

External Affairs and Additional Legislation Committee

Inquiry into Wales' future relationship with the European Union

Submission from Dr Ludivine Petetin and Dr Annegret Engel, Cardiff School of Law and Politics

Challenges and opportunities for the Welsh food and farming sectors in its relationship with the EU

Belonging to the EU creates a level playing field between the 28 Member States. When trading within the Union, access to the EU internal market is guaranteed (lack of customs and tariffs), including similar standards for health, safety, labelling, and traceability. Additionally, this means that Welsh products are protected against cheaper/low quality exports from outside the EU. On the day of exit – unless a trade agreement is agreed upon – Wales and the rest of the UK would be out of this level playing field and open to trade under WTO rules and obligations.

Despite the UK's withdrawal from the European Union however, the requirement to comply with certain EU standards will not automatically cease with its membership. Instead, the UK will continue to be bound by EU rules and regulations during the envisaged transitional period of two years after Brexit, without being able to actively have a say in them. In addition, other international obligations continue to apply beyond such a transitional period.

Implementation

New trade arrangements could have damaging impact on the Welsh food and farming sectors if these arrangements result from a series of bilateral agreements rather than a wide-ranging multilateral agreement. Dealing with various bilateral agreements will be complicated, burdensome and time-consuming to implement.

Enforcement

The issue of enforcing these (bilateral) agreements would be difficult unless a specific court or a panel of arbitrators would solve the issues arising from the agreements. A good example of the problem of enforcement is Switzerland. Trading relationships between the EU and Switzerland are based on bilateral agreements. First, when assessing these relationships, the EU is in a more favourable position as it is the stronger party of the two. Second, if the EU is not abiding to its commitments, because there is no court or dispute settlement mechanisms to solve issues arising from these agreements, Switzerland is at a disadvantage as the weak party to the agreement. In contrast, if Switzerland is not compliant with its obligations under the agreements, it is much easier for the EU to put pressure (mainly economic and political) on Switzerland to ensure Swiss compliance.

Food origin and food quality

To address the challenges created by Brexit, any future trade deal should maintain a regulatory structure that supports the Welsh food and farming sectors to produce premium products with high environmental, health, animal welfare and labour standards. Increasingly, consumers carefully look at food traceability and labelling. The public also seeks food quality indicators by scrutinizing EU logos that show the origin and quality of foods, such as the Protected Designation of Origin (PDO), the Protected Geographical Indication (PGI) and the Traditional Speciality Guaranteed (TSG) logos. These origin and quality logos, such as the Welsh Lamb and Welsh Black Beef PGI indicators, must be maintained after Brexit. This should be a priority for Wales. This would create certainty for Welsh farmers when exporting their products into the EU and enable them to maintain the same level of premium pricing.

Remaining in line with EU standards

On the day of exit, Wales (and the rest of the UK) will no longer be part of the EU discussions to develop agricultural and environmental standards but will have to abide by them if it wants to continue trading with the EU. This phenomenon is called the ‘Brussels effect’ or ‘extra-territoriality’ of EU legislation and standards. As a consequence, Wales will not be able to deviate from set EU standards when trading within the UK. Importantly, amended Welsh/UK standards will have to be equivalent or higher, but not lower.

Changes to trading arrangements with the EU

The Government, farmers, food producers and processors must prepare for a trade deal with the EU that will not be as financially and economically advantageous as today. The re-introduction of customs and tariffs would increase the price of EU products coming into the UK and vice versa. Without an agreement, EU tariffs for beef and lamb would be 12.8% plus €1,713 per tonne (on average depending on the cut of meat) – leading to an average increase of 50% of prices of Welsh lamb and beef to the EU consumer. In addition, inspections and checks at the border – relating for instance to food safety and the protection of animal and human health to prevent diseases– would increase the above prices further. Longer periods of time needed to transport products across borders would also increase the likelihood of perishable products being spoiled and livestock becoming more distressed. Again, this would increase prices of EU products coming into the UK and Welsh products being exported to the continent. The detrimental effects of such a scenario on the Welsh economy must be seriously taken into consideration and any future trade agreement should aim at minimising any changes to the status quo.

Increased productivity on the farm to ensure food security within Wales (and the rest of the UK) must be paramount. First, because – depending on the type of trade deal the UK gets – it could be harder for products to come into the UK; second, these products will most likely be more expensive; and third, this would negatively impact on consumer affordability and choice of (foreign) products.

If a trade deal similar to the EU-Canada Agreement (CETA) can be negotiated between the UK and the European Union, such excessive costs for customs and tariffs could be reduced to a minimum or even avoided entirely. In this case, a continued access to the internal market can

be guaranteed if certain standards – environmental or agricultural – are complied with. Nevertheless, the conclusion of such free trade agreements is far from straightforward, in particular considering the often lengthy negotiating process as opposed to the rather tight time frame in the UK's withdrawal from the EU. It is therefore recommended to aim for a speedy and orderly conclusion of a trade deal in order to ensure continued cooperation with the EU and its institutions in the interest of the UK as a whole and Wales in particular.

Trade agreements beyond the EU

Trading under WTO rules would increase the prices of products coming from the EU into the UK, whilst UK products would be competing against cheaper products, such as products produced with different methods of farming across the globe that include higher level of pesticides use, genetically modified organisms (GMOs), growth hormones, animal cloning, cultured meat, or chlorine washed chickens. These products are generally not wanted by British consumers and this should be taken into account.

Trading with non-EU partners could lead to a potential race to the bottom. A departure from the often-contested high EU standards in environmental and food law, and consumer protection could lead to a downward spiral when competing with cheaper products with lower or minimal standards (and of potential lower quality) in these areas. The UK/Wales should adopt a cautious approach to avoid a race to the bottom that would invite trade that is respectable of the environment and Welsh values.

Wales should be wary of cheap imports from countries where products are produced at great environmental costs (at the production and/or consumption stage) but where these externalities are not reflected in prices.

Issues with GMO cultivation

Currently, the cultivation of GMOs is regulated at EU level under the 2001 EU Deliberate Release Directive. Since a new amendment was enacted in 2015, EU Member States and their regions are allowed to ban or restrict the cultivation of such crops on their territory without having to rely on any scientific justification to do so. With this ability to 'opt-out', powers previously given to the EU have been renationalised and gradually regained by Member States and their regions according to the EU principle of subsidiarity. Wales embraced this opportunity straightway. However, England has not opted for the same policy decision. Different decisions between Wales and England seem to have been supported by a more environmentally-friendly approach to farming, food and environmental protection in Wales.

On the day of exit, divergences between Wales and England on the cultivation of GMOs could lead to problems, especially relating to a fragmentation of the UK internal market which would create obstacles to trade. Therefore, ensuring harmonisation and the absence of barriers to trade within the UK internal market will be crucial for the UK Government. Such a focus on trade could however be detrimental to environmental protection in Wales. This development would

further call into question the status of the devolved settlements which could lead to a de facto pre-emption of devolved powers.

Existing conundrums between calls for increased environmental protection under a ‘green Brexit’ discourse and the economic opportunities generated by future trade deals with countries upholding GMO cultivation ought to be solved. Lower standards on environmental protection, including on GMO cultivation, could lead to the UK appearing more attractive as a trading partner to certain countries, such as the US or China. However, such an approach could prevent trade with other existing and future trading partners, which maintain higher environmental standards, such as the EU. The so-called ‘Brussels effect’ or ‘extra-territoriality’ of EU legislation by which international partners tend to align their standards to those of the EU, may ultimately push the UK not to deviate from set EU standards in order to trade with the EU. Amended UK standards will have to be equivalent or higher, but not lower. This could play a role when negotiating a trade deal with the EU as well as when trading with third countries under WTO rules.

For more on the issues relating Wales, GMO cultivation and the EU, please see Engel, A. and Petetin, L. 2018. *Environmental Law Review* (forthcoming). Available on <http://orca.cf.ac.uk/id/eprint/108545>

Ludivine Petetin and Annegret Engel,

February 2018.