

Report pursuant to Section 42 of the Agriculture Act 2020

Protocol on the Accession of the United Kingdom of Great
Britain and Northern Ireland to the Comprehensive and
Progressive Agreement for Trans-Pacific Partnership



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

January 2024



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Ministerial Foreword

The Protocol on the Accession of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) represents the next chapter in the Government's highly ambitious independent trade policy.

By joining CPTPP, we will be part of a trading bloc that spans four continents, covering a population of more than half a billion people. The combined GDP of the 11 CPTPP Parties and the UK is worth around £12 trillion (2022)¹ and the UK becoming a Party to CPTPP is estimated to increase trade by £4.9 billion² in the long run.

We reaffirm our commitment to transparency and scrutiny of new trade agreements. We recognise this is vital to the public and Parliament. It also allows us to demonstrate that the benefits of these agreements, including our accession to CPTPP, will never come at the expense of the UK's high standards.

This report sets out in clear, concise language what the UK's accession to CPTPP means for the maintenance of UK levels of statutory protections in the areas of human, animal and plant life or health, animal welfare and the environment.

The report confirms that the UK's accession to CPTPP is consistent with maintaining such statutory protections, supported by the advice of the independent Trade and Agriculture Commission, the Food Standards Agency and Food Standards Scotland.

As CPTPP expands, so too do the benefits of being a part of it. We will get a seat at the table, and we will strive to make use of every opportunity to bring growth and prosperity to all parts of the UK.



The Rt Hon Kemi Badenoch MP
Secretary of State for Business and
Trade and President of the Board of
Trade



The Rt Hon Steve Barclay MP
Secretary of State for Environment,
Food and Rural Affairs

¹ 1 IMF World Economic Outlook Database, October 2023 edition.

² DBT modelling published in the CPTPP Impact Assessment, June 2023:

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Background

The UK signed the Protocol on the Accession of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership on 16 July 2023 ('the Accession Protocol').

1. The Accession Protocol sets out the terms and conditions upon which the UK is acceding to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). When the Accession Protocol enters into force the UK will accede to the CPTPP and become a Party to the CPTPP. The Accession Protocol, including its Annexes and footnotes will constitute an integral part of the CPTPP.³ The Accession Protocol amends and/or modifies parts of the CPTPP.
2. The CPTPP is a free trade agreement between Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. The CPTPP largely incorporates the provisions set out in the Trans-Pacific Partnership (done at Auckland on 4 February 2016), with a small number of provisions suspended upon entry into force of the CPTPP.
3. Prior to the UK acceding to the CPTPP, the Accession Protocol will be formally laid before Parliament for scrutiny under the Constitutional Reform and Governance Act 2010 (CRAg). CPTPP itself has already been ratified and entered into force by CPTPP Parties. It is the Accession Protocol, with the modifications to the treaty which apply to the UK, that is to be laid. The text of the Accession Protocol and CPTPP have been published and are available for consideration.⁴
4. Section 42(1) of the Agriculture Act 2020 requires that where a free trade agreement includes measures applicable to trade in agricultural products, the Secretary of State must lay a report (the "S42 report") before Parliament before the free trade agreement can be laid in Parliament under CRAg. The S42 Report must consider whether, or to what extent, measures in the free trade agreement applicable to trade in agricultural products⁵ are consistent

³ See Articles 1, 5 and 21 of the Accession Protocol.

⁴ Accession Protocol: <https://www.gov.uk/government/publications/accession-protocol-of-the-uk-to-the-cptpp>

CPTPP Text: <https://www.gov.uk/government/publications/cptpp-full-agreement-text>

⁵ "Agricultural products" means products of a kind which, at the time this section comes into force, is listed in—

a) Annex 1 to the Treaty on the Functioning of the European Union;

with the maintenance of UK levels of statutory protection in relation to the following areas:

- (a) human, animal or plant life or health,
- (b) animal welfare, and
- (c) the environment.

5. Under Section 42 (4), the Secretary of State may seek advice from independent, expert sources of advice in preparing the S42 Report. In this case, the Secretary of State has sought advice from the Trade and Agriculture Commission (TAC) in relation to matters listed below.
6. The TAC's remit was to produce advice on whether, or to what extent, the measures in the Accession Protocol were consistent with the maintenance of UK levels of statutory protection in relation to:
 - a) animal or plant life or health
 - b) animal welfare, and
 - c) the environment
7. The TAC's advice on the UK's accession to the CPTPP was laid before Parliament on 7 December 2023.
8. For this report on the UK's accession to the CPTPP by means of the Accession Protocol, advice has also been sought from the Food Standards Agency (FSA) and Food Standards Scotland (FSS). The FSA and FSS are statutory bodies which collectively have responsibility for human health in relation to food safety and nutrition related matters across the UK. The Department of Health and Social Care, as the department responsible for human health, has also been consulted on the main body of this report.
9. The fact that Government has not engaged specifically on any statement or opinion in the TAC or FSA/FSS advice in this S42 report does not imply agreement with it and insofar as the Government has not expressed a view, it reserves its position.

b) Annex 1 to [Regulation \(EU\) No 510/2014](#) of the European Parliament and of the Council of 16 April 2013 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products and repealing Council Regulations [\(EC\) No 1216/2009](#) and [\(EC\) No 614/2009](#);

c) the first two columns of Annex 2 to that Regulation;

S42 Report scope and conclusions

This report considers the impact of the UK's accession to the CPTPP via the Accession Protocol on relevant UK statutory protections. Legislation that relates to UK levels of statutory protection in human, animal or plant life or health, animal welfare, and the environment is wide ranging and has varying territorial extent and application.

The scope of this report extends to all Chapters of the Trans-Pacific Partnership, as incorporated into the CPTPP and as they may be modified or amended by the Accession Protocol, which the UK is acceding to by means of the Accession Protocol, that are applicable to trade in agricultural products. Accordingly, the following Chapters in part or in whole are in scope of this Report:

- Initial Provisions and General Definitions
- National Treatment and Market Access for Goods
- Rules of Origin (RoO) and Origin Procedures (OP)
- Customs Administration and Trade Facilitation
- Sanitary and Phytosanitary (SPS) Measures
- Technical Barriers to Trade (TBT)
- Competition Policy
- Environment
- Regulatory Coherence
- Dispute Settlement
- Exceptions and General Provisions

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

For each of these Chapters, this report assesses whether the measures within it are consistent with the maintenance of relevant UK statutory protections, with reference to the advice of the independent TAC and the FSA and FSS, where appropriate.

S42 Report criteria

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

- Whether any changes to primary or secondary legislation are required in relation to protections for (a) human, animal or plant life or health, (b) animal welfare, and (c) the environment.

- Whether there are any measures that affect the right to regulate of the UK Government and Devolved Administrations.

S42 Report conclusions

The matters identified as within scope of Section 42(1) are consistent with the maintenance of UK levels of statutory protection in relation to human, animal or plant life or health, animal welfare, and the environment; no new import conditions are required through implementation and there are no changes to statutory protections in these areas.

Further, CPTPP does not change or restrict the right to regulate of the UK Government and Devolved Administrations in these areas.

The CPTPP, to which the UK is acceding by means of the Accession Protocol, includes provisions which incorporate and build on WTO rules while promoting co-operation, transparency and trade facilitation.

TAC advice criteria and conclusions

The TAC's full advice was laid in Parliament on 7 December 2023.

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

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

The TAC concluded that “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.”⁶

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

The TAC concluded that “ 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

⁶ TAC Report (p.45)

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.”⁷

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

The TAC concluded that “No. CPTPP does not otherwise affect the ability of the UK to adopt statutory protections in these areas.” ⁸ The TAC considered several points around this, including the impact of increased imports under CPTPP on the UK’s border controls, the process of decision-making under CPTPP, and the ability of the UK to regulate in response to concerns raised during their consultations.

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

FSA and FSS advice conclusions

The joint advice from the FSA and FSS is annexed to this report. In summary, they concluded that:

“Following accession to CPTPP, the UK will have the ability to maintain its existing food safety statutory protections in accordance with UK law. CPTPP is also consistent with the maintenance of statutory protections for human health in relation to nutrition.

No changes to the UK food safety regulatory system are required to give effect to CPTPP at the point of entry into force, and the UK’s food safety regulatory system has been deemed compliant with CPTPP requirements ahead of the UK’s accession.

The FTA text preserves the regulatory autonomy of the UK Government and Devolved Administrations with respect to matters of food safety and nutrition.

⁷ TAC Report (p.45)

⁸ TAC Report, (p.46)

Food safety decisions will continue to be taken by ministers across the UK, informed by transparent advice from the FSA and FSS based on robust science and evidence. This is key to upholding statutory protections in the future.

If CPTPP accession results in an increase of food imported to the UK as projected, additional resources will be required to enable UK Public Health Authorities to deliver official controls and maintain food safety.”

Relevant Measures

Chapter 2: National Treatment and Market Access for Goods:

Chapter summary & conclusion

This Chapter sets out provisions for the National Treatment and Market Access for Goods between CPTPP Parties. The Chapter focuses on the elimination of tariffs, with most imports being eligible for zero tariffs, whilst detailing the product-specific limits on the amount of certain goods that are eligible for reduced/zero tariffs from CPTPP Parties.

The Chapter does not require the UK to change its existing levels of statutory protection. The Chapter promotes transparency, cooperation, and the exchange of information between Parties related to the trade in key or sensitive goods, including agricultural products.

The TAC's advice (p.20) noted that this chapter "prohibits all other border restrictions on imports and exports, in the same terms as WTO law⁹. 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."

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

Scope

The majority of Chapter 2 lies outside the scope of this report as it relates primarily to general provisions around market access for goods and has no impact on relevant UK statutory protections. However, Section C, beginning with Article 2.19, relates specifically to market access for agricultural goods.

⁹ Article 2.10 ('Import and Export Restrictions').

Articles

Article 2.1 Definitions:

This Article confirms the definition of “agricultural goods” is consistent with Article 2 of the WTO Agreement on Agriculture. Further, this article sets out specific definitions around modern biotechnology and its products.

Article 2.2 Scope:

This Article confirms that Section C applies to measures adopted or maintained by a Party relating to trade in agricultural goods.

Article 2.3 National Treatment:

This Article sets out that each Party shall accord national treatment to the goods of the other Parties in accordance with Article III of GATT 1994.

The TACs advice (p.21) notes that:

“...once a product has been imported into the UK, it cannot be subject to any discrimination vis-à-vis ‘like’ domestic products”.

Article 2.10 Import and Export Restrictions:

This Article prohibits all other border restrictions on imports and exports in the accordance with Article XI of GATT 1994.

The TAC’s advice (p.20) notes that:

“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.”

Article 2.21 Agricultural Export Subsidies:

This Article confirms that no Party shall adopt or maintain any export subsidy on any agricultural good destined for the territory of another Party.

CPTPP Parties share the objective of the multilateral elimination of export subsidies for agricultural goods.

This Article commits Parties to work together to achieve an agreement in the WTO to eliminate those subsidies and prevent their reintroduction in any form.

Article 2.22 Export Credits, Export Credit Guarantees or Insurance Programmes:

This Article commits Parties to work together in the WTO to develop multilateral disciplines to govern the provision of export credits, export credit guarantees and insurance programmes, including disciplines on matters such as transparency, self-financing and repayment terms.

Article 2.23 Agricultural Export State Trading Enterprises:

This Article commits Parties to work together toward an agreement in the WTO on export state trading enterprises that requires: the elimination of trade distorting restrictions on the authorisation to export agricultural goods; the elimination of any special financing that a WTO Member grants directly or indirectly to state trading enterprises that export for sale a significant share of the Member's total exports of an agricultural good; and greater transparency regarding the operation and maintenance of export state trading enterprises.

Article 2.24 Export Restrictions – Food Security:

This Article recognises that under Article XI:2(a) of the WTO General Agreement on Tariffs and Trade (GATT) 1994, Parties may temporarily apply an export prohibition or restriction that is otherwise prohibited under Article XI:1 of GATT 1994 on foodstuffs to prevent or relieve a critical shortage of foodstuffs. This is provided that the conditions set out in Article 12.1 of the WTO Agreement on Agriculture are met as well as the additional conditions around notification and consultation set out in the Article.

Article 2.25 Committee on Agricultural Trade:

This Article establishes a Committee on Agricultural Trade, composed of Government representatives of each Party. This Committee shall provide a forum for promoting trade in agricultural goods between the Parties; monitoring and promoting cooperation on the implementation and administration of this Section of the Agreement; and consulting Parties on matters related to this Section of the Agreement.

Article 2.26 Agricultural Safeguards:

This Article confirms that originating agricultural goods from any Party shall not be subject to any duties applied by a Party pursuant to a special safeguard taken under the WTO Agreement on Agriculture.

Article 2.27 Trade of Products of Modern Biotechnology:

This Article confirms the importance of transparency, cooperation and exchanging information related to the trade of products of modern biotechnology (as defined in Article 2.19) as well as information sharing on issues related to Low Level Presence (LLP) occurrences.

The FSA/FSS advice concludes (p.11) that this “does not require Parties to change their laws, regulations and policies for the control of products of modern biotechnology within its territory.” They also note (p.12) that “Parties are also not prevented, under this Article, from adopting measures in accordance with their obligations and rights under the WTO Agreements.”

The TAC’s advice (p.69) also noted that:

“The CPTPP has no effect on the UK’s existing WTO rights to regulate the import of GMO products.”

It is the Government’s view that nothing in this Article prevents the UK from adopting measures in accordance with its rights and obligations under the WTO Agreement or other provisions of this Agreement. Further, nothing in this Article requires the UK to adopt or modify its laws, regulations and policies for the control of products of modern biotechnology within its territory.

Chapter 7: Sanitary and Phytosanitary Measures:

Chapter summary & conclusion

This Chapter sets out provisions relating to SPS (Sanitary and Phytosanitary) measures. It focuses on the development and application of human, animal and plant life and health regulations.

The Chapter builds on the WTO SPS Agreement and aims to protect human, animal and plant life and health, while promoting co-operation, transparency and trade facilitation.

The UK is not making any changes to its SPS legislation or import requirements in order to accede to CPTPP. All food and drink products imported into the UK will still have to meet the relevant food safety and biosecurity standards for the UK.

In relation to human health, the FSA and FSS state (p.13) that: "The SPS chapter text agreed within the CPTPP Agreement is of fundamental importance as regards to reserving the UK’s right to maintain existing laws and regulations to protect human life and health, including food safety and nutrition. It is also important in preventing

any limitations in the way food regulation and enforcement is implemented in the UK.”

They conclude (p.18) that: “the UK will have the ability to maintain its existing food safety statutory protections in accordance with UK law” and that “No changes to the UK food safety regulatory system are required to give effect to CPTPP at the point of entry into force”.

The TAC advice (p.21) notes that:

“There is nothing in the SPS Chapter that limits the UK’s rights under the [WTO] SPS Agreement.”

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

Scope

The majority of Chapter 7, except for the Articles listed below, is within the scope of this report, in that it applies to the maintenance of UK levels of statutory protection on human, animal or plant life or health.

Articles 7.5, 7.6, 7.13, 7.15, 7.16 are outside the scope of this report. These primarily relate to cooperation or governance measures of the FTA, with no impact on UK statutory protections.

Articles

Article 7.1 Definitions:

This Article sets out the definitions of the CPTPP SPS Chapter and incorporates the definitions of Annex A of the WTO SPS Agreement into the Chapter.

Article 7.2 Objectives:

This Article establishes the objectives of the Chapter, and whilst they have no direct effect on the UK levels of statutory protection, they signal the intention of the Chapter and may affect its interpretation. This includes an objective to protect human, animal or plant life or health in the territories of the Parties while facilitating and expanding trade.

Article 7.3 Scope:

This Article sets out the scope of the Chapter. It specifies that all SPS measures that may directly or indirectly affect trade between the Parties can be considered under the Chapter. This applies equally to both existing and future SPS measures.

Article 7.4 General Provisions:

The Parties have existing rights and obligations towards each other under the WTO SPS Agreement. The FSA/FSS note (p.13) that this is significant as the WTO SPS Agreement provides all Parties of the trade bloc with important rights that allow them to set out their own level of public health protection appropriate to their country's respective population.

Further, the Article affirms that the Parties will continue to have these rights and obligations. The SPS Chapter cannot take away those WTO rights and obligations, which, where applicable, must be observed when any Party establishes or modifies its levels of statutory protection.

The TAC also note (p.27) that "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."

Article 7.7 Adaptation to Regional Conditions, Including Pest or Disease-Free Areas and Areas of Low Pest or Disease Prevalence:

This Article sets up a streamlined framework for assessing the safety of imports from an exporting country where that country has a localised pest or disease outbreak. This assessment comprises a determination of the exporting Parties regional conditions. This will help to avoid unnecessary trade restrictions by facilitating the safe movement of products between those areas which are unaffected whilst an outbreak elsewhere is managed.

Article 7.8 Equivalence:

This Article highlights the importance of recognition of the equivalence of SPS measures as a means to facilitate trade. It does not in itself recognise the equivalence of any SPS measures in different parties but outlines a procedure for recognition and seeks to ensure that determinations are made in a timely manner. The article states that determinations should take into account WTO SPS Committee guidance and relevant international standards, guidelines and recommendations.

The FSA/FSS advice (p.8) notes that "CPTPP accession does not automatically grant recognition of equivalence to member countries", and that (p.14) no new

equivalence determinations for agri-food products were agreed as part of the UK's accession to CPTPP.

The TAC advice (p.23) notes that equivalence on SPS measures is for the importing party to determine, with equivalence discussions tending to take a significant amount of time for regulator-to-regulator discussion until “the importing party fully accepts that the exporting party’s regulatory system achieves the goals that the importing party’s regulatory system does.”

Article 7.9 Science and Risk Analysis:

This Article sets out that each Party recognises the importance of ensuring that its respective sanitary and phytosanitary measures are based on scientific principles. It states that the Parties shall base their SPS measures on a risk analysis in accordance with the WTO SPS Agreement, or on relevant international standards, guidelines, or recommendations.

The Article also recognises the Parties’ rights and obligations under the relevant provisions of the WTO SPS Agreement and provides assurance that nothing in this chapter will prevent any Party from establishing the level of protection it determines to be appropriate.

The FSA/FSS advice notes that the Parties can determine their appropriate levels of protection through risk analysis before allowing products from other Parties to be imported. This enables the UK to maintain its risk-based import controls regime.

Both the TAC and the FSA/FSS advice comment on the ability for the UK to maintain SPS measures on a provisional basis, with the TAC noting (p.21) that:

“Article 7.9.3 expressly states: nothing in this Chapter shall be construed to prevent a Party from... 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.”

Article 7.10 Audits:

This Article sets out the role of audits. Under this Article, each Party will have the right to audit an exporting Party’s competent authorities and associated or designated inspection systems to determine their ability to provide required assurances and comply with the importing Party’s SPS controls. The Article sets out how such audits shall be conducted, and how measures can be taken in consequence of an audit.

The FSA/FSS noted in their advice (p.15) that “nothing in the Article prevents the UK from conducting an audit where justified for the purpose of seeking assurances on CPTPP members’ food safety control systems, nor does it prevent the UK from taking emergency food safety measures as appropriate.”

The TAC’s advice (p.39) notes that:

“The obligations of the auditing (importing) party under CPTPP include bearing the cost of the audit, and to make decisions resulting from the audit on the basis of objective evidence and verifiable data. 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.”

Article 7.11 Import Checks:

This Article sets out the framework for CPTPP Parties' import programmes. It states that these programmes should be based on the risks associated with importations and import checks should be carried out without undue delay. Nothing in this Article limits the Parties’ right to perform import checks and, as noted in the FSA/FSS advice (p.15), “to take appropriate enforcement action where non-compliance is identified, in line with existing UK laws and regulations.”

A Party can reject a consignment if it does not meet import requirements, but such action should be evidence based and limited to what is reasonable and necessary.

In relation to CPTPP’s provisions and conditions on import programmes and import checks, the TAC’s advice (p.39) notes that:

“We do not believe that these conditions will require any change to the UK’s existing border controls systems.”

Article 7.12 Certification:

This Article sets out the framework for certification on goods. In applying certification requirements, an importing Party shall take into account relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations.

The FSA/FSS note (p.15) that this applies “to the extent necessary to demonstrate that the imported products comply with the UK or other Parties’ SPS objectives. This is to ensure that certification does not present an unnecessary barrier to trade.”

Article 7.14 Emergency Measures:

The SPS Chapter does not place any restrictions on a Parties' ability to enact emergency SPS measures where there is a particular risk to animal, plant or human life or health.

This Article states that if a Party adopts an emergency measure, it shall review the scientific basis of that measure within six months and make available the results of the review to any Party on request.

The FSA and FSS note (p.16) that they “already have good working relationships with the Emergency Contact Points in many of CPTPP’s Food Safety Authorities and as one of the 11 members of the International Food Safety Authorities Network (INFOSAN). Information relating to any significant food safety issue affecting Northern Ireland would be communicated by FSA Northern Ireland via the EU Rapid Alert System for Food and Feed (RASFF).”

Article 7.17 Cooperative Technical Consultations:

This Article sets out that if a Party has concerns with any matter arising under the chapter with another Party that it cannot resolve through administrative procedures or bilateral or other mechanisms, it may have recourse to cooperative technical consultations. The purpose of cooperative technical consultations is to discuss the matter with the aim of resolving it within 180 days.

The Article also stipulates that Parties should endeavour to resolve matters by using administrative procedures. It allows Parties to seek to resolve matters through existing mechanisms if considered appropriate.

The Article sets out that Parties cannot engage the dispute settlement mechanism of the CPTPP without first seeking to resolve the matter through cooperative technical consultations.

The FSA/FSS note (p.16) that “cooperative technical consultations are not intended to replace the separate decision-making mechanisms and processes through which trading partners can, for example, apply to export a new product to the UK, or be formally consulted on proposed new regulations etc. The forum will help resolve issues between members in an informal way and represents an alternative dispute mechanism.”

Article 7.18 Dispute Settlement:

This Article confirms that the FTA Dispute Settlement Mechanism applies to the Chapter, except for the following:

- with respect to Article 7.8 (Equivalence), Article 7.10 (Audits) and Article 7.11 (Import Checks), Chapter 28 (Dispute Settlement) shall apply with respect to a responding Party as of one year after the date of entry into force of this Agreement for that Party;
- with respect to Article 7.9 (Science and Risk Analysis), Chapter 28 (Dispute Settlement) shall apply with respect to a responding Party as of two years after the date of entry into force of this Agreement for that Party.

- the dispute settlement mechanism does not apply to paragraphs 7.8.6.b (within article on Equivalence), and 7.9.2 (within article on Science and Risk Analysis).

The application of the CPTPP Dispute Settlement Mechanism to parts of the chapter means that future UK SPS measures may be at risk of being challenged, in addition to the existing recourse via the WTO Dispute Settlement Process.

The FSA/FSS note (p.4) that any “challenges would be on the basis that UK domestic Sanitary and Phytosanitary (SPS) measures were unfairly trade restrictive and not based on science and evidence. However, we note that our existing processes already provide that UK measures are based on sound science and evidence in line with the UK’s appropriate levels of protection and international obligations.”

They also note (p.15) that the “risk of SPS measures being challenged is already present under WTO rules and in other FTAs” and that (p.18) the “UK’s food safety regulatory system has been deemed compliant with CPTPP requirements ahead of the UK’s accession.”

Chapter 8: Technical Barriers to Trade:

Chapter summary & conclusion

This Chapter facilitates trade by addressing non-tariff barriers caused by technical regulations, standards, and conformity assessment procedures for goods. The objective of the Chapter is to eliminate unnecessary technical barriers to trade (TBT), enhance transparency, and promote greater regulatory cooperation and good regulatory practice.

TBT covers trade in all products, except for measures that fall under Government Procurement or SPS. Examples of TBT regulations include standardised packaging of tobacco products and minimum cocoa requirements for chocolate.

This Chapter builds on the WTO TBT Agreement¹⁰ and maintains each country’s right to introduce new technical regulations to fulfil legitimate policy objectives, such as the protection of human, animal and plant life or health and the environment¹¹.

This Chapter, including its annexes, does not require any changes to UK levels of statutory protections and is consistent with the maintenance of UK levels of statutory protection in relation to human, animal and plant life or health and the environment; further, nothing in the Chapter changes or restricts the right to regulate of the UK Government and Devolved Administrations.

¹⁰ The WTO TBT Agreement can be found at: https://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm

¹¹ As incorporated by Article 8.4 of this Chapter.

Article 8.6 of the TBT Chapter contains provisions to ensure each CPTPP Party accords conformity assessment bodies located in the territories of another Party treatment no less favourably than it accords to conformity assessment bodies located in (i) its own territory or (ii) the territory of another Party. Furthermore, Annex 8-A of the TBT Chapter contains requirements related to the labelling of ice wine (or a similar variation of the term). Primary and Secondary legislation will be required to implement these changes, but they do not adversely impact statutory protections, and so are consistent with the maintenance of statutory protections.

In relation to “human health”, the FSA/FSS concluded the following: “The TBT chapter is relevant to the maintenance of statutory protections in relation to human health, including food safety and nutrition related matters, insofar as it preserves the UK’s right to regulate in line with international WTO rights and obligations and with respect to specific marking and labelling provisions.”

The TAC, in their advice (p.21), agrees with the assessment that this chapter is largely based on its existing WTO equivalent:

“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.”

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

Scope

The majority of Chapter 8 is within scope of this report, given the relation of TBT to the areas specified in Section 42.2(a) of the Agriculture Act 2020.

Articles 8.11-8.12 are outside the scope of this report and are therefore not considered below. These relate to pure cooperation or governance measures of the FTA, with no impact on UK statutory protections.

Articles

Article 8.1 Definitions:

This Article confirms that the definitions of the terms used in this Chapter contained in Annex 1 of the WTO TBT Agreement, including the chapeau and explanatory notes of Annex 1, are incorporated into this Chapter and shall form part of this Chapter, with only necessary changes being made. The Article lays out further definitions for terms used within this Chapter.

Article 8.2 Objective:

The Article states that the objective of this Chapter is to facilitate trade, including by eliminating unnecessary technical barriers to trade, enhancing transparency, and promoting greater regulatory cooperation and good regulatory practice.

Article 8.3 Scope:

This Article sets out the application of the measures in this Chapter. It confirms that this Chapter shall apply to the preparation, adoption and application of all technical regulations, standards and conformity assessment procedures of central level of Government bodies¹² that may affect trade in goods between the Parties, except for Government Procurement or SPS measures.

Article 8.4 Incorporation of Certain Provisions of the TBT Agreement:

This Article confirms that the following provisions of the WTO TBT Agreement are incorporated into and made part of this Agreement, with only necessary changes being made:

- (a) Articles 2.1, 2.2, 2.4, 2.5, 2.9, 2.10, 2.11, 2.12;
- (b) Articles 5.1, 5.2, 5.3, 5.4, 5.6, 5.7, 5.8, 5.9; and
- (c) paragraphs D, E and F of Annex 3.

No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) of the Agreement for a dispute that exclusively alleges a violation of the incorporated provisions of the WTO TBT Agreement.

In relation to “Human Health” the FSA/FSS note (p.17) that the agreed text of this article “re-affirms the right of the UK to implement technical measures to achieve legitimate policy objectives, including the protection of human health and food safety (Article 2.2 of the WTO TBT Agreement) and reasserts certain provisions of the WTO TBT Agreement.”

Article 8.5 International Standards, Guides and Recommendations:

This Article confirms that the Parties recognise the important role that international standards, guides and recommendations can play in supporting greater regulatory alignment, good regulatory practice and reducing unnecessary barriers to trade. This article commits CPTPP Parties to cooperate with each other, when feasible and appropriate, to ensure that international standards, guides and recommendations that are likely to become a basis for technical regulations and conformity assessment procedures do not create unnecessary obstacles to international trade.

The FSA/FSS note (p.17) that this does not affect the UK’s right to regulate and does not require changes to existing food safety or nutrition related statutory protections.

¹² And, where explicitly provided for, technical regulations, standards and conformity assessment procedures of Government bodies at the level directly below that of the central level of Government.

Article 8.6 Conformity Assessment:

Conformity assessment bodies undertake conformity assessment procedures to confirm products comply with relevant regulatory requirements. This Article requires CPTPP Parties to accord to conformity assessment bodies located in the territory of another Party treatment no less favourable than that it accords to conformity assessment bodies located in (i) its own territory or (ii) the territory of any other Party. In order to ensure that it accords such treatment, each Party shall apply the same or equivalent procedures, criteria and other conditions to accredit, approve, license or otherwise recognise conformity assessment bodies located in the territory of another Party that it may apply to conformity assessment bodies in its own territory.

In practice, this means that conformity assessment bodies established in CPTPP Parties must be able to apply for approval to carry out conformity assessment for goods entering Great Britain. This is currently not possible under some of the UK's regulations, which requires conformity assessment bodies to be based in the UK, Great Britain or in a country with which the UK has a mutual recognition agreement.

Therefore, primary and secondary legislation will be required to implement this change. However, CPTPP-based conformity assessment bodies applying to a UK competent authority – a Government agency or department – will not be granted automatic approval for conformity assessment. It will only be granted if the competent authority deems that the conformity assessment meets the same qualification and inspection requirements as any UK-based conformity assessment body applying for approval. As such, this change will have no impact on UK statutory protections or the United Kingdom Accreditation Service's (UKAS) role as the UK's national accreditation body.

Article 8.7 Transparency:

The Article stipulates that each CPTPP Party shall allow persons of another Party to participate in the development of technical regulations, standards, and conformity assessment procedures by its central Government bodies on terms no less favourable than those that it accords to its own persons.

The Article requires Parties to publish proposals for new or amended technical regulations and conformity assessment procedures. The Article builds on the WTO TBT Agreement's notification obligations. Parties must notify the WTO TBT Committee where proposals for new technical regulations and conformity assessment procedures have a significant effect on trade, even where those technical regulations or conformity assessment procedures are based on international standards. Where urgent problems of safety, health, environmental protection or national security arise, or threaten to arise for a Party, Parties have the right to omit procedural steps for notification of technical regulations or conformity assessment procedures, as established under the WTO TBT Agreement.

Article 8.8 Compliance Period for Technical Regulations and Conformity Assessment Procedures:

This Article requires Parties to provide a period of normally no less than six months between the publication of a technical regulation or conformity assessment procedure and their entry into force. This is in line with the 2001 Doha Decision at the WTO. The Article also encourages Parties to provide for longer where feasible and appropriate.

Article 8.9 Cooperation and Trade Facilitation:

This Article expands on Articles 5, 6 and 9 of the WTO TBT Agreement and sets out a range of measures that Parties may take in order to further cooperation and facilitate trade between Parties. This includes measures they may take to facilitate acceptance of conformity assessment results, and secure greater regulatory alignment.

Article 8.10 Information Exchange and Technical Discussions:

This Article stipulates that a CPTPP Party may request another Party to provide information on any matter arising under this Chapter. A Party receiving a request shall provide that information within a reasonable period of time. Further, in the event that a matter arises under this Chapter, the Article sets out the procedure for holding technical discussions between Parties in order for the matter to be resolved. A Party must discuss a matter with another Party within 60 days of a request to do so, and Parties must endeavour to resolve the matter as quickly as possible. However, it is recognised that not every matter will be resolved through technical discussions.

Article 8.13 Annexes:

This Article states that the scope of the Annexes on Pharmaceuticals, Cosmetics, Medical Devices and Proprietary Formulas for Prepackaged Foods and Food Additives are defined in the Annexes themselves. The other Annexes to this Chapter have the same scope as that set out in Article 8.3 (Scope). The annexes to the Chapter aim to promote cooperation and reduce technical barriers to trade in specific sectors.

Annex 8A Wine and Distilled Spirits:

The Annex applies to the regulation of wine and distilled spirits. This Annex aims to reduce technical barriers to trade for wine and spirits, including provisions on the marking and labelling of such products. It contains measures relating to: transparency and the timing of the effect of relevant legislation; marking and labelling of wine and spirits; quality and identity requirements for spirits; certification requirements for wine and spirits; and requests for recognition of oenological practices. Paragraph 6 of the Annex permits parties to express alcoholic content by volume (e.g. 12% alc/vol) and in a percentage term to a maximum of one decimal point (e.g. 12%).

Paragraph 17 commits CPTPP parties to not prevent the import of wine goods with certain descriptors. Article 5.2 of the Accession protocol ensures nothing in this paragraph will require the UK to apply the paragraph in a manner inconsistent with its obligations under the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, done at London and Brussels on 24 January 2020.

Paragraph 14 outlines that Parties can impose penalties for the removal or deliberate defacement of any lot code identification.

Paragraph 19 permits wine to be labelled as ice wine, only if the wine is made exclusively from grapes naturally frozen on the vine.

As set out above, secondary legislation will be required to implement the requirements related to the labelling of ice wine at Paragraph 19. However, these changes do not adversely impact statutory protections.

Annex 8C Pharmaceuticals:

The Annex applies to the regulation of pharmaceutical products. The Annex promotes transparency and best practices for regulating in these sectors. It encourages collaboration through relevant international initiatives to help improve regulatory coherence and information sharing. Nothing in this annex impacts the UK's ability to regulate the National Health Service and the National Health Service will have no reduction in standards or levels of protections.

Annex 8D Cosmetics:

This Annex ensures that Parties will share information on the agency or agencies responsible for the regulation of cosmetic products within their territory and examine whether - if there is more than one agency - if there are burdensome and duplicative restrictions in place. The Annex commits Parties to collaborating through relevant international initiatives, including when developing and implementing regulations for cosmetic products.

Annex 8E Medical Devices:

This Annex applies to the regulation of medical devices. The Annex promotes transparency and best practices for regulating in this sector. It encourages collaboration through relevant international initiatives to help improve regulatory coherence and information sharing. Nothing in this Annex impacts the UK's ability to regulate the National Health Service and the National Health Service will have no reduction in standards or levels of protections.

Annex 8F Proprietary Formulas for Prepackaged Foods and Food Additives:

This Annex sets out requirements relating to the gathering of information relating to proprietary formulas for prepackaged food and food additives. It requires that if a Party gathers confidential information, said information requirements are limited to what is necessary to achieve its legitimate objective and the information remain confidential, including should that information be required in the course of judicial proceedings in accordance with its law. Parties are permitted to require ingredients to be listed on labels consistent with the standards CODEX STAN 1-1985 and CODEX STAN 107-1981, as may be amended, except when those standards would be an ineffective or inappropriate means for the fulfilment of a legitimate objective.

The FSA/FSS note that statutory protections in the UK are not affected by this Annex, which regulates parity of treatment between domestic and international applicants and the protection of their confidentiality of information.

Annex 8G Organic Products:

This Annex applies to technical regulations, standards or conformity assessment procedures which relate to the production, processing or labelling of products as "organic". It contains measures on: information exchange and cooperation on organics standards; enforcement of Parties' requirements relating to organics; and technical exchanges. It encourages Parties to consider and accept requests for recognition or equivalence of other Parties' relevant technical regulations, standards or conformity assessment procedures.

Nothing in this Annex requires changes to UK domestic regulations, and nor does it commit the UK to recognise or accept as equivalent other Parties' organics regulations unless the UK decides to do so.

Chapter 20: Environment:

Chapter summary & conclusion

This Chapter recognises the importance of mutually supportive trade and environmental policies and practices; and sets out commitments to promote high levels of environmental protection and effective enforcement of environmental laws. Under the General Commitments within the Chapter, in Article 20.3, the Chapter recognises the sovereign right of the UK and CPTPP Parties to establish their own statutory protections on the environment and to take action to meet related objectives, which includes net zero. The Chapter also includes commitments on cooperation across a range of environmental issues, including biodiversity, protection of the ozone layer, fisheries, environmental goods and services and the transition to a low emissions economy.

Under Article 20.3.6, 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.

In addition to the commitments signed up to under the CPTPP Environment Chapter, the UK has also agreed two further statements with certain CPTPP members relating to the environment. The UK has agreed a joint statement with Malaysia on promoting sustainable agricultural commodity trade and conserving forests¹³. The UK has also agreed a joint statement with Australia, Canada, Chile, Japan and New Zealand further reaffirming commitments to tackling climate change and environmental issues and promoting sustainable trade¹⁴.

The TACs advice concludes (p.37) that:

"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 [...] 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."

It is the view of the Government that this Chapter and relevant articles of the Accession Protocol do not require the UK to change its existing levels of statutory protection on the environment and is consistent with the maintenance of UK levels of statutory protection in relation to the environment. The Chapter also promotes transparency and cooperation on the environment between the Parties.

Scope

The majority of Chapter 20 lies within scope of this Report.

Articles

Article 20.1 Definitions:

This Article sets out the definitions of key terms used within this Chapter, such as what is meant by "environmental law" and "statute or regulation". Definitions used in the Environment Chapter are further modified under Article 12.1 of the Accession Protocol, which defines the territorial application of "statute or regulation" for the UK.

¹³

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1170962/UK-Malaysia_Joint_Statement_on_Sustainable_Agricultural_Commodity_Trade_and_Cooperation_to_Conserve_Forests_-_FINAL.pdf

¹⁴ <https://www.gov.uk/government/publications/cptpp-joint-statement-on-climate-change-the-environment-and-sustainable-trade>

Article 20.2 Objectives:

This Article sets out the objectives of this Chapter, which include to promote mutually supportive trade and environmental policies; promote high levels of environmental protection and effective enforcement of environmental laws; and enhance the capacities of the Parties to address trade-related environmental issues, including through cooperation.

The Article also recognises that it is inappropriate for a Party to establish or use their environmental laws or other measures in a manner which would constitute a disguised restriction on trade or investment between the Parties.

The TAC in their advice (p.37) note that:

“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.”

Article 20.3 General Commitments:

This Article sets out multiple statements and commitments on environmental protection, including recognising the sovereign right of each Party to establish its own levels of domestic environmental protection. The Article also commits Parties to encourage high levels of environmental protection and to continue to improve respective levels of environmental protection, and specifies that no Party shall fail to effectively enforce their environmental laws in a manner affecting trade or investment between the Parties, or waive or otherwise derogate from their environmental laws, in a way which weakens respective domestic statutory protections in order to encourage trade or investment between the Parties.

Article 20.4 Multilateral Environmental Agreements:

This Article affirms the commitment for each Party to implement the multilateral environmental agreements (MEAs) to which it is a party.

The TAC in their advice, (p.36) note that:

“In particular, there is no specific commitment to implement the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement,[69] even though these MEAs were in force at the time CPTPP was signed on 8 March 2018.[70] But this is not so important in practical terms since, under Article 20.4, each Party ‘affirms its commitment to implement the multilateral environmental agreements to which it is a party’. These MEAs include 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). [Footnotes removed]”

Article 20.5 Protection of the Ozone Layer:

The Article commits CPTPP Parties to take measures to control the production, consumption of, and trade in substances whose emissions adversely affect the Ozone Layer and as set out in relevant Multilateral Environmental Agreements. It commits Parties to make publicly available relevant information and to cooperate to address matters of mutual interest related to gases damaging to the atmosphere.

Footnote i clarifies that this article pertains to substances controlled by the *Montreal Protocol on Substances that Deplete the Ozone Layer*, done at Montreal, September 16, 1987 (Montreal Protocol), including any future amendments thereto, as applicable to it. Another footnote clarifies that a Party is deemed to be in compliance with this provision if it maintains certain specified measures implementing its obligations under the Montreal Protocol or any subsequent equivalent measure. Article 12.2 of the Accession Protocol sets out how the United Kingdom would be deemed in compliance with this provision.

Article 20.6 Protection of the Marine Environment from Ship Pollution:

This Article commits CPTPP Parties to take measures to prevent the pollution of the marine environment from ships as set out under relevant Multilateral Environmental Agreements recorded in the article. It commits Parties to make publicly available relevant information and to cooperate to address matters of mutual interest related to pollution of the marine environment from ships.

A footnote clarifies that this article pertains to pollution regulated by the *International Convention for the Prevention of Pollution from Ships*, done at London, November 2, 1973, as modified by the Protocol of 1978 relating to the *International Convention for the Prevention of Pollution from Ships*, done at London, February 17, 1978, and the *Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships, 1973 as Modified by the Protocol of 1978* relating thereto, done at London, September 26, 1997 (MARPOL), including any future amendments thereto, as applicable to it. Another footnotes clarifies that a Party is deemed to be in compliance with this provision if it maintains certain specified measures under MARPOL or any subsequent equivalent measure. Article 12.3 of the Accession Protocol sets out how the United Kingdom would be deemed in compliance with this provision.

Article 20.7 Procedural Matters:

This Article commits each CPTPP Party to promote public awareness of its environmental laws and policies, including enforcement and compliance procedures, by ensuring that relevant information is available to the public. The Article details the appropriate procedural practises that Parties should adopt in instances of violations of their environmental laws.

Article 20.8 Opportunities for Public Participation:

The Article commits CPTPP Parties to seek to accommodate requests for information regarding their implementation of this Chapter. Consultive mechanisms (either established or new) should be used to seek views on matters related to the implementation of this Chapter.

Article 20.9 Public Submissions:

This Article details the framework CPTPP Parties should follow when public submissions are received regarding the implementation of this Chapter. This includes ensuring procedures for the receipt and consideration of written submissions to be publicly available and the process to take in the case of submissions citing a failure of a Party to effectively enforce its environmental laws.

Article 20.10 Corporate Social Responsibility:

The Article states that each CPTPP Party should encourage enterprises to voluntarily adopt principles of corporate social responsibility related to the environment and consistent with internationally recognised standards.

Article 20.11 Voluntary Mechanisms to Enhance Environmental Performance:

This Article commits CPTPP Parties to encourage, as it considers appropriate, use of flexible and voluntary mechanisms for example, voluntary auditing and reporting, market-based incentives, voluntary sharing of information and expertise, and public-private partnership, recognising the role these play in environmental protection.

Article 20.12 Cooperation Frameworks:

This Article sets out the framework by which Parties should cooperate to address matters of joint or common interest in relation to this Chapter. This cooperation could be on a bilateral or plurilateral basis. The Parties commit to promote public participation, as appropriate, in cooperative activities.

Article 20.13 Trade and Biodiversity:

The Article commits CPTPP Parties to promote and encourage the conservation and sustainable use of biological diversity, in accordance with its law or policy. It commits Parties to make publicly available relevant information and to cooperate to address matters of mutual interest related to biological diversity.

Article 20.14 Invasive Alien Species:

This Article sets out that the Committee shall coordinate with the Committee on Sanitary and Phytosanitary Measures to identify information sharing and cooperative opportunities related to the movement, prevention, detection, control and eradication of invasive alien species. It recognises the potentially adverse effects of the movement of terrestrial and aquatic invasive alien species across borders.

Article 20.15 Transition to a Low Emissions and Resilient Economy:

This Article recognises that transition to a low emissions economy requires collective action and that Parties commit to cooperate in areas such as: energy efficiency and renewable energy sources; development of low-emissions technologies; addressing deforestation and forest degradation; sustainable transport and urban infrastructure development.

Article 20.16 Marine Capture Fisheries:

The Article recognises the importance of CPTPP Parties taking measures aimed at the conservation and sustainable management of Fisheries. The Article commits CPTPP Parties to operate a fisheries management system that regulates marine wild capture fishing and is designed to prevent overfishing and overcapacity; reduce relevant bycatch; promote recovery of overfished stocks. The management system should be based on best scientific evidence and on internationally recognised best practice.

The Article also commits CPTPP Parties to promote the long-term conservation for species including sharks, marine turtles, seabirds and marine mammals.

The Article contains a number of commitments relating to fisheries subsidies, including that CPTPP Parties shall not grant or maintain particular kinds of subsidies under Article 1.1 and Article 2 of the SCM Agreement. This commitment relates to subsidies for fishing that negatively affect fish stocks that are in an overfished condition; and subsidies provided to any fishing vessel while listed by the flag State or a relevant Regional Fisheries Management Organisation or Arrangement for IUU fishing in accordance with the rules and procedures of that organisation or arrangement and in conformity with international law.

The Article contains a number of commitments relating to steps Parties shall take to help to combat illegal, unreported and unregulated (IUU) fishing practices.

The TAC in their advice regarding prohibition of certain fisheries subsidies (p.35) note:

“This prohibition must be seen in the context of the WTO Agreement on Fisheries Subsidies, adopted on 17 June 2022, which provides for similar subsidy prohibitions. [66] 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 [67]¹⁵.

Article 20.17 Conservation and Trade:

This Article commits CPTPP Parties to adopt, maintain and implement laws and other measures to fulfil its obligations under the “*Convention on Trade in Endangered Species of Wild Fauna and Flora*”.

The Article also commits CPTPP Parties to promote conservation and to combat the illegal take of, and illegal trade in, wild flora and fauna, and the Article details the steps that Parties shall take to help achieve this, including exchanging information related to combating illegal logging and associated illegal trade.

Article 20.18 Environmental Goods and Services:

The Article recognises the importance of trade and investment in environmental goods and services as a means of addressing global environmental challenges. Further to this, the Article commits CPTPP Parties to endeavour to address any potential barriers to trade in environmental goods and services.

Article 20.19 Environment Committee and Contact Points:

The Article establishes an Environment Committee which is responsible for overseeing the implementation of the Environment Chapter and which is composed of senior Government representatives (or their designees). The Article further details the functions of the Environment Committee and the procedures for meeting. The article also sets out procedures for reviewing the implementation and operation of the Chapter.

Article 20.20 Environment Consultations:

This Article stipulates that a CPTPP Party may request a consultation with other CPTPP Parties regarding any matter arising under this Chapter. Other CPTPP members may join this consultation via written notice where they consider they have a substantial interest in the matter.

¹⁵ 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.

Article 20.21 Senior Representative Consultations:

If consulting Parties fail to resolve a matter under the previous Article, this Article stipulates that a consulting Party may request the Committee representatives convene to consider, and seek to resolve, the matter (including gathering information from relevant, non-Governmental experts as appropriate).

Article 20.22 Ministerial Consultations:

If the consulting Parties have failed to resolve the matter under Article 20.21 (Senior Representative Consultations), a consulting Party may refer the matter to the relevant ministers of the consulting Parties who shall seek to resolve the matter.

Article 20.23 Dispute Resolution:

This Article sets out the process by which Parties can resolve disputes relating to the Environment Chapter.

Parties may first seek to resolve matters under Article 20.20 (Environment Consultations), Article 20.21 (Senior Representative Consultations) and Article 20.22 (Ministerial Consultations).

If the consulting Parties have failed to resolve the matter through the above process, Parties additionally have recourse to a dispute settlement mechanism under the Dispute Settlement Chapter. The Dispute Settlement Chapter also sets out how panellists should be selected with regards to disputes related to the environment.

The TAC in their advice (p.37) note that:

“...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.”

Other Chapters

Chapter 1 – Initial Provisions and Definitions

The Chapter includes a ‘Relation to Other Agreements’ article (Article 1.2), which affirms the principle of co-existence between the CPTPP and other existing international agreements to which two or more CPTPP Parties are a party. This is also relevant to existing agreements to which the UK and at least one other CPTPP Party are Parties that may impact matters relevant for this report, and has the effect of reaffirming the UK’s commitment to upholding obligations taken elsewhere.

Chapter 3 – Rules of Origin and Origin Procedures:

To help UK exporters access preferential tariffs, CPTPP provides a single set of Rules of Origin (RoO) that define whether a good is “originating” and may benefit from preferential tariff treatment. The RoO Chapter primarily relates to the rules for determining “origin” and sets out procedures for claiming preferences. None of these provisions require the UK to change its existing levels of statutory protection on human, animal or plant life or health; animal welfare; or the environment.

Chapter 5 – Customs Administration and Trade Facilitation:

The Chapter aims to facilitate bilateral trade by ensuring that CPTPP Parties’ customs procedures are efficient, consistent, transparent, and predictable whilst also allowing each Party to maintain effective customs control.

It builds on CPTPP Parties’ commitments under the WTO Trade Facilitation Agreement including more ambitious commitments in areas such as Release of Goods and Advance Rulings. None of these provisions require the UK to change its existing levels of statutory protection on human, animal or plant life or health; animal welfare; or the environment.

The FSA/FSS advice notes (p.13) in relation to Article 5.7 on Expedited Shipments and Article 5.10 on Release of Goods that “exemptions have been agreed with HMRC ensuring that SPS checks don’t fall under the definition of “Custom Procedures”, therefore where SPS checks by competent authorities at border control posts (BCPs) (including food safety import checks) are required, there are no time constraints.”

Chapter 16 – Competition Policy

This Chapter, in particular Article 16.6 “Consumer Protection” contains important tools for the protection of consumers from fraudulent and deceptive commercial activities, with the aim to enhance consumer welfare in the free trade area established by CPTPP. This is a view shared by the FSA/FSS.

Chapter 25 – Regulatory Coherence

The Regulatory Coherence Chapter encourage all Parties have and maintain an evidence-based, coordinated, and transparent process when developing regulation. Adherence to good regulatory practice helps foster a more stable and predictable regulatory environment and helps reduce non-tariff barriers to trade. These benefits give businesses greater confidence to enter other CPTPP markets and increase trade, while also protecting the UK’s right to regulate.

This view is also shared by the TAC, who note in their advice (p.23) that:

“Chapter 25 is essentially directed at ensuring that regulations are made fairly, transparently and on the basis of proper considerations.”

Further, and to assist with this, the Chapter establishes a Regulatory Coherence Committee which will, amongst other things, monitor the implementation of the agreement and facilitate regulatory cooperation. Enhanced regulatory cooperation may allow for a more stable regulatory landscape between the Parties.

Chapter 28 – Dispute Settlement

The Chapter includes a state-to-state dispute settlement mechanism for the Parties to the Agreement to resolve disputes, should any Party pursue a dispute through this route.

The Dispute Settlement Chapter applies to disputes across the agreement including: the National Treatment and Market Access for Goods Chapter, the Rules of Origin and Origin Procedures Chapter, the Sanitary and Phytosanitary Measures Chapter, the Technical Barriers to Trade Chapter, the Environment Chapter, and the Exceptions and General Provisions Chapter, subject to any conditions or exceptions set out in those Chapters, or as set out in the Accession Protocol¹⁶.

These exceptions include the exclusion of some provisions in the Sanitary and Phytosanitary Measures Chapter from the dispute settlement mechanism. These are

¹⁶ See, for example, Article 14 of the Accession Protocol, which applies Article 28.3.3 (Scope) on a mutatis mutandis bases to an instrument entered into by two or more Parties in connection with the conclusion of the Accession Protocol.

outlined in more detail in the section on Chapter 7 (Sanitary and Phytosanitary Measures) above.

Chapter 29 – Exceptions and General Provisions

The CPTPP provides flexibility for the UK Government to protect legitimate domestic priorities through exceptions and general provisions. Some of the main exceptions relevant to the scope of this report are included by way of the General Exceptions in Chapter 29. Specifically, Article 29.1 incorporates Article XX of the GATT 1994¹⁷ and applies to multiple Chapters, as listed, including the SPS and TBT Chapters. Subject to the specific conditions stipulated within the chapeau of Article XX, such as avoiding arbitrary or unjustifiable discrimination, these general exceptions allow the UK to take measures to protect the legitimate policy objectives listed in Article XX GATT.

Article 29.3 provides that paragraphs (a), (b) and (c) of Article XIV of the GATS¹⁸ apply to certain services-related chapters of the CPTPP.

Measures that are within scope of the General Exceptions include measures (including environmental measures) necessary to protect public morals, protect human, animal or plant life or health, and relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption (relating to the conservation of living and non-living exhaustible natural resources). The exceptions language contributes to reaffirming the UK's sovereign 'right to regulate' domestically on a number of issues, including the environment. This is important considering the UK's international commitments on the environment, nature and biodiversity.

¹⁷ Further information can be found at:
https://www.wto.org/english/docs_e/legal_e/gatt47_02_e.htm#ArticleXX

¹⁸ Further information can be found at:
https://www.wto.org/english/tratop_e/dispu_e/repertory_e/g4_e.htm.

Impact of tariffs

Tariff liberalisation in the agreement

Joining CPTPP means that over 99% of current UK goods exports to CPTPP Parties will be eligible for tariff-free trade. The CPTPP offers some additional tariff liberalisation with the CPTPP Parties that the UK has existing bilateral agreements with. It also offers extensive tariff liberalisation with Brunei and Malaysia, with whom the UK does not currently have a Free Trade Agreement. The details on the UK's tariff commitments are set out in the Accession Protocol. In the case of existing CPTPP Parties, tariff concessions towards the UK are set out in the Accession Protocol and the relevant annexes of the CPTPP.

The impact of tariff liberalisation on UK statutory protections

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

While there are clear benefits from liberalisation under the agreement for consumers and businesses, the agreement includes a number of protections for sensitive UK sectors. The protections the UK has negotiated mean that increased access to the UK market for sensitive agricultural produce will be staged over a period of up to 15 years, giving producers in sensitive sectors time to adjust to any new trade flows. The UK has also agreed permanent annual limits on the volume of the most economically sensitive agricultural goods that can be exported to the UK from major producing countries. This includes permanent limits on the amount of beef, pork, chicken, sugar and milled rice that can be imported tariff-free from major producers of these goods under the CPTPP.

For those goods not covered by product-specific quantitative restrictions, a general transitional safeguard mechanism will also apply to provide a temporary safety net for industry if they face serious injury, or threat of serious injury, from increased imports as a result of the agreement. A transitional safeguard measure can be applied by the UK on a particular product within the three-year period beginning from entry into force of this agreement or, where tariff elimination occurs over a longer period of time, the period of staged tariff elimination.

The TAC noted (p.31) that “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 CPTPP) 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."

The TAC also noted (p.46) that, "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." "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."

Both the TAC (p.40) and the FSA/FSS (p.3) noted the importance of capacity and resources in delivery of import checks and official controls at the UK's borders. DEFRA will continue to work with both the Animal Plant Health Agency and Port Health Authorities to agree resourcing plans to deliver the proposed SPS controls set out in our Border Target Operating Model.

It is the view of the Government, supported by the advice of the FSA and FSS, that liberalisation of tariffs will not entail changes to UK levels of statutory protection in relation to human, animal or plant life or health; furthermore, nothing in the Chapter changes or restricts the right to regulate of the UK and Devolved Administrations.

Concerns raised in the TAC Report

We welcome the positive conclusions of the TAC with respect to concerns raised by stakeholders from their public call for evidence. We consider those concerns, including the TAC's conclusions on them, below.

Deforestation linked to palm oil

The TAC concludes (p.51) that “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 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.”

Under the landmark Environment Act 2021 the UK has introduced world-leading due diligence legislation to help tackle illegal deforestation within UK supply chains. Our law makes it illegal for larger businesses operating in the UK to use key forest risk commodities, sourced from land illegally occupied or used. A UK Government announcement on 9 December 2023 confirmed further details including that Palm oil, cocoa, beef, leather and soy are to be included in new legislation.¹⁹

We also agreed a joint statement with Malaysia setting out our shared commitment to work together to promote sustainable production of commodities and to protect forests. Moreover, the UK and Malaysia are signatories to the Glasgow Leaders Declaration on Forests and Land Use and are committed to halt and reverse forest loss by 2030.

The UK is committed to working in partnership with producer countries in order to support sustainable production of palm oil.

¹⁹ <https://www.gov.uk/government/news/supermarket-essentials-will-no-longer-be-linked-to-illegal-deforestation>

Hormonal growth promoter (HGP) use in cattle

The TAC concludes (p.53) that “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.”

The UK prohibits the use of artificial growth hormones in both domestic production and imported meat products. Our accession to CPTPP does not change this. All agri-food products imported into the UK under existing or future free trade agreements will, as now, have to comply with our import requirements.

The TAC noted that they were confident that any additional Canadian beef imports under CPTPP will be hormone-free, given their segregation of hormone-treated and non-hormone treated beef for export. Whilst Australia received no additional market access for beef under CPTPP) the TAC have previously commented (TAC: advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement, April 2022) that they have no reason to not believe the Australian cattle herd segregation and processing system for producing hormone-free beef is reliable and robust.

Ractopamine use in pork production

The TAC concludes (p.55) that “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.”

The UK prohibits the use of beta-agonists, such as ractopamine, in food producing animals for both domestic production and imported meat products. Our accession to CPTPP does not change this. All agri-food products imported into the UK under existing or future free trade agreements will, as now, have to comply with our import requirements.

The TAC expressed confidence in the robustness of Canada’s Ractopamine-Free Pork Certification Program (CRFPCP) and concluded there is no increased risk that RAC-treated pork from Canada will enter the UK.

Animal welfare concerns

The TAC addressed a number of stakeholder issues relating to animal welfare, including transport times, hot branding, pork production systems, caged hens, and aquaculture welfare (p.56-63).

The Government shares the public's high regard for the UK's animal welfare standards, and we have not lowered our animal welfare standards in order to enable accession to CPTPP. CPTPP does not create any new permissions or authorisations for imports from CPTPP members. The TAC also concludes (p.29) that "CPTPP preserves the legality of any UK statutory protection in relation to animal welfare that can be justified under WTO law."

Without exception, all imports into the UK must comply with our existing import requirements. Agri-food products produced to different environmental and animal welfare standards can be placed on the UK market as long as they comply with these requirements. This has always been the case and includes products from the EU and other longstanding trading partners alongside products traded under new agreements such as CPTPP.

Existing bilateral agreements between the UK and multiple CPTPP members contain commitments to cooperate on animal welfare. These allow us to raise issues of concern and promote high standards internationally. The UK Government is committed to promoting high animal welfare standards globally including continuing to work with the World Organisation for Animal Health (WOAH) to raise international standards more generally.

Pesticide use

The TAC concludes (p.67) that "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."

All agri-food products imported into the UK under existing or future free trade agreements will, as now, have to comply with our import requirements. This includes pesticides.

Our pesticides regulations set a high level of protection for consumers. The pesticide residues permitted in food are set after a comprehensive risk assessment, and are always set below, and usually well below, the level considered safe for consumers eating the food.

“Import tolerances”, can be set to take account of residues arising from uses and authorisations in other countries, allowing imported produce to be placed on the GB market and meeting the needs of international trade. These are set using the same consumer safety criteria as for domestically produced food. This approach allows diverse farming practices in other countries reflecting contrasting climatic and environmental conditions.

There is an ongoing Government programme of monitoring of pesticide residues in food to determine whether food available to UK consumers complies with the statutory residue levels and is safe.

Genetically Modified Organisms (GMO)

The TAC concludes (p.69) that “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.”

Any GMO imported into the UK must undergo a rigorous safety assessment led by the Food Standards Agency and Food Standards Scotland. These agencies will provide independent advice to ministers on whether to approve any GMO for sale or not. If approved, the product must be appropriately labelled. Any GMO already being imported has already passed such an assessment.

Further information on the FSA/FSS transparent approach to approval of GMOs can be found here: <https://www.food.gov.uk/business-guidance/regulated-products/genetically-modified-organisms-guidance>.

Antimicrobial resistance

The TAC concludes (p.72) that “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.”

All agri-food products imported into the UK under existing or future free trade agreements will, as now, have to comply with our import requirements which includes clear controls on limits of veterinary medicine residues in meat and other animal products.

Comment on views expressed by TAC about potential interpretation of provisions of CPTPP and other free trade agreements

The Government notes and welcomes the TAC conclusions that the 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, that CPTPP reinforces the UK's levels of statutory protections in these areas, that it strengthens the UK's ability to maintain its levels of statutory environmental protection, and that CPTPP does not otherwise affect the ability of the UK to adopt statutory protections in these areas.

The Government also notes the views expressed by the TAC on hypothetical interactions between terms of the CPTPP and the Accession Protocol on one hand and terms of other FTAs to which the UK is Party. The Government notes such matters are complex and often highly fact specific. The Government further notes that the TAC has not identified any actual conflict between the terms of the CPTPP and its Accession Protocol and the UK's other relevant FTAs in relation to which any such issue might arise. Opining further on what any hypothetical conflict might be and, in turn, any possible outcome would not be appropriate in this context.

Annex A: FSA and FSS Advice

FOOD STANDARDS AGENCY AND FOOD STANDARDS SCOTLAND JOINT SECTION 42 ADVICE – UNITED KINGDOM - COMPREHENSIVE AND PROGRESSIVE AGREEMENT FOR TRANS-PACIFIC PARTNERSHIP FREE TRADE AGREEMENT

1 INTRODUCTION

- 1.1 As the UK's Food Safety Authorities with a statutory duty to protect food and feed safety²⁰ and consumer interests in relation to food and feed across the four nations, the Food Standards Agency (FSA) and Food Standards Scotland (FSS) were asked by the Secretary of State for Business and Trade (DBT) on the 17 July 2023 to provide joint advice on the UK accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)²¹, as signed on 16 July 2023 by the UK and CPTPP Parties.
- 1.2 The CPTPP is a trade bloc made up of 11 members, which was founded by Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam on 8 March 2018. The UK therefore acceded to an existing Agreement, as set out by its founding members, with little space to amend the text of the treaty, rather than having negotiated the entirety of the treaty text from its inception like other recent Free Trade Agreements (FTAs).
- 1.3 As part of the ratification process, the FTA will be formally laid before Parliament for scrutiny under the Constitutional Reform and Governance Act 2010²². Ahead of this, to inform parliamentary scrutiny, the UK Government Section 42 report will provide an assessment of whether, or to what extent, measures in the FTA applicable to trade in agricultural products are consistent with the maintenance of UK levels of statutory protection in relation to human, animal or plant life or health, animal welfare and the environment.
- 1.4 Specifically, the FSA and FSS were requested in a letter dated 17 July 2023²³ by the Secretary of State for Business and Trade, in accordance with Section 42(4) of the Agriculture Act 2020²⁴, to provide advice on whether, or to what extent, the measures in the CPTPP FTA are consistent with the maintenance of

²⁰ For the purposes of this advice, any reference to food safety includes feed safety where it relates to human health.

²¹ [Comprehensive and Progressive Agreement for Trans-Pacific Partnership \(CPTPP\)](#)

²² [Constitutional Reform and Governance Act 2010 \(legislation.gov.uk\)](#)

²³ [CPTPP: Secretary of State for Business and Trade's request for the FSA and FSS's advice](#)

²⁴ [Agriculture Act 2020 \(legislation.gov.uk\)](#)

UK levels of statutory protection for human health for the areas within FSA and FSS statutory remit. This report sets out the joint advice of FSA and FSS to be annexed to the Government's Section 42 Report.

- 1.5 As the UK's independent Food Safety Authorities, FSA and FSS recognise that maintaining the UK's high food safety standards and having robust scrutiny arrangements in place for assessing the impacts of trade agreements on human health is important to consumers and stakeholders. Evidence submitted from stakeholders to FSA and FSS has highlighted four main areas of concern – food production standards; antimicrobial resistance (AMR); pesticide use; and equivalence. In responding to these concerns our advice has focused on relevant aspects of the CPTPP FTA to determine if this FTA maintains existing food safety statutory protections in accordance with UK legislation, noting that some of those issues are outside the remit of FSA and FSS.
- 1.6 It is worth noting for context that food products currently imported into the UK by CPTPP countries are already monitored at the border by competent authorities delivering Official Controls with oversight from FSA, FSS and the UK and Devolved Governments. This will continue to be the case under the CPTPP FTA. In addition to overseeing routine checks, FSA and FSS will maintain the ability to impose emergency import restrictions and safeguards if necessary, alongside working with the Department for Environment, Food and Rural Affairs (Defra) to conduct assessments for new market access requests, including from CPTPP countries.
- 1.7 Canada was the CPTPP country exporting the most food and feed to the UK in 2022, with 1,282,000 tonnes, the main import being cereals and grain (1,036,481 tonnes). For context, in 2022 Canada was in 12th position for global UK imports for food and feed. Following Canada, the main CPTPP importing countries to the UK were Australia (337,000 tonnes) and Chile (217,000 tonnes). The commodities with the highest volume of exports to the UK from CPTPP countries are wheat and meslin, and maize (respectively 523,522 and 509,138 tonnes) from Canada and low erucic rape or colza seed (89,300 tonnes) from Australia.²⁵ Imports to the UK of goods from CPTPP countries are estimated to grow by 29.2% in the absence of the Agreement between 2021-2040. The UK's accession to CPTPP is predicted to boost imports by a further 4.2% over time, according to UK Government data.²⁶ If this happens and it translates into an increase of food imports to the UK as is likely, it is crucial that competent authorities tasked with performing import checks at the border are adequately resourced to face an increase in flows. The resource implications also apply for

²⁵ [Data from FSA Trade visualisation tool](#)

²⁶ [Department for Business and Trade – CPTPP: impact assessment](#)

goods exported from the UK to CPTPP countries requiring veterinary export health certification.

1.8 The UK Government recently published final plans for its Border Target Operating Model (BTOM), a new regime of border controls applying to all global imports into GB, which uses a risk-based approach to imports of animals, animal products, plants, and plant products, applying different controls to goods in different risk categories. This is in line with the CPTPP Agreement, which requires import programmes to be based on risk. The UK Government has stated that the new BTOM arrangements will provide future border controls which are designed to be dynamic in nature, adapting to changing risk profiles. As a result, over a period of time some commodities may be subject to changes in the level of checks applied.

1.9 In Summary, the FSA/FSS advice is that:

- No changes or reductions to the UK food and feed regulatory and legislative standards are required to give effect to CPTPP at the point of entry into force.
- CPTPP as signed on 16 July 2023 maintains existing UK food safety and nutrition statutory protections so far as falling within the statutory remits of the FSA and FSS.
- We are aware and acknowledge concerns raised by stakeholders and consumers regarding UK accession to CPTPP, highlighted in responses to our Call for Evidence and we address salient points under FSA and FSS remits later in this report.
- CPTPP includes a Dispute Settlement Mechanism (DSM) that might enable CPTPP members to challenge future changes to the UK food safety regulatory regime. However, challenges would be on the basis that UK domestic Sanitary and Phytosanitary (SPS) measures were unfairly trade restrictive and not based on science and evidence. However, we note that our existing processes already provide that UK measures are based on sound science and evidence in line with the UK's appropriate levels of protection and international obligations. CPTPP also supports its members maintaining systems such as pre-market authorisations and the adoption of provisional measures where needed.
- No changes to UK food and feed regulatory and legislative standards are required to give effect to this FTA at the point of entry into force and the FTA respects the ability of the UK and Devolved Administrations to determine their own SPS controls. This means, for example, that the response to any potential

future domestic deregulatory pressures remain a responsibility of the UK Government and the Devolved Administrations.

- CPTPP is consistent with the maintenance of statutory protections for human health in relation to nutrition, based on analysis conducted by the FSA and FSS on nutrition related matters, with specific reference to nutrition and health claims; addition of vitamins, minerals and certain other substances; food supplements; foods for specific groups; and nutrition declarations.

2 SCOPE OF FSA AND FSS ADVICE

- 2.1 To reflect the FSA and FSS's full statutory remit as organisations with devolved policy interests, we are providing advice on statutory protections for food safety and nutrition related matters²⁷²⁸. Other departments leading on nutrition across the four nations are the Department for Health and Social Care in England and Welsh Government in Wales. FSA has responsibility for nutrition in Northern Ireland and FSS in Scotland. The advice does not cover statutory protections for food standards unrelated to human health which are out of scope of this commission, such as rules of origin, geographic indications, organic food labelling and advertising, and other areas not related to human health. Nor does it cover areas unrelated to public health such as tariffs, technical standards, addressing trade barriers and rules for market access, for example guidance for minimum labelling requirements of wine and spirits products. The impact on levels of statutory protections in relation to animal or plant life or health, animal welfare and environmental protection are examined by the Trade and Agriculture Commission (TAC).
- 2.2 The FSA and FSS undertake retrospective analysis of other considerations on trade in food in their joint Annual Report "Our Food: An annual review of food standards across the UK"²⁹.

²⁷ "Nutrition" means legislation within scope of appendix II of the [Nutrition Related Labelling, Composition and Standards Provisional Common Framework](#).

²⁸ The way UK Government and devolved administration work together across the four nations is set out in the [Food and Feed Safety and Hygiene \(FFSH\) common framework](#).

²⁹ [Our Food 2022: An annual review of food standards across the UK](#)
[Our Food 2022 An annual review of food standards across the UK: Food Standards Scotland](#)

- 2.3 UK levels of statutory protection³⁰ are defined in the Agriculture Act 2020 as the levels of protection, which at the time that this Section 42 report was made, are provided for under any legislation which has effect in, or in any part of, the UK. Food safety and nutrition related matters³¹ are a devolved competence, meaning that any extant food safety and nutrition legislation that has legal effect in any part of the UK is relevant to this assessment. This includes national laws across the UK. Existing international obligations, as captured under Article 15³² of the Accession Protocol which provides for the relationship between CPTPP and the Windsor Framework, are not in scope of this advice. Consequently, the application of laws captured by existing international obligations is not affected by the FTA. All references to UK statutory protections in this advice therefore relate to the legislation described in this paragraph as being in scope.

3 CONSUMER AND STAKEHOLDER INTEREST

- 3.1 In providing this advice on the CPTPP FTA, it is important to first set out the relevant wider context in relation to consumer views and stakeholder concerns. Following the commission received from DBT, the FSA and FSS invited submissions on food safety and nutrition statutory protections from interested parties using an open Call for Evidence issued on 24 July 2023 for a duration of seven weeks³³. We received nine submissions to the Call for Evidence and had several conversations with interested parties during FSA's and FSS's regular engagement with stakeholders. With thanks to respondents, relevant evidence received as part of this consultation process has been cited in our advice.

3.2 Stakeholder Interest

Respondents welcomed the opportunity to invest in growing economies across the Trans-Pacific Partnership. However, respondents also raised concerns that accession to the CPTPP may affect the UK's current right to regulate and ability to set its own SPS measures, and lead to potential pressure on the UK to adopt less stringent standards. Responses highlighted that UK food safety standards depend on the capacity of the UK to enforce its own SPS requirements, for example through inspections, border checks, document verification, third party auditors, and for the UK's competent authorities to have adequate resources to carry out Official Controls.

³⁰ "Statutory protections" include provisions in primary legislation, subordinate legislation or retained direct EU legislation as per [Section 42\(3\) Agriculture Act 2020](#).

³¹ Responsibility for nutrition related matters falls to DHSC in England, FSA in Northern Ireland, Welsh government in Wales and FSS in Scotland.

³² [Accession protocol of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership \(CPTPP\)](#)

³³ [UK accession to the Comprehensive and Progressive Trans-Pacific Partnership \(CPTPP\): FSA and FSS call for evidence](#)

- 3.3 As set out in this advice, the UK retains the right to regulate and to set its own SPS standards in relation to goods from CPTPP members. The entry into force of CPTPP will not require the UK to change any of its food safety legislation.

Further concerns were raised across four broad areas:

- Food Production Standards
- Anti-microbial resistance (AMR) and antibiotics use
- Pesticide use
- Equivalence

3.4 Food Production Standards:

Respondents raised concerns about the difference in the UK and CPTPP member countries' production standards. The **National Farmers Union for England and Wales** highlighted the differences in meat production standards in those CPTPP countries where hormones are used as a growth promoter for beef and meat washing such as with citric acid is used as a hygiene protocol, stating that both of these practices are banned in the UK. **Compassion in World Farming** shared similar concerns, highlighting that the UK's accession to CPTPP must not erode the current ban on chlorine-washed chicken. In a briefing shared with FSA and FSS, **Sustain** asked UK competent authorities to make a careful examination of other countries' egg production credentials, highlighting concerns about risks of Salmonella being potentially present in eggs produced in some CPTPP countries. It was highlighted that production of imported eggs should meet UK food safety standards under the UK National Control Plan for Salmonella. Some respondents felt that some CPTPP countries may have poor traceability and transparency within their production supply chains, which in their view may affect UK food safety and human health.

3.5 Anti-microbial resistance (AMR):

A number of respondents were concerned about the higher use of antibiotics for disease control in farming practices within several CPTPP countries in comparison to UK farming practices. **Sustain** highlighted that food imported into the UK may be contaminated with antibiotic-resistant bacteria which may affect human health, stating that UK farmers have voluntarily decreased their antibiotic usage by 55% since 2014 and that such reductions could be undermined, or even reversed, due to importation of lower cost meat, dairy and egg products. Data was presented to suggest that per population unit (PPU) antibiotic use in some CPTPP countries are up to 10 – 20 times higher than the UK.

3.6 **Pesticide use:**

A number of respondents raised concerns over the use of specific pesticides in CPTPP countries that are banned in the UK. **Sustain** flagged the use of pesticides in sugar production within CPTPP member countries which are banned in UK sugar production. The organisation also highlighted that UK pesticide standards are some of the strongest in the world for protecting human health, with UK Maximum Residues Levels (MRLs) more stringent than CPTPP countries. **The Pesticide Action Network UK (PAN UK)** reported that food from some CPTPP countries is permitted to contain residues of pesticides banned in the UK and may affect human health. Collectively, respondents were concerned that UK standards will become less stringent in order to remain competitive when the UK begins importing food from CPTPP countries.

3.7 **Equivalence (when countries mutually recognise regulatory standards):**

The **British Meat Processors Association** highlighted concerns that the UK may have to concede equivalence to a requesting CPTPP country that can meet UK standards while using methods we do not permit (for example, meeting microbiological standards by using anti-microbial washing).

3.8 **Safeguarding UK's food safety and responding to stakeholders' concerns:**

It is important to note that many CPTPP countries already have market access to the UK even before UK accession to the trade bloc. Future market access requests from CPTPP countries will be handled separately from the FTA and will be treated under the UK's market access processes applied to all trading partners worldwide.

In response to these stakeholder comments, it is important to recognise that food and feed imports from CPTPP countries will continue to have to meet UK food safety and nutrition legislative requirements. The UK currently has trading relationships with CPTPP member countries and an FTA in place with all members except Malaysia and Brunei, and products entering the UK from CPTPP countries are required to be in line with the UK's import requirements and UK legislation. This will not change following CPTPP accession. As long as current domestic regulatory requirements are maintained, food safety and standards will be unaffected. These standards are determined by ministers across the four nations, who are supported in their decisions by science and evidence-based advice provided by FSA and FSS with the aim to keep consumers safe. This means, for example, that the response to any potential future domestic deregulatory pressures remain a responsibility of the UK Government and the Devolved Administrations.

Any CPTPP member that wishes to export new Products of Animal Origin (POAO) to the UK will need to go through a market access process where their food standards will be assessed against our legislative requirements. In addition, if access is granted, all products from CPTPP countries will be subject to UK food safety import controls.

Some UK trading partners, including outside of CPTPP, already export to the UK food produced with the use of pesticides, but these products now and in the future are required to meet GB's MRLs to be sold within the UK. Consignments are subject to official controls at the UK border and nothing in this FTA removes any of these requirements and assurances with regard to ongoing and future trade. In addition, nothing in this FTA affects the UK's existing right under Article 3.3 of the World Trade Organisation (WTO) SPS Agreement which allows WTO members to apply import controls which deviate from international standards set by Codex or other WTO reference bodies, where justified by risk analysis.

- 3.9 In relation to hormone growth promoters, the use of various substances for growth promoting purposes is banned by legislation in the UK. Similarly, meat washing is controlled in UK legislation. CPTPP members are unable to export meat products that do not meet our standards. A rigorous and transparent risk analysis process would be needed before any proposal to approve a chemical wash is accepted. To date there have been no requests for the authorisations of such chemicals for poultry washes in the UK.
- 3.10 We acknowledge concerns from UK stakeholders on differential production standards, noting these issues are beyond the scope of the Secretary of State commission to FSA and FSS under Section 42.
- 3.11 In relation to residues of antibiotics in food produced abroad, we note that any import to the UK must meet the MRLs which are established by the Veterinary Medicines Directorate (VMD)³⁴. These requirements will continue to apply to imports from CPTPP member countries following the UK's accession to CPTPP. In relation to pesticides, the Health & Safety Executive (HSE) set and enforce pesticide MRLs, and current and future imports of food are required to meet these limits.
- 3.12 In relation to recognition of equivalence, CPTPP accession does not automatically grant recognition of equivalence to member countries. CPTPP members wanting to obtain a recognition of equivalence from the UK will need to request this from the UK Office of Sanitary and Phytosanitary Trade

³⁴ In respect of Northern Ireland MRLs are set in line with the principles set out in paragraph 2.3 of this advice.

Assurance, with FSA and FSS providing input into the assessment and decision-making process. Applicants will need to provide evidence to demonstrate that the products meet the UK's appropriate levels of protection.

3.13 Consumer Views

FSA, FSS and the UK Government regularly monitor consumers attitudes, including in trade and food. Recently, the Department for Business and Trade's "Public Attitudes to Trade Tracker Wave 6"³⁵ published in August 2023, showed that the top reason given by respondents for opposing trade Agreements was fears over a reduction in safety and food standards. Similarly, in June 2021, the consumer organisation Which?³⁶ conducted research with a nationally representative group of 3,263 consumers to understand their views and attitudes towards international trade. The majority of respondents (91%) thought that the UK Government should make sure, when agreeing trade deals, that the standards relating to safety and health applying to imports should be the same as those applied to food produced in the UK. In line with previous FSA research³⁷, and research conducted for FSS jointly with the FSA³⁸ this demonstrates the importance of food safety and health to UK consumers and the value they place on UK food safety standards.

3.14 Regular polling commissioned by FSA has consistently shown that consumers have significantly greater levels of concern about standards of food produced outside the UK, compared to domestic production.³⁹ Research by FSS in preparation of EU Exit found that 74% of adults were concerned about trade deals with other non-EU countries which could have different approaches and laws relating to food safety and standards. In the latest wave of the FSA's 'Food and You 2'⁴⁰ survey, which collected views from 5,991 consumers in England, Wales and Northern Ireland between October 2022 and January 2023, 72% of respondents had concerns about food produced outside the UK being safe and hygienic compared to 49% for UK produced food. Authenticity was also a concern for consumers, with 69% concerned about food produced outside the UK being what it says it is, compared to 45% for UK produced food. Reflecting these concerns, a 2022 YOUNGOV survey⁴¹ of 3,655 adults, (representative of all UK adults) found that 43% of consumers think that new trade deals will reduce the quality of food available in the UK.

³⁵ [Public Attitudes to Trade Tracker - Wave 6](#)

³⁶ [Are the UK's Trade Deals Reflecting Consumer Priorities? - Which? Policy and insight](#)

³⁷ [Food in a Pandemic | Food Standards Agency](#)

³⁸ Interests, needs and concerns around food: the public's view in Scotland

³⁹ [Food Concerns Brexit Omnibus Research Results September 2020](#)

⁴⁰ [Food and You 2 - Wave 6 | Food Standards Agency](#)

⁴¹ [The UK's Trust In Food Index 2022 - Red Tractor Assurance](#)

- 3.15 Consumer views of international food standards will differ by country of production. The UK's Trust in Food Index (2022)⁴² explored levels of trust in food produced in countries outside of the UK. Of the countries asked about, food from Ireland was trusted the most (74%) and food from China the least (11%). The CPTPP block contains one of the most trusted countries with food from New Zealand trusted by over two thirds (69%) of consumers (compared to 73% for UK produced food). Levels of trust in Canadian and Australian food were lower, at 62% and 58% respectively. Food produced in Japan was trusted by 44% of consumers. No other CPTPP countries were asked about in the research. Given the range of countries in CPTPP, consumers are likely to have mixed views around how the CPTPP may impact the standard of food in the UK. However public support for the UK joining the CPTPP appears high – in the summer of 2022, almost two thirds (59%) of those with some awareness of the partnership stated that they would support the UK joining, with around a fifth (19%) opposing (DBT, Public Attitudes to Trade Tracker, Wave 6).⁴³
- 3.16 It is clear from the research cited in paragraphs 3.14, 3.15 and 3.16, that maintaining food safety and health standards in trade deals is important to consumers and stakeholders. Existing statutory protections, such as the right to regulate for levels of protection appropriate to UK consumers based on science and evidence, and the right to take proportionate action on a provisional basis to protect consumers, will play a key role in how those standards are maintained in future. FSA and FSS will continue to provide science and evidence-based advice to ministers that takes into account consumers' wider interests in relation to food so that they can have confidence that food is safe and what it says it is as the UK Government takes forward its independent trade policy. However, it is worth noting that capability of Public Health Authorities to deliver import controls in the face of increased trade volumes resulting from FTAs will be dependent on the resources made available.

⁴² [The UK's Trust In Food Index 2022 - Red Tractor Assurance](#)

⁴³ [Public Attitudes to Trade Tracker : Wave 6](#)

3.17 Consumer protection is a fundamental statutory responsibility for FSA and FSS and we highly value consumer perspectives of trade in food and public attitudes towards imported food. We will continue to monitor consumer views and the impact of FTA's demonstrating our organisations uncompromising commitment to ensuring food is safe, including through the FSA and FSS joint annual report on UK food standards. The UK has been able to maintain its appropriate levels of protection and uphold its current regulatory regime. CPTPP and other FTAs scrutinised under Section 42 to date preserve the UK's right to regulate in accordance with the WTO SPS Agreement and have strong an emphasis on the use of robust science and evidence, allowing the UK to consider other interests and legitimate factors in decision making. FSA and FSS will continue to monitor consumer views and the impact of FTAs on food safety in the UK.

4 OVERVIEW OF THE PROVISIONS IN CPTPP

- 4.1 In the preamble to the CPTPP treaty text the Parties recognise their inherent right to regulate and preserve their flexibility to set legislative and regulatory priorities, safeguard public welfare and protect legitimate public policy objectives such as public health and public morals.⁴⁴ Future decisions in this regard will therefore continue to be taken by ministers across the UK informed by transparent advice on science and evidence from the FSA, FSS and other expert bodies where appropriate.
- 4.2 In the initial provisions of Chapter 1, the Parties affirm existing rights and obligations with respect to each other under existing international Agreements to which all Parties are Party, including the World Trade Organisation Agreements⁴⁵. In a food safety and nutrition context, these international rights do not impede the UK Government and Devolved Administrations' right to continue to take proportionate unilateral measures necessary to protect the health of consumers across the UK.
- 4.3 In order to access each other's market for any new agri-food exports, each CPTPP Party must submit an application via the respective market access processes, as established in the Science and Risk Analysis Article (Art 7.9.3(b)). In the UK, applications for POAO are received, coordinated and risk assessed by the UK Office for SPS Trade Assurance, with input from the FSA and FSS on food safety, Defra agencies and other UK and devolved government departments as appropriate.

⁴⁴ CPTPP - [Preamble](#)

⁴⁵ CPTPP – [Chapter 1, Initial Provisions and General Definitions](#)

- 4.4 In the same way, should a business from a member of CPTPP wish to market a new product in GB such as a novel food, food additive, feed additive or genetically modified food or feed, this would need to be made through the regulated products application service and undergo risk analysis by FSA/FSS to determine the safety of the product before it could be authorised by GB ministers for sale in GB⁴⁶. Similarly, to make a new nutrition or health claim in relation to food in GB, an application needs to be submitted through the appropriate channels in line with the Nutrition Labelling Composition and Standards (NLCS) Common Framework.
- 4.5 In the UK, checks on imported high risk food and feed not of animal origin (HRFNAO) are country specific, and commodities are subject to increased frequency of checks (which includes examination and testing) when a country demonstrates repeated non-compliance with UK requirements. Commodities from countries with increased repeated non-compliance are noted in annexes to UK legislation in respect of Official Controls at the border⁴⁷. The UK is continuously assessing the emerging risk status of various commodities and retains the right to subject any and all products to increased controls based upon adequate risk assessment.
- 4.6 Implementation of this FTA will not require any new food safety legislation, nor any changes to domestic regulatory food safety policy to be brought forward by the FSA or FSS in order to meet the obligations at the point of entry into force.
- 4.7 Under both WTO terms and under the terms of this FTA, the UK Government or Devolved Administrations are not prevented from maintaining or introducing science and evidence-based measures. The UK will also retain its ability to take provisional action based on pertinent information, where there is insufficient scientific evidence, to adopt measures on imported food and feed in order to meet the level of food safety protection deemed appropriate for consumers across the UK.

5 RELEVANT CHAPTER ANALYSIS

- 5.1 In assessing the maintenance of existing statutory protections for food safety and nutrition, the following chapters are particularly relevant due to their close links to UK food safety and nutrition legislation safeguarding human health as well as to FSA and FSS operational work:

⁴⁶ [GB Regulated Products Application Service](#)

⁴⁷ [Commission Implementing Regulation \(EU\) 2019/1793 of 22 October 2019 on the temporary increase of official controls and emergency measures governing the entry into the Union of certain goods from certain third countries implementing Regulations \(EU\) 2017](#)

- Chapter 2 – National Treatment and Market Access for Goods
- Chapter 5 – Customs Administrations and Trade Facilitation
- Chapter 7 – Sanitary and Phytosanitary (SPS) Measures
- Chapter 8 – Technical Barriers to Trade (TBT)
- Chapter 16 – Competition Policy
- Chapter 28 – Dispute Settlement

6 Chapter 2 – National Treatment and Market Access for Goods

- 6.1 This chapter governs the principles of trade in goods between the Parties, including national treatment to the goods of the other Parties and regulating customs duties. This means that imported goods and those produced locally should be treated equally, at least after the foreign goods have entered the market.
- 6.2 Article 2.27 of this chapter contains provisions related to Trade of Products of Modern Biotechnology. The provision does not require Parties to change their laws, regulations and policies for the control of products of modern biotechnology within its territory.
- 6.3 Although the description of “biotechnology” is not as comprehensive as that described in UK legislation in Regulation 5(1) (a), (b) and (c) of the Genetically Modified Organisms (Deliberate Release) Regulations 2002,⁴⁸ the definition contained in CPTPP aligns with international standards as defined by the Cartagena Protocol on Biosafety and the World Health Organisation. The CPTPP description mainly emphasises the importance of transparency and openness with regards to genetically modified (GM) food.
- 6.4 Parties are also not prevented, under this Article, from adopting measures in accordance with their obligations and rights under the WTO Agreements. The main aim of the provisions is to improve the transparency, cooperation and flow of information between Parties that trade such products, and to encourage contact points to share information, making publicly available any application requirements for the authorisation of a product of modern biotechnology, a summary of any risk or safety assessment at the basis of an authorisation and a list of authorised products.

⁴⁸ [Genetically Modified Organisms \(Deliberate Release\) Regulations 2002 \(legislation.gov.uk\)](#), [The Genetically Modified Organisms \(Deliberate Release\) \(Scotland\) Regulations 2002](#), [The Genetically Modified Organisms \(Deliberate Release\) \(Wales\) Regulations 2002](#), [The Genetically Modified Organisms \(Deliberate Release\) Regulations \(Northern Ireland\) 2003](#)

- 6.5 Another key feature of this Article is related to Low Level Presence (LLP) occurrences, setting out rules to address an LLP occurrence and prevent future ones. The term Low Level Presence occurrence is used to describe the unintended, adventitious or technically unavoidable presence of small amounts GM material in food, feed or grain that is authorised in one or more countries but not yet in the importing country. The Article enables the Parties to address LLP occurrence as appropriate to achieve compliance with their laws, regulations and policies. It encourages increased communications and transparency between the Parties to reduce the likelihood of trade disruptions from LLP occurrences and establishes a working group on products of modern biotechnology to exchange information and cooperate on trade-related matters associated with these products, comprised of Government representatives from the Parties. Measures in this Article are in line with UK legislation on products of modern biotechnology.
- 6.6 This Article also recognises the value of applying international food safety guidelines to address an LLP occurrence by specifically referencing Annex 3 of the Codex Guideline for the Conduct of Food Safety Assessment of Foods Derived from Recombinant-DNA Plants (CAC/GL 45-2003) – Article 2.27.6.(b)(iii)⁴⁹. “LLP occurrence” as defined in this Article is in line with FSA and FSS’s requirements of “Technical Zero” (0.02) of LLP in an imported product.

7 Chapter 5 – Customs Administration and Trade Facilitation

- 7.1 This chapter is designed to encourage Parties to provide custom procedures that are transparent, predictable, and consistent to prevent unnecessary barriers to trade. There are several Articles in this chapter which contain provisions relating to the customs procedures for goods. Of particular interest to the FSA and FSS are Articles 5.7 on Expedited Shipments and Article 5.10 on Release of Goods as imposing a particular timeline to selected goods for clearance at the border. In all cases, exemptions have been agreed with HMRC ensuring that SPS checks don’t fall under the definition of “Custom Procedures”, therefore where SPS checks by competent authorities at border control posts (BCPs) (including food safety import checks) are required, there are no time constraints. This means that where documentary, identification or physical checks, including sampling and testing, are required for the purposes of public health protection, the release times stipulated in these Articles would not apply. Article 5.9 on Risk Management contains provisions for each Party to adopt a risk management system for assessment that enables its customs

⁴⁹ [Codex Guideline for the Conduct of Food Safety Assessment of Foods Derived from Recombinant-DNA Plants](#)

administration to focus its inspections on high-risk goods, and to simplify clearance and movement of low-risk goods. This provision encourages each Party to review and update their risk management systems periodically to facilitate trade, allowing UK Competent Authorities to carry out risk-based official controls on imported food and feed as is the case now in GB. FSA and FSS have no concerns in respect of this chapter as there are sufficient safeguarding measures to ensure that border controls on food safety are not constrained by timelines applied to other goods.

8 Chapter 7 – Sanitary and Phytosanitary (SPS) Measures

8.1 The SPS chapter text agreed within the CPTPP Agreement is of fundamental importance as regards to reserving the UK's right to maintain existing laws and regulations to protect human life and health, including food safety and nutrition. It is also important in preventing any limitations in the way food regulation and enforcement is implemented in the UK. The following key Articles outline how the text achieves this.

8.2 Article 7:1-- Definitions.

The Definitions Article sets out the terminology used for the purposes of the SPS Chapter. The CPTPP's SPS Chapter definitions are reflective of those in Annex A of the WTO SPS Agreement which are also incorporated.

8.3 Article 7.4 – General Provisions

This Article reaffirms the rights and obligations of the Parties under the WTO SPS Agreement. This means that the Parties recognise the primacy of the WTO SPS Agreement over the CPTPP Agreement in relation to the application of measures in protection of human health and life. This is significant as the WTO SPS Agreement provides all Parties of the trade bloc with important rights that allow them to set out their own level of public health protection appropriate to their country's respective population in line with the relevant science and evidence, socio-economics and technical feasibility (Art 5, WTO SPS Agreement).^{50,51}

8.4 Article 7:8-- Equivalence

The Equivalence Article encourages CPTPP members to recognise each other's SPS measures as providing equivalent levels of protection to their own. Once it is demonstrated by the exporting Party and accepted by the importing Party that the measure provides an equivalent level of protection then a recognition of equivalence can be made, thereby promoting trade. This Article recognises that

⁵⁰ [WTO | Sanitary and Phytosanitary Measures - text of the agreement](#)

⁵¹ [WTO Analytical Index: Guide to WTO Law and Practice in respect of WTO SPS Agreement](#)

sometimes equivalence might not be recognised by the importing Party. The importing Party in this case must provide a rationale for its decision. While this Article sets out ways in which the Parties communicate during an equivalence determination and timelines, it recognises that the exporting Party needs to be able to objectively demonstrate that their SPS measure achieves the same level of protection as the importing Party's measure.

- 8.5 Article 4 of the WTO SPS Agreement on Equivalence⁵² obliges WTO Members to accept the SPS measures of other Members as equivalent, even if these measures differ from their own, if the exporting Member objectively demonstrates that its measures achieve the importing Member's appropriate level of protection. The WTO SPS Committee developed specific guidance⁵³ to help Members implement this Article. Such equivalence determinations are trade facilitative and can result in smoother trade in the for products affected by the laws and regulations that have been deemed as equivalent.
- 8.6 No new equivalence determinations for agri-food products were agreed as part of the UK's accession to CPTPP, although the UK already has some long-standing equivalence arrangements with CPTPP members such as Canada and New Zealand, with which the UK has a Recognition of SPS measures⁵⁴ and a Sanitary Agreement⁵⁵ respectively. The Article contains high level principles reaffirming WTO terms on the approach each Party will take to future equivalence determinations.
- 8.7 FSA and FSS would play a key role alongside other government departments in assessing any future equivalence requests and recommending any special conditions of trade (which could include particular requirements for processing, packaging etc.) that may be required to meet the UK's level of protection with regard to food safety. Such determinations would also not restrict the UK from making changes to our SPS regime in the future in the interests of consumers across the UK, in which case any determination would be reviewed. The Dispute Settlement Mechanism set out in chapter 28 of the CPTPP Agreement is not applicable to Paragraph 6 of the Equivalence Article. In the first instance, the parties should engage in a Cooperative Technical Consultation as highlighted

⁵² Equivalence is defined by the WTO as "the state wherein sanitary or phytosanitary measures applied in an exporting country, though different from the measures applied in an importing country, achieve, as demonstrated by the exporting country and recognized by the importing country, the importing country's appropriate level of sanitary or phytosanitary protection". ([WTO SPS Handbook Training Module: Chapter 4: Notification of Equivalence](#))

⁵³ [WTO | SPS - equivalence decision](#)

⁵⁴ [Annex 5-E](#) – "Recognition of sanitary and phytosanitary measures" of the [Trade Continuity Agreement](#) between the UK and Canada

⁵⁵ [UK/New Zealand: Agreement on Sanitary Measures Applicable to Trade in Live Animals and Animal Products \[CS New Zealand No.1/2019\]](#)

under Article 7.17. If such recourse is unsuccessful then the disputing Party could seek recourse via the WTO dispute settlement system.

8.8 Article 7.9 - Science and Risk Analysis

This Article contains provisions for each Party to base their SPS measures on scientific principles. Paragraphs 1 and 2 recognise the importance of ensuring that SPS measures are based on scientific principles and either conform to international standards, guidelines or recommendations or are “based on documented and objective scientific evidence that is rationally related to the measures”. This is in line with the UK’s international commitments, including WTO SPS Agreement Article 5.7 which states that “in cases where relevant scientific evidence is insufficient, a member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information”. The Parties can determine their appropriate levels of protection through risk analysis before allowing products from other Parties to be imported. This enables the UK to maintain its risk-based import controls regime. Nevertheless, the application of the CPTPP Dispute Settlement Mechanism (DSM) to other parts of this chapter means that future UK SPS measures may be at increased risk of being challenged, due to the option for CPTPP parties to seek recourse via the CPTPP DSM, in addition to the existing recourse via the WTO Dispute Settlement Process. The risk of SPS measures being challenged is already present under WTO rules and in other FTAs. DSM application means that the UK may be required to defend its SPS measures in a different forum. Obligations under Paragraph 2 of the Science and Risk Article are exempted from the application of the CPTPP Dispute Settlement Mechanism. They will only be able to raise a dispute after having discussed the issue in previous steps within the CPTPP internal arbitration mechanism, such as having Cooperative Technical Consultations. To date, measures taken forward as a result of the UK risk analysis process have not been challenged under WTO rules.

8.9 Article 7:10 - Audits

This Article sets the framework for conducting audits with a view to minimising burdens on the Parties and ensuring that the parameters of an audit are clearly communicated, agreed in advance and that evidence determining the outcome of an audit can be shared with the audited Party on request. Nothing in the Article prevents the UK from conducting an audit where justified for the purpose of seeking assurances on CPTPP members’ food safety control systems, nor does it prevent the UK from taking emergency food safety measures as appropriate.

8.10 Article 7:11 - Import checks

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

8.11 Article 7:12 - Certification

This Article sets out that import certification, where required by the UK or other Parties, shall only apply to the extent necessary to demonstrate that the imported products comply with the UK or other Parties' SPS objectives (respective of where the product is being imported to) and international standards on SPS. This is to ensure that certification does not present an unnecessary barrier to trade.

8.12 Article 7:13 - Transparency

This Article contains provisions for the Parties to share information on their proposed SPS measures. The Article links to the WTO SPS Agreement and relies on its notification submission system to notify the other Parties of changes in SPS measures. Paragraph 6 of this Article sets out that if SPS measures do not conform to an international standard, guideline or recommendation, the Party shall provide to the other Parties relevant documentation including "documented and objective scientific evidence that is rationally related to the measure". This transparency requirement accords with UK legislation and the UK already complies with the WTO SPS Agreement and with measures set out in this article.

8.13 Article 7:14 - Emergency Measures

The emergency measures text respects the Parties' right to take rapid action to protect human life and health and lays down parameters, including timelines, for how the Parties would engage in such instances and for conducting science-based reviews to justify maintaining the measures. FSA and FSS already have good working relationships with the Emergency Contact Points in many of CPTPP's Food Safety Authorities and as one of the 11 members of the International Food Safety Authorities Network (INFOSAN). Information relating to any significant food safety issue affecting Northern Ireland would be communicated by FSA Northern Ireland via the EU Rapid Alert System for Food and Feed (RASFF).

8.14 Article 7:16 - Information Exchange

This Article contains provisions for Parties to respond within a reasonable period of time to information requests from other Parties. This is in line with FSA and FSS working practices.

8.15 **Article 7:17 - Cooperative Technical Consultations**

This Article introduces a process for Parties wishing to raise technical concerns with one another. Timeframes are provided to ensure issues are resolved, and the Parties are obliged to utilise Cooperative Technical Consultations (CTC) before resorting to formal dispute settlement. CTCs are not intended to replace the separate decision-making mechanisms and processes through which trading partners can, for example, apply to export a new product to the UK, or be formally consulted on proposed new regulations etc. The forum will help resolve issues between members in an informal way and represents an alternative dispute mechanism.

8.16 **Article 7:18 - Dispute Settlement**

This Article sets out which areas of the SPS chapter are subject to the DSM set out in Chapter 28 of the FTA at entry into force and those Articles subject to a grace period. DSM is available to disputes under the articles relating to Equivalence, Audits and Import Checks after one year from the CPTPP Agreement's entry into force in the UK, DSM is available to a dispute under the Science and Risk Analysis article after two years. Some features of the Equivalence and Science and Risk Analysis Articles are exempted from the application of the Dispute Settlement Mechanism without time limits. These exempted features are paragraph 6 of Article 7.8 and paragraph 2 of Article 7.9 (footnotes 2 and 3) as highlighted previously in the analysis of the respective Articles within this advice.

9. **Chapter 8 - Technical Barriers to Trade (TBT)**

9.1 The TBT chapter is relevant to the maintenance of statutory protections in relation to human health, including food safety and nutrition related matters, insofar as it preserves the UK's right to regulate in line with international WTO rights and obligations and with respect to specific marking and labelling provisions, as detailed below. Any disputes that may arise between the Parties under this chapter would be subject to the DSM set out in Chapter 28 (Dispute Settlement) of the FTA.

9.2 **Article 8.4 – Incorporation of Certain Provisions of the TBT Agreement**

Affirmation of rights and obligations under the WTO TBT Agreement⁵⁶ means that the Parties recognise the primacy of WTO terms in applying technical regulations, standards and conformity assessment procedures. The agreed text therefore re-affirms the right of the UK to implement technical measures to achieve legitimate policy objectives, including the protection of human health and food safety (Article 2.2 of the WTO TBT Agreement) and reasserts certain

⁵⁶ [WTO | legal texts - Marrakesh Agreement](#)

provisions of the WTO TBT Agreement. This Article is exempt from application of the DSM, as it refers directly to provisions of the WTO TBT Agreement, making the WTO the most appropriate forum for disputes.

9.3 Article 8.5 – International Standards, Guides and Recommendations

This Article reaffirms WTO commitments that TBT measures should be based on relevant international standards where they exist. This does not affect the UK's right to regulate and does not require changes to existing food safety or nutrition related statutory protections.

9.4 Annex 8-F – Proprietary Formulas for Pre-packaged Foods and Food Additives

This Annex applies to the preparation, adoption and application of technical regulations and standards related to pre-packaged foods and food additives. Statutory protections in the UK are not affected by this Annex, which regulates parity of treatment between domestic and international applicants and the protection of their confidentiality of information.

10. Chapter 16 – Competition Policy

10.1 This Chapter, in particular Article 16.6 – “Consumer Protection” contains important tools for the protection of consumers from fraudulent and deceptive commercial activities, with the aim to enhance consumer welfare in the free trade area established by CPTPP. Articles 16.6.2, 16.6.5, 16.6.6 place obligations on the Parties to maintain consumer protection laws recognising that fraudulent and deceptive commercial activities increasingly transcend national borders. These Articles also include cooperation with respect to online commercial sales - as referenced at Chapter 14 (Electronic Commerce Article 14.7.1 and Article 14.7.3). This aligns with existing consumer protection measures in the Food Safety Act 1990⁵⁷ (Sections 14 and 15) that food offered for sale should be of the nature or substance or quality demanded and should not be falsely described or presented.

11. Chapter 28 – Dispute Settlement

11.1 The chapter contains details of the formal process for dispute settlement under the FTA, including: the choice of a forum in which to settle a dispute, the way to arrange consultations, alternative methods of dispute, establishment of a panel, its composition and terms of reference, their functions, rules of procedures and reporting. The application of the Dispute Settlement chapter to the SPS chapter would require, where possible, the UK Government and Devolved

⁵⁷ [Food Safety Act 1990](#)

Administrations to implement any decisions of a dispute panel, established under this chapter, which could include amendment of domestic legislation. Should the UK lose a dispute under this mechanism and considered not to have implemented the decision of the panel, then the UK could be required to agree compensation with the affected CPTPP member. If compensation is not agreed or paid, then the affected CPTPP member could suspend relevant benefits of the UK (benefits would be suspended by the affected member only).

12. **CONCLUSIONS**

12.1 We have set out the FSA and FSS's advice on the text of the UK's accession to CPTPP and its impact on statutory protections for food safety and nutrition. In summary, our conclusions are that:

- Following accession to CPTPP, the UK will have the ability to maintain its existing food safety statutory protections in accordance with UK law. CPTPP is also consistent with the maintenance of statutory protections for human health in relation to nutrition.
- No changes to the UK food safety regulatory system are required to give effect to CPTPP at the point of entry into force, and the UK's food safety regulatory system has been deemed compliant with CPTPP requirements ahead of the UK's accession.
- The FTA text preserves the regulatory autonomy of the UK Government and Devolved Administrations with respect to matters of food safety and nutrition.
- Food safety decisions will continue to be taken by ministers across the UK, informed by transparent advice from the FSA and FSS based on robust science and evidence. This is key to upholding statutory protections in the future.
- If CPTPP accession results in an increase of food imported to the UK as projected, additional resources will be required to enable UK Public Health Authorities to deliver official controls and maintain food safety.

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