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A New Dawn? The UK's Emergent Agri-food Trade Strategy after Brexit

Fiona Smith*

In 2017, the then United Kingdom (UK) Prime Minister, Theresa May, declared the UK would take on a new leadership role after its exit from the European Union (Brexit) to become the 'most forceful advocate for business, free markets and free trade anywhere in the world.'¹ As 'Global Britain' the UK would embrace its internationalist heritage, forge new and innovative trading relationships with countries outside the European Union (EU), champion the rules-based order for international trade, and make the case for free markets, free trade and globalisation.² Prime Minister May's speech sent a clear signal to the UK's trading partners that UK trade policy was about to undergo a radical redesign, although what form this redesign might take was not revealed.³

Early scholarship explored the possible contours of this new trade policy and developed along two complementary strands: the first identified the legal, economic, and political policy space within which the UK could craft its new trade policy. For example, how World Trade Organisation (WTO) rules restricted the use of trade instruments, like trade remedies, non-tariff barriers, and tariff barriers, to deliver UK domestic policy objectives and stimulate export trade;⁴ and the ongoing influence of

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1 PM, <https://www.gov.uk/government/speeches/davos-2017-prime-ministers-speech-to-the-world-economic-forum>

2 *Ibid.*

3 *Ibid.*

4 F Baetens, 'No deal is Better than a Bad Deal: The Fallacy of the WTO Fall-Back Option as a Post-Brexit Safety net' (2018) 55 Special Issue *Common Market Law Review* 133.

EU product safety and quality standards on UK goods traded through global supply chains (the 'Brussels Effect').⁵ The second strand focused on the optimal form of the EU-UK trading relationship post-Brexit and speculated about the UK's other possible trading arrangements with non-EU countries.⁶ As the UK settled its status at the WTO, started to build internal mechanisms for organising trade between the devolved nations and Westminster, and entered into its first independent free trade agreements with Australia and New Zealand, later academic commentators started to interrogate the effectiveness of these policies and their impact on global supply chains.⁷

A common thread running throughout all this scholarship is a plea for the UK to create a single comprehensive strategy that sets out a vision for post-Brexit trade policy. Despite all the political rhetoric and scholarly interventions, the UK Government has not published such a strategy.⁸ When challenged about this omission by the House of Commons International Trade Committee, the former Secretary of State for International Trade, Anne-Marie Trevelyan, stated: 'I think our objectives have been set out in a number of places already' and 'what we have ... is a framework saying that as we look at each country and the relationship we want to develop, we can then look at particular areas and think about what is important.'⁹ Yet, as Gasiorek argues, an effective trade strategy must be 'much broader than free trade agreements and need[s] to be considered in the light of domestic economic concerns and domestic policy.'¹⁰

This article considers whether it is possible to determine what the UK's trade strategy is. Taking Gasiorek's argument as a starting point, it is argued that three trajectories are emerging that indicate a general direction of travel for the focus and function of UK trade post-Brexit. These three trajectories are geographic, domestic and governance. The geographic trajectory reveals the countries the UK is choosing to negotiate free trade agreements with and the content of those agreements. The domestic trajectory shows the way trade policy instruments, like subsidies, are being used to achieve domestic policy objectives. The governance trajectory demonstrates how trade agreements are being scrutinised and implemented in the UK.

⁵ H Hestermeyer and F Ortino, 'Towards a UK Trade Policy Post-Brexit: The Beginning of a Complex Journey' (2016) 27(3) *Kings Law Journal* 452; Fahey, 'The Global Reach of EU Law and Brexit: Between Theory and Praxis' (2017) 20(1) *Irish Journal of European Law* 16.

⁶ T Heron and G Siles-Brügge, 'UK-US Trade Relations and Global Britain' (2021) 92(4) *Political Quarterly* 732; A Swinbank, 'Some Lessons that Might be Learnt from Brexit Britain's Trade Negotiations with the EU' (2021) 55(4) *JWT* 525.

⁷ S Switzer and JA MacMahon, 'Devolution and Post-Brexit Trade Agreements. Towards a Joint Trade Policy Committee' (2019) 23 *Edinburgh Law Review* 266.

⁸ Note the DTI published a paper on the proposed government position on the proposed UK export policy: DTI, *Made in the UK, Sold in the World*, 17 November 2021, refreshed.

⁹ House of Commons International Trade Committee, *Oral Evidence: COP26 and international trade*, HC 605, evidence by Rt Hon Anne-Marie Trevelyan, Secretary of State for International Trade, 27 October 2021, Oral Transcript, Q57 <https://committees.parliament.uk/oralevidence/2916/pdf/>.

¹⁰ M Gasiorek, 'New Government, New Trade Policy' (2022) *UK Trade Policy Observatory Blog*, 22 September 2022, <https://blogs.sussex.ac.uk/uktpo/2022/09/12/new-government-new-trade-policy/>

Understanding the UK's direction of travel for trade is vital because the UK's future trading partners, like the USA, can determine whether their own interests will benefit from a trade alliance with the UK.¹¹ Businesses operating through complex global value chains also require certainty in government trade policy as that policy underpins how they conduct their global economic activities.¹² The direction of travel has wider significance too because it indicates whether there will be innovation in the UK Government's economic thinking from conventional free trade theory focused on reducing barriers to international trade to open markets and the removal of regulation impeding business activity cross-border, to whether the Government intends to pursue a more innovative trade strategy at home and in its contributions to international institutions, like the World Trade Organization (WTO). Some countries, like the USA, appear to be rejecting such conventional forms of economic capitalism as the fundamental underpinning of their trade policies in favour of a focus on national vulnerabilities and global challenges like climate change.¹³ If the UK retains a conventional focus on free trade this approach may have geopolitical implications for its ability to provide influential 'thought leadership' in line with its Global Britain strategy if countries like the USA have moved on to a different way of thinking about the structure and function of trade policy and regulation.

The article explores these ideas through the lens of agri-food trade for three reasons: first, during the UK's EU membership, UK agri-food trade was protected by high tariffs and significant non-market access restrictions, like food quality and safety standards, with the consequence that trading partners with significant agri-food export capability remain keen to secure reductions of these restrictions when negotiating trade agreements with the UK post-Brexit.¹⁴ How the UK responds to this pressure to open its agricultural markets indicates whether it intends to retain the EU's historic protection of the agri-food sector from global trade or not. Given the high levels of historic protection, any changes will be more readily discernible in agri-food trade than in other goods sectors where market access restrictions have been lower.

Second, during the UK's EU membership trade instruments like subsidies and standards, were used to deliver domestic policy objectives for food quality, food safety, farm animal welfare, and environmental protection including policies linked to mitigating climate change.¹⁵ These food quality, safety and animal welfare

¹¹ Heron and Siles-Brugge, (above n6).

¹² H Vandenbussche, W Connell and W Simons, 'Global Value Chains, Trade Shocks and Jobs: An Application to Brexit' (2022) 45(8) *World Economy* 2338.

¹³ IEL Blog, 'Katherine Tai on Market Access, Trade and Peace, and Trade and Prosperity/Inequality' 18 October 2022, <https://ielp.worldtradelaw.net/2022/10/katherine-tai-market-access-trade-peace-trade-prosperity.html>; A Appleton and P Macrory, 'Heterodox Views: What is Wrong with the WTO and How to Fix it' (2022) 56(5) *Journal of World Trade* 713.

¹⁴ eg Australia, see A Swinbank, 'Brexit, Ireland and the World Trade Organization: Possible Policy Options for a Future UK-Australia Agrifood Trade Agreement' (2018) 72(4) *Australia Journal of International Affairs*, 371.

¹⁵ Note the UK government has already signalled its intention to retain focus on these key policy areas, the question is whether it will rely on the same trade instruments to deliver those policy objectives: DEFRA, *National Food Strategy, Terms of Reference*, 29 July 2020, <https://www.gov.uk/government/publications/>

standards remain important to UK consumers.¹⁶ As Gasiorek notes, domestic policy objectives are an intrinsic part of a country's trade strategy, so identifying the degree to which the UK retains the EU's levels and mechanisms of protection will be indicative of potential changes in the UK's vision for the purpose of trade instruments.¹⁷ Third, the UK Government enshrined new specific Parliamentary scrutiny procedures covering particular aspects of agri-food trade in post-Brexit free trade agreements (FTA): a Government report now must be laid before the UK Parliament, drawing on the advice of the Trade and Agriculture Commission (statutory TAC), that sets out the extent to which the new FTA is 'consistent with the maintenance of the UK's levels of statutory levels of protection in relation to (a) human, animal or plant life or health; (b) animal welfare, and (c) the environment.'¹⁸ Further voluntary scrutiny of these free trade agreements by the House of Commons International Trade Committee and the House of Lords International Agreements Committee was agreed by the UK Government.¹⁹ These more detailed scrutiny procedures are ostensibly about how trade policy should be implemented at the domestic level but in fact potentially reveal deeper constitutional change in the UK.²⁰

This discussion is divided into three parts. Part 1 presents an overview of UK agri-food trade, highlighting the economic and strategic importance of the sector to the UK economy together with the broader social and environmental challenges. Part 2 focuses on the UK's 'new' post-Brexit FTAs, the scrutiny of those agreements, and the FTAs at an advance stage of negotiation, like UK accession to the Comprehensive and Progressive Trans-Pacific Partnership Agreement (CPTPP).²¹ It will examine too how the UK's use of trade instruments, like subsidies, to address domestic broader policy objectives, like food security, is changing. Part 2's analysis will address these issues through the lens of the three trajectories-

[developing-a-national-food-strategy-independent-review-2019/developing-a-national-food-strategy-independent-review-2019-terms-of-reference](#)

- ¹⁶ Which? *Are the UK's trade deals reflecting consumer priorities?* 6 December 2021, <https://www.which.co.uk/policy/euexit/8502/consumer-priorities>.
- ¹⁷ Gasiorek (above n10), on the issues at stake, see K Balcome, D Bradley, and I Janic Fraser, 'Consumer Preferences for Chlorine-Washed Chicken, Attitude to Brexit and Implications for Future Trade Agreements' (2022) 111 *Food Policy* 102327 and on the general direction of UK's domestic food policy post-Brexit see E Lydgate and C Anthony, 'Brexit, Food Law and the UK's Search for a Post-EU Identity' (2022) 85(5) *Modern Law Review* 1168.
- ¹⁸ s.42(2) Agriculture Act 2020; s.9 Trade Act 2021 (s9 is not in force at the time of writing).
- ¹⁹ House of Commons International Trade Committee, *UK Trade Negotiations: Scrutiny of Agreement with Australia*, HC 244, 29 June 2022, 5–8.
- ²⁰ D Janic, 'Regulatory Strings that Bind and the UK Parliament after Brexit' (2022) 20(5) *Comparative European Politics* 566; C Gammage and P Syrpis, 'Sovereignty's Fictions in the UK's Trade Agenda' (2022) 71(3) *International Comparative Law Quarterly* 563.
- ²¹ Note that the UK 'rolled over' many FTAs it benefited from whilst an EU member State, but scholarship retains the term, 'new' FTA for trade agreements negotiated from scratch post-Brexit, see L Dalingwater, 'Britain's Post Brexit Trade Deals: Taking Back Control or a Threat to Sovereignty?' (2021) 13 *Angles* 1.

geographic, domestic and governance – to show what these changes reveal about the UK’s agri-food trade strategy. Part 3 will conclude by identifying the wider implications of these changes and what they indicate about the UK’s vision for trade policy going forward.

UK AGRI-FOOD TRADE IN CONTEXT

The UK is a net-food importer and is reliant on agri-food trade through global supply chains for its food security.²² In 2021, accounting for the impacts of inflation, the value of UK exports in food, feed and drink was £20.2 billion, whilst the value of the same goods into the UK was £45.9 billion; meaning the UK has a current shortfall in agri-food trade (‘trade gap’) of £25.6 billion.²³ The EU remains the major market for UK agri-food trade, with imports into the UK from the Netherlands, France, the Irish Republic and Spain valued at £15.9 billion and exports from the UK to the Irish Republic, France and the Netherlands, valued at £7 billion.²⁴ The USA is the largest non-EU market for UK agri-food trade, with exports from the UK to the USA valued at £2 billion in 2021.²⁵

Whilst the trade gap narrowed in 2021, there is an overall trend towards an increase in agri-foods imported into the UK, including lightly processed foods, like meat and butter, highly processed foods, like jams, sweets and alcohol, and unprocessed foods, like fresh fruit and vegetables, cereals and eggs.²⁶

Despite this dependence on imports, the UK’s affluence enables it to purchase key agricultural inputs, for example fertilisers and ingredients for food processing, notably soya, on the global market and means the country is resilient to economic shocks that have the potential to global food supply chains, like the war in Ukraine.²⁷ At the same time, the UK’s agile private sector ensures that UK food security is not severely impacted by critical labour shortages in the agri-food sector, lack of capacity in warehousing, or disruption to transportation across borders, like those experienced during the Covid-19 pandemic.²⁸ It should be noted though that such shocks increase consumer prices, which in a time of rising costs of living, impacts vulnerable consumers.²⁹

²² DEFRA, *United Kingdom Food Security Report 2021*, 6.

²³ DEFRA, *Agriculture in the UK 2021*, 21 October 2022, 155.

²⁴ *Ibid.* 155.

²⁵ *Ibid.* 155.

²⁶ *Ibid.* 158.

²⁷ *United Kingdom Food Security Report 2021*, (above n22), 149.

²⁸ J Du and O Shepotylo, ‘UK Trade in the Time of Covid-19: A Review’ (2022) 45 *World Economy* 1409, 1414; note the existence of DEFRA’s Food Chain Liaison Group see K Parsons and D Barling, ‘England’s Food Policy Coordination and the Covid-19 Response’ (2022) 14 *Food Security* 1027.

²⁹ House of Commons Environment, Food and Rural Affairs Committee, *Food Security*, Oral Evidence by Andrew Opie, Director of Food and Sustainability British Retail Consortium, HC622, 8 November 2022, Q100.

Overall, the agri-food sector makes an important economic contribution to the UK economy: in 2020 the sector added over £115 billion, accounting for 6% of the UK's gross value added (GVA) and employed over 4 million people.³⁰ These statistics offer a positive economic picture and suggest that a focus on limiting UK reliance on imported agri-food and increasing UK exports of agri-food might be plausible ambition for UK trade policy. A more nuanced picture is revealed from the wider domestic policy context.³¹

Over 71% of all UK available land is given over to agriculture.³² This includes land used for crop production, grazing for livestock and for pigs reared outdoors. Farming's contribution to the UK's overall economy was only £11,222 million in 2021, representing 0.5% of the UK's wealth (Gross Domestic Product, GDP).³³ Approximately 90% of all farm businesses in the UK are designated as small and medium sized enterprises.³⁴ With some notable exceptions, farm business income in the UK is low, averaging out at £46,500 in 2020/21: approximately 9% of that income comes from farm subsidies previously provided under the EU's Common Agricultural Policy (CAP), although these subsidies are subject to stringent eligibility criteria and not all forms of farming receive support.³⁵

DEFRA reports that over 29% of all UK farms failed to make any profit in 2021.³⁶ Many farms cannot employ additional agricultural workers beyond the farmers themselves, which, in turn, has damaging economic and social impacts for the wider rural community.³⁷ The workforce is ageing too, with approximately 36% of all farmers above the UK retirement age of 65.³⁸ This combination of low farm incomes, an ageing workforce and global pressures on farm productivity from food price volatility and market access restrictions limiting access to export markets, to impacts of avian flu and rising energy and fertiliser prices, means many farmers are under financial pressure. It is not surprising to see a trend towards diversification on farm away from agricultural production towards a range of other activities, like warehousing, farm shops, renewable energy hosting, like wind turbines, as well as the provision of 'ecosystems services,' like

³⁰ The agri-food sector comprises farming, food manufacturing, food wholesaling, food retailing and food for non-residential catering: *Agriculture in the UK 2021*, (above n23), 163–64.

³¹ DEFRA and DIT, *UK Food and Drink International Action Plan 2016–2020*, 18 October 2016; *Made in the UK, Sold in the World*, (above n8).

³² *Agriculture in the UK 2021*, (above n23), 20 & 26. Note that not all agricultural production is food, see D Helm, 'Agriculture after Brexit' (2022) 38(1) *Oxford Review of Economic Policy* 112, 114–15.

³³ *Agriculture in the UK 2021*, (above n23), 39. (or 9% of the Gross Value Added (GVA), 163.

³⁴ NFU, 'How agriculture is changing: the importance of diversification,' 29 November 2019, <https://www.nfuonline.com/updates-and-information/how-agriculture-is-changing-the-importance-of-diversification/>

³⁵ *Agriculture in the UK 2021*, (above n23), 28. Note upland farming may be entitled to receive higher levels of subsidy: on the payments made to farmers, see A Swinbank, 'The UK's Agri-food trade policies one year on from Brexit' (2022) 21(2) *EuroChoices* 11.

³⁶ *Agriculture in the UK 2021*, *Ibid*, 26.

³⁷ *Ibid*, 30; *United Kingdom Food Security Report 2021* (above n22), 207–08.

³⁸ *Agriculture in the UK 2021*, *Ibid*, 26.

tourist accommodation and recreational opportunities, including guided walks across the land.³⁹

As Helm notes, ‘British agriculture is generally not environmentally benign.’⁴⁰ Fertiliser and pesticide use for crop production and manure from livestock wash off fields and adversely affect soils, habitats, and water quality in rivers and aquifers, although fertiliser and pesticide use has been declining in the UK since 2010.⁴¹ Freshwater use for farmland irrigation impacts negatively on rivers and aquifers dependent on the weather, with the record temperatures of June 2022 seeing particularly high demand for irrigation and consequent stress to UK fresh water resources.⁴²

Agriculture, particularly UK livestock production, contributes 11% of the UK’s greenhouse gas emissions (GHGs), the gases that drive climate change.⁴³ This makes the sector the largest generator of GHGs relative to the sector’s economic contribution to the UK’s GDP (0.5%) and a significant impediment to the UK achieving its net-zero GHG emissions targets by 2050.⁴⁴ It should be noted that the UK Government is committed to a minimum reduction of 37% in methane emissions from agriculture by 2050.⁴⁵

Going forward, the UK Government’s strategic objectives remain to develop an efficient, cost-effective food system that delivers safe, healthy and affordable food from a resilient, sustainable and humane food supply that restores and enhances the natural environment for everyone now and in the future.⁴⁶ The published role of trade in this vision seems to be limited to export opportunities for UK businesses and negotiating new free trade agreements. This is despite calls in the National Food Strategy for England that access to the UK be conditioned on imports meeting a set of ‘core standards’ including positive environmental impacts and animal welfare standards.⁴⁷ Part 2 considers whether it is possible to discern the emergence of an agri-food trade strategy that goes beyond exports and trade agreements and takes into account key domestic economic and wider policy priorities.

³⁹ Oral Evidence by Minette Batters President of the National Farmers Union, (above n29); NFU, ‘How Agriculture is Changing: The Importance of Diversification’ (above n34).

⁴⁰ Helm, (above n32), 116.

⁴¹ *Agriculture in the UK 2021*, (above n23), 127,130 & 134.

⁴² *Ibid*, 128. Note livestock consumption is also linked to negative dietary and health outcomes: Willet et al, ‘Food in the Anthropocene: The EAT -Lancet Commission on Healthy Diets from Sustainable Food Systems’ (2019) 393 *The Lancet* 447, 450. Lower red meat consumption is a key part of the UK Government’s food strategy: DEFRA, *Government Food Strategy*, June 2022, CP698, 23.

⁴³ ie carbon dioxide, methane and nitrous oxide. Willet et al, *Ibid*, 462.

⁴⁴ Helm (above n32), 116.

⁴⁵ s.1 Climate Act 2008; UK Government, *Net Zero Strategy: Build Back Greener*, October 2021, 26–27.

⁴⁶ DEFRA, *National Food Strategy, Terms of Reference*, (above n15).

⁴⁷ *Government Food Strategy*, (above n42), 28–30; H Dimbleby, *The National Food Strategy Part 1*, July 2020, Ch5, 74–75.

AN EMERGENT AGRI-FOOD TRADE STRATEGY?

A trade strategy for UK agri-food trade is starting to develop along three trajectories: geographic, domestic and governance. These three are not policy priorities, as 'priorities' suggests deliberative goal-setting and considered interconnection between them by the UK Government. Domestic and geopolitical turbulence following Brexit, including the impact of the Covid-19 pandemic, the Ukraine-Russia war, USA-China trade wars and changes in Conservative Party leadership, means that the development of a UK vision for post-Brexit agri-food trade is sporadic. The consequence is that, at best, there are directions of travel, or trajectories, around which the UK Government now appears to be building.⁴⁸ The discussion below outlines the geographic, domestic and governance trajectories in order to show what these changes reveal about the UK's agri-food trade strategy. The synergies and disconnections between them and wider implications are considered in Part 3.

(a) A Changing Geography

Following Brexit, the UK concluded over seventy trade agreements, signed three new ones that are awaiting ratification with Australia, New Zealand and the countries of Eastern and Southern Africa and is in the process of negotiating seven more, including UK accession to the CPTPP.⁴⁹ Whilst the number of trade agreements is significant and testament to the talent and resilience of UK trade negotiators, it is the new agreements with Australia and New Zealand and negotiations of those trade agreements coming close to a conclusion, rather than the 'rollover' trade agreements the UK benefited from while a EU member State, that indicate a new geographic trajectory for the UK Government's vision for the future of UK agri-food trade.⁵⁰ This new geographic trajectory takes two forms: first, the focus on non-EU countries with which the UK wishes now to strategically align itself, beginning with the so-called, 'Indo-Pacific tilt',⁵¹ and, second, the way the UK is moving away from historic assumptions that a trade agreement should be tied to each trading partner's territorial border, and towards more innovative ways of thinking about geography in trade agreements.

Initial ambitions for UK post-trade agreements centred around negotiations with the USA, Canada and Japan, Australia and New Zealand with the UK acting as the

⁴⁸ S Lowe, 'Trade after Brexit: what next for Global Britain' *Flint* 16 May 2022, <https://flint-global.com/trade-after-brexit-what-next-for-global-britain/> There is a clear strategy for post-Brexit regulation and for building relationship with countries to sustain supply chains see 'PM Speech on building a better future' 4 January 2023, <https://www.gov.uk/government/speeches/pm-speech-on-making-2023-the-first-year-of-a-new-and-better-future-4-january-2023> There is a degree of consensus too from the opposition parties around these issues: see 'Keir Starmer sets out Labour's 5-point plan to Make Brexit Work' 4 July 2022, <https://labour.org.uk/press/keir-starmer-sets-out-labours-5-point-plan-to-make-brexit-work/>

⁴⁹ Such agreements range in type and are not all FTAs. This point will be returned to below *infra*: <https://www.gov.uk/government/collections/the-uks-trade-agreements#trade-agreements-in-force>

⁵⁰ On the rollover of EU FTAs to the UK, see G Deepak, 'Brexit-The Legal Intricacies in Rolling Over EU PTAs' (2021) 52(3) *Georgetown Journal of International Law* 679.

⁵¹ HM Government, *Global Britain in a competitive age: the integrated review of security, defence development and foreign policy*, March 2021, CP403, 6.

central pivot between the Atlantic and Indo-Pacific regions.⁵² The failure of Donald Trump to secure another term as President of the USA in 2020 led to a reprioritising of USA-UK negotiations by the new Biden administration and resulted in the UK concentrating its efforts instead on the Indo-Pacific region.⁵³

In the strategic cases for the UK-Australia and UK-New Zealand FTAs, the UK Government estimated UK exports to Australia could increase by £900 million and both FTAs would be a crucial step towards UK accession to the Pacific-rim trade agreement, the CPTPP, of which Australia and New Zealand are members.⁵⁴ The CPTPP accession is more ambitious because the UK will be joining 'one of the largest free trade agreements in the world; worth £9 trillion in GDP in 2019, spanning Asia Pacific and the Americas.'⁵⁵ The UK Department of International Trade (DIT) estimates over 99.9% of UK exports, including whisky, will benefit from lower tariffs and UK farmers can take advantage of a projected 25% increase in demand for meat products from CPTPP countries by 2030 following UK accession.⁵⁶ The CPTPP is broader in policy scope too than all other FTAs the UK could conclude in the Indo-Pacific region, encompassing non-trade issues pertaining to agri-food, like environmental protection.⁵⁷ Early policy documents from DIT and the UK's advisory Board of Trade, seem to work from the assumption that a FTA's function is to generate export-led growth by creating new trading opportunities for UK businesses rather than on pursuing UK trade objectives in the light of its domestic policy priorities.⁵⁸ Accession to the CPTPP operationalises this ambition and sets out the start of a clear geographic trajectory for trade in terms of the countries with which the UK intends to trade in the future.⁵⁹

Another aspect to the geographic trajectory of the UK's emerging trade strategy is its innovative approach to territoriality in the new post-Brexit trade agreements beyond conventional legal treatment of FTAs in the WTO rules.⁶⁰ This new approach stems

52 DIT, 'Chatham House speech: Liz Truss sets out vision for values-driven free trade' 29 October 2020, <https://www.gov.uk/government/speeches/chatham-house-speech-liz-truss-sets-out-vision-for-values-driven-free-trade>

53 P Crerar, 'No US Trade Deal on the Horizon, Admits Truss as she Flies in for Biden Meeting' *The Guardian* (London, 20 September 2022), <https://www.theguardian.com/politics/2022/sep/20/no-us-trade-deal-on-the-horizon-admits-truss-as-she-flies-in-for-biden-meeting>

54 DIT, *UK-Australia Free Trade Agreement: The UK's Strategic Approach* June 2020, 5. Note the statistics for growth in UK-New Zealand trade are not cited by DIT, see DIT, *UK-New Zealand Free Trade Agreement: The UK's Strategic Approach* June 2020, 5.

55 DIT, *UK Accession to CPTPP: the UK's Strategic Approach*, June 2021, 4.

56 *Ibid.*

57 Ch 20 CPTPP, *Ibid.*, 6.

58 *Made in the UK, Sold in the World* (above n8); Board of Trade, *Global Britain, Local Jobs*, March 2021, 17 & 28.

59 The negotiations with the USA are on-going. There is further discussion of an agreement with the Gulf Cooperation although this agreement does not involve agriculture. FTA negotiations with India are at an early stage and fall within the 'Indo-Pacific tilt': D Webb, *Progress on UK free trade agreements*, House of Commons Library, 19 December 2022 No9314.

60 Note the definition of a free trade agreement for goods in Article XXIV:8(b) GATT where it envisages 'elimination of customs duties and other restrictive regulations of commerce' on substantially all

first from the political expediency of finding innovative solutions to trade across the Irish border between Northern Ireland and the Republic of Ireland (the legal border between the UK and the EU member States) to maintain peace and security in line with the Belfast Agreement.⁶¹

Whilst Northern Ireland remains within the customs territory of the UK, thus enabling it to benefit from any new trade agreements concluded by the UK with non-EU countries, any customs duties due to be paid on goods at risk of being exported across the Northern Irish border into the EU are payable and any customs checks are to be undertaken *before* the goods leave the UK—that is *within* the customs territory and territorial border of the UK. Northern Ireland is also required to remain aligned to the EU rules in terms of certain product requirements, especially those for agri-food.⁶² These arrangements were designed to ensure no 'hard border' on the island of Ireland by moving the customs border from the territorial borders between the UK and the EU member States into the Irish Sea. Implementation is problematic especially for agri-food quality and safety checks and talks to revise the Protocol are ongoing at the time of writing.⁶³

The UK is innovating too in terms of where the power lies *within* a state to negotiate a trade agreement. For example, in 2022 the UK entered into Memorandums of Understanding (MOU) with three individual USA States, namely, Indiana, North Carolina and South Carolina.⁶⁴ USA FTAs are negotiated at federal level, with all the positive impacts accruing to the entire geographic territory of the USA and benefiting every individual State; individual USA States do not have the power to enter into full FTAs.⁶⁵ The UK's MOUs are not legally enforceable therefore, but they signal clear intentions for enhancing cooperation between the individual State and the UK in areas like agriculture and agbioscience (Indiana)⁶⁶ and climate change mitigation, especially the elimination of GHG emissions (North Carolina).⁶⁷

trade *between* 'two or more customs territories' rather than *within* customs territories like the UK-EU solution.

⁶¹ ie the Good Friday Agreement. *The Belfast Agreement: An Agreement Reached at the Multi-Party Talks on Northern Ireland*, April 1998, CM3883.

⁶² Articles 4 & 5 Agreement on the withdrawal of the United Kingdom and Northern Ireland and the European Union and European Atomic Energy Community, OJL29(31.1.2020) 7.

⁶³ J Marshall and J Sargeant, 'Northern Ireland Protocol: Ongoing UK-EU Disagreements' Institute for Government, 26 January 2022, <https://www.instituteforgovernment.org.uk/explainers/northern-ireland-protocol-disagreements>.

⁶⁴ DIT, *Memorandum of Understanding on economic cooperation and trade relations between Indiana and the United Kingdom*, 27 May 2022; DIT, *Memorandum of Understanding on economic cooperation and trade relations between North Carolina and the United Kingdom* 20 July 2022; DIT, *Memorandum of Understanding on economic cooperation and trade relations between South Carolina and the United Kingdom*, 8 December 2022.

⁶⁵ CD Cimino-Isaacs, *US Trade Policy Primer: Frequently Asked Questions*, United States Congressional Research Service, R45148, 4 February 2021, 26–31.

⁶⁶ Section 3.4 *Memorandum of Understanding on economic cooperation and trade relations between Indiana and the United Kingdom* (above n64).

⁶⁷ Para 3 Preamble, *Memorandum of Understanding on economic cooperation and trade relations between North Carolina and the United Kingdom* (above n64).

Each of these MOUs stress the importance of ‘prompting closer cooperation’ and the need to ‘work cooperatively within the boundaries of existing laws and treaties in their respective jurisdictions on goals and issues set forth’ in the MOU.⁶⁸ The UK Government describes them as ‘unique to our relationship with each State’ and ‘separate to the work the UK does with the US at federal level.’⁶⁹ Yet, in a press release announcing the conclusion of the MOU with Indiana, the Government makes clear reference to it being a ‘milestone in trade relations with the US’ and representing ‘Global Britain in action’.⁷⁰ These statements suggest that the UK regards these MOUs as a mechanism to push forward trade arrangements with the USA while a full FTA remains political unfeasible.

Klaussen argues that the Biden administration favours concluding MOUs, or ‘mini trade-deals’, over full FTAs at present because it enables the US to push forward American commercial objectives quickly rather than negotiating numerous interconnected issues usually found in a FTA.⁷¹ She raises concerns that despite the speedy conclusion of such deals there is potential for them to slip ‘below the radar of ... ordinary accountability and monitoring regimes.’⁷² It should be noted that Klaussen’s analysis focuses on US mini trade-deals covering specific issues that create *binding* obligations in trade law, like, for example, packing and labelling requirements for tomatoes imported into the USA, rather than on the kind of non-binding MOU entered into by the UK and the individual USA States.⁷³ Whether the UK’s USA State-level MOUs will drive forward the UK’s ambition to conclude a full FTA with the USA and suffer from the same scrutiny deficit remains to be seen. The UK Secretary of State for Trade, Kemi Baddenoach, notified the UK-South Carolina MOU to the House of Commons International Trade Committee and the House of Lords International Agreements Committee in December 2022, although, at the time of writing, there has been no further public scrutiny.⁷⁴

(b) Domestic Innovation

In July 2020, the then Secretary of State for International Trade, Liz Truss, set up the first non-statutory UK Trade and Agriculture Commission (non-statutory TAC), to consider ‘the policies that government should adopt in free trade agreements to

⁶⁸ eg Para 8 Preamble, *Memorandum of Understanding on economic cooperation and trade relations between North Carolina and the United Kingdom* (above n64).

⁶⁹ DIT, ‘UK MOUs with US states on economic cooperation and trade relations’ December 2022, <https://www.gov.uk/government/collections/uk-mous-with-us-states-on-economic-cooperation-and-trade-relations>

⁷⁰ DIT Press Release, ‘UK signs first US state-level agreement with Indiana’ 27 May 2022, <https://www.gov.uk/government/news/uk-signs-first-us-state-level-agreement-with-indiana>

⁷¹ K Klaussen, ‘Trade’s Mini-Deals’ (2022) 62 *Vanderbilt Journal of International Law* 315, 315.

⁷² Klaussen, *Ibid.*, 315.

⁷³ Klaussen, *Ibid.*, 318. Note the UK is already making use of this kind of issue-specific MOU see *UK-Switzerland: Agreement on Mutual Recognition to Conformity Assessment* [CS Switzerland No2/2022] 17 November 2022, CP670; presented to UK Parliament, November 2022.

⁷⁴ See House of Commons International Trade Committee, ‘Correspondence from the Secretary of State relating to the UK-South-Carolina Memorandum of Understanding’ dated 6 December 2022, published 14 December 2022.

secure opportunities for UK farmers; ensure the sector remains competitive; and make sure that animal welfare and environmental standards in food production are not undermined.⁷⁵

The non-statutory TAC interpreted this to mean that it should recommend ways to integrate the Government's international policies to negotiate FTAs with new trading partners with UK agri-food domestic policy to ensure consistency between the two and 'advance the interests of British farmers, food producers and consumers.'⁷⁶ The TAC did not recommend a particular ordering for such policies' implementation but it did advocate continued dialogue between the government departments responsible for trade (DIT) and domestic agri-food policy (Department for the Environment, Food and Rural Affairs, DEFRA) to guarantee alignment between the policies to maximise effectiveness and coherence.⁷⁷

Rather than following the TAC's recommendation, the place of trade within domestic agri-food is emerging sporadically from each of the UK's new post-Brexit FTAs, the farm support scheme (subsidies) and the Government's response to the National Food Strategy.⁷⁸

First, the UK's new FTAs with Australia and New Zealand mark a significant shift away from the previous pre-Brexit strategy adopted by the EU that created export opportunities for the EU agri-business while insulating EU markets from the vagaries of global price volatility through high import tariffs and customs checks for food quality, food safety and animal welfare.⁷⁹ In contrast, the UK's post-Brexit FTAs create new export opportunities for UK agribusiness *and* fully open the UK market to agri-food imports that meet the requisite existing food quality, food safety and farmed animal welfare requirements.⁸⁰ The speed of this transition from protection to free market is dramatic.

For example, under the UK-Australia FTA, all UK tariffs on imports of Australian agri-food products (excluding pork, poultry, some eggs products and long-grained rice) will be set to zero by the tenth year following the entry into force of the FTA, whereas under the EU the UK's average global agri-food import tariff was 8.3%.⁸¹ Whilst some

⁷⁵ DIT, *Trade and Agriculture Commission: Terms of Reference*, 12 March 2021, para 2.

⁷⁶ Trade and Agriculture Commission *Final Report* March 2021, 3, 49, 50.

⁷⁷ Note DEFRA feeds into the DIT's trade strategy: see House of Commons Environment, Food and Rural Affairs Committee, *Oral Evidence: Australia FTA: Food and Agriculture* HC23, 11 May 2022, evidence from Minister for International Trade, Penny Mordaunt and Minister for Environment, Food and Rural Affairs, Victoria Prentis, responses to Q404.

⁷⁸ Agricultural policy in the UK is devolved, whereas trade is not. eg see Agriculture Act 2020 c. 21 (covering England); on food strategy for England see *Government Food Strategy*, (above n42). The National Food Strategy covers England only, but Dumbleby notes the close ties between the food systems of England, Scotland, Wales and Northern Ireland, *National Food Strategy: Part 1* (above n47), 2.

⁷⁹ See Swinbank (above n14) on the position for agri-food protection pre-Brexit.

⁸⁰ See Trade (Australia and New Zealand) Bill, second reading, House of Lords, presentation of the Bill into the House, Lord Johnson of Lainston, Minister of State, Department of International Trade, *Hansard*, HL Deb vol826, col1234, 9 January 2023.

⁸¹ For the staged reduction of UK tariffs on Australian agri-food imports see UK-Australia FTA, Annex 2B-Part 2B-1(6)(a)-(h); House of Commons International Trade Committee, *UK trade negotiations: Agreement with Australia*, HC 117, 6 July 2022, 29.

UK primary agri-food production, like beef, is protected for a limited period from a phase-in of full tariff liberalisation by tariff rate quotas (lower tariff for fixed quantity of imports), the volumes of Australian beef permitted to be imported into the UK at this lower tariff quota rate will rise from 3,761 tonnes to 35,000 tonnes in the first year following the FTA's entry into force, an estimated rise of 931% on pre-FTA levels.⁸² Product-specific safeguards on beef and sheep-meat only start in the 11th year after entry into force of the FTA after protection of tariff rate quotas on these products has ended.⁸³

As the National Farmers Union argued in its evidence to the House of Commons International Trade Committee, unlike the UK, Australia is a net-food exporter with lower production costs than UK farmers so Australian farmers are more likely to take advantage of the new opportunities than UK agribusiness, which does not see Australia as a potential growth market for UK agri-food exports.⁸⁴ This potential impact on the UK farmers is acknowledged by the UK Government: in its UK-Australia FTA Impact Assessment, it noted there would be a likely long-term decrease in annual GVA of £94 million for farming in the UK and a decrease of £225 million for the UK processed and semi-processed agri-food sector.⁸⁵ The Government's observation that this decline would be off-set by growth in other sectors like manufacturing suggests an intention to rebalance all goods sectors and reject agri-food exceptionalism seen under the EU.⁸⁶ This new liberalisation strategy extends into the UK-New Zealand FTA too. As the House of Lords International Agreements Committee states in its scrutiny report:

[a]lthough the Government has not said so explicitly, it appears to have made a choice to prioritise trade liberalisation over retaining some areas of protection. This unconditional approach to agricultural tariff liberalisation (albeit phased) is similar to that followed in the Australia FTA. We note that the recently agreed EU-New Zealand FTA provides a similar level of market access to New Zealand in the UK-New Zealand FTA. However, the EU's agreement maintains greater protections for its agricultural producers than the UK-New Zealand FTA does for UK agricultural producers ... while the UK will allow up to 60,000 tonnes of New Zealand beef into the UK in year 15 of the agreement, and unlimited imports afterwards, the EU will cap imports at 10,000 tonnes.⁸⁷

⁸² Parliament of the Commonwealth of Australia, *Report 201: Free Trade Agreement between Australia and the United Kingdom of Great Britain and Northern Ireland* Joint Standing Committee on Treaties, November 2022, Canberra, paras 3.22–3.25.

⁸³ Only for beef and sheep-meat TRQs: see UK-Australia Free Trade Agreement, Annex 2-B Part 2B-2-2 Product Treatment TRQ1 (beef) para 4 and TRQ2 (sheep -meat), paras 4–5. For similar liberalisation impacts of the UK-New Zealand FTA see House of Lords International Agreements Committee, *Scrutiny of international agreements: UK-New Zealand free trade agreement*, 4 November 2022, HL Paper 86, 7–10.

⁸⁴ *UK trade negotiations: Agreement with Australia* (above n54), 28.

⁸⁵ DIT, *Impact Assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, 6,29,30 & 68.

⁸⁶ For the EU approach to agriculture see generally MN Cardwell, *European Model of Agriculture* (2004) OUP.

⁸⁷ House of Lords International Agreements Committee, *Scrutiny of international agreements: UK-New Zealand free trade agreement*, (above n83), para 19.

UK accession to the CPTPP offers the opportunity for increased agri-food exports to the Indo-Pacific countries.⁸⁸ Although the Government stressed in its strategic approach to accession negotiations that such access would not be at the expense of compromising on the UK's existing high food, environmental and farmed animal welfare standards, there is no further detail on how it intends to fulfil that commitment.⁸⁹ As Morita-Jaeger and Larbalestier argue, the CPTPP does not offer the same protections of food, environmental and animal welfare standards and is much more prescriptive about risk management, risk communication and the use of scientific evidence when justifying import restrictions on agri-foods from other CPTPP members.⁹⁰ In particular, Article 7.9 CPTPP states that CPTPP members must ensure that any sanitary and phytosanitary measures (SPS) are 'based on documented and objective scientific evidence' so members cannot impose SPS import restrictions on a precautionary basis where scientific evidence is insufficient.

Despite calls by the non-statutory TAC and the National Food Strategy for England that the UK set out 'core food standards' that could be singled out for differential (higher) tariff treatment in FTAs, the Government has not followed this recommendation.⁹¹ If the UK follows the same full liberalisation approach as it adopted in the new Australia and New Zealand FTAs and does not find legal mechanisms within CPTPP membership to maintain its existing agri-food and environmental standards, then this signals a significant change in UK values.⁹²

The UK Government is using trade instruments, namely subsidies, in new ways post-Brexit too to deliver key domestic policy objectives, like food security and environmental protection. In 2018, it launched a consultation into the future of the agri-food sector in England.⁹³ This consultation envisioned a 'once-in-a-generation opportunity to reform agriculture' and to reject the EU's system of land-based farm support payments (subsidies) under the CAP which the Government believed was unnecessarily bureaucratic, disproportionately favoured large land-owners and limited the positive impacts on the environment and food security.⁹⁴ Instead, a new Environment Land Management scheme (ELMS) was proposed to pay farmers 'public money for public goods.'⁹⁵ 'Public goods' eligible for financial support include farmed animal welfare, public access to the land, rural resilience and farm productivity going beyond existing UK baseline standards.⁹⁶ It is believed that linking payments to these higher standards

⁸⁸ *UK Accession to CPTPP: the UK's Strategic Approach*, (above, n55).

⁸⁹ *Ibid*, para 3.2.6.

⁹⁰ M Morita-Jaeger and G Larbalestier, 'Written Evidence from the UK Trade Policy Observatory to International Trade Committee Inquiry for the CPTPP' (TPP0021), September 2022, para 28(b).

⁹¹ Trade and Agriculture Commission, *Final Report*, March 2021, recommendation 8; National Food Strategy Part 1 (above n47), recommendation 5.

⁹² E Lydgate and M Gasiorek, 'CPTPP and agri-food regulation: Crossing the EU-exit rubicon?' (2021) UKTPO Briefing Paper 60, July 2021, 4–5.

⁹³ Note agriculture is a devolved competence: DEFRA, *Health and Harmony: the future for food, farming and the environment in a Green Brexit*, February 2018, Cm9577, 5.

⁹⁴ *Ibid*, 6.

⁹⁵ *Ibid*, 6.

would help build a distinct British brand attractive to consumers at home and overseas.⁹⁷

Under the Agriculture Act 2020, the existing system of CAP farm support payments will be phased out over a seven-year transition period starting in January 2021.⁹⁸ Details of the new ELM scheme emerged in November 2020.⁹⁹ ELMS will consist of three parts: Tier 1 is the Sustainable Farming Incentive (SFI) ‘a universal scheme open to all farmers’ designed to encourage farmers to manage their land in a more sustainable way. The SFI is intended to be the largest scheme with farmers choosing the most appropriate scheme for their land from a range of ‘packages ‘with the help of farm consultants paid for by the farmer’.¹⁰⁰ Tier 2 is Local Nature Recovery, targeting payments at specific local environmental issues; and Tier 3 is Landscape Recovery, a national scheme focused more on rewilding existing farmed land.¹⁰¹ SFI rollout was scheduled to begin in 2022, with full implementation of Tiers 2 and 3 expected in 2024.¹⁰²

The Government acknowledges that this shift away from the EU system of farm support payments to ELMS ‘will be a big change for some farmers’ and that its ultimate aim was for farmers to be ‘running sustainable businesses *that do not need to rely on public subsidy*’ at all.¹⁰³ The House of Commons Environment, Food and Rural Affairs Committee found that the detail emerging suggests there is still uncertainty regarding how the transition will affect farming in England with some farmers leaving the sector, going out of business, particularly in upland farms, or seeking other forms of income that are detrimental to the environment.¹⁰⁴ Such an approach suggests a fundamental shift in the way trade instruments like subsidies are used domestically. Whilst the Government sets out how ELMS will fit with other post-Brexit policies, like the National Food Strategy, the net-zero climate change strategy and the environment plan, it does not address possible impacts and interconnections with trade.¹⁰⁵

⁹⁶ *Ibid*, 8; MN Cardwell and F Smith, ‘Charting a New Course for the UK Agri-Food Sector-*Health and Harmony: The Future for Food, Farming and the Environment in a Green Brexit*’ (2018) 89(3) *Political Quarterly* 497, 497–98.

⁹⁷ *Health and Harmony, Ibid*, 10.

⁹⁸ s8 (end of transition period) Agriculture Act 2020 c21.

⁹⁹ DEFRA, *The Path to Sustainable Farming: An Agricultural Transition Plan 2021–2024* November 2020.

¹⁰⁰ *Ibid*, 32.

¹⁰¹ *Ibid*, 32.

¹⁰² *Ibid*, 10.

¹⁰³ *Ibid*, 6–7 (emphasis added).

¹⁰⁴ House of Commons Environment, Food and Rural Affairs Committee, *Environmental Land Management and the agricultural transition*, HC 78, 21 October 2021, 8, 10 &11; House of Commons Environment, Food and Rural Affairs Committee, Oral evidence by Mark Spencer Minister for Food, DEFRA and Janet Hughes, Programme Director, Future Farming and Countryside Programme, to *Environmental Land Management Scheme: Progress Update*, HC 621, 15 November 2022.

¹⁰⁵ *The Path to Sustainable Farming* (above n99), 16–18. Note that the UK government also created a new Trade Remedies Authority (TRA) to conduct trade defence investigations and impose anti-dumping or countervailing measures under the authority of Schedules 4 and 5 of the Taxation (Cross-border Trade) Act 2018 (c22), the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (SI No

(c) Shifting Governance

A new governance trajectory is starting to emerge too for agri-food trade. As noted above, new legal structures in FTAs and domestic legislation are being negotiated and implemented to open UK agri-food markets, potentially change how risk is addressed in existing UK food safety standards, and provide new forms of farm support payments.¹⁰⁶ Yet, there are other aspects to this emerging governance trajectory that have wider constitutional significance and suggest a fundamental shift of power away from the UK Parliament towards the Executive.

Parliamentary scrutiny of the UK's new post-Brexit trade agreements takes place under the treaty ratification process set out in the Constitutional Reform and Governance Act 2010 (CRaG).¹⁰⁷ The FTA must be laid before both the House of Commons and the House of Lords for 21 days when the houses are 'sitting'.¹⁰⁸ If either House objects to the ratification during this time, then the Government must lay a statement stating why the FTA should be ratified.¹⁰⁹ Following a further period of 21 sitting days, if there is an objection, then the Government must repeat the process.¹¹⁰ In addition, the Government must also lay a report before Parliament under s 42(2) of the Agriculture Act 2020 (s42 report) setting out whether the FTA is 'consistent with the maintenance of UK levels of statutory protection in relation to (a) human, animal or plant life or health; (b) animal welfare, and (c) the environment.' To assist in preparing this report, the Government can take advice from 'any person the Secretary of State considers to be independent and to have relevant expertise.'¹¹¹ The Trade Act 2021, Part 3 provides for the creation of a TAC (statutory TAC) to offer such advice, although Part 3 has yet to be brought into force.¹¹²

For the UK-Australia and UK-New Zealand FTAs the Government prepared the s 42 reports for Parliament relying on a combination of advice from (i) an interim non-statutory TAC (interim TAC) for an assessment of the animal, plant life or health, animal welfare and environmental aspects of those FTAs, and (ii) the Food Standards Agency (FSA) and Food Standards Scotland (FSS) for the food safety aspects of

450) and the Trade Remedies (Increase in Imports Causing Serious Injuries to UK Producers) (EU Exit) Regulations 2019 (SI No 449). Whether the TRA will demonstrate the same neoliberal shift as seen in ELMs is unclear as staffing and other administrative challenges mean that there have been no *de novo* cases before the TRA and it is still considering whether trade defence measures put in place during the UK's EU membership should be retained: Trade Remedies Authority, *The Trade Remedies Authority: our first year of operation June 2021-June 2022*, (2022), 2.

¹⁰⁶ Namely, the UK-Australia and UK-New Zealand FTAs; the CPTPP; and the Agriculture Act 2020: See Part 2(a) and (b) discussion above *infra*.

¹⁰⁷ c25, ss20–25. See generally J Barrett, 'The United Kingdom and Parliamentary Scrutiny of Treaties: Recent Reforms' (2011) 60(1) *International and Comparative Law Quarterly* 225.

¹⁰⁸ s.20(9) CRaG.

¹⁰⁹ s.20(4) CRaG.

¹¹⁰ ss.20(4)&(5) CRaG. Note the government can avoid the s.20 procedure in exceptional circumstances, s22. CRaG.

¹¹¹ s.42(4) Agriculture Act.

¹¹² s18 Trade Act 2021.

human health under the power invested in the Secretary of State in s 42(4) of the Agriculture Act 2020.¹¹³

The members of the interim TAC were appointed through an open appointment process, but the decision to draw information from the FSA and FSS, rather than open up the process formally to wider civil society input was not debated.¹¹⁴ The FSA invited some unnamed organisations to input into their scrutiny reports for the Australia and New Zealand FTAs although the FSA has made it clear it is keen to have a more open process for input into future reports.¹¹⁵ Parliament is aware that the Government is drawing on advice from the statutory independent FSA and FSS, but there are also ‘a range of stakeholder and expert groups that feed into [government] policy on trade’ that are not subject to direct Parliament scrutiny.¹¹⁶

In addition to the formal scrutiny of FTAs under CRAg, the Government agreed to voluntary scrutiny by the House of Lords International Agreements Committee and the House of Commons International Trade Committee under which it will allow those Committees timely access to the new FTAs and a three-month period ‘between publication of the FTA and its laying under CRAg’ to undertake their own assessments.¹¹⁷ Despite this promise of rigorous Parliamentary oversight, the House of Commons International Trade Committee highlighted the patchy development of the scrutiny process, the failure to allocate Parliamentary time to debate the Committee’s reports on the FTAs, and that there is no provision for a Parliamentary mandate for trade negotiations during an informal exchange of letters between the Committee and the Secretary of State.¹¹⁸

The interim TAC stated in its s 42 reports that the UK’s FTAs with Australia and New Zealand do not undermine existing UK statutory standards for animal or plant life or health, animal welfare or environmental protection.¹¹⁹ Nevertheless, a change in UK

¹¹³ Note the first, non-statutory TAC’s terms of reference were more comprehensive (above n75); s42(4) Agriculture Act 2020. eg DIT, *Report pursuant to Section 42 of the Agriculture Act 2020, UK-New Zealand Free Trade Agreement*, July 2022, 3

¹¹⁴ DIT, ‘Appointments to Trade and Agriculture Commission (TAC): call for expressions of interest’ June 2021, <https://www.gov.uk/government/publications/appointments-to-trade-and-agriculture-commission-tac-call-for-expressions-of-interest>; the FSA and FSS ‘invited submissions on food safety statutory protections from interested parties, including those who represent the interests of consumers’ but the report does not indicate who those representatives were: FSA, FSS, *Joint Section 42 advice-UK-Australia Free Trade Agreement*, last updated, 4 January 2023, para 3.1.

¹¹⁵ S Jebb, ‘Chair’s stakeholder update-How the FSA is supporting Free Trade Agreements’ 4 August 2022, <https://food.blog.gov.uk/2022/08/04/chairs-stakeholder-update-how-the-fsa-is-supporting-free-trade-agreements/>

¹¹⁶ Victoria Prentis, ‘The Protection of UK Food Standards’ *Hansard*, HC Deb. vol677, col. 1428, 24 June 2020.

¹¹⁷ Exchange of letters between Lord Grimstone and Baroness Hayter, 19 May 2022 <https://committees.parliament.uk/publications/22312/documents/164995/default/>

¹¹⁸ House of Commons International Trade Committee, *UK trade negotiations: Parliamentary scrutiny of free trade agreements*, HC 815, 18 October 2022, 3.

¹¹⁹ DIT, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP633, April 2022; DIT, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-New Zealand Free Trade Agreement*, CP 709, June 2022.

standards in the future cannot be excluded completely. The Retained EU Law (Revocation and Reform) Bill 2022 is before the UK Parliament at the time of writing, with proposals to revoke the application in the UK of much of the remaining EU law by the end of 2023. Some regulatory bodies in the devolved nations and civil society organisations have raised concerns that key EU environmental and food protection standards may be caught in this 'bonfire of regulation' by accident.¹²⁰ It is not yet clear whether the Government intends to carry this legislation forward.¹²¹

As noted above, the UK's agri-food strategy is emerging along a domestic trajectory too, with fundamental changes to the way trade measures (subsidies) are used to support farmers to deliver non-trade objectives, like net-zero GHG emissions set out in the Agriculture Act 2020.¹²² This is a fundamental shift away from the farm support schemes under the EU's CAP.¹²³

Whilst the Agriculture Act 2020 was subject to Parliamentary scrutiny, the power to design all aspects of the scheme is left to the Secretary of State and the scheme will be implemented through delegated legislation that is not scrutinised by Parliament in sufficient detail.¹²⁴ As the House of Commons Environment, Food and Rural Affairs Committee (EFRA) stated in its report on the scrutiny of the Act, given the extent and speed of change to the UK's farm support system, a degree of flexibility for implementation for the Government was to be expected. The Committee expressed its concern, however, 'that the imbalance of duties and powers in the Bill, combined with the significant delegation of powers, does not provide sufficient clarity about how the new system for agricultural support will function and how the delegated powers will be used.'¹²⁵ The Committee felt it had been offered limited opportunity for 'pre-legislative scrutiny' of the Bill, suggesting that an 'unsatisfactory precedent' was being created.¹²⁶

CONCLUSIONS

The UK Government is starting to publish strategies indicating how it intends to deliver 'Global Britain' in specific policy areas, like the environment.¹²⁷ It has not done the

¹²⁰ eg Food Standards Scotland, 'FSS warns of significant risks to consumers from the Retained EU Law Bill', 23 September 2022 <https://www.foodstandards.gov.scot/news-and-alerts/fss-warns-of-significant-risks-to-consumers-from-the-retained-eu-law-bill/>; J Edwards, 'Large parts of civil society are united in opposition to the Retained EU Law Bill- it's time the UK government listened' *The Wildlife Trusts Blog*, 28 November 2022 <https://www.wildlifetrusts.org/blog/joan-edwards/retained-eu-law-bill-its-time>

¹²¹ B Riley-Smith, 'Rishi Sunak's plan to ditch EU laws facing Lords delay' *The Telegraph* 2 January 2023 <https://www.telegraph.co.uk/politics/2023/01/02/rishi-sunaks-plan-ditch-eu-laws-facing-lords-delays/>

¹²² See discussion section 2(b) *infra*.

¹²³ *The Path to Sustainable Farming*, (above n99).

¹²⁴ ss9–18 Agriculture Act 2020.

¹²⁵ House of Commons, Environment, Food and Rural Affairs Committee, *Scrutiny of the Agriculture Bill: Government Response*, HC273, 1 April 2020, 2.

¹²⁶ *Ibid.*, 1.

¹²⁷ *Net Zero Strategy: Build Back Greener* (above n45).

same for trade. This is a surprising omission especially as agri-food trade in particular was an important issue for voters in the Brexit campaign.¹²⁸ Despite the omission, this article argues that it is possible to identify three emerging directions of travel or ‘trajectories’ – geographic, domestic and governance – that together provide the contours of a nascent vision for UK agri-food trade post-Brexit.

The geographic trajectory reveals the UK Government pivoting away from the EU as the UK’s major trading partner and focusing instead on countries in the Indo-Pacific region. Early FTAs with Australia and New Zealand and negotiations to join the CPTPP show this geographic shift and indicate a deeper change in the way the UK agri-food sector is treated in FTAs. Agri-food exceptionalism experienced under the EU, where agri-food trade was singled out for higher market access protection will cease, and neo-liberal trade policies for all sectors including agri-food trade will be adopted. There are hints too at an erosion of existing standards that embedded UK values for food, the environment and farmed animal welfare as the price of UK accession to the CPTPP. Whether this change is intentional is unclear, but it does suggest a potential shift in the UK Government’s attitude towards risk regulation and a change to what are regarded as UK values. This interpretation would seem to be borne out by concerns raised about the effects of the Retained EU Law (Revocation and Reform) Bill 2022.¹²⁹

The domestic trajectory mirrors this strong tilt towards neoliberal agri-food trade policies seen in the geographic trajectory. EU farm support payments (subsidies) under the EU’s CAP are being removed in favour of ‘public money for public goods’ paid under the new ELMS for farmers producing beyond minimum levels of environmental protection. Some Government rhetoric goes so far as to redefine the ‘successful farmer’ as one who does not rely on subsidies at all,¹³⁰ thereby equating removal of farm subsidies with the post-Brexit values of ‘independence and freedom from constraint.’¹³¹

The domestic trajectory also stresses the power of trade instruments, like subsidies, to deliver domestic policy objectives, like environmental protection. This trajectory contrasts with the geographic trajectory, where there has been unwillingness to identify such ‘core standards’ to condition access to UK agri-food markets in new FTAs.¹³² This bifurcation between the geographic and domestic trajectories means there is a potential for the domestic agri-food sector to be held to higher standards than the equivalent standards for imported goods. The Government could bring together these geographic and domestic trajectories through the food strategies of

¹²⁸ D May et al, ‘Understanding UK farmers’ Brexit Voting Decision: A Behavioural Approach’ (2021) 81 *Journal of Rural Studies* 281, 286.

¹²⁹ J Edwards, ‘Large Parts of Civil Society are United in Opposition to the Retained EU Law Bill- it’s Time the UK Government Listened’ *The Wildlife Trusts Blog*, 28 November 2022 <https://www.wildlifetrusts.org/blog/joan-edwards/retained-eu-law-bill-its-time>

¹³⁰ *The Path to Sustainable Farming*, (above n99) 7.

¹³¹ Gammage and Syrpis, (above n20), 564.

¹³² *UK trade negotiations: Parliamentary scrutiny of free trade agreements*, (above n118), 7–8, and note contradictory evidence of such an approach by the Institute for Economic Affairs, *Ibid.* 8.

England and the devolved nations. Yet, the food strategy for England remains embryonic so sequencing the food strategies after FTA negotiations and new forms of farm support payments ensures opportunities for such policy integration have been lost.¹³³

The governance trajectory shows the Government taking advantage of UK independence from EU bureaucracy to craft novel legal forms, like the USA State-UK MOUs, to drive forward its Global Britain vision.¹³⁴ This positive development is overshadowed by shifts in UK frameworks of accountability and authority exemplified by the sporadic Parliamentary scrutiny of the UK's new FTAs and the power to craft the new farm support scheme, ELMS being left with the Secretary of State only.¹³⁵ Although the Government since declared its support for active engagement of subsidy recipients in ELMS' design, whether meaningful inclusive policy design will take place is unclear, as details of ELMS are still being finalised at the time of writing.¹³⁶

The vision for agri-food trade within the broader context of 'Global Britain' is thus starting to emerge through new trading relationships, innovative use of trade instruments to deliver domestic objectives and new forms of governance. Whilst the trading relationships and support schemes garnered publicity and public comment, the changes in governance have received less attention outside civil society and academia. Yet, without further scrutiny before its final iteration, the UK's agri-food trade strategy could fundamentally re-make the UK's domestic agri-food sector, redefine UK values and contribute to the reconfiguration of the constitutional principles of Parliamentary decision-making.

¹³³ *Government Food Strategy* (above n42).

¹³⁴ See section 2(b) above *infra*.

¹³⁵ *UK trade negotiations: Parliamentary scrutiny of free trade agreements*, (above n118), 3.

¹³⁶ *The Path to Sustainable Farming* (above n99), 7; NFU, 'Government changes to ELMS 'risks being too little too late' 5 January 2023, *NFU Online*, <https://www.nfuonline.com/updates-and-information/government-announces-changes-in-roll-out-of-elms/>