

An EU-UK SPS Agreement: The perils and possibilities of (re)alignment

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Key points

- The UK agri-food sector accounts for approximately 13% of the workforce. Following the end of the Brexit transition period in January 2021, UK agri-food exports to the EU decreased by on average 16.34% per year compared to the previous 3-year period.
- Before Brexit, deep regulatory harmonisation facilitated the development of highly integrated supply chains within and between agri-food businesses. In EU trade terms, the UK is now classified as a 'third country', imposing a new set of regulatory barriers on UK traders.
- To lessen these barriers, the UK Government has stated it will pursue a new Sanitary and Phytosanitary (SPS) agreement with the EU.
- As UK and EU agri-food regulation was previously harmonised to create frictionless trade, a first step in this negotiation is to take stock of the divergence that has taken place.
- This Briefing Paper identifies and documents three types of divergence: formal legislative divergence, process divergence (encompassing regulatory formation, the internal market, and enforcement) and strategic divergence.
- In most legislative areas, including pesticides and hazardous substances, the EU has introduced stricter standards, which the UK hasn't matched. However, the UK has introduced stricter animal welfare standards.
- A deep and wide SPS Agreement, which includes dynamic alignment, will require not only legislative re-alignment in the identified areas, but also address process divergence through closer institutional cooperation and reform of UK border enforcement protocols.
- The UK Government should consult with industry and devolved nations regarding how such an Agreement fits with its wider agri-food strategy.
- To the extent that the UK government can 'own' resultant reforms, an SPS negotiation provides an opportunity to address gaps in post-Brexit governance and enforcement.

Introduction

New requirements for physical, documentary and identity checks have complicated agri-food trade between the UK and EU post-Brexit. The UK Government has affirmed that pursuing a Sanitary and Phytosanitary Standards

(SPS) Agreement with the EU that reduces such checks is one of its objectives.¹ A report from Aston University concluded that such an agreement would boost agri-food exports from the UK to the EU by 22.5%.²

While both sides have negotiated agreements that lessen agri-food regulatory trade barriers, there is no precedent that clearly fits their particular circumstances. This suggests the need for legal innovation. However, finding a landing ground for an SPS Agreement remains delicate. It will require both sides to define the flexibilities in their Brexit-era 'red lines' more clearly.

An SPS Agreement entails mutual recognition, or alignment, of regulation. As product standards necessary for frictionless trade were largely aligned until Brexit, the negotiation will, as a first step, require the EU and UK to take stock of the divergence that has since occurred, both active (where the UK changed previously harmonised regulation to differ from the EU) and passive (where the EU changed regulation and the UK did not follow).³ Beyond this formal legislative divergence, even where regulation remains the same as when it was retained as UK law, there have been significant changes in regulatory approvals processes, the workings of the UK internal market, and enforcement both at and behind the border. Addressing these changes, which might be described as *process divergence*, could comprise a challenging element of the negotiation, with the potential to infringe upon UK 'sovereignty' if the EU seeks reform of these UK processes.

An SPS Agreement will also necessitate integrated thinking regarding larger strategic aims. In the UK, a complex landscape of interconnected and interdependent policies, strategies, regulations and other measures have been announced since the change of government in July and exist alongside the legacies of previous administrations. Notably for the agri-food sector, the new government has placed economic growth⁴ at the centre of its ambitions, announced a Defra regulatory review⁵ and confirmed its support for farmers and commitment to food security.⁶ There remain important gaps, including the status of a dedicated trade strategy, the potential for policy integration with changing domestic agricultural and environmental policies, understanding the outcome of changes to tax reliefs for agricultural businesses and embedding the lexicon of international trade within government and industry. The previous Government emphasised Free Trade Agreement (FTA) negotiations and an Indo-Pacific 'tilt'. Unlike the EU, the UK has also acceded to the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), a large regional trade agreement which diverges from the EU's model for FTAs in its SPS provisions.

None of these areas of strategic divergence and uncertainty prohibit an SPS Agreement; indeed it could serve the UK's central growth objective. But greater regulatory alignment is also connected to broader strategic alignment. For example, new EU regulations affecting agri-food, such as the Carbon Border Adjustment Mechanism and Deforestation-Free Products Regulation, are also geopolitical factors shaping global supply chains.

In this Briefing Paper, we first set out the rationale for an SPS Agreement, from the perspective of agri-food trade. We then briefly consider different models for such an Agreement, and how they fit with UK and EU 'red lines'. We next identify areas of UK divergence post-Brexit, including differences in regulation and regulatory processes, and potential implications for the negotiation, as well as how the SPS Agreement sits with larger UK agri-food trade strategy. Given uncertainties on both sides, we do not aim to resolve questions that the SPS negotiation raises, but instead identify and frame issues that need to be addressed.

¹ Veterinary Services: UK Trade with EU, [Question for DEFRA](#), UIN HL286, tabled 24 July 2024.

² Du, J., Shepotylo, O., Messenger, G., ['Would a veterinary agreement be a boost for UK-EU agri-food exports?'](#) UK in a Changing Europe, 17 June 2024.

³ This distinction is drawn from the UK in a Changing Europe's [Divergence Trackers](#).

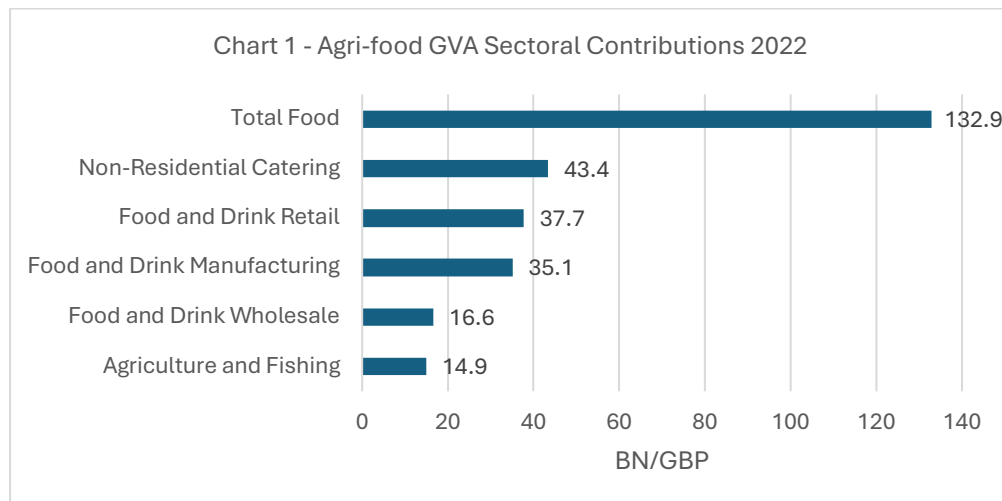
⁴ HM Government, [Chancellor unveils a new era for economic growth](#), 8 July 2024.

⁵ HM Government, [Dan Corry appointed to lead Defra regulation review](#), 15 October 2023.

⁶ HM Government, [Minister Daniel Zeichner - NFU Summer Reception speech](#), 18 July 2024.

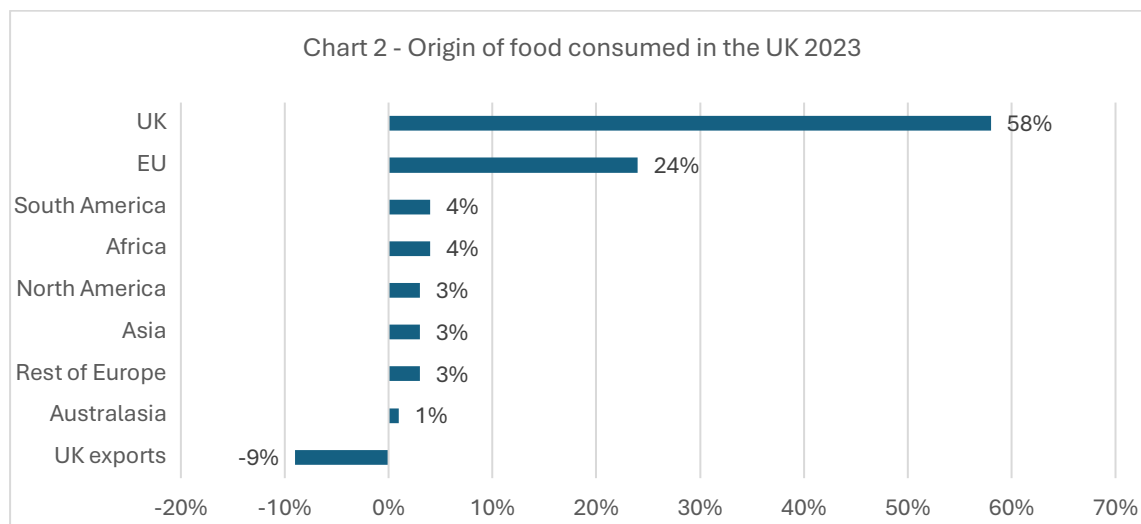
Rationale for SPS Agreement

The UK agri-food sector contributed over £147 billion (6.5%) to national Gross Value Added (GVA) and employed 4.2 million people in 2022, accounting for approximately 13% of the workforce.⁷ Chart 1 illustrates the distribution of contribution to GVA across the sector and contextualises primary production activity as part of the broader industry.⁸



In 2023, global agri-food exports of food, feed and drink were £24.4 billion(bn), a £3.1bn (11%) decrease compared to 2022 (adjusted for inflation). Imports declined to £61.1bn, a £5.9bn (8.8%) reduction in comparison to 2022. The overall UK agri-food deficit stood at £36.7bn, a fall of £2.8bn (7.1%) against the previous year.⁹

UK domestic production accounted for 58% of domestic consumption. Chart 2 highlights the international regional origins of UK food consumption and highlights the dependence on imports from the EU for food, feed and drink as the UK's single largest supplier.¹⁰



By value in 2023, the UK exported £14.0bn of food, feed and drink to the EU and imported £43.8bn, a £29.8 deficit. Chart 3 demonstrates the value of food, feed and drink at 2023 prices traded with the EU 2013-2023.¹¹

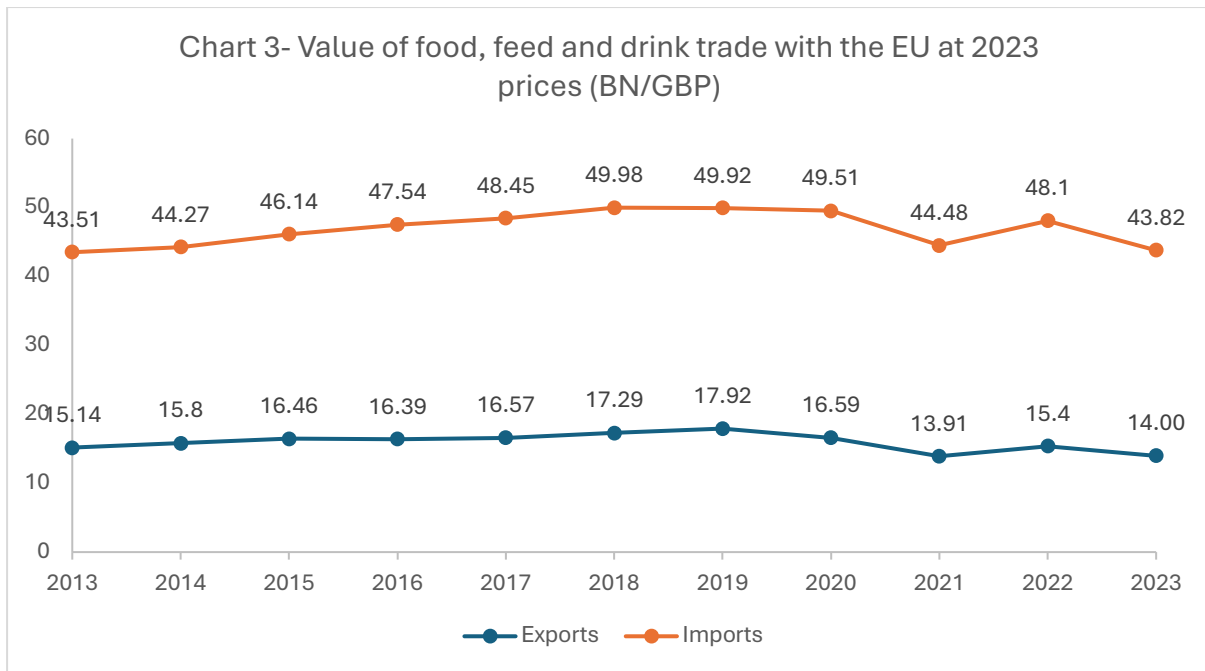
⁷ DEFRA, [Food statistics in your pocket](#), 5 August 2024.

⁸ Ibid.

⁹ DEFRA, [Chapter 13: Overseas trade](#), Accredited official statistics, 22 July 2024.

¹⁰ N. 7 above.

¹¹ N. 9 above.



As a broad indicator of change in trade flows, data from chart 3 demonstrates that following the end of the Brexit transition period in January 2021, agri-food imports from the EU fell by a 3-year average of 8.71% (£4.34bn) per year with exports to the EU decreasing by 16.34% (£2.82bn) per year compared to the previous 3-year pre-Brexit period.¹² Whilst co-located with the significant geoeconomic impacts from the covid pandemic and the Russian invasion of Ukraine, trade flows between the UK and EU, particularly exports, demonstrate no recent signs of regaining previous levels.

Farmers have cited increased input costs and new regulatory import/export issues as the top reasons why a majority feel negative about Brexit. Sentiment regarding the adverse impact of Brexit is pronounced across multiple sectors with 70% of cereals growers; 68% of dairy, beef and sheep producers and 81% of vegetable growers concurring with this concern.¹³

Before Brexit, it was estimated that around 90 per cent of UK food law and policy was made at the EU level.¹⁴ This deep regulatory harmonisation underpinned the UK’s reliance on EU food and facilitated the development of highly integrated supply chains within and between UK and EU agri-food businesses. In EU trade terms, the UK is now classified as a ‘third country.’ This status imposes a new regime of regulatory barriers on UK traders including enhanced documentary requirements, physical inspections, administrative border processes and requires additional essential knowledge that all traders must have to ensure compliance and minimise supply chain friction. Similarly, EU traders seeking to continue existing or develop new commercial relationships with UK companies must now understand and adapt to new statutory processes.

Table 1 provides a non-exhaustive summary of the extensive operational requirements that can be applied to the UK agri-food sector when trading with the EU.

¹² Analysis from UKTPO found an 18% decrease in the 3-year average UK agri-food exports to the EU post-Brexit. Gasiorek, M. and Tamberi, N, *Some goods (and some less good) news from UK trade*, UKTPO Blogs, 16 February 2024.

¹³ Analysis: *7 years after Brexit, farmers count the cost*, Farmers Weekly, 23 June 2023.

¹⁴ *Ensuring food safety and standards*, Report of the National Audit Office, HC 2217, 12 June 2019.

Table 1. UK-EU Trade - Documentation, Inspections, Processes and Essential Knowledge

Documentation	
Export Health Certificates	Required for the movement of regulated SPS goods. Currently 156 versions applicable to agri-food products entering the EU. Sign-off by veterinary official usually required at additional cost. Can now be used in digital format, replacing paper only stipulations. Typically 5-10 pages with accompanying detailed guidance notes on how to complete.
Phytosanitary Certificates	Certification for regulated plants and plant products to demonstrate consignments have been inspected, are free from dangerous pests and diseases and suitable for cross-border trade. Consignment inspection time and certificate production charged to trader.
Private Attestations	Statutory self-declaration by the EU importer for exempt SPS goods, e.g. shelf-stable composite products. Confirms compliance with EU regulations.
CHED	Common Health Entry Document – four versions available used for pre-notification of SPS controlled product movements including, animals, animal products, certain plants and plant products, feed and food products.
Commercial documentation	Required to accompany certain exempt SPS goods for inspection at the border – can be selected for a documentary check, includes invoices and packing lists.
Inspections	
Risk based	Percentage of consignments inspected based on product risk categorisation – examples: live animals 100%, eggs for human consumption 15%, meat products 1%.
Intelligence led	Interventions triggered through intelligence led processes to intercept the illegal movement of controlled SPS goods across the border – biosecurity and human health protection.
Processes	
IPAFFS	Import of Products, Animals, Food and Feed System – used to pre-notify the import of SPS controlled goods into Great Britain including live animals, products of animal origin, certain composite food products, germinal products, certain plant and plant products.
CDS	Customs Declaration Service – used for import and export declarations when moving goods across the UK border. Automatic cross-checking with IPAFFS for certain SPS goods.
BCPs	Border Control Posts – locations for physical and documentary inspections. When importing to the UK need to confirm type of SPS good can be handled at intended BCP location.
GVMS	Goods Vehicle Movement System – issues a Goods Movement Reference Number to facilitate vehicle movements once required data has been uploaded for imports or exports. Connected with CDS to cross-reference against pre-logged customs declarations.
CUC	Common User Charge – fees levied on certain SPS goods using a CHED (see above). Applies to Government facilities at Dover and Eurotunnel. Fees vary, 10GBP-29GBP, capped at 145GBP per CHED. Other Port Health Authorities charge their own rates.
Additional Essential Knowledge	
HS Codes	Harmonised System (commodity) Codes – working knowledge required to ensure correct products are identified for SPS and Customs controls for goods crossing the border.
Product risk categories	Using the correct risk categories for SPS products identifies the rules and procedures to be followed in order to move products across the border whilst remaining in compliance.

Rules of Origin	Detailed knowledge of complex production, processing and manufacturing rules required to claim tariff preferences, reliefs, change commodity codes and prove product origin.
Applicable import VAT rates	Active monitoring of VAT rates applicable to the import of SPS products. Significant cost implications across the supply chain if incorrect rates not reflected in customs processes.
UK integrated online tariff	HS code driven – identifies import, export and origin regulations for commodities. Includes controls, duties, quotas, trade remedies, safeguards, VAT and excise.
Query resolution	Knowledge of principal contacts and escalation processes to resolve queries with SPS and customs issues. Includes liaising with Defra, Animal and Plant Health Agency, HMRC, DBT and Port Health Authorities across multiple contact points and I.T systems.
UK BTOM	UK Border Target Operating Model - overarching policy and operational suite of measures. Individual elements subject to significant change and delay – requires monitoring by traders.

Source: Authors

Industry organisations cite certification and associated regulatory measures that are required to enable trade of agri-food goods between the UK and EU as a major obstacle to growth in the sector and sources of significant additional costs.^{15,16}

The new Free Trade Agreement governing trade between the EU and UK, the Trade and Cooperation Agreement (TCA), does not require Parties to recognise the equivalence of their SPS regulation if it achieves the same level of protection. The UK has more obligations to do so with Australia, New Zealand and Parties to the CPTPP than with the EU.¹⁷ In its new post-Brexit FTAs, the UK has the fewest provisions facilitating and promoting regulatory alignment with its greatest agricultural export and import destination.

There is also little inter-Governmental cooperation on agri-food trade. The Trade Specialised Committee on Sanitary and Phytosanitary Measures established under the Trade and Cooperation Agreement to act as joint forum for discussion of SPS issues between the UK and EU has extensive roles and responsibilities detailed under Article 87. These include, but are not limited to, addressing issues on development and application of SPS requirements and standards; expeditiously discussing concerns relating to SPS import conditions applied by the other party and regularly reviewing measures including certification to facilitate trade.¹⁸ Public records indicate this formal committee meeting occurs on an annual basis only and there appears to be no direct, simply discoverable, mechanisms for industry stakeholders and the wider public to contribute to the formation of these agendas. It is also unclear what other non-TCA forums exist where similar issues could be raised. The previously openly constituted Trade Advisory Group on agri-food has been replaced with unspecified stakeholder management structures, with access, functionality and efficacy remaining opaque.¹⁹

SPS Agreements

i. Models of alignment

As outlined above, documentary, physical and identity borders have contributed to a decline in exports and created economic headwinds for UK agri-food producers. The basic approach of an SPS Agreement is to identify a list of regulatory areas in which two countries consider their regulation to be 'equivalent', and in these areas

¹⁵ [FDF Trade Snapshot: H1 2024](#), 19 September 2024.

¹⁶ BMPA, [Hidden import charges unfair on UK businesses and shoppers](#), 22 May 2024.

¹⁷ Both the [Australia](#) and [New Zealand](#) SPS chapters contain provisions calling for the Parties to recognise the equivalence of each others' SPS measures. The [UK-EU TCA SPS chapter](#) does not include such provisions.

¹⁸ [Trade and Cooperation Agreement between the United Kingdom and the European Union](#) (UK-EU TCA), Treaty Series No. 9 (2021), Presented to Parliament April 2021, Article 87.

¹⁹ HM Government, [Trade advisory groups: membership](#), 5 September 2022.

reduce the incidence of border checks. Existing models vary widely, and include standalone veterinary or phytosanitary agreements, which focus solely on trade in animal or plant products respectively. They also sometimes take the form of provisions embedded within SPS chapters of Free Trade Agreements.

The degree and type of border barrier reduction also varies widely. Table 2, from the European Commission, contrasts two models of veterinary agreements, with Switzerland and New Zealand, and treatment of ‘third countries’, the UK’s current category.

Table 2. EU import requirements, authorisations and prohibitions for animal products: comparison between different categories of third countries

Product	EU-Switzerland style veterinary agreement					EU-New Zealand style veterinary agreement					Other authorised third countries				
	Allowed	Certificate	Frequency of border checks (% according to EU legislation)			Allowed	Certificate	Frequency of border checks (% according to EU legislation)			Allowed	Certificate	Frequency of border checks (% according to EU legislation)		
			Documentary (100%)	Identity (100%)	Physical (15-30%)			Documentary (100%)	Identity (100%)	Physical (15-30%)			Documentary (100%)	Identity (100%)	Physical (15-30%)
Live animals	Yes	Intra-EU	Borderchecks abolished			Yes	Simplified	100%	100%	100%	Yes	Standard	100%	100%	100%
Red meat	Yes	Not required	Borderchecks abolished			Yes	Simplified	100%	100%	1-10%	Yes	Standard	100%	100%	15%
Fresh minced red meat	Yes	Not required	Borderchecks abolished			Banned									
Poultry meat	Yes	Not required	Borderchecks abolished			Yes	Simplified	100%	100%	1-10%	Yes	Standard	100%	100%	100%
Minced poultry meat	Yes	Not required	Borderchecks abolished			Banned									
Fisher products	Yes	Not required	Borderchecks abolished			Yes	Simplified	100%	100%	1-10%	Yes	Standard	100%	100%	15%
Live bivalve molluscs fit for human consumption	Yes	Not required	Borderchecks abolished			Yes	Simplified	100%	100%	1-10%	Yes	Standard	100%	100%	30%
Live bivalve molluscs for purification	Yes	Not required	Borderchecks abolished			Banned									
Dairy products	Yes	Not required	Borderchecks abolished			Yes	Simplified	100%	100%	1-10%	Yes	Standard	100%	100%	30%
Composite products	Yes	Not required	Borderchecks abolished			Yes	Standard	100%	100%	15%	Yes	Standard	100%	100%	15%
Personal imports	Yes	Not required	Borderchecks abolished			Banned									
Pets non-commercial	Yes	Pet Passport	Borderchecks abolished			Yes	Standard	100%	100%	N/A	Yes	Standard	100%	100%	N/A

Source: [European Commission, 2021](#)

As this table demonstrates, a New Zealand style veterinary agreement would reduce the need for physical checks and simplify requirements for certificates only for some products, and for others there would be no change. Even in these limited areas where reductions have taken place, it maintains documentary and identity checks.

On the phytosanitary (plant products) side, the UK’s 2022 Free Trade Agreement with New Zealand provides an example of an FTA-embedded model: the SPS chapter sets out that neither party has to provide phytosanitary certificates for low-risk food commodities, and each will accept each others’ plant health certifications in designated pest-free areas.²⁰

In contrast, the EU-Switzerland veterinary agreement results in a common veterinary area. Within it, all forms of border controls for trade on animals and animal products are removed.²¹

The degree to which these agreements remove border requirements is proportional to the regulatory alignment achieved. While the EU-New Zealand veterinary agreement is based on mutual recognition of the equivalence of some regulation for red meat, poultry, dairy and seafood, the EU-Switzerland veterinary agreement brings about broad regulatory harmonisation and dynamic alignment with new regulation. The Swiss agreement also requires coordination of customs procedures: when ‘third country’ imports enter Switzerland, they must meet EU customs

²⁰ [UK - New Zealand FTA SPS chapter. Article 5.7, 5.13.](#)

²¹ [Swiss Government, Veterinary Agreement between Switzerland and the EU \(website\).](#)

requirements and vice versa. The Swiss agreement is part of a deeper economic integration framework that cuts across multiple sectors of the economy. Switzerland's seamless market access for agri-food products comes accompanied by commitments to free movement, budgetary contributions and consistency with case law from the Court of Justice of the European Union (CJEU).

ii. The landing ground for a UK-EU SPS Agreement²²

The New Zealand model is not comprehensive enough to resolve the problems faced by EU and UK exporters. A Swiss-style agreement raises a different set of challenges. Though Labour has expressed a desire for an EU reset, their Manifesto reiterated that they will maintain the 'red line' prohibition on the Single Market set out by the Conservative Party.²³ This rules out the type of wide, deep and interconnected regulatory cooperation that provides the foundation for the Swiss model. The EU has made clear that it does not wish to replicate the Swiss model of many bilateral sectoral agreements, and also rejected 'cherry picking', or sectoral deep cooperation, in Brexit negotiations. Combined, these conditions make it impossible for the EU and UK to achieve fully frictionless trade in agri-food products.

At the same time, the new UK Government's growth-based agenda seems to signal the possibility of a more pragmatic approach to addressing border barriers with Europe, and it has been less explicit in its rejection of a role for the CJEU. The recent Product Standards and Metrology Bill,²⁴ discussed further below, also includes provisions for unilateral alignment with EU environmental product regulation, suggesting a significant ideological departure from the Conservatives' approach. If the UK Government is prepared to accept the process set out in the Bill then they might be prepared to do so in the future with regard to SPS measures. At the same time, the EU seems to be participating in a wider trend toward sectoral regulatory cooperation outside the bounds of large, omnibus FTAs.²⁵ These changes suggest the possibility of some form of dynamic alignment on agri-food regulation between the EU and UK. We discuss the form this might take later on.²⁶

What has changed since Brexit?

I. Active divergence (UK statutory divergence in previously harmonised areas)

Pre-Brexit, the EU Single Market provided for largely frictionless trade between EU Member States and with and between the four nations of the UK. For EU Member States, free movement is achieved through harmonisation of regulatory requirements necessary to achieve frictionless trade; for example, in food law, limits on harmful substances such as contaminants, toxins, pesticide residues and veterinary drugs. Post-Brexit, the UK incorporated EU law into UK law.²⁷ Subsequent changes have included UK divergence resulting in new border barriers. These areas may be the focus of negotiation regarding re-alignment through an SPS agreement.

Probably the most high-profile area of active divergence is gene editing. In his first speech as Prime Minister, in a clear reference to EU regulation, Boris Johnson stated he would '...liberate the United Kingdom's extraordinary bioscience sector from anti-genetic modification rules'.²⁸ This and some other areas of active legislative divergence that would require greater alignment to achieve frictionless trade are set out in the table below.²⁹

²² A more detailed analysis of the landing ground between the UK and EU is available in: [A trade policy framework for the European Union-United Kingdom reset](#)

²³ Labour Manifesto, [Britain Reconnected](#), 2024.

²⁴ [Product Standards and Metrology Bill \[HL\] 2024-5](#).

²⁵ Cernat, L., [The Art of the Mini-Deals: The Invisible Part of EU Trade Policy](#), ECIPE, October 2023.

²⁶ Consideration of the negotiation process, such as how a veterinary agreement sits with the EU-UK Trade and Cooperation Agreement lie beyond this Briefing Paper; for a useful analysis, see Du, J., Shepotylo, O., Messenger, G., [Would a veterinary agreement be a boost for UK-EU agri-food exports?](#) UK in a Changing Europe, 17 June 2024.

²⁷ First as 'retained EU law' (Withdrawal Act, 2021), which was 'assimilated' into UK law pursuant to Retained EU Law Act (2023)

²⁸ HM Government, [Boris Johnson's first speech as Prime Minister](#), 24 July 2019.

²⁹ These are drawn mostly from analysis of twelve editions of the UK in a Changing Europe's UK and EU Divergence Trackers. UK in a Changing Europe's [Divergence Trackers](#)

UK legislative area	Effect	Stricter or weaker vis-à-vis EU
Gene editing ³⁰	Excludes from the definition of GMOs some gene edited organisms with changes that could have been achieved through traditional breeding, or which could occur naturally. This lessens the requirements for risk assessment vis-à-vis the EU. ³¹ England will permit the use of precision breeding for animals, whereas the EU regime covers only plants.	Weaker
Transport of live animals ³²	Prohibition on export of live animals through or from UK for slaughter.	Stricter
Ban on new licenses for animal testing in cosmetics	Reintroduces a complete ban on the testing of cosmetics or their ingredients on animals which the EU has diverged from	Stricter for animal welfare (EU approach prioritises human health in chemicals testing)
Pesticides – maximum residue levels (MRLs) ³³	Increase of permitted Maximum Residue Levels for pesticides for 49 active substances	Weaker
Changes to marketing criteria for wine ³⁴	Consultation on amendment of marketing requirements for wine, including allowing Designation of Protected Designation of Origin (PDO) criteria for wine from hybrid grapes, a more flexible approach than the EU.	Weaker

Other examples of operational divergence that are of significant concern to agri-food businesses relate to trade requirements pursuant to Brexit. These include food labelling regulations that now require certain products to be labelled 'Not for EU' to comply with the Northern Ireland Retail Movement Scheme as agreed in the Windsor Framework. Similarly, food business operators or the food importer must now include a physical UK address for per-packed food products placed on the domestic market.³⁵ The implementation of both measures has compounded uncertainty and additional costs for businesses throughout the supply chain.

The Government's response to the fairer food labelling consultation, which would potentially introduce enhanced country of origin and method of production information requirements, including an indication of welfare standards, is still outstanding.³⁶ The UK Forest Risk Commodity regulations³⁷ and the UK Carbon Border Adjustment Mechanism,³⁸ also both propose different regulatory designs from similar EU regulations, with implications for trade, product sourcing and input costs.

The UK has introduced significant changes to its domestic approach to agri-food support. Development of new domestic agricultural policy is a devolved matter for each UK nation. In England, this has focused on moving away from inherited EU Common Agricultural Policy derived area payments to funding targeted on the delivery of environmental public goods and services. Additional programmes concentrate on investment in productivity

³⁰ HM Government, [The Benefits of Brexit: How the UK is taking advantage of leaving the EU](#), January 2022.

³¹ [Explanatory Memorandum to the Genetically Modified Organisms \(Deliberate Release\) \(Amendment\) \(England\) Regulations 2022](#).

³² [Animal Welfare \(Livestock Exports\) Act, 2024](#).

³³ Pesticide Action Network, [Previous UK government weakened pesticide safety limits in blow to consumer protection](#), 19 September 2024.

³⁴ DEFRA, [Wine reforms consultation](#), 2024.

³⁵ DEFRA, [Food labelling: giving food information to consumers](#), 20 September 2022.

³⁶ DEFRA, [Consultation on fairer food labelling](#), 7 May 2024.

³⁷ UK Parliament, [Introduction of Forest Risk Commodities regulations](#), Steve Barclay, Statement made on 12 December 2023

³⁸ House of Commons Library, [Carbon Border Adjustment Mechanism](#), 5 March 2024.

and research.³⁹ Whilst broadly welcomed by many farmers and growers there continues to be industry concerns relating to the complexity of new schemes, levels of funding available and policy focus on environment rather than food production.^{40,41} Wales, Scotland and Northern Ireland are responsible for developing their own domestic policies reflecting the needs of those nations, potentially resulting in greater internal policy fragmentation and regulatory divergence. These areas of divergence do not impact directly on free movement of products across borders but demonstrate significant competitive pressures facing UK farmers. An SPS Agreement, while making export to the EU easier, would not alleviate these concerns.

The UK has also concluded FTAs with countries that do not have FTAs with the EU: Australia and CPTPP. Accession to these FTAs does not automatically entail regulatory divergence with the EU, nor does it preclude the UK and EU negotiating a veterinary agreement; for example, New Zealand has a veterinary agreement with the EU and is also a Party to CPTPP. However, the CPTPP SPS chapter contains provisions which depart from the EU's precautionary approach to food law.⁴² Deep regulatory alignment with the EU (which New Zealand does not have) is much more likely to be problematic for CPTPP Parties. When the UK acceded to CPTPP, it was subject to a regulatory review to ensure that its domestic regulation complied with CPTPP obligations. Canada, a CPTPP Party, raised concerns regarding the UK's precautionary prohibition on hormone-treated beef, but the UK was allowed to accede despite this.⁴³ It is uncertain how the UK joining the EU's regulatory model across the agri-food sector would be greeted by CPTPP Parties. It is possible that they would either pressure the UK diplomatically, or initiate disputes.

The UK should be able to export to the US, or the CPTPP even if their regulatory requirements are different. It might be more costly for firms, but other than that it should not be a problem. The issue that arises is on the UK import side. If the UK wants to accept imports produced to non-EU regulatory requirements it has no choice but to accept border controls to monitor the flow. It might be able to facilitate some of this via different import channels, along the lines of the Windsor Framework, but that seems cumbersome to implement.

ii. Passive divergence (EU introduction of new legislation that the UK does not follow)

New EU regulation introduced since 2021 contributes to divergence in ways that have implications for an SPS agreement. The following table sets out areas in which the EU has passed new legislation that impacts upon trade and will require greater alignment to bring about frictionless trade.⁴⁴

EU legislative area	Effect	Stricter or weaker vis-à-vis UK
Packaging and Packaging Waste⁴⁵	Stricter requirements on recycled content; diverging labelling requirements	Stricter
Single Use Plastic⁴⁶	Stricter ban on single use plastic items	Stricter
Food additives⁴⁷	Ban on titanium dioxide (E171)	Stricter
Pesticides - neonicotinoids⁴⁸	Reduction of import tolerances on clothianidin and thiamethoxam to the lowest traceable levels (effective ban on import). The UK bans these domestically but has authorised emergency use of thiamethoxam. ⁴⁹	Stricter

³⁹ DEFRA, [Funding for farmers, growers and land managers](#), 18 November 2022.

⁴⁰ Speed, M., [Farmers' leader slams post-Brexit agricultural policy](#), FT, 17 December 2023.

⁴¹ NFU, [Budget blow for British farming, says NFU](#), 30 October 2024.

⁴² Lydgate, E. and Gasiorek, M., [CPTPP and agri-food regulation: Crossing the EU-exit rubicon?](#) UKTPO Briefing Paper 60, July 2021.

⁴³ Institute of Export and International Trade, [Canadian concern over British ban on hormone-treated beef causes a stir in UK's CPTPP negotiations](#), 9 February 2022.

⁴⁴ As above, these are drawn mostly from the UK in a Changing Europe's UK and EU [Divergence Trackers](#)

⁴⁵ European Commission, [Proposal for a revision of EU legislation on Packaging and Packaging Waste](#), November 2022.

⁴⁶ House of Commons Library, [Single use plastic: How do bans differ across the UK and EU?](#) 22 November 2022.

⁴⁷ COMMISSION REGULATION (EU) 2022/63 of 14 January 2022 amending Annexes II and III to Regulation (EC) No 1333/2008 of the European Parliament and of the Council as regards the food additive titanium dioxide (E 171), OJ L 11/1, 18.1.2022 j

⁴⁸ European Commission, [Commission adopts stringent residue limits for pesticides to protect pollinators](#), 2 February 2023.

⁴⁹ <https://www.gov.uk/government/news/emergency-pesticide-authorisation-approved-to-protect-national-sugar-beet-crop>

Arsenic⁵⁰	Reduction of permitted maximum levels of arsenic in foods such as baby food and infant formula by 80% and limited in other foods eg rice, juice and salt.	Stricter
Geographical Indication requirements⁵¹	These changes encompass labelling requirements for the producer's name to be included in the same field of vision as the GI name on any packaging.	Stricter

In addition to these areas, the development of UK Forest Risk Commodity (FRC) legislation is a prominent example of failure to keep pace with similar regulation implemented by our largest agri-food trading partner. The UK FRC regime is set out in schedule 17 of the Environment Act 2021 and amongst other matters defines the meaning of forest risk commodity and makes provisions for the establishment of due diligence systems, annual reporting requirements, enforcement actions and sanctions.⁵² The final scope and timetable for implementing secondary legislation is yet to be announced. In contrast, extensive regulatory information and guidance exists in the public domain regarding the EU Deforestation Regulations adopted in 2023 following a multi-year policy development process.⁵³ This has enabled organisations to understand the scope of the requirements, assess potential exposure and strategically plan to ensure compliance with the relevant commodity supply chain regulations. The absence of detail regarding UK FRC legislation has created a significant point of known uncertainty for UK businesses with implications for product sourcing, additional administrative costs and operational processes. It is unclear how these two regimes may interact in the future across complex UK-EU supply arrangements to minimise impact on trade in agri-food whilst delivering the required policy objectives.

iii. Process divergence

Alongside these areas of legislative divergence, separating UK food law from EU regulation and regulatory bodies required the UK to develop domestic capacities such as scientific agencies and standing committees and procedures that had previously been managed at the level of the European Commission. This repatriation of powers does not automatically provide an equivalent regime.⁵⁴ Changes to UK regulatory and enforcement processes will likely be significant in an SPS Agreement negotiation, particularly one that involves dynamic alignment.

a. Changes to regulatory approval processes

Processes of regulatory formation have diverged post-Brexit. The EU utilises scientific risk assessment to inform regulatory decision-making, but the precautionary principle can be invoked when 'scientific uncertainty persists', allowing regulators to introduce restrictions on a temporary basis.⁵⁵ In the UK, the precautionary principle has been retained. However, precaution is made operational through regulatory approval processes themselves. Gene editing, pesticide residues and arsenic levels are examples from the tables above that suggest the UK's risk assessment process resulted in a less precautionary regulatory outcome.

The European Food Safety Authority undertakes risk assessment. The UK food standards agencies, the Food Standards Agency, Food Standards Scotland and the Health and Safety Executive, now play a similar role. However, their roles are not set out as explicitly in UK legislative frameworks, and at times the requirement to

⁵⁰ European Commission, Comitology Register, [COMMISSION REGULATION \(EU\) .../... of XXX amending Regulation \(EC\) No 1881/2006 as regards maximum levels of arsenic in certain foods](#), D084673/02 (Draft Implementing Act).

⁵¹ European Council, [Council adopts law to strengthen protection for geographical indications for foods and drinks](#), 26 March 2024.

⁵² [Environment Act \(2021\)](#)

⁵³ European Commission, [Regulation on Deforestation-free Products: Overview](#).

⁵⁴ Lydgate, E. and Anthony, C. (2022), Brexit, food law and the UK's search for a post-EU identity. *The Modern Law Review*, 85: 1168-1190. <https://doi.org/10.1111/1468-2230.12735>

⁵⁵ European Commission, *White paper on food safety* COM (1999) 719.

seek independent scientific advice on regulatory approvals, unlike in the EU, is phrased in discretionary language ('may' rather than 'shall').⁵⁶

The amount of concern that the EU expresses about UK risk assessment will likely be proportional to the extent of regulatory alignment envisaged, and whether the SPS Agreement will include dynamic alignment. In practice, this dynamic will be asymmetric - the UK largely aligning with EU regulation. The EU may want to ensure not only that outcomes align but that UK institutional processes are robust and its risk assessment approach aligns with that of the EU. This may also entail closer coordination with EU bodies, notably the European Food Safety Authority (where Switzerland is an observer).

b. Re-gluing the UK Internal Market?

In the UK, agricultural policy and agri-food regulation are devolved. EU regulation constrained the ability of UK devolved nations to regulate independently. The UK House of Lords' European Union Committee described the EU as having provided 'part of the glue holding the United Kingdom together'.⁵⁷ Post-Brexit, new arrangements were introduced through the UK Internal Market Act (UKIM) and Common Frameworks. These arrangements differ fundamentally. There is now provision for Ministers in England, Wales and Scotland to amend regulation on a devolved basis and divergence is managed on a non-legislative basis through Common Frameworks. Frictionless market access is maintained through the UKIM, which applies 'market access principles' of mutual recognition and non-discrimination. The UK's new internal market settlement has proven controversial: Scotland and Wales did not consent to UKIM.⁵⁸ (Northern Ireland is subject to a different set of arrangements pursuant to the Northern Ireland Protocol and Windsor Framework).

On a strategic level, divergent agri-environment policy has created an uneven baseline for UK agri-trade policy. There have been very different trade signals across devolved administrations, regarding their ambition, resources, policy and impact on business. There has also been divergence in regulation that impacts upon agri-food trade, including on single use plastics, gene editing, bottle deposit schemes and a peat ban.⁵⁹

Some of these differences result from the fact that both Scotland and Wales wanted to retain closer alignment with EU legislation than England. Scotland has called for a comprehensive SPS Agreement with the EU.⁶⁰ Wales does not have a dedicated EU strategy, but Welsh Parliament Research has highlighted concerns that it has less of a voice in shaping EU-UK matters than it did pre-Brexit.⁶¹

While superficially, an SPS Agreement might offer a pathway to 're-glue' the Internal Market, it also raises fundamental questions about how potential EU alignment will be managed in a devolved area. The power to negotiate new treaties rests with the central UK Government, and devolved nations have expressed frustration about their limited influence in shaping the central Government's positions.⁶²

The Product Standards and Metrology Bill⁶³ illustrates these tensions. The Bill sets out wide powers for UK Ministers to align with EU regulation unilaterally in the area of environmental product standards. Such powers, if incorporated in a UK-EU SPS Agreement, would undermine the devolution settlement. To avoid this outcome, UK Ministers should consult closely with devolved nations in negotiating such an Agreement and obtain their consent before signing.

⁵⁶ Lydgate, E. and Anthony, C. (2022), Brexit, food law and the UK's search for a post-EU identity. *The Modern Law Review*, 85: 1168-1190. <https://doi.org/10.1111/1468-2230.12735>

⁵⁷ European Union Committee, *Brexit: devolution* HL Paper 9 (July 2017) para 2.

⁵⁸ IFG explainer, [Internal Market Act](#).

⁵⁹ HM Government, [Impact of a proposed ban of the sale of horticultural peat in England](#), 21 February 2023; Brodies, [Scotland's ban on single-use plastics comes into force \(sort of...\)](#), 15 June 2022; C Watson, [Why has Scotland's deposit return scheme been delayed?](#) BBC News, 7 June 2023; Thompson, K., [Governments split over gene-edited food](#), Chartered Institute of Environmental Health, 15 June 2022.

⁶⁰ Scottish Government, 'Trading arrangements with the EU: The case for a comprehensive veterinary and sanitary and phytosanitary (SPS) agreement after Brexit.'

⁶¹ Senedd Cymru, [The role of Wales in UK-EU relations: an opportunity for reflection?](#) 19/02/24.

⁶² See, eg, [Written evidence submitted by the Scottish Government \(TFA0028\)](#) Environment Food and Rural Affairs Committee, 2023.

⁶³ [Product Regulation and Metrology Bill \[2024\]](#)

c. Border enforcement

A new SPS agreement between the UK and EU requires the confidence of both parties in processes at the border to maintain agri-food standards and facilitate trade. From 1 January 2021, following the end of the Brexit transition period, the EU applied full third-country customs and regulatory requirements to goods exported from Great Britain. Full border controls including physical and documentary checks were implemented to ensure environmental, health, safety and security standards were complied with.⁶⁴ The UK Border Target Operating Model (BTOM), part of the UK's 2025 Border Strategy, initially set out an ambitious timeline of phased introductions for checks on imported goods from the EU. However there has been significant slippage and delays in implementing checks on SPS controlled goods entering the UK with inconsistent communications and short notice of changes, creating additional uncertainty for industry and port operators. Certain medium-risk fruit and vegetable products imports will now not be subject to checks until July 2025, over four years since full controls were implemented by the EU. The response to this latest delay typifies concerns expressed about the general BTOM approach with fears of asymmetric border requirements creating an unbalanced trading environment and heightened biosecurity risk.⁶⁵ Likewise, the development of key I.T. systems designed to facilitate trade continue to be pushed back. Notably, development of the Single Trade Window, a single portal approach to simplify processes for traders, has been paused in the 2025-26 financial year with the government committing to engage with stakeholders to understand future needs when operating at the border.⁶⁶ Resourcing and operations at the border remain contested issues with financial and division of responsibility tensions between central government and Port Health Authorities.⁶⁷ The introduction of robust border controls in the UK, and some monitoring of these border controls to ensure they meet EU requirements, is likely to be an essential condition for the EU to conclude an ambitious SPS Agreement.

What do these changes mean for SPS Agreement?

This Briefing Paper has identified divergence in SPS legislation and also the processes by which legislation is made and enforced. The degree to which this divergence will need to be addressed depends on the depth of the SPS Agreement negotiated. A deep and wide SPS Agreement, which includes dynamic alignment, may require not only legislative but also some institutional alignment (eg, the UK acting as an observer at the European Food Safety Authority) and reform of UK border enforcement protocols. Many of these changes would affect areas subject to larger critiques that have emerged post-Brexit. These critiques include lack of transparency and lack of consultation with both industry and devolved nations. An SPS negotiation provides an opportunity to examine post-Brexit governance gaps, to the extent that pursuant reforms can be 'owned' domestically, rather than imposed externally.

This points to significant unanswered questions regarding the form that an SPS Agreement will take. Both the Swiss and the New Zealand SPS Agreements with the EU are implemented through standing committees. However, the larger context for these Agreements differs greatly. The Swiss Veterinary Agreement and common veterinary area it gives rise to is interconnected with a number of other commitments across a wide range of sectors, including budgetary contributions and free movement of people. The UK should be prepared that any alignment of regulatory requirements, and the waiver of border barriers that comes with it, will be interconnected with the wider set of EU negotiating objectives. The fact that the EU exporters aren't as affected by new regulatory barriers due to delays in the introduction of UK border checks may also lessen their perceived need for such an agreement. The EU will wish to ensure that it is safeguarding the effectiveness of its regulatory requirements. Where it aligns with EU regulation, the CJEU will be deferred to as the ultimate authority in the interpretation of this legislation.

⁶⁴ House of Lords, [Border controls for UK and EU imports and exports](#), 26 April 2024.

⁶⁵ NFU, [Border import controls – essential information](#), 26 November 2024.

⁶⁶ BIFA, [Single Trade Window: Update](#), 5 November 2024.

⁶⁷ <https://www.doverporthealth.gov.uk/news/dover-port-health-authority-statement-13-march-2024>

When determining how deeply to align with the EU, the Labour Government faces outstanding strategically interconnected issues that will shape the future of the UK agri-food sector and the vision for new a SPS relationship. Although a consultation has been launched on development of an industrial strategy it is understood that a dedicated trade strategy is not expected until spring 2025. Growth is the primary mission of the new Government⁶⁸ and it would appear a missed opportunity not to coordinate development of these two elements. A dedicated and consolidated approach to agri-food trade is essential in providing both industry and government with confidence when considering changes in trading relationships. Similarly, the interaction between trade and domestic agricultural policy should be fully understood. Commitments to food security and ensuring producers are not undercut by low welfare and standards in trade deals, whilst welcomed by many, lack the more inclusive approach to policy integration that is demonstrated by other nations delivery structures, for example the US Foreign Agriculture Service.⁶⁹

Fully understanding both the challenges and opportunities identified by the sector is a fundamental issue for policymakers. In developing a negotiating position, the UK Government should engage with industry stakeholders through an open, transparent mechanism that facilitates genuine dialogue and contributes to a holistic approach incorporating both domestic and international policy considerations. Similarly, the implications of heightened geopolitical volatility and new trade deals negotiated post-Brexit on relational dynamics between the UK and EU must also be reflected upon and fully comprehended to ensure clarity in communication and expectations.

Conclusion

The UK agri-food sector - from primary producers to manufacturers – identifies a new SPS agreement with the EU as a core component of growth and sectoral resilience. As the EU-New Zealand Veterinary Agreement model illustrates, a UK-EU SPS Agreement, even if negotiated successfully, risks doing little to address existing border barriers between the UK and EU. A more ambitious, and effective, SPS Agreement will require both sides to navigate and define the flexibilities in their Brexit-era 'red lines'. In practice, this requires taking stock of the divergence that has occurred since Brexit – in the substance and process of legislation, and in wider strategy for the sector. Ultimately, a broad SPS Agreement that includes dynamic alignment will likely require not only legislative but also some institutional alignment, as well as reforms to UK domestic policy development and border enforcement.

⁶⁸ HM Government, [Invest 2035: the UK's modern industrial strategy](#), 24 November 2024.

⁶⁹ USDA, [About FAS](#).