

Brexit and the politics of food: Understanding the relationship between food standards and FTAs

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On July 28th, Global Counsel hosted a technical discussion between food policy experts looking at what is at stake for UK food and agriculture after the landmark Agriculture Bill as the UK pursues and negotiates trade agreements in the lead-up to exiting the European Union. We were joined by Tim Lang, Professor of Food Policy at City University of London and Emily Lydgate, Senior Lecturer at Sussex Law School, with the conversation moderated by Stephen Adams, Senior Director at Global Counsel. The discussion explored the challenges of the UK setting regulatory standards for itself as it leaves the EU as it simultaneously is working to strike new international trade agreements, and the tensions that are arising at the level of the devolved administrations on how to regulate the British internal market.

Please find further writing by Emily Lydgate [here](#).

Please find further writing by Tim Lang [here](#).

A transcript of the discussion is below.

SA: Hello and welcome to this Global Counsel webinar. The subject of this afternoon's webinar is a typical one, as it relates to the Agriculture Bill and its passage through the UK parliament, but the point is to take it as a jumping off point for a wider discussion about the very profound tensions surrounding this point that arguably speaks to a wider set of concerns around the relationship between food standards, food regulation, and trade. We will use the webinar to dig into the tangle that the British government is creating for itself as it tries to do several difficult things at the same time. The theme of the webinar is the problem that is arising from simultaneously attempting to reframe UK food standards and practices for life outside the EU (in a context where the UK is a federation of devolved jurisdictions for many purposes of standards' regulations - a problem that so far we haven't had to consider because of the overarching EU framework), and to do these things at the same time as the UK is trying to consider whether external trade agreements should be a factor in the way the UK sets food standards. The most important variable is the question of what it might entail to sign an FTA with the US that touches on these areas. This afternoon we will unpack the tangled way the government is approaching the problem, see if there would be a different approach, and if any of these problems are soluble.

Tim, to start can I ask you to say a little about the context here - Brexit is the primary motivating force behind the need to review the way we manage food standards in the UK. What are the most important things about how we did it as an EU member state, and what that means for life outside?

TL: You are asking an academic a big question - I wouldn't start with 1973, I would go back to the fight between the British and the Dutch for who would control naval power in the channel and

onwards. Where we are now is resurrecting pre-EU default positions of assuming someone else is going to feed us. The UK gets about 40% of its food from EU, 30% directly through EU and 10-12% through trade deals. It depends how you calculate it - whether through value or tonnage but broadly Britain only feeds itself about half. If you do an environmental analysis you will see feedstuffs are not included typically. There was some brilliant work done by Scottish and Dutch academics that Britain only feeds itself about 30% if you look at total environmental footprint.

Britain walked into the EU after being rebuffed several times and took 6 years to get ratified in 1975 by referendum with a 2 to 1 majority. We gradually integrated the post-Second World War system of agricultural support into the EU system, with its approach to rebuilding the food and farming system from rapid crisis work done in the Second World War. The big issue was the single market process that ended the messiness of the common market setting standards for different products to make it so that you can trade anything anywhere as long as you can track it. The UK was hit by food safety crises in the 1980s culminating in the 2007 white paper on food safety. Leaving all of that means trade, safety, consumer confidence, an integrated food system, supply chain management - is thrown into the air.

We do not know where we are going. I have literally come onto this call after reading part one of the National Food Strategy which has been delayed several times. It is very interesting and personal, raising things people on this call would want to know about. The report zig-zags a little, (e.g. we want high standards but does the British public realise they are already getting lower than described standards through the EU), and then sticks to the party line - the new Agri-Trade Commission will resolve all of these issues. From my perspective it will not - it is made up of some farmers, some right-wing trade economists, and has not got the kind of expertise that would be needed to resolve trade and standards issue. So, to summarise, we are in an interesting place.

SA: We will come back to the question of the commission - the government sees it as a political solution but there is a question of whether it is enough.

TL: I understood why the NFU pushed for it, but most people in food policy were nervous about the short-term, non-specialist membership commission - it will not resolve legal issues that someone like Emily could.

SA: How much autonomy did the UK have as an EU member state in setting food standards and policies?

TL: By definition [of common market], it did not. However, because we are dealing with the political and cultural reflexes of being in Britain, the Brits always wanted to be an outlier and the reflex is not to play the game. Sometimes they would be a good member state and negotiate, and sometimes they were totally sectarian and had old imperial reflexes. Britain is a declining power and we are now entering cold waters.

EL: You can quantify it, in that Defra had to do twice as much legislation as the next department just to transfer all EU law into UK rulebooks. The Withdrawal Act set out that we would have EU law as a starting point and would make only minor technical changes, but because EU law played such a big role in regulatory processes it required a profound reconfiguration of how the UK does food safety legislation. Also significant is the extent to which the Withdrawal Act gives wide scope to ministers to make changes. Before we had 'legal lock' with the EU where the UK could only work

collaboratively to make changes, but the new legislation gives powers that mean now ministers can change virtually every element of food safety legislation through secondary legislation.

SA: What has motivated this? Is it a question of the volume of legislation involved in transfer or a more deliberate attempt to locate power over these kind of changes in Whitehall and in Government?

EL: I definitely do not envy the time pressure which will be a feature, but it is hard to avoid the perception that it is concentrating power in the executive (with the ‘taking back power’ narrative). We have seen across the board the role of secondary legislation which doesn’t go through full democratic scrutiny, has massively expanded.

TL: I agree with Emily’s comments. I would add that a concern over what is simultaneously happening with the loss of EU infrastructure of science, of advice, of risk assessment information, right across the board. This is troubling, not just for us but for the food industry - they do not know what the scientific basis will be on which decisions are going to be made in that executive power. That lack of science infrastructure is a critical issue.

SA: We clearly have a scale challenge - the volume outstrips other areas of EU law. Is there an underlying issue in terms of regulatory approach for the UK as opposed to the EU? To what extent did the UK feel at home with the EU’s regulatory style, and if not to what extent is that a factor in the way the reshoring of legislation is likely to proceed?

TL: I think Britain was a major player in terms of food standards regulatory processes because the British manufacturing industry was very powerful. 15 of the top manufacturing companies when there were only 12 member states were British. There was a lot of collaboration between food companies and the regulatory process. Thatcher pushed for a single market as it was what British industry wanted. As the EU has expanded, the relationship has got looser and in the last 10 years has got very loose with Britain increasingly the outsider and ‘odd man of Europe’. Britain has been an unhappy club member and now we will find that challenging and will see goodwill gone.

SA: Is there a specific sense in which Britain is unhappy - with the methodological approach to regulation or wider question of autonomy?

TL: More of a general sense that has grown only recently. Britain was previously very involved and a good partner in the passing of the Single European Act. This making of the single market was important because it was a removal of regulatory burden to establish a common level playing field. After 2008 the relationship went ‘wobbly’, then when the Lib Dem-Conservative Coalition came about there was nervousness in Europe. Britain has ‘ducked and dived’ over its time in the EU; you cannot say it was a good or bad player. The solidity of the core of big northern French-Germany-Netherlands- Britain partnership has been destabilised by Britain leaving. This relationship is important for food because that is where we get most of our food from. We need to engage carefully with the system.

EL: The sense is that the UK has a unique distinction in being both the ‘dirty man of Europe’ and an environmental leader in certain areas, so it a complex picture.

TL: The UK had to be dragged environmentally, but on food standards was more ambivalent. By the time the White Paper came through, the UK had had 10 years of food crises and was humble.

EL: England has been stigmatised in terms of some of its agricultural practices, so we have had a sense of being dragged along but the UK has more representation in EFSA than any other member states.

SA: So, to sum up the way you both have framed the problem for our discussion, it looks like 3 key problems:

1. The sheer volume of legislation and how to reshore that into a domestic regulatory framework.
2. If we were ‘ducking and diving’ at a European level that presumably represents that the domestic political economy lacks a consensus on food standards, and we will have to deal with tension in the microcosm of UK food policy.
3. Finally, one thing implied by expansion of food safety regulation is that we need to rebuild infrastructure to underpin this task of building a domestic regulatory system.

TL: Another problem is that in terms of the British scientific infrastructure for assessing e.g. welfare standards or pesticide regulations of residue on consumer goods, a lot of the expertise has been Europeanised just when we are negotiating with the ‘thug’ in world food trade (the US) which has huge infrastructure and powerful trading capacity, and we are like a ‘lamb to the slaughter’.

SA: Let’s talk about the devolution dimension - the British single market. **EL** can you let us know why we have had to rediscover this element of devolution settlement at this point and why it is proving so contentious?

EL: An element that is becoming more appreciated is that the EU formed the glue for the UK internal market, with a series of principles that allow member states to go their own way but when necessary for free trade we have common standards so there aren’t internal trade borders. What is interesting about secondary legislation is that it actually devolves more powers - for example, the EU would have prevented one-member state from having GMOs that others do not. But now there are no national controls, how would we deal with trade with Scotland if it bans GMOs that England produces for example? One proposal is to have negotiations on common frameworks between nations, but those are stalled. We have had two major pieces of legislation that have dropped which were pushing in different direction - Scotland was consulting on a Continuity Bill which is to ensure dynamic alignment with EU environmental law whereas the UK had an Internal Market Bill which seems to be saying that it would manage trade barrier problems by having all devolved nations (apart from Northern Ireland) using the principle of mutual recognition. This would mean that if the US and the UK do a trade bill that will mean the UK could change its approach to food safety standards to meet the US, and these products could then be exported to Scotland without Scotland having any say.

SA: The English government have been criticised for a ‘power grab’ but surely there does need to be some mechanism of mutual recognition - what could English/UK government have done differently? How could you put division of power on the face of the Bill?

EL: Optics are very different than for the Cassis de Dijon ruling in the EU because no single member state that can define regulation for the whole of EU - but in UK you can. The scope in the EU is narrow because you harmonise all food standards and then have room on margins. Optics are very different because of the power asymmetries. Scottish voters did not want to want to leave the EU, so it makes sense they want to maintain alignment. If the government’s aim is to preserve the

union, it needs to give devolved nations a stronger say. If it gave them veto power over food safety regulations, it would affect trade deals but would preserve the union and internal market, which are also very important.

TL: I will talk about Northern Ireland because it is a horrendous problem. I was recently chairing a meeting where someone critically involved in food trade in Northern Ireland said they did not know what they were going to do with 100,000 consignments of food a year, and they do not know what the regime is going to be. Something that is also absolutely not being discussed in public, is that as tension in the UK is emerging you have at the same time very big food companies that have a single market - are we going to say that Wales can set its own standards and Ireland will also have their own? All of this is not clear, and it is what laws are for. The government needs to clarify because they have supply chain networks to look after.

SA: Large companies tend to take the view that they are rule takers everywhere.

TL: You are right but they set rules as well. There are two regulatory regimes, legal and commercial. Commercial has been further muddied by civil society making regulations (e.g. the marine stewardship council is more important than government in setting those regulations).

SA: Companies don't tend to think inside jurisdictional boundaries; they want as few as possible, but policymakers don't see things that way.

TL: We are in a state where we have multi-sector governance and multi-level governance which are all fluid. This is not good for the food system. Food requires stability and not disruption, but we have a Government which believes in disruption.

SA: EL you have identified a tension at the level of the devolved structure: England needs to recognise the fundamental reality that there will be a trade-off between the integrity of the British single market and the ability to have command and control from centre. There will need to be more give and take with respect to devolved administrations. It will be interesting to see where we end up going next.

I want to move onto the trade challenge. You have identified a set of challenges with reshoring of the UK regime, made more complex because we are essentially reshoring four regimes that used to be bound together within the EU single market framework. We are simultaneously doing that while negotiating with the United States that has a view on what it would like to achieve in these negotiations. Is it necessary for food standards to be a part of an agreement of this kind?

EL: The US would say yes.

SA: But is that the only answer to the question?

EL: Not if the UK says no. The US negotiating objectives are set by congress, set out in legislation and include objectives with food safety. These have been the same objectives for quite a while, and I do not see that problem going away.

SA: what does US actually want the UK to do differently?

EL: From the perspective of regulation, there is one aspect of food safety - microbial contamination -that is the main concern. The US want to allow safeguards to block agri-exports

based on food-borne illness and contamination. They are more laissez-faire when it comes to the use of consumer protections, such as additives, GMOs etc. The long-standing debate and position of the US about EU food safety regulation that the EU is not science-based. The EU has tighter thresholds for banning, or restricting food based on health problems and on this basis has banned or restricted US products. US is seeing Brexit as an opportunity to move the UK into its regulatory sphere by getting it away from the more precautionary approach of the EU.

SA: To what extent if we wound the clock back 3 years, how much appetite did the UK actually have for a shift in regulatory paradigm?

EL: Putting together the point about devolution with the point about retailers, there is a tremendous amount of resistance. Right from the beginning of the Brexit debate, food safety has been a symbol for what a lot of people do not want about Brexit. It is part of wider general concerns about leaving the EU which is lowering our standards more generally. It is not just retailers but also farmers because 60% of our produce is exported and on an economic basis you want to stay in that market. There is lots of pushback but the impetus to meet agreement is political, as the government wants to recoup success and show the UK is concluding FTAs as part of their Brexit promise.

SA: I have seen substantial public concern around this question, and several government ministers say they understand this is a red line. Would your political judgement be that it is now off the table? Some of the stuff coming from negotiations with the US is that people are trying to be creative without changing food standards.

EL: These controversies have not yet come to a head because the UK have kept their cards close to their chest. We also need to keep track of the [Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTTP)], because the current emphasis and scrutiny is on the US agreement but the use of treaty language and treaty commitments to weaken the precautionary principle is something the CPTTP does already. If the UK agrees to that agreement then the US will have a strong case to say that you already said you would do various things under another agreement so why not now.

SA: Under open and fair competition agreement the EU is pushing to codify the precautionary principle so there are a number of external pressures on the UK's internal methodology. Is the US an outlier in its desire to import these conditions into FTAs? What about other partners like Australia or New Zealand?

EL: Others have shown that the EU's approach is not as rigorous as it could be, but still contextually it could be seen as a gold standard, so we need to track these issues with Australia, with Japan (although we don't trade much food with Japan), with the CPTTP. There are similar issues for these countries, but the US has been particularly forceful in this area. If you look at the negotiating objectives for the US, they want to develop a mechanism to avoid undue barriers for agriculture so it sounds like they are being aggressive in this area.

SA: The political logic comes down to the political acceptability of these agreements weighed against the desire to secure an agreement to signal messages about the UK - the trade-off is hard to read but the domestic pressure not to compromise is rising all the time, and also compounds the UK internal market problem. There seems to be a case for a bit more reticence on the UK's part. Tim, do you have a sense of how this plays out from here?

TL: The US is a small player for the current British food system. Secondly, no-one I know of thinks the trade deal will be done this side of the US elections. It was already a nightmare in British public opinion - trade agreements take a long time but particularly when politics are this volatile.

My long view is that Britain was an industrial nation (likes to think of itself as the first industrial nation), and it had a bruising fight after Napoleonic wars over what it wanted from its food system. It went for a cheap food policy, where it sourced from anywhere. Britain now has a very patchwork food culture and food system. It is uncertain which way it is going to go. I was just reading the National Food Strategy which has an interesting take on what is going on. UK internal food politics are very unclear, and the symbolic power of American institutions like McDonalds means that Americanisation is built into Britain. All of this is going to be played out in new ways.

It is uncertain what the outcomes are going to be and which systems it will reflect. On the one hand there are powerful environmental considerations, with well-organised lobbying organisations in every constituency. There is also a well-organised consumer movement.

SA: To finish, we have talked a lot about how we have found ourselves in these messes but if you were writing about the opportunity for the UK over the next five years what would you say?

EL: The opportunity is that we are stepping into new regulatory space, and when you have this freedom to think about how you want to regulate there can be new ideas and innovation and a better standard. There could be better monitoring and more informed regulation that takes on more stakeholders' views. There was lots of room for improvement in the EU systems that we were inheriting. It is interesting how food safety has become an existential problem of Brexit and the union. It's not just about how we will govern external trade and market but about who are we as a nation, outside of the EU and can we even call ourselves a United Kingdom.

SA: Obviously we need to keep our eye on a market that takes 60% of our exports but there is a case for a pause before rushing into regulatory convergence via trade policy.

Tim would you agree with that sense of what is possible?

TL: It is actually a choice of philosophies, with a clash of food identities at stake. The opportunity may lie in regionalism which may sound odd as we were saying the problem was the 'dis-United Kingdom'. The problem politically is England and if a sensible government was in place it would give weight to regions of England as opposed to centralising. We have a clash between a centralising and privatising government which has been forced to think differently as due to covid-19 it has to now engage with local authorities. The future of the world and ecosystems, and food health, calls on smaller, bioregional smaller supply chains. This is a different direction to the pan-European, globalising tendency.

We can see an opportunity for rebirth of bioregionalism, of cities and towns as food hubs. Britain has a powerful movement referred to as 'sustainable food cities' attached to C40 and big international networks. The difficulty will be jobs because of the coincidence of crisis of covid-19, ecosystems crisis, and Brexit. The food area is full of crises at the moment and we know it and the clock is ticking all the time. To talk of opportunities is very optimistic.

SA: By opportunity I mean that it is a chance for the UK to think about own domestic political economy.

TL: The UK is going to have to grow up and recognise it is no longer an imperial power, it is a declining power. If you really wanted to look at food defence you would talk about cybersecurity not trucks through dover, we would see some serious politics - food defence accompanying ecopolitics of food resilience, and health politics about health externalities, and regulatory burdens. The Agriculture Bill has nailed that as not in its territory, so all eyes are on part one of the Henry Dimbleby report coming out tomorrow. But part two is the really exciting part coming out next year, with the economics of it all which will be really critical because food is the biggest employer in Britain. Four million people worked in food before covid-19 in food and a lot now are out of work.

SA: Thank you both for navigating us through these issues. We began with the Agriculture Bill as a starting off point, then quickly got into profound questions of what kind of food politics do we want, what kind of food supply chains do we want, what kind of union do we want and how do we want Britain integrating into global supply chains.