



ANNEX

Food Standards Agency and Food Standards Scotland Joint Section 42 advice – United Kingdom – Comprehensive and Progressive Agreement for Trans-Pacific Partnership Free-Trade Agreement

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1. Introduction

1.1 As the UK's Food Safety Authorities with a statutory duty to protect food and feed safety¹ 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 17th July 2023 to provide joint advice on the UK accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)² as signed on 16th 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 8th March 2018. The UK therefore applied for accession 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 accession Protocol will be formally laid before Parliament for scrutiny under the Constitutional Reform and Governance Act 2010³. 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 17th July 2023⁴ by the Secretary of State for Business and Trade, in accordance with Section 42(4) of the Agriculture Act 2020⁵, to provide advice on whether, or to what extent, the measures in the UK agreement to join the CPTPP FTA are consistent with the maintenance of 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 For the purposes of this advice, any reference to food safety includes feed safety where it relates to human health.

² [Comprehensive and Progressive Agreement for Trans-Pacific Partnership \(CPTPP\)](#)

³ [Constitutional Reform and Governance Act 2010 \(legislation.gov.uk\)](#)

⁴ [CPTPP: Secretary of State for Business and Trade's request for the FSA and FSS's advice](#)

⁵ [Agriculture Act 2020 \(legislation.gov.uk\)](#)

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.⁶ 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.⁷ 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 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.
- The UK Accession Protocol to the CPTPP as signed on 16th 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

⁶ [Data from FSA Trade visualisation tool](#)

⁷ [Department for Business and Trade – CPTPP: impact assessment](#)

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 matters^{8,9}. 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).

⁸ "Nutrition" means legislation within scope of appendix II of the [Nutrition Related Labelling, Composition and Standards Provisional Common Framework](#).

⁹ 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](#).

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^{10,11}.

2.3 UK levels of statutory protection¹² 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 matters¹³ 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 15¹⁴ 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 24th July 2023 for a duration of seven weeks¹⁵. 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.

¹⁰ [Our Food 2022: An annual review of food standards across the UK](#)

¹¹ [Our Food 2022 An annual review of food standards across the UK: Food Standards Scotland](#)

¹² “Statutory protections” include provisions in primary legislation, subordinate legislation or retained direct EU legislation as per [Section 42\(3\) Agriculture Act 2020](#).

¹³ Responsibility for nutrition related matters falls to DHSC in England, FSA in Northern Ireland, Welsh government in Wales and FSS in Scotland.

¹⁴ [Accession protocol of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership \(CPTPP\)](#)

¹⁵ [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 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)¹⁶. 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 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"¹⁷ published in August 2023, showed that the top reason given by respondents for opposing trade Agreements are fears over a reduction in safety and food standards. Similarly, in June 2021, the consumer organisation Which?¹⁸ 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 research¹⁹, and research conducted for FSS jointly with the FSA²⁰ 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.²¹ Research by FSS in preparation of EU Exit found that 74% of adults were concerned about trade deals

¹⁶ In respect of Northern Ireland MRLs are set in line with the principles set out in paragraph 2.3 of this advice.

¹⁷ [Public Attitudes to Trade Tracker - Wave 6](#)

¹⁸ [Are the UK's Trade Deals Reflecting Consumer Priorities? - Which? Policy and insight](#)

¹⁹ [Food in a Pandemic | Food Standards Agency](#)

²⁰ [Interests, needs and concerns around food: the public's view in Scotland](#)

²¹ [Food Concerns Brexit Omnibus Research Results September 2020](#)

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 2'²² 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 survey²³ 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.

3.15 Consumer views of international food standards will differ by country of production. The UK's Trust in Food Index (2022)²⁴ 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 6.²⁵

3.16 It is clear from the research cited in paragraphs 3.13, 3.14 and 3.15, 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.

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

²² [Food and You 2 - Wave 6 | Food Standards Agency](#)

²³ [The UK's Trust In Food Index 2022 - Red Tractor Assurance](#)

²⁴ [The UK's Trust In Food Index 2022 - Red Tractor Assurance](#)

²⁵ [Public Attitudes to Trade Tracker : Wave 6](#)

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 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 morals²⁶. 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 Agreements²⁷. 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.

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 GB²⁸. 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

²⁶ CPTPP - [Preamble](#)

²⁷ CPTPP – Chapter 1, [Initial Provisions and General Definitions](#)

²⁸ [GB Regulated Products Application Service](#)

respect of Official Controls at the border²⁹. 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 is 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:

- 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

²⁹ [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](#)

Modified Organisms (Deliberate Release) Regulations 2002³⁰, 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.

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)³¹. “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

³⁰ [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](#)

³¹ [Codex Guideline for the Conduct of Food Safety Assessment of Foods Derived from Recombinant-DNA Plants](#)

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 Risk Management contains provisions for each Party to adopt a risk management system for assessment that enables its customs 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).^{32,33}

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

³² [WTO | Sanitary and Phytosanitary Measures - text of the agreement](#)

³³ [WTO Analytical Index: Guide to WTO Law and Practice in respect of WTO SPS Agreement](#)

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 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 Equivalence³⁴ 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 guidance³⁵ to help Members implement this Article. Such equivalence determinations are trade facilitative and can result in smoother trade 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 measures³⁶ and a Sanitary Agreement³⁷ 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 under Article 7.17. If such recourse is unsuccessful then the disputing Party could seek recourse via the WTO dispute settlement system.

³⁴ 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](#))

³⁵ [WTO | SPS - equivalence decision](#)

³⁶ [Annex 5-E](#) – "Recognition of sanitary and phytosanitary measures" of the [Trade Continuity Agreement](#) between the UK and Canada

³⁷ [UK/New Zealand: Agreement on Sanitary Measures Applicable to Trade in Live Animals and Animal Products \[CS New Zealand No.1/2019\]](#)

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 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 were 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. 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 Agreement³⁸ 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 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. 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 and Article 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 1990³⁹ (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.

³⁸ [WTO | legal texts - Marrakesh Agreement](#)

³⁹ [Food Safety Act 1990](#)

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 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.