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The NFU represents more than 55,000 farming and growing members in England and Wales. In addition it represents some 40,000 'Countryside' members with an interest in the countryside and rural affairs.

Government review of the balance of competences between the United Kingdom and the European Union

Trade and Investment

1. What are the advantages and disadvantages of the EU's competence over trade and investment, particularly in relation to international trade and investment negotiations?

Trade policy is a core competency of the EU. The ability of the EU to negotiate and act collectively as a bloc is a major strength of the EU. It is the sheer scale and strength of the EU market place which means that the EU is one of the major players in the global trade decision making arena.

The EU is the largest single market in the world with over 500 million consumers and is the largest trader in agricultural products globally. The combined import, export value of agricultural goods was €203,542 million in 2011¹. This compares to 62 million citizens in the UK and a combined import, export value of €70,779 million².

The EU is also the single largest importer of agricultural goods from developing nations, significantly higher than the total imports of the other five high income economies combined (the US, Japan, Canada, Australia and New Zealand).

The EU successfully negotiated the current global trading rules on agriculture under the Uruguay Round. The specific interests of the agricultural sector are enshrined in the Agreement on Agriculture and in the Agreement on Sanitary and Phyto-sanitary Measures (SPS). Both Agreements prevent protectionist backsliding of agriculture and agricultural trade policy and ensures that the WTO can enforce a rules based system. The SPS agreement in particular ensures members of the WTO have to consult on new regulation and standards, use international standards wherever possible, and operate standards and regulations that are proportionate to public health risk.

It is worth highlighting that were the UK to leave the EU, but remain as a member of the WTO, that WTO rules would prohibit import restrictions solely on the grounds of the production or processing method (PPM). Restrictions are only allowed on the grounds that a product is objectively different and harmful (for example it contains residues of dangerous chemicals). It would also be highly likely that the UK would have to apply the EU's Common Customs Tariff on goods from 3rd countries. This would be necessary to avoid a "carousel" trade. In addition, the UK would also lose all the preferential access

¹ http://ec.europa.eu/agriculture/statistics/trade/2011/eu27-chapter_en.pdf

² AG in UK 2012

€1:£0.8

that the EU has negotiated so far, whilst UK negotiating power would be weaker if it had to engage with third countries than by doing so together with a bloc of countries (EU28).

The UK government implemented a ban on tethers and stalls in the pig sector in 1999. The UK ban was implemented ahead of the EU ban in 2006 for tethers and 2013 for sow stalls. The Efra committee concluded in 2008 that “there can be no doubt that the early introduction of a ban on stalls and tethers placed a heavy financial burden on the industry...the decision placed English farmers at a serious disadvantage to their EU counterparts.” Under WTO rules, the UK would not be able to implement a ban on the importation of pig meat produced under these conditions.

Similarly if the UK were to implement higher standards than accepted international standards, and restrict imports on that basis, then the UK would have to provide scientific justification for such standards. This is something that the EU, with evidence of the EU’s Food Standards Agency (EFSA) is able to provide to the WTO and is particularly relevant in the area of food safety standards for the EU and UK. (i.e. pathogen reduction treatment).

The NFU believe that there is opportunity for the EU to communicate more clearly with stakeholders on a range of trade issues and issue progress updates. For example, there is a lack of transparency/communication from the European Commission on Free Trade Agreements. In a number of instances, the impact assessments have only been published once the negotiations have already started. This makes it a challenge for the NFU to evaluate and discuss the impacts with our members, and provide input into the process at an early stage.

EU priorities for trade

In recent years the EU has focused on achieving balanced progress in the multi-lateral WTO Doha Development Agenda (DDA). Despite the lack of progress on agricultural issues, the blockage does not emanate from the position of the EU. Indeed EU agriculture would benefit if the DDA is concluded in a timely manner.

Without progress on DDA, the Commission has instead turned its attention on negotiating bilateral Free Trade Agreements (FTA). The EU is embarking on an unprecedented number of such FTAs. As a net exporter in agricultural goods, the EU has significant offensive interests in a number of agricultural products and this is replicated at the UK level. However, one of the EU’s sensitive products is high quality grass fed beef. The UK is the fourth largest producer of beef and veal in the EU. An impact assessment on the Mercosur FTA, carried out by the JRC in November 2011 found that in the worst case scenario, the UK would be the second worst affected member state in terms of agricultural revenue per ha of UAA behind Ireland, and that the production of beef would decline by around 7% across the UK. The EU recognises this potential impact on farming and continues to negotiate for a balanced agreement. This is in contrast to the UK government, where a strong commitment to concluding an agreement with Mercosur is maintained despite the negative impacts on the agricultural sector.

2. *What are the advantages and disadvantages of having trade and investment promotion largely at the national level? How well has this delivered on UK objectives?*

International promotion of food and drink products has undergone significant transformation in recent years. This has included the closure of the Defra-funded Food from Britain and the dismantling of Regional Development Agencies (and subsequent reduction of funding for regional food groups). Nonetheless, UK food exports to non-EU countries continue to grow and further increased by 4.6% in 2012.

One key advantage to having promotion at a national level is that it allows existing national bodies to participate readily in UK initiatives. For example, the Agricultural and Horticultural Development Board

continues to undertake export development work on behalf of farmers, with calls to step up activity in some sectors, most notably dairy.

Typically, the UK's food exports will make much of its provenance and this will be characterised in the targeting, and promotion of UK foodstuffs overseas. This approach to marketing has a more strategic fit with the national approach (particularly given much of the UK food exports are currently with other EU member states) than it does with a wider EU approach. Arguably, a sub-national level (regions and counties) also benefits the marketing and promotion of food and drink products given strong regional identities. Already, devolved governments and regional food groups facilitate a range of activity on food promotion in international markets, trading on the strong provenance attached to specific regions, and in some instances, capitalising on the EU-sponsored Protected Designation of Origin or Protected Geographical Indication status. Clearly, the marketing characteristics for food and drink that work best in an international context do not necessarily tie directly with the national approach taken on trade and investment. However, the critical element is to make sure that the national approach offers the flexibility for promotional activity based on regional identities.

3. *What are the advantages and disadvantages of the current division of competence over export and import controls and export credits?*

Given that export controls relate primarily to military goods and technology, whilst import controls focus on the EU's sanctions regime, this issue arguably has little relevance for agricultural products. What is relevant is the approach to export credits. With extra-EU exports of food growing, export credits and associated tools that facilitate external trade are set to have a greater significance for agricultural products. With a potential risk attached to exporting to new markets and dealing with new customers, such programmes are likely to have a more prominent role in future, given that they can remove a critical perceived barrier to expanding trade (exporter concern over whether or not they will get paid). The fact that individual member states have their own ECAs is important, as it gives flexibility to MS to support their exporters and respond to their needs. Of course, it is important that OECD guidelines continue to provide an overall framework for such programmes. Increasing extra-EU trade flows for agricultural products will likely mean that UK and EU exporters will increasingly compete against major trading blocs. The terms and conditions around payment and finance will undoubtedly be a factor in the purchasing decisions of potential customers, and it is therefore important that there is a set of rules that encourages a level playing field and governs how other countries use export credit programmes.

4. *What are the likely advantages and disadvantages of moving from national to EU competence in relation to investment protection?*

No comment

5. *How well are UK objectives met and interests taken into account through a) EU trade defence investigations, and b) the EU representing the UK in trade defence cases against the EU and more generally in trade disputes with other WTO members?*

The power of the EU as a trading bloc is integral to addressing any disputes with WTO members, and is considerably greater than that of the UK alone. In general, the EU has increasingly taken into account the interests of industry in regards to trade defence issues. In particular, DG Trade has begun to listen and engage with EU agriculture as it adapts to increasing competition and liberalised trade. For example, in recent years, we have seen reviews of long-standing anti-dumping duties on some fertiliser products remove the additional duties on all but one of the anti-dumping measures on agricultural potash and nitrogen fertilisers. This ultimately benefits the British and EU farming industry, with the European fertiliser market increasingly driven by global dynamics rather than by just the EU supply and demand balance of nutrients. More recently, DG Trade has acted on illegal dumping of biofuels from

the Americas by introducing anti-dumping measures which allow EU processors to operate with fair competition.

6. *What future challenges/opportunities might we face on trade and investment policy and what impact might these have on the UK national interest?*

In general, the NFU believe there is tremendous opportunity for the UK government to engage much earlier and much more closely with EU institutions and other Member States at the pre-consultation stage. Whilst legislation and agreement positions are being framed seems to be a key area for shaping policy and ensuring it is best suited to the challenges and opportunities faced by businesses in the UK. It is therefore disappointing that figure 4 in the BIS May 2013 Call for Evidence omits this step. Similarly, there is also opportunity to work much sooner and closer with UK industry including developing non-legislative options that may be appropriate to consider before the EU acts to draw up legislation.

7. *Are there any general points you wish to make which are not captured above? We would welcome any specific examples and quantitative evidence where possible.*

The National Farmers Union welcomes this opportunity to comment on the balance of competences review. The NFU represents more than 55,000 farming and growing members and in addition some 40,000 countryside members with an interest in the countryside and rural affairs. Calls for the UK to undertake trade as a national competence is of particular concern to UK farmers, particularly if this is a step towards trading freely with the rest of the world in agricultural goods. As highlighted in Q1, operating as part of the EU framework for trade ensures that UK farmers are rewarded for the higher standards that they produce and protected from third country imports not produced to the same standards. This protection could be jeopardised with a change in trade policy, risking the long term competitiveness of the UK's agri-food sector and having a very negative impact on British agriculture.

Currently, regulation is a key issue for farm businesses who regularly report (see NFU Confidence Survey <http://www.nfuonline.com/Our-work/Economics-and-International/News/Weather-and-costs-cast-cloud-on-confidence/>) that administrative burdens and bureaucracy are stifling their ability to become more productive and competitive. Much of the regulation that impacts on farmers' and growers' businesses stems from policy and legislation set in Brussels, so this review is an important opportunity to re-establish clear boundaries between domestic and EU competency.

The Government's review should recognise that farmers and growers operate in a single market with the principles of equal access at its heart. This is especially important for primary food producers as the European single market in food is the bedrock of the European Union. There is a persuasive logic to establishing common rules that remove barriers to the free movement of goods and services within this single market and facilitate fair competition. However these common rules should apply the principles of better regulation and promote trade opportunities where competitive advantage exists. Indeed, the NFU objective is to ensure that the right framework is in place to allow our members' businesses to grow and remain competitive; thereby ensuring that UK farmers can continue to make a meaningful contribution towards addressing the global challenges that society face.

For this to happen, we firstly believe that the operating conditions under which our members operates must be fair. Whilst we operate on the EU common market, we seek a common, level playing field where UK farmers are able to compete on an equal footing with our European competitors, respond to market signals and increase farm competitiveness in a sustainable way. As a result of successive reforms of the CAP, the EU's internal market in agricultural products is increasingly aligned with the global market. We support this direction of travel and ultimately we seek actions and outcomes that ensure UK farmers are able to compete on global markets.

The following principles of commonality, simplification, market orientation and enhanced competitiveness guides NFU policy. To this end we firmly support:

Commonality /fairness

- Equitable rules applied in a way which allows the market to operate on a fair and transparent basis.
- Timely enforcement of EU legislation with meaningful infraction powers, including exclusion from operating on the EU common market, for those who fail to take the necessary agreed actions.
- On-going assessment of the functioning of the common market to ensure that distortions in competition are not able to prevail as a result of differences in member state enforcement of agreed EU law

Simplification / effectiveness and relevance

- Science based rules that provide minimum levels of entry onto the market and are implemented in a way across the EU to prevent competitive disadvantage to any operators on the common market.
- Periodic review of EU rules to ensure that legislation is kept abreast of scientific change and changes in market behaviour.

Market orientation

- Our preference is for the continued harmonisation of powers relating to the production and sale of agricultural products, including food safety requirements, marketing standards and labelling requirements.
- Accompany these, we support the continuation of market driven, voluntary approaches that go beyond minimum levels, allowing competitive gain for those willing to guarantee higher minimum standards

Increased competitiveness

- We believe that environmental, animal welfare and social rules, where deemed necessary for the functioning of the common market, should be agreed at a European level with the flexibility to adapt to local conditions.
- What is critically important to us is that there are safeguards to ensure that these rules are implemented in an equitable way by all participants on the common market to ensure no distortions in competition can prevail.

If you would like to discuss anything in our response, please contact Philip Bicknell, NFU Chief Economist.