

TRADE AND FOOD REGULATORY COOPERATION

Presentation to the conference ‘The Global Food Regulatory Landscape: Post Brexit’

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10 November 2017

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From the old to the new world of trade

- “The old world of trade was a world where production systems were national and where **obstacles to trade were about protecting domestic producers from foreign competition.**
- By contrast, the new world is a world where production is transnational along global supply chains of goods and services and where **obstacles to trade are about protecting the consumer from risks.**
- We are moving from the **administration of protection** – quotas, tariffs, and subsidies – to the **administration of precaution** – security, safety, health, and environmental sustainability. This is a new version of the old divide between tariffs and non-tariff measures.”
- - Pascal Lamy, [Jan Tumlir lecture](#), ECIPE 2015

My questions

- The EU is negotiating an increasing number of Free Trade Agreements, not only Brexit
- How are food safety issues addressed in these agreements?
- What might be lessons for future UK-EU27 trade relations after Brexit?

Food safety regulations: barrier or catalyst?

- Although NTMs often pursue legitimate policy objectives, if they are **overly restrictive**, they are considered NTBs
- **NTBs defined** as selected NTMs that discriminate against foreign products or where trade restrictiveness, whether or not deliberate, exceeds what is necessary for the measure's non-trade objectives.
- It is very difficult, and sometimes impossible, **to distinguish legitimate NTMs from protectionist NTMs**
- Particular problem in SPS/TBT area if one party holds the view that **a particular measure is disproportionate to the level of risk** and therefore excessively impedes trade
- Ensuring imports meet same high standards can send a positive quality signal to consumers which boosts consumption

Why of interest to trade economists?

- Tariff rates applied by countries around the world have fallen to historic low levels due to the growing number of multilateral, regional and bilateral trade agreements.
- Business surveys show firms now more concerned with various regulations before they are allowed to enter the destination market.
- Given growth in global supply chains, differences in regulations can be a hindrance to participation
- Note distinction between public regulations and private standards

Significance of agrifood NTMs (ad valorem equivalent)

	US	EU
ECORYS (2009)		
Processed foods (food & beverages)	73%	57%
Bureau et al (2014)		
Agricultural products (WTO defn)	48%	54%
Disdier, Emlinger and Fouré (2015)		
Agri-food products	36%	40%

Models of international regulatory cooperation

- A hierarchy of models (OECD, 2013)
 - Agreement on **information exchange**
 - Agreement to adopt **good regulatory practice**
 - Mutual recognition of testing and **conformity assessment procedures** while maintaining separate standards
 - **Mutual recognition of the equivalence** of **different standards** as providing the **same level** of health, safety or environmental protection.
 - **Harmonisation of standards**, meaning that two countries agree to adopt the same standards.

Some core WTO SPS principles

- Members have the **right** to take necessary SPS measures
- Regulations must be **necessary** to achieve a genuine policy objective
- Should be based on **scientific principles**
- Non-discrimination
- Harmonisation (use of international standards)
- Equivalence
- Transparency
- Consistency
- Proportionality ('no more burdensome than necessary')
 - Regulations must not be applied in just a manner as to be disguised barriers to trade or unnecessarily restrictive of trade

High levels of anxiety that TTIP would result in undermining food safety standards

- **Fears include:**
- TTIP will lead to lower EU standards because it will result in a **race to the bottom**
- (US) **business interests will be given undue influence** over food safety decision-making to the detriment of EU standards
- Processes proposed are likely to lead to **'regulatory chill'**
- **Food safety decisions will be made by trade officials** outside the normal processes of food regulation

Regulatory cooperation in TTIP

- Chapter on **Regulatory Cooperation** (RC)
- Specific chapter on **Sanitary and Phytosanitary (SPS) Measures**
- **Annexes** where regulatory equivalence has been agreed
- First EU proposal for RC chapter submitted in 2015
- EU submitted a radically different RC chapter in February 2016 following reactions from civil society, European Parliament and others

EU's RC principles in TTIP

- **Protecting** public policy objectives
 - RC seen as a way to pursue high levels of protection in public health, safety and environment while facilitating trade and investment
 - Stresses commitment to enhance or maintain levels of protection, to respect the right to regulate inc. use of precautionary principle
- RC remains **voluntary** and cannot be imposed on regulators
- Proposes general principles of **good regulatory practice**
- An **effective institutional mechanism** to encourage RC, but would NOT have powers to take legally binding decisions, nor will it replace domestic EU (or US) regulatory procedures
- **Dispute settlement** would not apply to [RC] chapter

Lessons for Brexit

- UK intends to **leave the customs union and the single market**
- Promises **no hard border** or physical infrastructure on the island of Ireland
- Three possibilities by March 2019
 - Leaves with agreement plus transition period – ‘negotiating outcome’
 - Leaves with agreement without transition – ‘cliff edge’
 - Leaves without agreement – ‘disorderly’ Brexit
- **Customs** clearance
- Border checks for **regulatory compliance**

Lessons for Brexit

- Proposes **bold and ambitious free trade agreement** with mutual recognition of regulatory equivalence in agrifood area (in its Northern Ireland position paper)
- Would allow different measures to achieve the same high regulatory standards
- Until now, EU has only done **full regulatory harmonisation** with EEA countries and Switzerland (i.e. countries that adopted the EU acquis)
- **EU-New Zealand Veterinary Agreement** is the most advanced equivalence agreement
 - In place since 1996, updated in 2015

Lessons for Brexit

- On Brexit Day, the UK and the EU will start with the **same regulatory standards**....
- ...but there will still be a need for regulatory authorities to **recognise this compliance** for traded product
- Regulatory equivalence – will require the UK to make a **trade-off** between the degree of autonomy it wishes to have and the degree of market access
- The EU's FTA experience shows that **consumers** do not like food standards being determined through a trade agreement
- Ireland's vulnerability to Brexit is **unique**, and our concerns are not necessarily shared widely across the EU

Further reading

European Parliament

DIRECTORATE-GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT
STRUCTURAL AND COHESION POLICIES **B**

Agriculture and Rural Development

- Culture and Education
- Fisheries
- Regional Development
- Transport and Tourism

Research for AGRI Committee -
Possible transitional arrangements
related to agriculture in the light of
the future EU - UK relationship:
institutional issues

STUD

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Knowledge Network

Thought Leader Article Series

Food regulatory barriers to cross-border trade after Brexit

by Professor Alan Matthews



The UK announced it intended to withdraw from the EU on 29 March 2017 after more than four decades of membership. During this period trade has been facilitated between the EU Member States by an increasingly integrated regulatory framework.

One element of this is the common commercial policy administered at the EU level, which has removed tariff barriers on intra-EU trade and ensures that goods entering the EU from third countries anywhere in the EU pay the same Common External Tariff.

The other element is the single market which came into force on 1 January 1993. A common EU legislative framework sets high minimum standards which all goods sold on the EU market must meet, although individual Member States can set higher standards for their own producers. The principle of mutual recognition means that goods lawfully placed on the market in one Member State cannot be prevented from being sold in other Member States.

The combination of the customs union and the single market means that trade takes place within the EU without frictions or additional trade costs. There are no tariffs, no customs clearance requirements and no regulatory barriers or checks when goods, including food, are moved from one EU Member State to another.

All of this could potentially change for trade between EU Member States and the UK once the UK leaves the EU. In the worst case scenario, if the UK leaves without a trade agreement with the EU, or without a transitional arrangement to cover the time before a new trade agreement can come into force, there is the potential for significant additional trade barriers following Brexit Day.

These additional costs would bear particularly heavily on Irish-UK trade because of the high level of integration between the two economies. It would also bear particularly heavily on trade in live animals and food because of the additional requirements for regulatory checks at borders for these products in order to safeguard food safety, plant and animal health (referred to as sanitary and phytosanitary (SPS) checks). In this respect, the future of cross-border trade between Northern Ireland and the Republic of Ireland requires particular consideration.

Potential trade costs after Brexit

The EU operates strict regulatory controls on imports of animals and food into the EU from third countries. After Brexit, the UK will be a third country and these controls will apply to exports from the UK to the Republic of Ireland unless alternative arrangements are specified in a future trade agreement.