Compassion in World Farming), 006 (Farmers Union of Wales), 007 (Four Paws), 011 (NFU), 016 (WWF), 014 (Trade and Animal Welfare Coalition).

<sup>&</sup>lt;sup>146</sup> Submission 014 (Trade and Animal Welfare Coalition).

<sup>&</sup>lt;sup>147</sup> Retained Council Directive 2008/120/EC of 18 December 2008 laying down minimum standards for the protection of pigs.

<sup>&</sup>lt;sup>148</sup> National Farm Animal Care Council 'Code of Practice for the Care and Handling of Pigs' (2014).

conducted if it is deemed necessary, for example, on veterinary advice and 72% of UK piglets were tail docked in 2020.<sup>149</sup> In Canada, since 2016, tail-docking performed at any age must be done with analgesics to help control post-procedure pain.

In common with most countries, castration of male pigs is routinely undertaken in Canada, Mexico and Chile. This is to reduce aggression and avoid the risk of boar taint in pork. In UK, castration is permitted<sup>150</sup> but discouraged and only 1%-2% of male piglets undergo this procedure. Voluntary assurance schemes such as Red Tractor forbid this practice.

In Mexico, pigs are covered under the Federal Animal Health Act 2007, which covers the prevention and control of animal disease and welfare. It includes the Five Freedoms. In 1993, the Five Freedoms were adapted to explain how animal owners can meet each freedom.<sup>151</sup>

- Freedom from hunger and thirst
- Freedom from discomfort
- Freedom from pain, injury or disease
- Freedom to express normal behaviour
- Freedom from fear and distress

There is also state-level animal welfare legislation. However, we were unable to identify any pig-specific welfare regulations from Mexico. A new Mexican international sustainability standard for the pork industry was introduced in 2023.<sup>152</sup>

# 2. Does this practice involve products likely to be imported into the UK at increased rates under CPTPP?

Possibly. Canada, Chile and Mexico are the only CPTPP parties that are significant exporters of pork. Canada, Chile and Mexico will share a tariff rate quota that increases incrementally over 10 years, capped at 55,000 tonnes from year 10. As a ban on sow stalls will be in place in Canada by July 2024, there is little risk that products will be imported to the UK that involves a practice not permitted in the UK. Should Mexico make use of this quota, it is foreseeable that CPTPP will lead to imports of pork produced in a manner not permitted in the UK (ie, utilising individual sow stalls throughout gestation).

<sup>&</sup>lt;sup>149</sup> AHDB 'Real Welfare update report (2018–2020)' (AHDB 2021) <u>https://ahdb.org.uk/knowledge-library/real-welfare-update-report-2018-2020</u>.

<sup>&</sup>lt;sup>150</sup> DEFRA, Guidance, Code of practice for the welfare of pigs (updated 5 October 2023) <u>https://www.gov.uk/government/publications/pigs-on-farm-welfare/caring-for-pigs#mutilations</u>.

<sup>&</sup>lt;sup>151</sup> The Five Freedoms are explained here: SPANA 'The Five Freedoms of Animal Welfare' accessed 30 November 2023 (<u>https://spana.org/blog/the-five-freedoms-of-animal-welfare/</u>).

<sup>&</sup>lt;sup>152</sup> Global Ag Media, 'Mexico unveils first international sustainability standard for pork industry', <u>https://www.thepigsite.com/news/2023/08/mexico-has-the-first-international-sustainability-standard-for-pork-industry</u>.

#### 3. Does this practice imply cost savings for CPTPP producers vis-à-vis UK producers?

This answer to this question is complex. Determining the profitability of rearing pigs in a range of systems with different standards for pig welfare is not easy. On balance, sow stalls will be lower cost than free pens. But this is not straightforward. Sow stalls facilitate individual feeding, prevent bullying and typically reduce total space requirements, and labour costs (eg for feeding, cleaning etc) may also be reduced. However, installation of the steel bars etc is costly and regular maintenance is required. Higher welfare systems require capital investment and more space, which come with costs for producers. Likewise, tail docking requires handling and restraint of the piglets, thus incurring labour costs as well as appropriate equipment and consumables.

### 4. Does CPTPP prevent the UK from regulating imports of products produced according to this practice?

No. CPTPP incorporates the UK's WTO rights to prohibit imports of pork if this is necessary to protect the UK's 'public morals'. This does not, however, mean that all public morals objections will permit the UK to impose an import restriction. This will not be permitted where the UK permits in the same practice domestically, or where it does not enforce an equivalent restriction on imports from other countries. The fact that tail-docking is frequently utilised in the UK, and for that matter the EU,<sup>153</sup> the UK's largest pork supplier, will make a public morals defence difficult to maintain. A similar argument applies with respect to castration, which is permitted in UK and widely practiced in the EU. CPTPP does not change the WTO legal position concerning labelling.

#### 5. Conclusion

Should the UK wish to implement an import ban on pork produced in a certain manner on animal welfare grounds, this is in principle possible. However, this is subject to the condition that the UK does not itself permit the same practice, and that it does not allow imports from other countries that engage in this practice. CPTPP does not change the WTO legal position concerning labelling.

#### G. Caged hens

Eight consultees raised concerns over the use of battery cages in the production of eggs, on animal welfare grounds.<sup>154</sup> In particular, there were concerns that reduced tariffs under CPTPP would lead to an increase in UK imports of eggs and egg products produced using caged systems from Canada and Mexico, the two largest producers of eggs in the CPTPP.

 <sup>&</sup>lt;sup>153</sup> N De Briyne et al, 'Phasing out pig tail docking in the EU – present state, challenges and possibilities' (2018)
 4 Porcine Health Management 27.

<sup>&</sup>lt;sup>154</sup> Submissions 001 (British Egg Industry Council), 003 (British Veterinary Association), 004 (Compassion in World Farming), 007 (Four Paws), 011 (NFU), 014 (Trade and Animal Welfare Coalition), and 016 (WWF).

#### 1. Is this practice permitted in a manner that is not permitted in the UK?

The UK permits the use of 'enriched' or 'colony' cages with a minimum space of 750 cm<sup>2</sup> of cage area per hen.<sup>155</sup> Canada currently permits the use of battery cages but is committed to banning all caged egg production by 2036.<sup>156</sup> Egg production in Mexico is still largely based on caged systems.

# 2. Does this practice involve products likely to be imported into the UK at increased rates under CPTPP?

No. Canada is the largest egg and egg product (liquid or powered egg) exporter in CPTPP, but it mainly exports to the United States. Mexico is a net importer of eggs, mostly from the US. The UK has had a trade agreement with Mexico since 2004 which includes eggs and egg products, but this quota has never been used. We do not expect to import fresh eggs or egg products under CPTPP. The UK exports more egg products by weight than Canada.

#### 3. Does this practice imply cost savings for CPTPP producers vis-à-vis UK producers?

Yes. Battery cages increase egg production efficiency and reduce costs.

# 4. Does CPTPP prevent the UK from regulating imports of products produced according to this practice?

No. CPTPP incorporates the UK's WTO rights to prohibit imports of eggs if this is necessary to protect the UK's 'public morals', though any such prohibition would need be required to be applied consistently to imports from all countries. CPTPP does not change the WTO legal position concerning labelling.

#### 5. Conclusion

Canada is the largest egg and egg product (liquid or powered egg) exporter in CPTPP, but it mainly exports to the United States. Mexico is a net importer of eggs, mostly from the US, and while the UK has had a trade agreement with Mexico since 2004 which includes eggs and egg products, this quota has never been used. We do not expect to import fresh eggs or egg products under CPTPP. The UK exports more egg products by weight than Canada.

In any event, CPTPP does not affect the UK's WTO rights to prohibit imports of eggs from caged hens. This is possible if necessary to protect public morals concerning hen welfare, provided that any import restriction or other measure applies equally to imports from all countries.

#### H. Pangasius welfare

One consultee raised a concern that reduced tariffs under CPTPP would lead to an increase in UK imports of pangasius from Viet Nam produced to low welfare standards.

<sup>&</sup>lt;sup>155</sup> DEFRA, Code of practice for the welfare of laying hens and pullets (2018)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/732227/c ode-of-practice-welfare-of-laying-hens-pullets.pdf.

<sup>&</sup>lt;sup>156</sup> National Farm Animal Care Council 'Code of Practice for the Care and Handling of Pullets and Laying Hens' (2017).

Pangasius (also known as 'basa' or 'Vietnamese catfish') is a freshwater air breathing catfish from Southeast Asia, which is typically be found in lakes and rivers in Viet Nam (mainly in the Mekong Delta), as well as Thailand, Laos and Cambodia. Pangasius is primarily farmed intensively using cages and ponds. Viet Nam produces the vast majority of globally exported Pangasius.<sup>157</sup>

#### 1. Is this practice permitted in a manner that is not permitted in the UK?

There is no direct UK competitor product in the UK. Pangasius is a 'relatively hardy' freshwater fish and is capable of air-breathing.<sup>158</sup> The distinct biology of pangasius means that a like for like comparison with regulations for salmon or trout farmed in the UK is not appropriate.

### 2. Does this practice involve products likely to be imported into the UK at increased rates under CPTPP?

No. The UK-Viet Nam FTA provides for the elimination (after time) of duties on pangasius, with the most traded lines already fully liberalised. As a result, CPTPP provides no significant additional access to Vietnamese pangasius.

#### 3. Does this practice imply cost savings for CPTPP producers vis-à-vis UK producers?

Not applicable. As noted, there is no direct UK comparison with pangasius production.

# 4. Does CPTPP prevent the UK from regulating imports of products produced according to this practice?

No. CPTPP does not affect the UK's WTO rights to regulate imports of pangasius.

#### 5. Conclusion

CPTPP does not affect the UK's WTO rights to restrict imports of pangasius, should this arise as an issue.

#### I. Pesticide use

One consultee raised concerns over the use of pesticides, on environmental (as well as economic) grounds.<sup>159</sup> The concern was that CPTPP's reduced tariffs would lead to an increase in UK imports of fruit and vegetables using pesticides that are not permitted to be used in the UK.

In considering this issue, we begin by noting that it is entirely normal for a country to operate an independent pesticide approval regime for licensing pesticides for use in agriculture (including fungicides, insecticides, and herbicides as well as other plant protection products), covering both the active substance and the fully formulated product

<sup>&</sup>lt;sup>157</sup> Haven King-Nobles, Thomas Billington, Jennifer-Justine Kirsch, and Trang Đặng, 'Fish Welfare Initiative Fish Welfare Scoping Report: Viet Nam' (March 2020).

<sup>&</sup>lt;sup>158</sup> Le Thi Anh Hong et al, 'Isolation and characterization of indigenous microorganisms for antagonizing Fusarium incarnatum and preventing swollen swim bladder disease in Pangasius hypophthalmus' (2023) Materials Today: Proceedings, in press.

<sup>&</sup>lt;sup>159</sup> Submission 012 (Pesticide Action Network (PAN) UK).

itself. Pesticides are assessed for their 'safety' (impact on workers, consumers, residents and bystanders, the environment, water bodies and wildlife) as well as for their efficacy, and approvals are granted on a crop-by-crop basis, considering local climatic and environmental conditions, while also setting parameters on issues such as application rates, method, concentration and timing. It follows that, because of the variety of geographies and climates in the 11 CPTPP parties, these differences will be very significant, and it is therefore inevitable that different pesticides will be authorised for use in different countries for different crops, and that certain pesticides not authorised for use in one country may be authorised for use in another without this automatically indicating a higher or lower level of safety or protection.

The consultee in question also raised a concern that the UK could be pressured into reauthorising formulated pesticides and/or active substances which have been previously banned in the UK due to concerns over their negative impact on human health or the natural environment. Again, we note that the issue of human health raised above lies outside of the remit of this advice, but in relation to it we can address the issue of potential political pressure, from an environmental standpoint, where we observe that the point where the UK would have been at greatest pressure to concede to reauthorise substances, or to amend its pesticides approval regime, would have been during the negotiations to join CPTPP. That point of maximum leverage passed following the conclusion of the work of the accession working group which examined the UK's compliance with the rules of CPTPP.<sup>160</sup> What remains are the UK's legal rights to regulate imports produced using pesticides, which we examine below. It is beyond our remit to comment on the factors that might affect the UK's exercise of those rights.

#### 1. Is this practice permitted in a manner that is not permitted in the UK?

Yes. The Pesticide Action Network UK (PAN UK) reports that there are 119 pesticide products not permitted for use in the UK that are permitted, to varying extents, by one or more of the 11 CPTPP parties.<sup>161</sup>

### 2. Does this practice involve products likely to be imported into the UK at increased rates under CPTPP?

Yes. A wide range of fruit, vegetables, crops, and horticultural products are produced and exported (at various volumes) by the 11 CPTPP parties, including tropical fruits and fresh produce which cannot be grown commercially in the UK, as well as some that can and are grown commercially in the UK. This includes cereal crops, such as rice, wheat and oilseed crops (eg soya and rapeseed). It is important to note that all of these products are currently imported from CPTPP parties either under WTO law or under existing FTAs.

<sup>&</sup>lt;sup>160</sup> The Accession Working Group Report is a summary of the UK accession process and outcomes across all areas of the agreement. This report was agreed amongst the pre-existing Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) Parties, who collectively made up the UK's Accession Working Group. Report available here: <a href="https://www.gov.uk/government/publications/cptpp-accession-working-group-report">https://www.gov.uk/government/publications/cptpp-accession-working-group-report</a>.

<sup>&</sup>lt;sup>161</sup> PAN UK, Sustain and Emily Lydgate, 'Toxic Trade – CPTPP How joining the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) threatens to weaken UK pesticide standards' (9 June 2021) at <a href="https://www.sustainweb.org/reports/toxic-trade-cptpp/">https://www.sustainweb.org/reports/toxic-trade-cptpp/</a>.

As noted, the production of these commodities in the territory of other CPTPP parties will likely involve pesticides that are not permitted for use in the UK. Consultation with UK fruit and vegetable industry trade association members and examination of the products exported by the 11 countries suggested that the greatest potential for increased imports lies in products that are already imported by the UK, such as asparagus from Chile, Peru and Mexico and blueberries from Canada, Chile and Peru. Seasonal supply in the UK means that imports are only likely to take place outside the UK growing season, although there could be competing imports at the 'shoulders' of the seasons as supply crosses over from UK to imported product.

The UK has well-established supply chains with suppliers in a number of CPTPP countries, including the shipment of grains from Canada and fruit and vegetables from Peru, Chile and Mexico. Many of these supply chains require auditable production standards, such as GLOBALG.A.P which require proof that standards of pesticide use are being met.

In addition, retailers are increasingly requiring suppliers to adhere to auditable environmental standards. Driven by their own sustainability objectives (in response to consumer sentiment), often the UK retailer/importer seeks to deploy higher (audited) standards of the environmental impact of food production than the UK statutory position. As part of its evidence review, the TAC learnt that, over the next few years, producer compliance with the LEAF Marque scheme operated by the UK-based charity 'Linking Environment And Farming' will increasingly become a requirement for UK and non-UK growers supplying a range of large UK supermarkets. It requires monitoring of a number of environmental impacts of food production, including improved pesticide stewardship, water and soil management.

#### 3. Does this practice imply cost savings for CPTPP producers vis-à-vis UK producers?

Yes. Pesticides are used by farmers primarily to protect crop yield and quality from weeds, pests, and diseases and, therefore, profits. While it is difficult to quantify cost savings, the availability of a wide range of tools to suppress pest and disease pressures in the growing of crops is an important element of profitable farming and any restriction thereof may reduce yield. A UK industry-sponsored study by agricultural consultants Andersons in 2014 found that the loss of 40 commonly used pesticides considered under various threats of withdrawal from use would see UK agriculture's Gross Value Added (GVA) fall by c £1.6bn per annum, a drop of 20% on the 5-year average (2009-2013).<sup>162</sup>

Diversity of cropping options in arable rotations is an important aspect of profitable arable farming. For example, the restriction on neonicotinoid pesticides in the UK has contributed to a significant reduction in production of rapeseed in the UK<sup>163</sup> which was previously an important and profitable break crop that facilitated wheat-based arable rotations.

<sup>&</sup>lt;sup>162</sup> The Andersons Centre, 'Crop Production Technology: The Effect of the Loss of Plant Protection Products on UK Agriculture and Horticulture and the Wider Economy' (2014) at <u>https://www.nfuonline.com/andersons-final-report/</u>.

<sup>&</sup>lt;sup>163</sup> Rothamsted Research, 'EU Policies Led to Collapse of Major Biofuel Crop in UK and Europe' (January 2022), at <u>https:h//www.rothamsted.ac.uk/news/eu-policies-led-collapse-major-biofuel-crop-uk-and-europe-says-report.</u>

Restrictions on the availability of pesticides can therefore have financial implications across a farming enterprise beyond the specific impact on the profitability of a single crop.

# 4. Does CPTPP prevent the UK from regulating imports of products produced according to this practice?

No. The legal position remains the same as under WTO law. In this respect, a distinction must be drawn between import restrictions to protect UK plants, animals, and the environment, shared resources (such as highly migratory animals), and import restrictions focusing on the environment in the territory of other CPTPP parties.

Import restrictions to protect UK plants, animals and the environment are permitted subject to certain conditions, under the same exceptions in WTO law and under CPTPP. To this end, these agreements permit the UK to monitor maximum residue levels (MRL) of pesticides which are the maximum concentration of a pesticide residue in, or on, food or feed that is legally tolerated when the substance is applied correctly. In addition, the UK has import tolerances, which are specific MRLs set for imported food or feed. These are usually applied when there is no UK MRL because the substance is not approved for use in the UK. This means that trace residues of substances banned in the UK may be permissible on imports, but at levels that are deemed safe. CPTPP has no effect on the UK's existing WTO rights to apply these protections.

However, both WTO law and CPTPP prohibit import restrictions that do not have any connection with UK (or shared) animals, plants, or the environment, but are solely focused on animals, plants or the environment in other territories (with the exception of animal welfare issues). In principle, if that means that producers in those territories can lower their costs compared to UK producers, this is entirely permissible.

That said, CPTPP also contains enforceable obligations, which go beyond WTO law, requiring each CPTPP party to 'strive to ensure that its environmental laws and policies provide for, and encourage, high levels of environmental protection and continue to improve its respective levels of environmental protection'<sup>164</sup> and requiring it to implement its environmental laws when not to do so would give its producers a competitive advantage over the producers of other CPTPP parties.<sup>165</sup> These obligations apply (mainly but not always to central government) laws directed at the control of environmentally hazardous or toxic chemicals and wastes, and the protection or conservation of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas.<sup>166</sup> These obligations might be relevant to pesticide use, depending on their effects. However, they would only be enforceable if the exporting CPTPP party (or the UK) failed to 'strive to ensure' that its pesticide laws provide for high levels of production, or if it implemented its laws in an inconsistent manner, and this came with an economic advantage.

<sup>&</sup>lt;sup>164</sup> Article 20.3.3.

<sup>&</sup>lt;sup>165</sup> Article 20.3.4-6.

<sup>&</sup>lt;sup>166</sup> Definition of 'environmental law' in Article 20.1.

#### 5. Conclusion

CPTPP has no effect on the UK's existing WTO rights to regulate the import of products produced using pesticides that are harmful to UK animals, plants, or the environment. In principle, that does not permit the UK to protect the environment of other CPTPP parties from the negative effects of pesticide use. However, CPTPP also contains several enforceable environmental obligations which could be relevant to pesticide use in other CPTPP countries, namely if those countries fail to strive to ensure that their environmental laws achieve a high standard of environmental protection, or if they fail to implement their environmental laws consistently, and this comes with a trade or investment advantage. This is important, as CPTPP is likely to lead to increased imports of products that have been produced at lower cost by using pesticides in CPTPP parties that would not be permitted in the UK.

#### J. Genetically Modified Organisms (GMOs)

One consultee raised concerns over the use of GMOs, on environmental and animal welfare grounds.<sup>167</sup>

#### 1. Is this practice permitted in a manner that is not permitted in the UK?

Yes. In the UK, an authorisation for cultivation of GMOs is separate and distinct from an authorisation to market feed (or food) containing or derived from GMOs. In practice, approvals for cultivation are extremely rare. There are currently no GM crops being commercially cultivated in the UK, although there are a number of public and private small-scale trials being conducted.

Before a GMO feed (or food) product can be placed on the market in Great Britain it must be authorised.<sup>168</sup> GM feed (or food) is only authorised for sale if it does not present a risk to health, mislead consumers and have less nutritional value than their non-GM counterpart.<sup>169</sup> GMO feed (and food) which contains or is produced from GMOs, must be labelled regardless of the presence of GMO material in the final product, although there is a threshold of 0.9% for the presence of GMO material below which labelling is not required. GMO feed (and food) which contains or is produced from GMOs, must be labelled regardless of GMO material in the final product, although there is a threshold of 0.9% for the presence of GMO material below which labelling is not required. GMO feed (and food) which contains or is produced from GMOs, must be labelled regardless of the presence of GMO material below which labelling is not required. GMO feed (and food) which contains or is produced from GMOs, must be labelled regardless of the presence of GMO material in the final product, although there is a threshold of 0.9% for the presence of GMO material in the final product, although there is a threshold of 0.9% for the presence of GMO material below which labelling is not required.

Northern Ireland is subject to the EU law specified in Annex 2 to the Northern Ireland Protocol (now the Windsor Framework).<sup>170</sup> This means that those seeking a new authorisation for a GMO to be placed on the Northern Ireland market will continue to follow

<sup>&</sup>lt;sup>167</sup> Trade and Animal Welfare Coalition 'What Does CPTPP Mean for Animal Welfare? TAWC submission to Trade and Agriculture Commission' 2023.

<sup>&</sup>lt;sup>168</sup> Authorisation occurs under retained EU Regulation 1829/2003 on Genetically Modified Food and Feed.

<sup>&</sup>lt;sup>169</sup> Food Safety Authority 'Genetically modified foods' (9 January 2018) <u>https://www.food.gov.uk/safety-hygiene/genetically-modified-foods</u>.

<sup>&</sup>lt;sup>170</sup> HM Government, 'The Windsor Framework - further detail and publications' (29 September 2023) https://www.gov.uk/government/collections/the-windsor-framework-further-detail-and-publications.

EU rules. The marketing authorisation system applies both to food and feed, whether it is produced in the UK or imported from another country.

While there is currently no commercial GMO production in the UK, it is currently permitted to import market authorised GMO products. Consequently, it will be more straightforward for producers in some CPTPP countries, where cultivation is more readily authorised, to import GM food and feed products into the UK than to produce the same products in the UK provided these have appropriate authorisation in the UK.

We note also that genetic modification is to be distinguished from gene editing ('GE'). The Genetic Technology (Precision Breeding) Act 2023 allows the creation and marketing of 'precision bred' plants and vertebrate animals in England, removing them from the regulatory system for GMOs. The territorial scope of the Act is limited to England, but under the UK Internal Market Act 2020, precision bred products that can legally be placed on the market in one part of the UK may be marketed in the other parts.

Compared to the UK, genetic modification of organisms is much more common elsewhere in the world, including in CPTPP parties. Indeed, there are a total of 994 authorisations for GM products or organisms in nine of the eleven other CPTPP parties,<sup>171</sup> these having been issued a range of uses including cultivation, food, and feed. The most relevant authorisations for CPTPP parties are as follows:

Country	Total GMO approvals	GMO approvals include								
		Canola or Rapeseed	Maize	Wheat	Flax	Rice	Potato	Sugar beet	Tomato	Apple
Australia	149	٧	V	V			٧	٧		
Brunei	No Approvals									
Canada	198	٧	V		٧		٧	٧		٧
Chile	3	٧	V							
Japan	202	٧	V				٧	٧	٧	
Malaysia	57	٧	V				٧	٧		
Mexico	188	٧	V				٧	٧	٧	
New Zealand	117	٧	V	٧		V	٧	٧		
Peru	No Approvals									
Singapore	58	٧	V				٧	٧		
Viet Nam	22		٧							

<sup>&</sup>lt;sup>171</sup> International Service for the Acquisition of Agri-biotech Applications (ISAAA), CPTPP GMO approvals, <u>https://www.isaaa.org/gmapprovaldatabase/countrylist/default.asp</u>. Note that\_the total number of GMOs will be lower than the number of authorisations.

# 2. Does this practice involve products likely to be imported into the UK at increased rates under CPTPP?

Yes. CPTPP is likely to lead the UK importing more GMO and gene edited (GE) products for which duties are liberalised, and in particular with respect to GM rapeseed and soybean for which tariffs are eliminated. We note that the FSA and FSS have granted marketing approvals for both sets of commodities,<sup>172</sup> and that the UK imports GM soybeans and soy products.

# 3. Does this practice imply cost savings for CPTPP producers vis-à-vis UK producers?

Authorisation to cultivate GMO crops provides several cost savings. GM crop technology has been used widely by many farmers globally for 25 years. It has helped farmers adapt their weed and pest control practices and enabled important improvements in yields. In turn, this has delivered cost savings.<sup>173</sup>

Evidence on rapeseed production in Canada indicates these savings can be significant:

Genetically-modified herbicide-tolerant (GMHT) canola was introduced in Western Canada in 1995. In 2007, a producer survey elicited answers to 80 questions regarding their experiences, including production practices, tillage and herbicide use, control of volunteer canola, and weed-control practices. The survey revealed that the new technology generated between \$1.063 billion CAD and \$1.192 billion annual net direct and indirect benefits for producers from 2005-2007; this is partly attributed to lower input costs and partly attributed to better weed control.<sup>174</sup>

The UK does not have the climate to grow soybeans, whether GMO or not, so any cost saving is not relevant.

# 4. Does CPTPP prevent the UK from regulating imports of products produced according to this practice?

No. There is little GMO production in the UK, but it is currently legal to import and market GMO products, if they are labelled as such (above a minimum threshold). It is possible that GM canola oil (from rape oilseed) and soy will be imported from CPTPP countries in increased quantities. The UK's WTO rights to regulate the import of GM products are not affected by CPTPP. We note that the consultee that raised this concern based it in part on animal welfare. In this respect, it is important to reiterate that while a concern about animal welfare can justify trade restrictions on the grounds that this is necessary to protect public morals, there would need to be evidence that such a justification applies in the case at hand.

# 5. Conclusion

The CPTPP has no effect on the UK's existing WTO rights to regulate the import of GMO products. However, CPTPP is likely to lead to increased imports of products that have been

<sup>&</sup>lt;sup>172</sup> FSA/FSS database of GMO authorisations <u>https://data.food.gov.uk/regulated-products/gmo\_authorisations</u>.

<sup>&</sup>lt;sup>173</sup> G Brookes, 'Farm income and production impacts from the use of genetically modified (GM) crop technology 1996-2020' (2022) 13 GM Crops Food 171.

<sup>&</sup>lt;sup>174</sup> M Gusta et al, 'Economic benefits of genetically-modified herbicide-tolerant canola for producers' (2011) 14 AgBioForum 1.

produced at lower cost by using GM technology that in effect would not be permitted for cultivation in the UK.

## K. Antimicrobial resistance

Two consultees raised concerns over the use of antimicrobials<sup>175</sup> in agriculture and aquaculture in CPTPP parties due to their effects on increasing antimicrobial resistance (AMR).<sup>176</sup>

Antimicrobial resistance occurs when genetic changes in the agents of disease (such as bacteria, viruses etc) results in these medicines becoming ineffective, with serious effects on people, animals, and the economy. AMR is being addressed at several levels, including through trade. On the other hand, with respect to animal health, the judicious use of these medicines alleviates suffering and contributes to welfare and productivity. The key is to determine 'judicious use'. In the UK, antimicrobial use in animals has fallen by 59% between 2014 and 2022,<sup>177</sup> largely due investment to improve preventive medicine, housing and husbandry.

Prior to a ban in 2006, certain antibiotics were used as growth promoters in the EU. Now, in the UK, antibiotics and other antimicrobial agents may be used to treat individual animals or groups of animals. Poor, overcrowded, and dirty conditions increase the incidence of infectious disease and thus the demand for treatment; in these circumstances, antimicrobials may be used via feed or water to treat whole groups of animals or even be used prophylactically, before the onset of anticipated disease. This may be considered as misuse, masking the detrimental effects of poor animal management, and increasing the risk of emergence of AMR. Generally, antimicrobial use is higher in intensive, indoor farming systems, eg, for pigs and poultry, than for outdoor extensive grazing systems eg, for beef cattle and sheep. Therefore, between country comparison of average antimicrobial use by animal should consider the different systems in operation. Arguably, countries which have invested in improved animal health and welfare encounter higher costs of production compared to countries with poorer welfare, compensated by antimicrobial medication and lower production costs. This might increase the competitiveness of exports to the UK from some CPTPP countries.

The international spread of AMR occurs through the incidental transfer of microorganisms that carry resistance genes via people, animals, animal products or other goods. This should be distinguished from the potential for unacceptable levels of drug residues to be found in foods of animal origin. For crops and fresh produce, it should also be noted that, often it is

<sup>&</sup>lt;sup>175</sup> An antimicrobial is an agent that kills microorganisms (microbicide) or stops their growth (bacteriostatic agent). Antimicrobial medicines can be grouped according to the microorganisms they act primarily against. For example, antibiotics are used against bacteria, and antifungals are used against fungi. Antimicrobial medicines combat infectious diseases in people, animals and plants. They are crucial to modern medicine and have been widely used globally in farming/ food production for decades.

<sup>&</sup>lt;sup>176</sup> Submissions 004 (Compassion in World Farming), 003 (British Veterinary Association).

<sup>&</sup>lt;sup>177</sup> Veterinary Antimicrobial Resistance and Sales Surveillance 2022.

not possible to detect evidence of prior application of an antimicrobial, as it is washed off or the agent has degraded on the surface of the product - even for goods pre-shipment.

# 1. Is this practice permitted in a manner that is not permitted in the UK?

This is a very complex issue and will depend on the type of antimicrobial at issue and its use in any given case. Antimicrobial use is not prohibited in the UK, but their use in agriculture and aquaculture is regulated in several respects, including a requirement for veterinary prescription, as described in the Veterinary Medicine Directorates Code of Practice.<sup>178</sup> The EU has introduced new regulations for antibiotic use in vet medicine<sup>179</sup> and the UK Government intends to implement similar provisions.<sup>180</sup> The same is true of other CPTPP parties. For example, Mexico declared a national strategy to combat antimicrobial resistance in humans and animals in 2018.<sup>181</sup> Canada, in common with many countries, requires that medically important antimicrobials are only used in animals by veterinary prescription.<sup>182</sup> Mandatory reporting shows a trend of small annual decreases in use in Canada, although this varies by species.<sup>183</sup> Viet Nam passed a National Action Plan on combating antibiotic resistance. This plan, consisting of six specific objectives, highlights proper use of antibiotics in cultivation, livestock production and aquaculture.<sup>184</sup>

# 2. Does this practice involve products likely to be imported into the UK at increased rates under CPTPP?

Possibly. But this is very unlikely to have a material impact on AMR, as the increased market access for animal products (where most antimicrobial use is concentrated) is relatively small compared to other markets for CPTPP production, including China.

<sup>&</sup>lt;sup>178</sup> Veterinary Medicines Directorate, Code of Practice on the responsible use of animal medicines on the farm, <u>https://www.gov.uk/government/publications/responsible-use-of-animal-medicines-on-the-farm/code-of-practice-on-the-responsible-use-of-animal-medicines-on-the-farm</u>; Veterinary Medicinal Products Directive 2001/82/EC (as amended) and Veterinary Medicines Regulations 2013.

<sup>&</sup>lt;sup>179</sup> Ivo Schmerold et al, 'European regulations on the use of antibiotics in veterinary medicine' (2023) 189 European Journal of Pharmaceutical Sciences 106473

<sup>&</sup>lt;sup>180</sup> HM Government, 'Addendum to the UK 5-year action plan for antimicrobial resistance 2019 to 2024' (16 May 2022) <u>https://www.gov.uk/government/publications/addendum-to-the-uk-5-year-action-plan-for-antimicrobial-resistance-2019-to-2024</u>.

<sup>&</sup>lt;sup>181</sup> Government of Mexico, National Action Strategy against Antimicrobial Resistance in Mexico (6 July 2018) <u>https://www.gob.mx/cofepris/acciones-y-programas/estrategia-nacional-de-accion-contra-la-resistencia-a-los-antimicrobianos-en-mexico</u>.

<sup>&</sup>lt;sup>182</sup> Government of Canada, Responsible use of Medically Important Antimicrobials in Animals (2021), <u>https://www.canada.ca/en/public-health/services/antibiotic-antimicrobial-resistance/animals/actions/responsible-use-antimicrobials.html</u>.

<sup>&</sup>lt;sup>183</sup> Government of Canada, 2021 Veterinary Antimicrobial Sales Highlights Report, <u>https://www.canada.ca/en/health-canada/services/publications/drugs-health-products/2021-veterinary-antimicrobial-sales-highlights-report.html</u>.

<sup>&</sup>lt;sup>184</sup> Viet Nam Ministry of Agriculture, Rural Development National Action Plan for Management of Antibiotic Use and Control of Antibiotic Resistance in Livestock Production and Aquaculture (2017-2020), <u>https://rr-asia.woah.org/wp-content/uploads/2020/03/vietnam\_ah\_amr-nap-printed\_en.pdf</u>.

# 3. Does this practice imply cost savings for CPTPP producers vis-à-vis UK producers?

This is difficult to assess. Antimicrobials use in agriculture, both in terms of managing disease and growth promotion, contributes to profitable livestock farming. Antimicrobials can also enhance yields in crop and fruit production or enhance their economic value by eliminating visible blemishes (eg, rusts) on the product's surface. However, antimicrobials are not free, so a lower usage is a cost saving relative to those UK producers who use higher amounts of antimicrobials in their production.

# 4. Does CPTPP prevent the UK from regulating imports of products produced according to this practice?

No. The position remains the same as under WTO law.

# 5. Conclusion

The UK's CPTPP accession is unlikely to lead to increased threat of antimicrobial resistance (AMR) in the UK, largely because it does not provide for a very significant market access for products that would be produced using antimicrobials. In any event, CPTPP does not restrict the UK's WTO rights to regulate imports to protect against any harmful effects of antimicrobial use in CPTPP countries.

## VIII. Annex B-Product scope for CPTPP

The Trade and Agriculture Commission has reviewed agricultural and edible products from the Harmonised System (HS) Chapter 1 to HS Chapter 22 ie those covering agri-food products which fall within our remit. Chapters 5, 13 and 14 are not reviewed here as their products are already tariff free.

# HS Chapter 01: Live animals

## **Existing Tariffs**

MFN tariffs: Live animals for breading can already be imported tariff-free. Live animals imported for slaughter vary from 6% for live horses to 10% plus £770/T for cattle, £340/T for pigs, £670/T for sheep, £43 per thousand for chickens and £127 per thousand for turkeys and geese.

## **Changes under CPTPP**

All of these tariffs will be eliminated in full immediately in the CPTPP.

## **Expected changes to UK imports under the CPTPP**

We do not expect any increase in live animal imports.

## Reasoning

## HS 0102 live bovine animals

The UK currently imports most of its live cattle duty-free from Ireland and Germany under the TCA.

## HS 0103 live swine

Similarly, the UK imports pigs duty-free almost exclusively from Ireland under the TCA.

## HS 0104 Live sheep

The UK imports insignificant quantities of live sheep.

## HS 0105 Live poultry

The UK exclusively imports live poultry from Ireland (possibly just into Northern Ireland) under the TCA and/or Withdrawal Agreement.

## HS 0106 live other includes primates, rabbits, birds, bees and reptiles

These can already be imported tariff-free with the exception of domestic rabbits and pigeons. The UK does not import either pigeons or rabbits in significant quantities.

## HS Chapter 02: Meat and edible meat offal

For all products in this sector, Australia and New Zealand are restricted to the quotas agreed in their bilateral trade agreements with the UK and products excluded from the Australian bilateral agreement are also excluded for Australia in the CPTPP.

## HS 0201 and HS 0202: Beef – fresh, chilled or frozen

## **Existing Tariffs**

UK MFN tariffs on beef range from 12% plus £1,180/T for carcass for equarters to 12% plus £2,530/T for boneless cuts.

## **Changes under CPTPP**

In CPTPP the UK offers a shared tariff rate quota for beef (including offal and processed beef) starting at 2,600 metric tonnes in year 1 and increasing gradually to a maximum 13,000 tonnes in year 10. The CPTPP parties in the shared quota are Brunei, Canada, Chile, Malaysia, Mexico and Peru. All CPTPP quotas will be administered on a first come first served basis.

Duties on beef imported from Singapore will be eliminated from year 3 of the agreement. Duties on beef imported from Japan and Viet Nam will be eliminated from year 1.

## **Expected changes to UK imports under CPTPP**

We expect the beef quota to be filled by Chile initially but later by Canada or Mexico when the quota amount is of a commercial size. We expect a small increase in beef from Japan, but no increase from Singapore or Viet Nam.

## Reasoning

The UK currently imports between 200,000 and 300,000 tonnes of fresh, chilled or frozen beef each year, about 80% of which comes from the Republic of Ireland.

The only large beef exporter in this quota group is Canada. Mexico is a smaller exporter of both fresh and frozen beef while Chile is a small exporter of frozen beef mainly to China.

The UK-Canada FTA has a 3,869 tonne, carcass weight, beef quota. The UK imported 1,481 metric tonnes (MT) of fresh, chilled or frozen beef in 2020 but only 658MT in 2021 and only 1MT in 2022.<sup>185</sup> There is a possibility that this could increase under the CPTPP. However, as Canada exports around 400,000 tonnes of beef a year and its largest market for fresh beef is the US, and its largest market for frozen beef is Japan, the small, shared quota in CPTPP is unlikely to make the UK an attractive market for Canadian beef exporters.

There is no existing quota for Mexican fresh, chilled or frozen beef in the UK-Mexico FTA. It is possible that Mexico could fill the CPTPP quota as its costs of production are likely to be lower than Canada's. However, at the moment the majority of Mexican beef exports go to the US, followed by Japan, South Korea, and Hong Kong.

<sup>&</sup>lt;sup>185</sup> Trade Map - Bilateral trade between Canada and United Kingdom <www.trademap.org> accessed 30 November 2023.

The UK-Chile FTA has a small existing quota of 459 tonnes for beef, but the UK imported only about 20 tonnes of Chilean beef in 2022, equal to 4% of this quota.

The UK-Peru FTA has a small existing quota of 556 tonnes for beef, but this has never been filled. We do not expect this to change.

Singapore is mostly a re-exporter of beef imported from Brazil or Australia to Indonesia, the Maldives, or Timor-Leste. Singapore does not export processed beef products (HS1601 or HS1602) in any significant quantity.

Like Singapore, Viet Nam imports beef from India, Canada and Australia and re-exports very small amounts to Laos (landlocked by Viet Nam) and Cambodia.

Japan already exports small amounts of high value wagyu beef to the UK. Imports to the UK could increase under CPTPP. However, we do not expect increased imports of more than a few hundred tonnes.

## HS 0203: Pork – fresh, chilled or frozen

#### **Existing tariffs**

MFN tariffs on pork range from £390/T for pork bellies to £720/T for loins and £990/T for dried or smoked shoulders.

## **Changes under CPTPP**

The UK is eliminating its tariffs for a small quota of pork (including processed pork and dried or cured pork). The quota starts at 10,000 metric tonnes in year 1 and increases to 55,000 tonnes in year 10 where it will remain fixed. The shared quota applies to Brunei, Canada, Chile, Malaysia, Mexico, Peru, Singapore, and Viet Nam. However, Singapore will drop out of the quota in year 3 when its pork becomes duty-free. Viet Nam will drop out of the quota in year 5 when its pork becomes duty-free.

#### Expected changes to UK imports under the CPTPP

The largest pork exporter in this quota group is Canada, followed by Chile and Mexico. This quota volume is commercially viable from year 1 and we expect it to be filled by one of these three countries.

## Reasoning

The UK imports between 300,000 and 500,000 tonnes of fresh, chilled, or frozen pork<sup>186</sup> each year, predominated from Denmark, Germany and Spain and 150,000 to 200,000 tonnes of salted, cured, dried or smoked pork.<sup>187</sup>

The UK-Canada FTA has existing quotas for pork imports from Canada of 5,805 tonnes measured in carcass weight equivalent. This quota was not used in 2022. Canada is a

<sup>&</sup>lt;sup>186</sup> <u>Trade Map - List of products imported by United Kingdom <www.trademap.org> accessed 30 November</u> 2023

<sup>&</sup>lt;sup>187</sup> <u>Trade Map - List of products imported by United Kingdom <www.trademap.org> accessed 30 November</u> 2023

significant and extremely efficient pork producer. Canada exports over 1.2 million tonnes of pork each year and its five largest export markets are the US, Japan, China, Mexico and the Philippines, but it exports very small amounts of pork to the UK – no imports in 2022, 87 tonnes in 2021, 66 tonnes in 2020, 293 tonnes in 2019, and 42 tonnes in 2018<sup>188</sup>.

The UK-Chile FTA has an existing quota for pork products from Chile of 167 tonnes. Chile exports between 150,000 and 250,000 tonnes of pork each year, mostly to Asia and other American countries. However, it also exports small quantities of pork to Germany, Italy, and Spain.

The UK-Mexico FTA does not have an existing pork quota for the UK. Mexico exports between 130,000 and 230,000 tonnes of pork per year. Its largest market is Japan, then the US, South Korea and China. Mexican exports are geared to wealthy distant markets so they would have the infrastructure to supply the UK.

The UK-Peru FTA has an existing quota for pork products of 494 tonnes, but Peru does not export pork.

Singapore and Viet Nam mostly re-export to their neighbouring countries pork they have imported from Brazil or EU producers.

#### HS 0204 Sheep meat – fresh, chilled or frozen

#### **Existing Tariffs**

MFN tariffs on sheep meat range from 12% plus £750/T for frozen forequarters to 12% plus £2600/T for chilled boneless cuts.

## Change under the CPTPP

The UK is eliminating its tariffs in full for sheep meat exported from Brunei, Canada, Chile, Japan, Malaysia, Mexico, Peru, Singapore and Viet Nam from the agreement's entry into force. Australian and New Zealand sheep meat exports have no additional CPTPP quota.

#### Expected changes to UK imports under the CPTPP

We do not expect any increase in sheep meat imports.

#### Reasoning

Outside of Australia and New Zealand, the only CPTPP country that exports any quantity of sheep meat is Chile, exporting about 6,000 tonnes a year. The UK-Chile FTA has an existing tariff free quota for sheep meat products of 1,304 tonnes. Last year the UK importers used about a third of this quota. We do not expect Chile to export more sheep meat to the UK as a result of CPTPP.

## HS 0207 Poultry – fresh, chilled or frozen

<sup>&</sup>lt;sup>188</sup> <u>Trade Map - Existing and potential trade between Canada and United Kingdom <www.trademap.org></u> <u>accessed 30 November 2023</u>

## **Existing Tariffs**

MFN tariffs on poultry range from 6% for chicken livers,  $\pm 150/T$  for boned offcuts, to  $\pm 850/T$  for chilled boneless cuts.

## Change under the CPTPP

The UK is eliminating its tariffs for a small quota of poultry meat. The quota starts at 2,000 metric tonnes in year one and increases to 10,000 tonnes in year ten where it will remain fixed. This quota also covers processed poultry and poultry offal. The quota is shared by Brunei, Canada, Chile, Malaysia, Mexico, Peru, Singapore and Viet Nam. The quota will be filled on a first come first served basis.

However, poultry imported from Singapore will drop out of the quota in year 3 when its poultry exports become duty-free, and Viet Nam will drop out of the quota in year 5 when its poultry exports also become duty-free. Tariffs on poultry from Japan and New Zealand are eliminated in full in CPTPP.

#### Expected change to UK imports under the CPTPP

We do not expect UK poultry imports to increase under the CPTPP.

#### Reasoning

The UK imports between 400,000 and 500,000 tonnes of poultry each year.

The largest poultry exporter in the CPTPP is Chile. The UK-Chile FTA has a quota for poultry meat of 11,686 tonnes. Before Covid, Chile exported between 7,000 and 10,000 tonnes of poultry meat to the UK each year, but it exported less than 1,000 tonnes in 2022. Chile's exports to the US increased during and after Covid and the US is possibly absorbing any extra Chilean poultry capacity that could have been exported to the UK.

The second largest exporter of poultry in the CPTPP is Canada; however, after the US, the Philippines and Taiwan, most of Canada's chicken exports go to the same countries in Africa and the Caribbean as the UK's poultry exports. It is likely that Canadians, like the British, prefer breast meat and export their brown chicken meat. If so, it is unlikely that Canada will export chicken to the UK under the CPTPP.

Malaysia, Singapore and Viet Nam mostly re-export chicken to their neighbouring countries which they have imported from Brazil, the US or Thailand.

The other CPTPP countries included in the quota do not export poultry.

# HS Chapter 03: Fish, crustaceans, molluscs and other aquatic invertebrates

#### **Existing Tariffs**

MFN tariffs for Fish: chilled, frozen, filleted or preserved range from 2% for whole Pacific salmon to 20% for Tuna. UK tariffs on crustaceans, molluscs and aquatic invertebrates vary from 6% on whole lobsters, 8% on chilled squid, 10% on clams, and 18% on whole shrimps.

## Changes under the CPTPP

The UK is eliminating in full almost all of its fish tariffs immediately. The exceptions are herring, kawakawa, mackerel and some unspecified freshwater fish as well as preserved Pacific Salmon. These tariffs will be eliminated over five years.

The UK will remove its tariffs in full on imports of most types of crustaceans, molluscs and aquatic invertebrates with the exception of live lobsters, freshwater crayfish, scallops, and some mussel varieties which will all be eliminated over five years. In general, all CPTPP countries will have the same tariff reductions except for *Live, Fresh or chilled Mussels* where the tariffs will be eliminated in full for all CPTPP countries except New Zealand whose tariffs will be reduced over five years.

#### Expected changes to UK imports under the CPTPP

We expect to see increased imports of frozen and filleted pangasius and tuna from Viet Nam. Increased imports of tuna, bream and monkfish from Mexico. Increased imports from Chile of chilled Pacific salmon, frozen Pacific salmon, frozen mackerel, frozen trout, fresh and frozen fillets of Pacific salmon, trout fillets, and smoked Pacific salmon. Increased imports from Canada of chilled Atlantic salmon, frozen hake, frozen halibut, fillets of Pacific salmon and smoked Herring. Increased imports of New Zealand frozen fish and mackerel.

We expect increased imports of prawns, shrimp, lobsters, squid, and mussels. We do not expect an increase in crab imports.

#### Reasoning

The UK imports between 400,000 tonnes and 500,000 tonnes of fish, crustaceans, molluscs, and aquatic invertebrates each year.

Viet Nam already supplies about a quarter of the UK's imports of shrimp each year; however, we expect imports to increase as removal of the 12% to 18% tariffs will make Vietnamese shrimp and prawns more competitive than other suppliers. Malaysia, Mexico and Canada also export shrimp and could also increase if they can compete with Viet Nam.

Canada already exports lobsters to the UK, supplying almost all of the UK's imports. Chile exports crab but not to the UK, as the UK is a much larger exporter of crab, we do not expect this to change.

Peru exports large quantities of frozen cuttlefish and squid. Viet Nam exports frozen squid, smoked, dried or salted squid and frozen octopus. The UK imports frozen squid but little from either Peru or Viet Nam, we expect UK imports to increase under the CPTPP.

New Zealand is a larger exporter of frozen fish, squid, mackerel, and mussels. We expect UK imports to increase if New Zealand has additional capacity to supply them.

The UK already has tariff-free quotas for several CPTPP parties for the following fish, crustaceans, molluscs, and other aquatic invertebrates:

#### Canada

Frozen cod: 971 tonnes – 71% filled in 2022. Processed shrimps: 12,443 tonnes – 27% filled in 2022.

# Chile

Hake: 833 tonnes – no imports. Smoked fillets of fish: 7 tonnes – no imports under this quota.

# Mexico

Prepared or preserved fish: 1,702 tonnes – no imports under this quota. Tuna-Loins: 817 tonnes – no imports under this quota.

# Viet Nam

Tuna, skipjack bonito and other genus Euthynnus: 1,566 tonnes – only 2.3 tonnes imported in 2022 using this quota.

Preparations of Surimi: 68 tonnes – 26% filled in 2022.

# HS Chapter 04: Dairy products, eggs and honey

# **Existing Tariffs**

MFN Tariffs on Dairy products range from £100/T for fresh milk and cream, up to £1,930/T for butter, up to £1,850/T for cheese, £250 per kilo for fresh hens' eggs and a 16% tariff on honey.

# **Changes under the CPTPP**

Dairy products are not restricted by quotas in the CPTPP. Most milk and yoghurt products will see tariffs reduced over five years while tariffs on cheese will be reduced over 11 years. Fertilised eggs from all species will see tariffs eliminated in full immediately. Domestic hens' eggs for consumption will have tariffs removed over 10 years for all CPTPP parties except Australia which is excluded. The 16% tariffs on honey will be eliminated in full immediately for all CPTPP parties.

# Expected changes to UK imports under the CPTPP

We expect butter and cheese imports from New Zealand and to a lesser extent from Australia to be imported using their FTAs as both agreements remove the tariffs in year 6.

Canada could increase exports of whey or eggs/egg products, Chile could export whey. Most CPTPP parties could increase their honey exports.

We do not expect the UK to increase its imports of fresh milk or cream or concentrated or sweetened milk or cream.

## Reasoning

The UK imports about 1.2 million tonnes of milk based dairy products, 60,000 to 80,000 tonnes of eggs and egg products and about 50,000 tonnes of honey.

The largest Dairy exporter in CPTPP is New Zealand. New Zealand is the world's largest exporter of dairy products and could increase its exports to the UK when the tariffs are fully removed and it can compete with the UK's present EU suppliers: Ireland, France, Germany, Italy, the Netherlands, Belgium, and Denmark.

After New Zealand, Australia is a large dairy exporter but mainly exports concentrated milk and cream used in food manufacturing. However, the UK also exports concentrated milk and cream and so is unlikely to import this.

Canada exports small quantities of whey, cheese, milk and cream.

However, several CPTPP parties already have tariff-free quotas for dairy products that are not used.

Peru already has quotas in its UK Andean FTA for: 777 tonnes of concentrated or sweetened milk and cream; 1,554 tonnes of unconcentrated or unsweetened milk and cream; 647 tonnes of cheese or curd; 492 tonnes of fermented milk; 10 tonnes of yoghurt; and 130 tonnes of butter. None of these quotas were used in 2022. Nor has the UK bought any of these products from Peru in the last ten years. Peru's main dairy export is concentrated or sweetened milk or cream, however the UK is a larger exporter than Peru.

Chile has a 474-tonne quota for cheese and curd that is not used.

Preserved eggs, processed eggs, and egg yolks will have tariffs removed over 10 years from all CPTPP parties except Australia. Only Canada is likely to export eggs in the CPTPP. Japan exports eggs but almost all go to Hong Kong. Mexico has an existing quota to export eggs to the UK, but it has never been used. Viet Nam has an existing quota for 68 tonnes of eggs, and this has also never been used.

Additional supplies of honey could be imported from Mexico, Viet Nam, Chile, Canada, New Zealand, and Australia. However, Mexico already has a 5,500-tonne quota for honey which was only 44% filled in 2022.

# HS Chapter 06: Live trees and plants; roots and bulbs; and cut flowers and foliage

## **Existing Tariffs**

MFN tariffs: Most plants and tree are zero rated. Some bulbs and roots have tariffs of 4% to 8% and cut flowers have tariffs of 8% to 10%.

#### **Changes under the CPTPP**

Tariffs will be eliminated in full immediately under the CPTPP.

#### Expected changes to UK imports under the CPTPP

We do not expect imports of plants or cut flowers to increase under the CPTPP.

## Reasoning

The UK already imports very small quantities of live plants, bulbs and flowers from Malaysia, Mexico, Peru, Singapore, and Viet Nam. The UK already has two tariff-free quotas to import cut flowers from Mexico of 54 tonnes and 48 tonnes. Neither was used in 2022.

# HS Chapter 07: Edible Vegetables, roots and tubers

## **Existing Tariffs**

UK MFN tariffs on most imported vegetables are between 4% and 14%. Only dried legumes and preserved vegetables unsuitable for immediate consumption are tariff-free.

## **Changes under the CPTPP**

Tariffs on vegetables will be eliminated in full under CPTPP with the exception of onion sets, shallots and fresh or frozen beans whose tariffs will be removed over five years.

## Expected changes to UK imports under the CPTPP

We expect to see increased imports of asparagus and fresh or chilled peas from Peru; onions from Chile; frozen vegetables from Canada; sweet potatoes from Viet Nam; and cabbages and brassicas, pumpkins and squash, cucumbers, sweet peppers, aubergines, asparagus and tomatoes from Mexico.

## Reasoning

The UK already has tariff-free quotas for vegetables imported from several CPTPP parties.

## Sweetcorn

The UK has a 3,380-tonne quota for sweetcorn imported from Canada, a 183-tonne quota for Sweetcorn from Peru and a 681-tonne quota for Sweetcorn from Viet Nam. In 2022, the UK used 3% of its Canadian quota importing 106 tonnes, 88% of its Peruvian quota importing 160 tonnes and 53% of its Viet quota importing 361 tonnes.

## Garlic

The UK has a 384-tonne quota for garlic from Peru, a 167-tonne quota for garlic from Chile and a 54-tonne quota for Garlic from Viet Nam. In 2022, the UK did not import any Garlic from Viet Nam, nor from Chile and only 1.3 tonnes from Peru.

## Mushrooms

The UK has a 48-tonne quota for mushrooms from Viet Nam and a 25-tonne quota for mushrooms from Peru. In 2022, the UK did not import any mushrooms from Peru nor from Viet Nam.

## Asparagus

The UK has a quota for 600 tonnes of asparagus from Mexico. This was almost completely filled in 2022 with fresh asparagus imports of 578 tonnes.

#### Peas

The UK has a 68-tonne quota for frozen peas from Mexico. This was not used in 2022.

## HS Chapter 08: Edible fruit and nuts

## **Existing Tariffs**

UK MFN tariffs: 2% to 16% on fresh fruits, up to 20% plus £7 per 100kg for frozen fruit and 2% to 4% on nuts except for Brazil nuts, coconuts, cashew nuts and pistachios which are tariff-free.

#### **Changes under the CPTPP**

Tariffs on fruit and nuts will be eliminated in full immediately under CPTPP with the exception of cider apples whose 6% tariff will be reduced over five years, other apples whose 8% and 4% seasonal tariffs will be removed over 10 years and bananas whose  $\pm$ 95/T tariff will be reduced to  $\pm$ 62/T. Peru and Mexico will both also have quotas for 8,000 tonnes of bananas charged at a duty of  $\pm$ 40/T.

#### Expected changes to UK imports under the CPTPP

We expect increased imports of cranberries and blueberries from Canada; apples, grapes, peaches and nectarines, citrus fruit, kiwi fruit and avocados from Chile; tropical fruit from Malaysia; avocados, lemons, mangos and berries from Mexico; grapes, mangoes, citrus fruit, frozen fruit and berries from Peru; and bananas, tropical fruit and citrus fruit from Viet Nam.

## Reasoning

The UK imports 85% of the fruit it consumes, equal to 3.3 million tonnes, according to DEFRA. <sup>189</sup>The UK imports all types of fruit, its largest imports by volume are bananas, citrus fruit, apples and pears, grapes, tropical fruit, melons and berries.

The UK presently has tariff-free quotas for 316 tonnes of cherries from Chile, 136 tonnes of melons and 136 tonnes of strawberries from Mexico. These quotas were not used in 2022. We suspect the quotas were too small to be useful to UK importers.

#### HS Chapter 09: Coffee, Tea, Mate and Spices

## **Existing Tariffs**

UK MFN Tariffs: unroasted or decaffeinated coffee can be imported tariff-free, roasted coffee has a 6% tariff and decaffeinated coffee has an 8% tariff. Black tea is tariff-free. Packaged green tea has a 2% tariff. Imports of mate and most spices in this chapter are tariff-free except vanilla, sweet peppers and cloves which have 6%, 8% and 8% tariffs respectively, whether whole, dried, crushed or ground. While crushed or ground pepper has a 4% tariff uncrushed pepper is tariff-free.

<sup>&</sup>lt;sup>189</sup> UK Government, Department for Environment, Food and Rural Affairs, 'National statistics Chapter 7: Crops' accessed 30 November 2023 <u>https://www.gov.uk/government/statistics/agriculture-in-the-united-kingdom-2022/chapter-7-crops#fresh-fruit</u>

## **Changes under the CPTPP**

All tariffs in this chapter will be eliminated in full immediately under the CPTPP.

# Expected changes to UK imports under the CPTPP

We do not expect UK demand for these spices to increase. There may be some substitution of imports of roasted coffee from Germany to some CPTPP parties. Otherwise, we do not expect imports to change.

## Reasoning

We believe the UK's demand for these products is inelastic. The UK imports around 250,000 tonnes of coffee each year. Viet Nam is usually the UK's second largest supplier after Brazil. Peru and Mexico also supply the UK with smaller amounts of coffee. Viet Nam is one of the world's largest exporters of pepper. Peru and Malaysia are smaller exporters. Peru and Mexico are larger exporters of dried sweet peppers. Singapore is a large exporter of cloves.

# **HS Chapter 10: Cereals**

# **Existing Tariffs**

MFN tariffs: 12% on spelt, £79/T on wheat and meslin, £77/T on barley, £74/T on oats £30/T for buckwheat, £46/T for millet, £30/T for fonio, £30/T for quinoa, £77/T for triticale and £30/T for other cereals. Durum wheat, maize, grain sorghum, and canary seed are tariff-free.

UK MFN rice tariffs: £176/T on rice in the husk, £121/T on milled or semi-milled rice, £54/T on broken rice, £25/T on husked (brown) rice and 6% on paddy rice for sowing.

## **Changes under the CPTPP**

Most of these tariffs will be immediately eliminated in full. The exceptions are some varieties of wheat and oats whose tariffs will be removed over five years and some barley varieties whose tariffs will be removed over 10 years.

Rice tariffs will be eliminated in full on rice for sowing, rice in the husk, husked or brown rice, tariffs on milled or semi milled rice will be removed over 8 years for round grain and medium grained rice.

Milled or semi-milled round grain or medium grain rice will see its £121/T tariffs removed over eight years for Australia, Brunei, Chile, Japan, Malaysia, Mexico, Peru and Viet Nam. The £54/T tariff on broken rice will only be removed over five years for all CPTPP parties.

Milled and semi-milled long-grain rice will be subject to a tariff-free quota for Viet Nam starting at 3,300 tonnes in year one and increasing to 17,500 tonnes in year eight where it shall remain. Any long-grain rice imported above this quota will be subject to the UK's Most Favoured Nation tariffs.

Milled and semi-milled long-grain rice from Brunei, Chile, Malaysia, and Peru will share a tariff-free quota, on a first come first served basis, of 1,000 tonnes in year 1 increasing to 10,000 tonnes in year 10, where it will remain.

There will be no trade liberation for milled or semi-milled long-grain rice from Australia, Japan, or Mexico whose rice exports will continue to be charged the UK's Most Favoured Nation tariff rate.

Canada and New Zealand will have all rice tariffs eliminated in full immediately.

#### **Expected changes to UK imports under the CPTPP**

We expect UK imports of wheat and other non-rice cereals to increase under the UK Canada FTA and the UK Australia FTA rather than the CPTPP.

Imports of non-rice cereals will depend on the UK's own harvest of most of these products with the exception of maize, durum wheat and quinoa. Peru could export more Quinoa under CPTPP but Mexican durum wheat and maize are already tariff-free so imports should not change.

The UK cannot grow rice so imports are not dependent on the UK harvest, although rice imports will be restricted by the very small quotas offered to the few CPTPP parties that export milled or semi-milled long-grain rice as these quotas are not large enough to fill UK supermarket or bulk purchasing requirements. However, we expect Viet Nam to export more rice in the varieties that are not restricted by quota. We expect Malaysia will fill the smaller quota for milled and semi-milled rice.

## Reasoning

The UK imports about 2.5 million tonnes of corn, 1.5 to 2 million tonnes of wheat, 50,000 to 100,000 tonnes of Barley and small amounts of buckwheat, oats, quinoa, grain sorghum and rye.

The UK imports between 600,000 and 750,000 tonnes of rice each year. In 2022 the UK imported 300,000 tonnes of milled and semi milled rice, 260,000 tonnes of husked or brown rice and 40,000 tonnes of broken rice.

Canada and Australia are the only major exports of wheat, rye, barley and oats in the CPTPP, and they already supply the UK. Peru exports quinoa and Mexico and Peru export maize and durum wheat.

Canadian wheat will be tariff-free in 2024 under the UK-Canada FTA. Canada has a quota of 51,600 tonnes of some varieties of wheat and meslin with tariff codes starting with 10019900, but this quota was not used in 2022 probably because Canada's main wheat exports are 10019932 Red spring wheat grade 2 and 10019932 Red spring wheat grade 1.

Viet Nam is the world's third largest exporter of 100630 milled or semi-milled rice, exporting 3.7 million tonnes in 2022 and 4.9 million tonnes in 2021. It seems strange to limit UK long grain milled and semi-milled rice imports from Viet Nam. It is equally strange to include Brunei and Chile in the second quota which is only likely to be used by

Malaysia or Peru. Malaysia exported 112,000 tonnes of milled and semi-milled rice in 2022. Peru exported only 19,600 tonnes, less than the UK which exported 30,000 tonnes.

Viet Nam has a quota for 3,356 tonnes of husked rice, 5,001 tonnes of fragrant rice and 5,001 tonnes of Semi-milled or milled rice including long grain rice. Although these quotas are a small fraction of the UK imports, the UK still imported 73.5 tonnes of husked rice, 198 tonnes of Fragrant rice and 2,371 tonnes of milled or semi-milled rice from Viet Nam in 2022.

Peru has a quota for 8,335 tonnes of rice but Peru does not export large quantities of rice and this quota was not used in 2022.

## HS Chapter 11: products of the milling industry

## **Existing Tariffs**

UK MFN Tariffs: ranging from £82/T of corn flour, £77/T on rolled or flaked oats, from £109 to £148/T on malt, £187/T on wheat starch, £223/T of durum wheat flour and £428/T on wheat gluten.

#### Changes under the CPTPP

Most tariffs will be immediately eliminated in full by the CPTPP. The exceptions are rolled or flaked oats, malt, wheat starch, and wheat gluten whose tariffs will also be removed over five years.

#### Expected changes to UK imports under the CPTPP

The CPTPP party that could increase its exports to the UK of any product in this group is Canada. Other than that, Viet Nam could increase exports of rice flour, vegetable flour and cassava manioc starches. Mexico could export more corn flour and corn starch.

Whether imports of milled products increase under CPTPP will depend on whether the parties growing the underlying commodity can produce flour more cheaply than the mass production mills in Europe that presently supply the UK.

#### Reasoning

The UK imports about 600,000 tonnes of milling products each year including about 200,000 tonnes each year of HS 1108 starch and inulin. The UK also imports between 10,000 and 12,000 tonnes of manioc starches each year.

The largest CPTPP exporters of products in this chapter are Canada, Viet Nam, and Australia.

Viet Nam has a tariff-free quota of 12,000 tonnes for manioc starches, but less than 200 tonnes were imported from Viet Nam in 2022.

The UK presently imports most of its flour, malt, starch inulin and wheat gluten tariff-free from EU countries such as the Netherlands, Germany, Belgium, France, Italy and Denmark.

# HS Chapter 12: Oil seeds and oleaginous fruits etc.

## **Existing Tariffs**

Most of the products in this chapter are already imported tariff-free. The few that that are not are lucerne seed, lupine seed, fescue seeds, tonquin beans, and flower seeds which have a 2% tariff; hop cones and fodder roots which have a 4% tariff; fodder beet seed, salad beet seed and beetroot seed which have an 8% tariff; dried sugar beet which has a tariff of £190/T; and sugar cane which has a tariff of £38/T.

## **Changes under the CPTPP**

All tariffs will be eliminated immediately.

## **Expected changes to UK imports under the CPTPP**

We do not expect imports to increase as the UK's main imports in this Chapter are already tariff-free.

## Reasoning

The UK mainly imports soybeans, rape seeds, ground nuts and sunflower seed products from this Chapter. The UK imported 906,000 tonnes of soy; 811,000 tonnes of rape seed; 200,000 tonnes of ground nuts; 75,000 tonnes of sunflower seeds and 66,000 tonnes of fodder roots in 2022.

CPTPP parties Canada and Australia could provide the UK with more soy, rapeseed (canola), sunflower seeds and fodder crops but no CPTPP country exports ground nuts.

Palm nuts and kernels are also in this chapter. Malaysia could export more to the UK, but this is very unlikely. Malaysia is more likely to simply export either crude palm oil or refined palm oil.

# HS Chapter 15: Animal Fats or vegetable fats and oils etc.

## **Existing Tariffs**

UK MFN tariffs: most animal fats in this chapter are tariff-free except for lard with £140/T, tallow with a 2% tariff and some fish oils with 2% to 10% tariffs. Most vegetable oil products in this Chapter have tariffs added. Palm oil tariffs are 2% for crude oil and up to 12% for refined and packaged palm oil. Soybean oil tariffs range from 6% to 8% whilst sunflower oil, rape seed oil and safflower oil have 6% to 10.9% tariffs. The UK's tariffs on margarine range from 2% to 16%. Olive oil tariffs range from £920/T for crude olive oil to £1340/T for refined olive oil.

## **Changes under the CPTPP**

Under CPTPP all tariffs in this Chapter will be eliminated in full.

## Expected changes to UK imports under the CPTPP

We do not expect a large increase in imports of these products as demand is relatively stable. However, we do expect to see a change in import providers for palm oil to

Malaysia from Indonesia, Netherlands, and Germany. We do not expect palm oil imports from Papua New Guinea (PNG) to be affected as they are already tariff free.

We expect a small shift in supply of chemically modified fats and oils to Malaysia from China and the US.

We expect some soybean oil supply to move to Canada and Malaysia from the Netherlands, but total imports to be unaffected.

We expect imports of sunflower and safflower oil to be unchanged.

Malaysia and Canada could increase their UK market share for margarine, but we do not expect total UK imports of margarine to increase.

Chile, Australia and Peru export some olive oil. This could increase but it would only displace existing imports, if at all.

Australia and Malaysia may increase their oilseed rape exports depending on the UK's own production volumes.

#### Reasoning

The UK imports over 1.5 million tonnes of animal and vegetal fats and oils each year. The UK's largest imports by volume are palm oil, chemically modified inedible fats and oils, sunflower seed oil, soy oil, margarine, rapeseed oil, and olive oil.

The UK's palm oil imports mostly come from Papua New Guinea (37%), Indonesia (22%), Malaysia (16%), Germany (12%), and the Netherlands (8%).

Together Indonesia and Malaysia export over 80% of the world's palm oil. We expect Malaysia, the world's second-largest exporter of palm oil after Indonesia, to increase its UK market share over Indonesian palm oil which will still be subject to MFN tariffs.

UK palm oil imports from the Netherlands and Germany are mostly refined palm oil previously imported as crude oil from either Malaysia, PNG, Indonesia or other Caribbean producers and refined in the Netherlands or Germany. As about threequarters of Malaysian palm oil exports are refined palm oil we would also expect to see an increase in direct imports of refined palm oil from Malaysia taking market share away from European refineries. This will depend on capacity constraints at refineries and supply chain preferences.

In 2022 the UK's imports of chemically modified inedible fats and oils were mostly from Malaysia, (60%), China (16%) and the US (10%) and subject to tariffs of 2%, 4%, or 7.7% tariffs depending on the level of refinement. In other years the US has been the UK's largest import supplier. Under CPTPP imports from Malaysia will be tariff-free, so we expect them to take market share from China and the US who will continue to have tariffs added to their products.

The UK imports about 300,000 tonnes of sunflower, safflower, or cottonseed oil each year. The UK's largest suppliers are Ukraine and France who together supply over half the UK's imports, with other EU countries making up the balance. Both Ukrainian imports

and EU imports are tariff-free and no CPTPP country is a particularly large exporter of these oils, so we do not expect imports to increase.

The UK imports about 200,000 tonnes of soybean oil, 85% of which comes from the Netherlands tariff-free. However, the Netherlands cannot grow soybeans: it imports them from Brazil, the US, Ukraine and Canada and then crushes them. Canada and Malaysia also export refined soy oil; like the Netherlands, Malaysia crushes imported soybeans while Canada crushes its own soy. Viet Nam exports smaller quantities of crude soybean oil. These CPTPP parties could take some UK market share from the Netherlands, but we do not expect total soy oil imports to increase.

The UK imports between 100,000 and 180,000 tonnes of margarine, mostly from EU countries. Malaysia is one of the world's largest margarine exporters, exporting about 400,000 tonnes of Margarine each year. Canada exports about 80,000 tonnes of margarine. The UK imports around 75,000 tonnes of olive oil each year. As mentioned above, tariffs on oil are extremely high and consequently, the UK mostly imports olive oil tariff-free under the EU TCA from Spain, Italy or Greece. However, olive oil tariffs will be eliminated in full under the CPTPP. Chile, Australia and Peru export some olive oil. This could increase but it would only displace existing imports, if at all.

The final oil we will cover individually is rapeseed oil. This is the only large, imported oil that the UK also produces and exports. UK imports vary from 50,000 to 150,000 thousand tonnes each year while UK exports vary from 86,000 tonnes in 2022 to 241,000 tonnes in 2018. This is possibly due to yield variations or erucic acid content. The UK mostly imports fixed rapeseed oil with a low erucic acid content of less than 2%. Canada is the world's largest exporter of rapeseed oil, exporting about 3 million tonnes a year. Australia exports about 200,000 tonnes a year and Malaysia exports about 70,000 tonnes a year. The UK imports a year. The UK and a life but does not. The UK imports about 100 tonnes a year from Australia and none from Malaysia.

# HS Chapter 16: Preparations of meat, fish, crustaceans, molluscs or other aquatic invertebrates

#### **Existing Tariffs**

UK MFN tariffs range from £0.84 per kilo for sausages to £2.53 per kilogram for beef products, 10% for preparations of game or rabbit, and £2513/T for preserved poultry containing 25% to 57% poultry meat or offal. Tariffs on Prepared or preserved fish range from 4% to 25% and tariffs on preparations of crustaceans, molluscs, and other aquatic invertebrates range from 8% to 25%.

#### Changes under the CPTPP

Preparations of meat will have their tariffs removed in line with their meat ingredients and CPTPP parties will be subject to the same quota liberations or restrictions as for those meat ingredients.

Beef products will be counted within the same shared quotas for unprocessed beef. Pork products, including sausages and hams, must use the same quota for unprocessed pork.

Chicken products will also be counted as part of the shared quota for unprocessed chicken meat. Preparations of 'other' preserved meat, offal, or blood will mostly be eliminated in full including turkey meat.

Tariffs on prepared or preserved fish range from 4% to 25%. Most will be eliminated in full immediately under CPTPP but the 20% tariff on processed tuna will be reduced over seven years, the 25% tariff on mackerel fillets and on prepared sardines will be reduced over five years, and the 6% tariff on frozen fillets will also be reduced over five years. Packaged shrimp, prawns or mussels will have their 20% tariffs reduced over five years.

#### Expected changes to UK imports under the CPTPP

We do not expect increased imports of meat products subject to small quotas. Products made with meats not subject to a quota could increase. However, preparations of fish, crustaceans, molluscs, and other aquatic invertebrates are likely to see increased imports once the tariffs have been removed as there are no limiting quotas on fish imports. Most CPTPP parties export fish, crustaceans, molluscs, and aquatic invertebrate products. We expect that when the tariffs are lifted, imports from Viet Nam, Malaysia and Canada could displace those from Indonesia or China.

#### Reasoning

The UK imports about 600,000 tonnes of preparations of meat each year, although under CPTPP imports of most meat products and sausages will be limited by the small quotas and the economic preference for using a quota for more expensive products.

The UK imports about 200,000 tonnes of HS1604 prepared or preserved fish but very little from any CPTPP country. The UK imports over 40,000 tonnes of HS1605 preparations of crustaceans, molluscs, and other aquatic invertebrates each year.

#### HS 1604

Viet Nam is the largest exporter of HS1604 preserved or prepared fish in CPTPP, exporting about 130,000 tonnes each year, but most of this goes to Japan, the US, and South Korea. Viet Nam has a quota for 1,566 tonnes of prepared or preserved tuna, but the UK imported only 2.3 tonnes from Viet Nam in 2022. The UK has an existing 68 tonnes import quota for Viet Surimi (a paste made from fish meat) but only imported 18 tonnes of Surimi.

Malaysia exports about 40,000 tonnes of prepared or preserved fish each year but only about 1,000 tonnes to the UK. We expect this to increase after the UK's tariffs are removed under CPTPP.

Canada exports about 25,000 tonnes of preserved and prepared fish each year, and the UK is its second largest export destination after the US. UK imports of Canadian prepared or preserved fish could increase under CPTPP.

Mexico has a quota for 1,702 tonnes of prepared or preserved fish and 817 tonnes of tuna loins but neither quota was used in 2022. Mexico only exports between 8,000 and 20,000 tonnes of prepared or preserved fish annually so is unlikely to increase its exports to the UK.

Chile has a quota for 25 tonnes of prepared or preserved fish that was not used. Chile exports less than 20,000 tonnes of prepared or preserved fish each year, so we do not expect their exports to the UK to increase.

Peru shares a quota for 542 tonnes of prepared or preserved fish with Ecuador and Colombia. Peru exports around 20,000 tonnes of prepared and preserved fish each year. We do not expect its exports to the UK to increase under CPTPP.

Japan only exports about 20,000 tonnes of prepared and preserved fish each year; we do not expect its exports to the UK to increase under CPTPP.

Chile's exports of prepared or preserved fish dropped dramatically after 2007 and it now only exports about 15,000 tonnes each year; we do not expect its exports to the UK to increase under CPTPP.

Australia exports very little prepared or preserved fish and we do not expect this to change under CPTPP.

#### HS 1605

Viet Nam exports around 150,000 tonnes of HS 1605: preparations of crustaceans, molluscs, and other aquatic invertebrates. Viet Nam's largest exports are persevered or prepared shrimp and prawns. Viet Nam is already the UK's largest supplier of prepared or preserved crustaceans, molluscs and aquatic invertebrates, supplying over a quarter of UK imports by volume in 2022, while Canada supplied 10%, Chile 6%, Malaysia 2% and Peru 1%.

Viet Nam's largest individual product export to the UK was over 10,000 tonnes of prepared prawns equal to about 30% of UK imports, and Canada supplied about 12% of the UK's prepared and preserved shrimp and prawn imports. Chile, Malaysia, and Peru mostly export prepared and preserved cuttlefish and squid to the UK.

Chilean and Peruvian products in this sector are already being imported tariff-free but they are limited by small quotas in their FTAs.

## HS Chapter 17: Sugar and Sugar Confectionery

#### **Existing Tariffs**

UK MFN Tariffs: sucrose ranges from £280/T to £350/T, sugars other than cane or beet range from £110/T to £420/T, molasses is tariff-free and quota-free and sugar confectionary ranges from 6% to 12%.

## **Changes under the CPTPP**

The tariff on beet sugar for refining will be reduced over 10 years. Imports of cane sugar from Brunei, Canada, Chile, Malaysia, Peru, Singapore, and Viet Nam will share a tariff free quota of 4,500 tonnes in year one of the trade agreement increasing to 25,000 tonnes in year 10. The quota will be shared on a first come first served basis. The quota will remain at 25,000 tonnes thereafter. Imported cane sugar from Canada shall have access to the quota until the end of year one and be duty free from year two and imports of cane sugar from Singapore shall have access to the quota until the end of year

two and then be duty free from year three. Australian sugar will be subject to MFN tariffs until year 15 of the CPTPP agreement. New Zealand sugar will be subject to MFN tariffs until year 8 of CPTPP. Tariffs will be eliminated in full immediately for Japan.

Tariffs on sugars other than from cane or beet will be reduced for all CPTPP parties over ten years.

Tariffs on sugar confectionary will be eliminated in full immediately.

## Expected changes to UK imports under the CPTPP

The UK's cane or beet sugar tariffs are very high and increase the import price by over 50%. We expect increased imports of sugar from Singapore and Canada as they drop out of the shared quota in years 2 and 3 respectively and have unlimited tariff-free access. By year 3 the shared quota will be about 10,000 metric tonnes and a useful size for the other smaller exporters still in the shared quota.

The largest exporter of non-cane or non-beet sugar in CPTPP is Canada, exporting over 300,000 tonnes each year, then Malaysia which exports about 100,000 tonnes, then Viet Nam which exports around 50,000 tonnes. We expect Canada, Malaysia, and Viet Nam to increase their exports to the UK after the tariffs have been removed.

We do not expect imports of sugar confectionary to increase as the tariffs are relatively low and the UK's domestic production dominates this market.

## Reasoning

## HS 1701 Cane or beet sugar

The UK imports between 700,000 and 1,000,000 tonnes of cane or beet sugar each year and exports between 40,000 and 370,000 tonnes.

Of the parties included in the shared quota, Malaysia's sugar exports vary between 100,000 and 300,000 tonnes each year. Peru's exports vary from 35,000 tonnes to 170,000 tonnes. Singapore exports about 50,000 to 60,000 tonnes of sugar each year. Canada exports between 30,000 and 80,000 tonnes of sugar, mostly refined from imported sugar cane. Viet Nam was a large sugar exporter before 2015 but exported just under 10,000 tonnes in 2022. Chile exports less than 1,000 tonnes. Brunei does not export sugar.

The largest sugar exporter in CPTPP is Mexico which exports between 900,000 and 1.4 million tonnes of sugar each year. But Mexico is specifically excluded from the tariff-free sugar quota and will continue to be subject to the UK's Most Favoured Nation (MFN) import tariffs.

Other parties excluded from the shared quota are Australia, New Zealand, and Japan. Australia exports between 80,000 and 200,000 tonnes of sugar each year, New Zealand exports about 25,000 tonnes of sugar, but Japan exports less than 3,000 tonnes of sugar.

Peru already has a tariff-free quota for 4,655 tonnes of cane sugar but this was not used in 2022.

Viet Nam has a quota for 2,724 tonnes of sugar but only 240 kilograms of sugar was imported from Viet Nam in 2022.

It is probable that these quotas were too small for UK importers. The UK is able to import up to 260,000 tonnes of sugar tariff-free from Brazil, the world's largest and most efficient sugar producer. Brazil has filled the UK's international sugar quota since it was introduced in 2021. Brazil and France provided just under 70% of UK sugar imports last year. France, although a more expensive producer than Brazil, has unlimited tariff-free access to the UK market through the UK-EU Trade and Cooperation Agreement.

#### HS 1702 Other sugar not from cane or beet

The UK imports about 300,000 tonnes of mostly glucose and maltose. 80% of the UK's non-cane or beet sugar imports are supplied by France, Belgium, and the Netherlands.

The largest exporter in CPTPP is Canada, exporting over 300,000 tonnes each year, then Malaysia which exports about 100,000 tonnes, then Viet Nam which exports around 50,000 tonnes. We would expect these parties to increase their exports to the UK after the tariffs have been removed.

## HS 1703 Molasses

Molasses is already tariff-free and quota-free, so we do not expect imports to change under CPTPP.

## HS 1704 Sugar Confectionary

The UK imports over 200,000 tonnes a year, mostly from EU countries. Canada is the largest exporter in CPTPP, exporting over 150,000 tonnes a year, followed by Malaysia with exports of 50,000 tonnes. However, the UK's own production dominates its domestic market, so we do not expect imports to increase.

## HS Chapter 18: Cocoa and Cocoa Preparations

#### **Existing Tariffs**

UK MFN tariffs: cocoa beans or unsweetened cocoa powder are tariff free; 6% tariffs on cocoa butter; 8% to 14% tariffs on most processed cocoa, cocoa preparations and chocolate.

#### Changes under the CPTPP

These will all be eliminated in full immediately under the CPTPP.

#### Expected changes to UK imports under the CPTPP

The UK could import more cocoa butter and paste from Malaysia and Peru, and could increase its imports of finished chocolate or productions containing cocoa from Canada or Australia.

#### Reasoning

Malaysia, Singapore and Peru export cocoa butter and powder. The largest exporter of chocolate products in CPTPP is Canada but the UK imports only small quantities of Canadian chocolate. We do not expect this to change.

# HS Chapter 19: Preparations of cereal, flour, starch or milk, pastrycook's products

## **Existing Tariffs**

UK MFN tariffs range from 6% to £450/T.

#### **Changes under the CPTPP**

All tariffs in this chapter will be eliminated in full immediately except for prepared food made from rice, whose tariffs will be reduced over five years.

#### **Expected changes to UK imports under the CPTPP**

We do not expect imports to increase despite the full elimination of the UK's tariffs.

#### Reasoning

Canada is the largest exporter of goods in this Chapter; but the UK is already its third largest market, albeit a minnow after the US, which imports 96% of Canada's exports in this chapter. The UK imports about 1%. The UK will be the second largest exporter of these products in CPTPP.

## HS Chapter 20: Preparations of vegetables, fruit, nuts or other parts of plants.

#### **Existing Tariffs**

MFN tariffs range from 4% for capsicums preserved in vinegar, to 30% plus £170/T for frozen orange juice, to 40% plus £101 per hectolitre plus £170/T for Grape juice of Brix value exceeding 67 (Brix measures the percentage of sugar in a 100 grams of liquid).

#### **Changes under the CPTPP**

All tariffs will be eliminated in full immediately, except on some potato products where tariffs will be eliminated over 5 years.

## Expected changes to UK imports under the CPTPP

We would expect the UK to increase its imports of these products under CPTPP.

#### Reasoning

The UK imports over one million tonnes of fruit juices, 750,000 tonnes of frozen vegetables, over 500,000 tonnes of preserved tomatoes, 400,000 tonnes of preserved vegetables, 250,000 tonnes of prepared or preserved fruit, 100,000 tonnes of vegetables preserved in vinegar, 80,000 tonnes of jams and about 10,000 tonnes of dried fruit and 10,000 tonnes of dried mushrooms and truffles.

Australia exports fruit juice, and dried fruit; Canada exports over a million tonnes of frozen vegetables each year; Chile exports 150,000 tonnes of jams and over 100,000 tonnes of preserved tomatoes and 100,000 tonnes of fruit juices; Malaysia exports

20,000 to 30,000 tonnes of fruit juices; Mexico exports around 250,000 tonnes of preserved fruits, around 350,000 tonnes of fruit juices and around 150,000 tonnes of vegetables preserved in vinegar; New Zealand exports various frozen vegetables and fruit juices; Peru exports 180,000 to 200,000 tonnes of prepared vegetables, 50,000 tonnes of prepared or preserved fruit and nuts, and 40,000 tonnes of fruit juice; and Viet Nam exports around 200,000 tonnes of prepared or preserved fruit and nuts, of prepared or preserved fruit and nuts, 140,000 tonnes of fruit juice, and around 30,000 tonnes of prepared or preserved vegetables.

## HS Chapter 21: Miscellaneous edible preparations.

## **Existing Tariffs**

MFN Tariffs: range from 6% on Soy Sauce, 8% on Mustard, 10% on tomato ketchup to £350/T on Isoglucose syrups.

## **Changes under the CPTPP**

Most of the products in this Chapter will see their tariffs eliminated in full immediately under the CPTPP. The exceptions are flavoured or coloured sugar syrups whose tariffs will be eliminated over 10 years.

#### **Expected changes to UK imports under the CPTPP**

We do not expect the UK's total consumption of these products to increase but we do expect some supply chains to move to CPTPP parties and away from countries where the tariffs still apply.

#### Reasoning

The UK imports over 400,000 tonnes of food preparations, over 300,000 tonnes of condiments, 200,000 tonnes of tomato ketchup, 130,000 tonnes of ice cream, 40,000 tonnes of soups and broths, 30,000 tonnes of extracts of coffee, 30,000 tonnes of protein concentrates, 25,000 tonnes of active yeasts and 25,000 tonnes of soy sauce.

Australia and Canada are large exporters of most food preparations. Japan is a large exporter of soy sauce and condiments. Malaysia exports food preparations, coffee extras, condiments, soy sauce and active yeast. Mexico exports sauces and condiments, active yeast, food preparations, soups, coffee extras and tomato ketchup. New Zealand exports food preparations, sauces and condiments. Singapore exports sauces and condiments.

## HS Chapter 22: Beverages, Spirits and Vinegar

#### **Existing Tariffs**

MFN Tariffs: range from zero on mineral water, beer made from malt, and spirits with alcoholic strength by volume of less than 80%. Spirits with alcoholic strength by volume of more than 80% are charged tariffs of £0.16 per litre, cider and perry are charged a tariff of £0.16 per litre, wine has a tariff of £0.12 per litre, fortified wine has a tariff of £0.17 per litre, and sparkling wine a tariff of £0.26 per litre. Sweetened carbonated non-alcoholic drinks have tariffs of 8%. Wine vinegar is charged tariffs of between £0.04 per litre and £0.053 per litre.

## **Changes under the CPTPP**

Under CPTPP all of these tariffs will be eliminated in full except the tariff on spirits with more than 80% alcohol by volume and denatured alcohol of any strength, which will both have their tariffs reduced over 10 years.

## Expected changes to UK imports under the CPTPP

We expect imports of other sweetened water to increase. Imports of most wine will be dependent on a CPTPP country's ability to increase supply. Imports of spirits are determined by marketing rather than price so a reduction in the tariffs is unlikely to increase imports. Imports of tariff-free beverages are not expected to change.

## Reasoning

The UK imported nearly 2 million tonnes of sweetened water in 2022, 1.3 million tonnes of wine, 900,000 tonnes of beer, 850,000 tonnes of spirits with alcoholic strength by volume of more than 80%, 600,000 tonnes of mineral water, 270,000 of alcohol with less than 80% alcohol by volume, 222,000 tonnes of cider perry or mead, 33,000 tonnes of vinegar and 13,000 tonnes of wine flavoured with aromatic substances.

**HS 2201** – the UK's main supplier of mineral water is France; we don't see that changing as mineral water is already tariff-free.

**HS 2202** – the UK mainly imports sweetened carbonated water and non-alcoholic beverages from the Netherlands, Germany, France, Switzerland, and Belgium. Except for Switzerland, this is imported tariff-free. The UK presently imports small amounts of HS 2202 from Australia, Canada, Japan, Malaysia, Mexico, New Zealand, Singapore, and Viet Nam. They are all charged tariffs except for Canada. After Canada's tariffs were removed UK imports increased tenfold from 200 cubic metres to over 2000 cubic metres.

**HS 2203** – Beer made from malt is already tariff free. The UK's largest supplier is Ireland followed by Italy and the Netherlands. We don't expect this to change.

**HS 2204** – Despite the tariffs, even in 2022 Australia, Chile and New Zealand were already amongst the UK's top eight wine suppliers. Australia was the UK's second-largest supplier after Italy, ahead of France and Spain; Chile was fifth and New Zealand eighth. Whether these parties can increase their exports to the UK when the tariffs are removed will depend on their capacity to produce more wine to fill any increased UK demand, as well as demand from competing markets such as the United States, China and Canada.

**HS 2205** – This is a small import for the UK, and it is already tariff-free. Chile, Australia, Canada and Viet Nam export small quantities but we do not expect their exports to the UK to increase.

**HS 2206** – Fermented beverages such as cider, perry and mead. The UK mostly imports these drinks from Ireland and Sweden tariff-free under the UK EU TCA. Despite the tariffs, the UK already imports small quantities from Japan, Australia, and Malaysia. Canada is the largest exporter in CPTPP but almost all of their exports go to the US. We do not expect imports in this subheading to increase.

**HS 2207** – Over two-thirds of the UK's imports of undenatured alcohol with alcoholic strength by volume greater than 80% come from Brazil and the USA. The UK will be the largest exporter in the CPTPP, then Canada, then Australia. Singapore, Viet Nam and Chile export smaller amounts.

As both Brazil and the US imports are subject to tariffs, but are still the UK's largest suppliers, we do not believe that these products are particularly price sensitive, and we do not expect imports from CPTPP parties to change.

**HS 2208** – Undenatured alcohol with less alcoholic strength by volume below 80%. Most of the UK's imports in this subheading are already tariff-free except rum. The tariffs on rum will be eliminated in full immediately under CPTPP. The UK's largest supplier of rum is the United States. It presently has the same tariffs as Australian and Mexican rum. We expect imports of Australian and Mexican rum to increase a little under CPTPP. However, this market is determined by marketing and consumer preference rather than price, so we do not expect to see a large increase.

**HS 2209** – The UK's wine vinegar imports are mainly supplied tariff-free from Spain and Italy. The UK imports a very small amount from Canada, Malaysia and Australia. As the tariffs on wine vinegar are small, we do not expect imports to increase from CPTPP parties.

## IX. List of consultees

- Nan Jones, British Meat Processors Association
- Mark Williams, British Egg Industry Council
- Ben O'Halloran, British Veterinary Association
- James West, Compassion in World Farming
- Peter Dawson, Dairy UK
- Nicholas Fenwick, Farmers' Union of Wales
- Sonul Badiani-Hamment, FOUR PAWS UK
- Henrietta Appleton and Alastair Leake, Game & Wildlife Conservation Trust
- Neil Shand, National Beef Association
- Rachael Speed, NFU and NFU Cymru
- Josie Cohen, Pesticide Action Network UK (PAN UK)
- Markus Gehring, Marios Tokas and Matheus Garcia, Centre for International Sustainable Development Law (CISDL)
- Marisa Heath, Trade & Animal Welfare Coalition (TAWC)
- Anthony Speight, Agricultural and Horticultural Development Board (AHDB)
- Dave Little, Institute of Aquaculture University of Sterling
- Milorad Radakovic and Lewis Grant, Experts in veterinary public health
- Muhammad Haris Abdullah, Sarah Nasiha, Simon Selvaraj, Malaysian Palm Oil Certification Council (MPOCC)
- Jaime Yeoh and Nurul Huda, Ministry of Plantation & Commodities, Malaysia
- Anna Nicholls and Balazs Toth, UK Office for SPS Trade Assurance, DEFRA
- Emily Lydgate, Senior Associate Professor in Environmental Law, University of Sussex
- Jonny Hughes, Blue Marine Foundation
- Rochelle Fergusson, New Zealand Government SPS Counsellor
- Kate Swan, New Zealand High Commission First Secretary Trade & Economic
- Chris Ninnes, Chief Executive Aquaculture Stewardship Council
- Fiona Wright, Christina Falla and Gavin Hatton, Seafish
- Scott Reaney, Head of Technical and imports SPS policy team, DEFRA

- Paolo Vergano, Partner at FratiniVergano
- Glen Reynolds, SE Asia Rainforest Research Partnership (SEARRP)
- Angela Bowden, Seed Crushers and Oil Processors Association
- Emily Fripp, EFECA
- Clare Mike, Linking Environment And Farming (LEAF)
- Matthew Smith, Doug Forsyth, and Parthiban Muthukumarasamy, Canadian Government officials
- Alfredo Dajer, Mexico agriculture expert
- Jack Ward, British Growers Association

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