

# Environment, Food and Rural Affairs Committee

## Oral evidence: Agriculture Bill: Trade Standards, HC 171

Wednesday 11 March 2020

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Members present: Neil Parish (Chair); Geraint Davies; Dave Doogan; Robbie Moore; Mrs Sheryll Murray; Mr Toby Perkins; Julian Sturdy and Derek Thomas.

Questions 1 - 56

### Witnesses

I: Emily Rees, Managing Director, Trade Strategies; Dr Nick von Westenholz, Director of EU Exit and International Trade, National Farmers Union; James West, Senior Policy Manager, Compassion in World Farming.



## Examination of witnesses

Witnesses: Emily Rees, Dr Nick von Westenholz and James West.

**Q1 Chair:** Good morning, everybody. Sorry to keep you waiting. We have been discussing a few matters about amendments and the like to the Agriculture Bill, so it will probably be very much to your liking, but I will not discuss that now. If you would like to introduce yourself across the panel, please, then we will start.

**Dr von Westenholz:** I am Nick von Westenholz, the director of EU exit and international trade at the National Farmers Union.

**Emily Rees:** My name is Emily Rees and I am a trade analyst from Trade Strategies.

**James West:** I am James West, senior policy manager at Compassion in World Farming.

**Q2 Chair:** Welcome to you all. We will go straight into the questions. The first one is fairly straightforward and I will put this to Nick in the first instance. Why should the import of foods produced to lower standards than allowed in the UK be prohibited? Is this just protectionism?

**Dr von Westenholz:** The protectionism question is one that we get asked a lot. There are a few points on that. First, there are situations where protecting your domestic production sectors is justified, for a number of reasons, not least that, in the current climate, we are encouraging our farmers to produce in a way that is sympathetic to the environment and that upholds high standards of animal welfare. Often, that will come with a considerable extra cost for those producers, so there is a point about equity. When you are legally requiring your producers to shoulder extra costs, at the very least you should require the products they are competing with to observe the same standards. It is legitimate in that sense.

The other point about why it is perfectly reasonable to protect standards in trade policy is that the UK Government and UK policymakers have taken a policy position on high standards of production. They have decided that these are valuable and legitimate, for whatever reason. It is, therefore, hugely inequitable to then allow those farmers to be undercut, not least because it counteracts the policy you are trying to achieve. You end up increasing the provision of food produced to lower standards, when, apparently, the aim of the domestic policy is to drive higher standards in production, so it becomes completely counterproductive.

The last point I would make is that UK farmers deliver an awful lot of things beyond just affordable and safe food. They look after over 70% of the UK landmass. It is a ready-made army already on the land, producing food to high environmental standards. If you lose that, you will have to



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find it from somewhere else at considerable cost. There is an awful lot of value that UK farmers provide to the country.

**Q3 Chair:** Playing devil's advocate here, what do you say to those who say, "Why should we not have cheaper food? Why do we need to protect British farmers? Why not let them have the cold winds of competition?"

**Dr von Westenholz:** We already have very affordable food. As a proportion of income, only consumers in Singapore and the United States pay less for their food than consumers in the UK. All you have to do is go down to the shops and see how affordable and available food is in this country, with the BOGOF deals, et cetera. In terms of the price of food, I find it very surprising when people level that argument. I cannot see it as a concern. That is not to say that there are not considerable concerns around poverty in the UK, with some parts of the country and some parts of society being unable to afford food. That is not an issue with the price of food; it is an issue with incomes and with welfare, and it is those that need to be tackled. It does surprise me and I do wonder what the question is when the answer thrown out is "cheaper food".

**Q4 Chair:** What you have not commented on is, if we are driving towards higher welfare standards, whether that puts the cost of production up as well.

**Dr von Westenholz:** Absolutely. We have a situation where costs of production for UK farmers are comparatively very high globally, and a lot of that is because of the regulatory burden around things like environmental protection and welfare. We do have higher costs of production and that is why all we are suggesting in this space is that we be treated, to use an oft-used term at the moment, on a level playing field with producers elsewhere in the world. It is not protectionism. We are quite happy to compete, simply if they are observing the same standards and costs of production that farmers here are asked to observe.

**Q5 Chair:** Farmers are restricted from using the same methods as other parts of the world, with maybe more intensive production or more antibiotics. If we are stopped from doing that, surely it is legitimate that that is then protected through imports.

**Dr von Westenholz:** Indeed.

**Q6 Chair:** Do not worry, Emily, you will come in in a minute. The second question is for Nick and James. Given that we have retained EU law on chlorine-washed chicken and hormone-treated beef, which imports would you be particularly concerned about? I will perhaps bring James in on that one.

**James West:** Two of the production systems that are banned in the UK are battery cages for hens and sow stalls for pigs. Imports of products from those systems would undercut British standards and British farmers operating without using those systems. Back to the previous question, I



do not think we are asking for all imports to be banned; we are asking for imports of products that do not meet UK standards to be banned. Along the lines of what Nick was saying, Government policy is to subsidise public goods. That is to move to higher systems of production across the range; that is not to bridge the gap between what British farmers are producing and cheap or lower-quality imports that are potentially coming in.

**Q7 Chair:** When we think of eggs and egg production, we think of shell eggs. The problem with the poultry industry, as far as I can see, is that over half the egg product we use is liquid or powder—mainly liquid now. That can be imported from anywhere under virtually any conditions for those hens, including density of population. How do you see us being able to stop that coming in?

**James West:** I appreciate it is trickier with ingredients, but the Agriculture Bill permits the Secretary of State to introduce method-of-production labelling. We would suggest that it should be a duty rather than a power. That would cover the whole range of intensive indoor versus extensive pasture-based farming and everything in between. You would not just label the higher-welfare production; you would also label all methods of production.

**Q8 Chair:** In a processed product where you might have 25 ingredients, the challenge has always been to make sure that, on that label, you can check the welfare standard of that egg product in your quiche or whatever. That is the challenge. There probably is not a magic solution but where do you see us being able to label that? That is where I can see a lot of this lower-welfare-standard product coming in.

**James West:** I do not know exactly what the label would look like but, as British agriculture continues to move to higher standards through Government policy, country-of-origin labelling will then become more relevant. At the moment, there is an assumption that British is best. In some cases, that might be accurate; in some cases, it might not be. If Britain genuinely has the highest animal welfare standards in the world, that label offers some guarantee, in addition to an indication of how the product was produced, even in an external country.

**Q9 Chair:** With barcodes, we should be able to have it all listed, but we have to push to the processor as well as the final seller of that.

**Dr von Westenholz:** This is where these issues become very complicated. We should be clear that a lot of this discussion is around what we can do in the trade deals we are currently negotiating. These issues will often arise outside of any trade deals, just in our trade with the rest of the world under MFN principles at the WTO, which brings in an important issue that we might come to later around what our applied tariffs should be. On this issue about how you can build a system, it is complicated and will take time, but you can already see accreditation systems around the world for food standards. There are many private



standards that do that, and UK farmers, by and large, produce to those schemes, be it Red Tractor or other schemes. Those are all private, but they demonstrate that you can create systems that allow producers to demonstrate that they meet certain requirements. If you can look at ways of rolling out these sorts of systems on a large-scale basis and using that as the basis to compare standards, that will go some way to achieving control over what ends up on shop shelves.

One concern with the labelling issue is that, first, we know that consumers, whatever they say, do not necessarily pay a lot of attention to labels. Part of that is because, certainly in the UK, there is a certain level of trust that, if it is on the shop shelves and it is put on their plates, it meets certain expectations. Secondly, about half the food we eat is eaten outside of the home. It is consumed in such a way that there is no label at any point. The idea that consumer information is the easy way to resolve all this is not correct.

Q10 **Chair:** When you ask in restaurants, very often they will say it is local, but I always say, "Local to where?" That is always the standard answer. It is how we control what we eat outside of what we buy. To some degree, the big retailers have their reputations and, if you challenge them and the product is not what people believe it to be, you have the embarrassment factor, but I am not sure you do with some of the eating-out chains, which probably want to keep their prices as low and as competitive as possible.

**Dr von Westenholz:** Yes.

Q11 **Mrs Murray:** We import oilseed rape from non-EU countries that use neonicotinoids, which British farmers cannot use. Do you want the Government to stop these types of imports? Nick, it is probably another area that you have a big interest in. I know it is of massive concern to my own farmers. Do you have any thoughts on this?

**Dr von Westenholz:** It is. There is almost a crisis in oilseed rape growing now in the UK. It has reduced almost to half its levels some years ago. To be honest, we predicted at the time that that would happen, if neonicotinoids were banned. They have been, that has happened, and we are now where we are. We have some ideas about how we can remedy that domestically, but one of the big concerns, as you say, is that we are importing a lot of oilseed rape produced using tools such as neonicotinoids, which are banned here. We have to acknowledge that, under current interpretations of WTO obligations, there is not very much we can do about that.

Having said that—and this may come up a few times in this discussion—the view of WTO rules is often very binary: "That is against WTO rules, so we cannot do it." If Brexit means anything, it should mean that the UK takes a bit of leadership in testing some of those rules, challenging them and, over a longer period, maybe looking to reform them as well. Whether an outright ban on oilseed rape grown using neonicotinoids is



the right thing to test under those rules, I am not sure, but certainly, in the 21st century, we should be interrogating WTO rules in a way that asks whether it is legitimate for countries to exercise trade restrictions on the basis of production methods that are banned in their own countries, particularly where those have environmental ends, as is the case with neonics. It seems to me that that is a perfectly legitimate policy stance.

It is clearly not well dealt with under WTO, which goes back to the GATT rules agreed in 1947. They are old and ought to be ripe for review and reform, in my opinion. Today, the big concerns that society has are around things like climate change, environmental impact and animal welfare, and they are really not well dealt with, so I would hope we could move to a place where we start to test some of those rules and, as I say, start to reform and review them.

**Q12 Mrs Murray:** Just for Nick, and then perhaps Emily can come in afterwards, how would you balance the needs of farmers with the environmental lobby, which has very legitimate concerns about the effect of neonics on pollinators?

**Dr von Westenholz:** Absolutely. The debate around this comes in two parts: what the standards should be and, once you have decided on what those standards should be, how you make sure they are upheld in both your domestic policy and your trade policy. There is a perfectly reasonable argument to have about the impact of tools like pesticides and other crop-protection technologies on the environment. We have a pretty robust regulatory system in the EU—it is probably about to come under a bit of pressure because we are moving out of the EU system—which provides quite a high level of scrutiny of pesticides as they are brought to market.

Clearly, debates still go on about whether they have an impact on the environment, but we should try to be as science-based as possible in assessing what the impacts of those are, in the recognition that the reason farmers want to use pesticides is because they have a benefit. They protect their crops from diseases and pests and, therefore, provide a supply of food. The trick with your regulatory system is to acknowledge that and to do it in a way that reduces and minimises any associated harm. That is where the debates around things like neonics emerge. It should be based on the science but we should absolutely acknowledge that there are environmental concerns here, which need to be addressed as well.

**Emily Rees:** There is a wider question with the WTO. We know that this organisation is undergoing quite an acute crisis that goes way beyond food. We have a breakdown of the rules-based system, which is a very urgent one. We have no functioning Appellate Body in Geneva. This means there is no mechanism currently to organise disputes among countries. While I can appreciate many of the comments being made here today, it is important to look at the wider context of what is happening at an international level.



When we are talking about reforming the WTO, we are talking about safeguarding rules-based trade. We can discuss the science-based questions, and look at conditionalities and other parts of the rulebook that perhaps we are less comfortable with, but currently we are safeguarded by that rulebook. We need to have a moment to appreciate the seriousness of what is happening at that level. We are hoping for a breakthrough at the ministerial conference in Nur-Sultan in June, but we are in a serious situation in that institution.

**Chair:** That is a very interesting point.

Q13 **Julian Sturdy:** Oilseed rape and neonicotinoids are classic examples of a situation where the use of pesticides is being reduced in the UK. We can argue that there are some good elements to that, and there could be an argument that there are some bad elements to that, but ultimately the situation for UK and EU producers is only going to get worse because the toolbox available to farmers regarding pesticides is decreasing. In addition to neonicotinoids, we have the loss of a number of fungicides coming forward as well, which is only going to put the cost of wheat production up across the EU. This is going to be an ongoing issue outside of the UK and, potentially, outside of the EU as well.

What can we do? That is really my question, and it is to both Nick and Emily. You have said it is going to be very difficult under WTO, so can the UK Government do anything with it in its current form to restrict the import of products that are grown to a lower environmental standard, such as using pesticides and seed dressings that are not available to UK producers for environmental reasons?

**Dr von Westenholz:** From a purely technical point of view, a sovereign state can introduce any laws it likes to follow. That was one of the arguments behind Brexit, so it would be able to impose restrictions. It would then, pretty quickly, be challenged by the affected WTO members—and, indeed, not just those directly affected—who want to protect their rights under the rules-based system, as Emily said.

Then there is a major question of whether the UK Government would want to go down that road at all. At the moment, that is highly unlikely. In terms of pure restrictions in the short term, it is very challenging. Rape is going to be the test case, but there may be some areas on this standards issue where the Government might want to impose restrictions or conditions on imports, and then have the argument, test them and see what happens.

You raise a very important point because this issue about standards is not just about trade policy. In the current environment, we often talk about trading standards, but it is about both trade policy and domestic policy. This is a two-pronged approach. If the UK Government and the electorate behind it support high standards of production in the UK, and that is what they are driving for, you need a domestic policy that



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supports that as much as a trade policy that supports it. If you get either wrong, you will undermine it.

To your point about neonics and oilseed rape, for example, if the UK Government persist with the EU approach to pesticide approvals, so UK producers have access to less and less and their costs of production are therefore increased, certainly indirectly, what will the Government do to support that through their agricultural policy? We have started exploring the idea, for example, on rape of having an assurance scheme. The Government can, essentially, underwrite farmers to grow oilseed rape, because we think there are lots of good reasons—environmental included—to grow oilseed rape, as well as agronomic reasons. If the UK Government are going to say, “You have to compete against imports that can use things we are not allowing you to use,” how are they going to provide support through their domestic policy? That is the question.

**Emily Rees:** A lot of things have been said and perhaps we can clarify what we can do under WTO terms and what we can do under free trade agreements. They are very different things.

**Julian Sturdy:** That is important.

**Emily Rees:** Currently, you have imports into the EU, so we are importing produce produced under different methods of production from other parts of the world.

Q14 **Julian Sturdy:** The importation of oilseed rape is increasing right across Europe because European and UK farmers cannot produce it.

**Emily Rees:** You can take many examples. We can take that of wheat, which you also mentioned: Canadian wheat versus UK wheat. WTO rules say, very simply, that, for a like product—and there is a likeness test to assess what is wheat and wheat—you cannot discriminate against a foreign product or among foreign products. These are the rules at a WTO level.

Q15 **Julian Sturdy:** You cannot do that for environmental reasons, and there is no environmental test or anything like that.

**Emily Rees:** It is not under the standards. The sanitary and phytosanitary agreement of the WTO says that a Government can legitimately impose rules to protect human health, plant health and animal health. This means there is a grey zone when we are talking about animal welfare or environmental standards, but those are the rules today. The technical barriers to trade agreement says, in article 2.1, that WTO members must offer the same treatment to like products of domestic and foreign origin, and not discriminate between products of foreign origin. We need to be very clear that that is what the rulebook says today.

When we are talking about what we can negotiate in free trade agreements, it is a very different situation. Within the framework of trade negotiations, we can put in conditionality, so we can ask of our



negotiating partner that, in order to get preferential access to our market, certain rules be respected. That is something we can do. We have seen it in a number of agreements. For instance, in the area of animal welfare—and we were speaking of eggs—most recently, in the EU-Mercosur trade agreement, there is a conditionality on animal welfare for the importation of eggs. Currently, under WTO terms, you cannot discriminate an egg against an egg. It does not matter how it has been produced. We need to be very clear about the general understanding in terms of agricultural trade.

We were also talking about sow stalls and battery hens. These are rules that are applicable today to domestic production within the European Union, but these are rules we can impose only on the import of products within free trade agreements.

**Q16 Chair:** That is why free trade agreements, in the end, are much more advantageous, if you want to maintain a reasonable standard of production, than going, bluntly, to WTO rules.

**Emily Rees:** It also comes at a market access cost. We provide a preferential tariff, for instance. We can eliminate a tariff in an agricultural quota within the market access provisions of our free trade agreement, under a condition of a certain number of rules being respected, be it in the environment chapter, in labour standards, in sanitary and phytosanitary questions or in a number of other areas. This is what we tend to refer as “SPS-plus”. It is about going beyond the SPS agreement of the WTO within the framework of a free trade agreement.

**Q17 Chair:** Naturally, whoever you are trading with needs to agree that before you can get that agreement through. They may want to water that down.

**Emily Rees:** Absolutely, and that is where the cost of these concessions comes into play.

**Dr von Westenholtz:** This is the point I tried to make earlier: a lot of the discussion is around what happens in free trade agreements, and that is where people are focusing this on. That is half the challenge. As you say, in a way, in purely formal terms, it is much easier to deal with these issues within FTAs. In practical, political terms, it may prove much harder, as we may see with the UK-US negotiations this year. On the face of it, it is easier; the bigger challenge is how you manage these issues outside free trade agreements or trade deals, for the reasons Emily has just outlined.

**Chair:** Yes, it is a bit like the wild west outside of trade agreements, but we cannot possibly comment.

**Q18 Mr Perkins:** First, on this question of what constitutes lower food-production standards, I will ask you first, Emily: is there an accepted definition as to what constitutes lower standards? We speak quite simply about this as though it is accepted. Do you recognise the



single test as being the food production standards that we have and that others should aspire to?

**Emily Rees:** I am very glad that you bring up this question. It is one we often hear about: what is a high standard and what is a low standard? Within this discussion, we often hear that the EU is the gold standard, and I would like to challenge that slightly. James made a point earlier on this.

We could take a number of agricultural products. Let me take a very simple example: dairy. It gets cold in the winter in the UK and other parts of Europe, so you will tend to keep your dairy cows indoors. In other parts of the world, it does not get so cold and they do not need to be put into sheds for numerous months. What is the higher or the lower standard? Can we accept that there is also a natural endowment of certain countries to have a higher method of production on the basis simply of climate, natural resources or the availability of water? We need to be very careful when we look at what constitutes a high or a low standard. It is not as clear-cut.

Q19 **Mr Perkins:** Would you say that the Farm Animal Welfare Committee and the five freedoms of animal welfare are generally accepted as the recognised standard, or should something else be recognised as the standard?

**Emily Rees:** On the five freedoms, perhaps James will be better able to address that point, but let us go into what the standards for animal welfare are right now at an international level. As I mentioned, under the WTO sanitary and phytosanitary agreement, we accept that there are three standard-setting bodies that set the international standards: for plant health, it is the International Plant Protection Convention; for animal health, it is the World Organisation for Animal Health; and for food safety, it is the Codex Alimentarius. Those are the international standard-setting organisations.

When we look at animal welfare, it has been addressed under the World Organisation for Animal Health in the terrestrial code. However, the WTO sanitary and phytosanitary agreement accepts that, again, it is to protect human health, plant health and animal health. Therefore, it is currently understood that the sections of the terrestrial code that apply to animal welfare are not applicable under the SPS agreement per se at a WTO level. I am happy to discuss the seal ban case in the wider context of this, because there is a question of how values and public morals should be considered in international law and in the international law governing our trade.

Q20 **Mr Perkins:** James, I will invite you to come in on the original question. Also, your organisation was one of those involved in contributing towards the Animal Protection Index. I would like you to reflect on that, in terms of the standards we have in the UK and whether they are matched across the EU.



**James West:** On the five freedoms, that is a good place to start in terms of whether a country or a production system is delivering good animal welfare. On the API, the UK comes out relatively high. It was rereleased just yesterday and the UK was downgraded to a B from an A. On farm animals, it might be on a D, which is possibly the same level as Australia. But we should be looking at the science. We should not be comparing ourselves with countries of low-welfare production. We should be asking, "What is the science telling us is the best method of production for animal welfare?", and trying to move our systems towards that.

For example, in France, they have a scheme called Label Rouge, which is particularly for chickens. It delivers genuinely higher standards of welfare. Roughly 17% of French broiler production is produced under that system. In the UK, it is around 5% for the equivalent standard. We should be saying, "France is doing well in this particular issue. Let us do that." That is where there could be Government policy of small grants to farmers to transition to higher welfare systems, or subsidies to help with the running costs. Ultimately, all the value is undermined if farmers are being undercut by low-welfare imports.

Q21 **Mr Perkins:** We would all advocate the highest standards. In this discussion about where those standards are, it is important to have a starting point. You say that the UK was downgraded from an A to a B just yesterday. How many other EU countries would be at that level? Are there others below that level?

**James West:** I cannot remember off the top of my head. I think the API covers roughly 50 countries. It covers all animal welfare, rather than just farm animal welfare. I believe that there are six or seven in the top tier, and they are scattered throughout after that. Broadly speaking, north-west Europe falls into the top tier. The further you move in any direction from that, the levels drop.

Q22 **Mr Perkins:** Dr von Westenholz, I would invite you to comment, first, on this downgrading that James has referred to and whether you can tell the Committee anything about that. Secondly, there has been a perception that, across the EU at least, we have relative equivalence of standards, but the evidence of these differences within the EU shows that, to an extent, that equivalence was an illusion originally and it will probably continue to be difficult to achieve in the future.

**Dr von Westenholz:** I cannot comment on the API report because I have not seen or read it, but I understand it is more than just farm animals, so we would need to understand what it covers.

Yes, there are differences of welfare standards and other standards within the EU, and now those continue in the short time that we have been out of the EU. By and large, standards are similar. The standards of production particularly within northern European countries are more similar than they would be in comparison with other countries around the world. There are reasons for different standards. There is this other



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distinction that we need to recognise between mandatory and voluntary standards. Lots of producers in lots of countries will produce to particular standards because, essentially, they have chosen to do so by being part of a scheme: in the UK, that might be Red Tractor; it might be the private standards operated by supermarkets; it might be RSPCA or LEAF.

That is different to the regulatory requirements that all producers have to adhere to and, of course, those have largely been set by the EU. Countries have gone over and above that in some instances, the great example being what the UK did in the pork industry in the early 1990s. That had very damaging effects on the UK pork sector. It is a very good example of what happens if you go too quickly ahead of everybody else. You have the counterproductive measure where you hobble your own production and you rely on imports produced to lower standards. That is exactly what happened there. Generally, the standards are broadly comparable in Europe.

Emily is absolutely right. Talking just about standards and how other people's standards must meet our standards hides the complexity of the issue. The example around dairy is a good one, and there are all sorts of others. That is one of the reasons that, a year ago, we said that a commission should be set up, bringing in Government, stakeholders and trade experts, to look at this and make specific and detailed policy recommendations about how you get round and deal with these very difficult, complicated issues. That is exactly what is needed. It is really quite disappointing that we have not seen it, even though Michael Gove said that he would set that up over a year ago now. We have not seen it. It would have resolved lots of the issues we are now finding ourselves in. It is a little bit late.

**Chair:** We have the new Secretary of State coming in on the 24th, so we will raise that then.

**Dr von Westenholz:** It is very late now. We are in trade negotiations. I still think that would be an incredibly useful body to have, to look at precisely these issues. How do we compare standards? Where do we really want to focus? What standards are we keen to safeguard? How do we compare those to the standards in other countries in a reasonable way that does not unnecessarily hinder trade? These are the complicated questions that need addressing.

Q23 **Robbie Moore:** Emily, I know that you touched on this slightly earlier on, but under the WTO SPS agreement, if a food production method was thought to affect human, animal or plant health, what scientific justification would be required to ban it?

**Emily Rees:** Would you have a precise example, perhaps?

**Robbie Moore:** I was hoping you could give us an example.

**Emily Rees:** You would need to prove by science, preferably by a scientific body from your country. Currently, we use the science produced



under EFSA, the European food standards agency, based in Parma. It produces the science for the EU. It is the EFSA science that generally is considered if a dispute is raised. My understanding is that, as of next January, the UK will be able to rely on the science produced under EFSA membership, but I am not quite sure what the rules are for the production of science as of next January and who should be producing it. There is a question mark there.

Q24 **Chair:** We do not have anything in this country similar to EFSA, do we?

**Emily Rees:** We have the Food Standards Agency.

**Chair:** Yes, but it probably does not have the science.

**Emily Rees:** You will need to have scientific production. I know that these are more political cases, but let us go into them: the hormone beef and the chlorinated chicken. Currently, those cases are frozen in the WTO because, essentially, the science produced has not been able to show that there is a risk to human health in consuming them. As a precautionary principle, the EU has decided that it would prefer to ban such imports, but it needs to create a concession with the other trading partner. For instance, in July of last year, the EU provided extra tonnes of beef to the US under a phase-in system, in order to settle, in a way. It is not a closed case.

That is where the science comes into play and that is where it is important. If the science is not considered robust enough to make the case under human health, plant health or animal health, you will generally need to make a concession to your trading partner in order to settle. I am not sure if that answers your question.

Q25 **Robbie Moore:** As a follow-up, considering historical disagreements between the EU and the USA, will SPS, in your view, be a sticking point for future trade relationships between the UK and the US and EU?

**Emily Rees:** If we take hormone beef as an example, that case is not closed. It is frozen and an amicable agreement has been reached. As of January, if it is not reopened with the UK; it is more a question of leverage in bringing the UK to make concessions, perhaps within the ambit of a trade negotiation, rather than settling a case in Geneva.

Q26 **Chair:** To get round this, the EU has allowed a certain amount of beef in that is not hormone-treated.

**Emily Rees:** Correct.

**Chair:** There is a quota of beef. I suppose that that is the sort of thing that we could incorporate ourselves, if we chose to do so—I say “chose to do so”—in a trade agreement with America. Otherwise, it would come in, would it not?

**Emily Rees:** On the hormone beef, the agreement was that there would be the creation of a new quota, the high quality beef quota, alongside the



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Hilton quota. The high quality beef quota puts in a definition of minimum grain feed, which corresponds very much to a North American method of production. Out of this, the EU conceded a 45,000 tonne tariff rate quota for high-quality beef to the US in order to settle, if that makes sense. The case is not closed.

Essentially, once this quota was open, it was open to the world, and a number of other countries also wanted to export under it, which then brought a renegotiation last July, in which the EU ring-fenced 35,000 tonnes, to be quite precise, out of the 45,000 tonnes for the USA.

**Chair:** I ought to declare a slight interest. I have nine beef animals, just to declare that for the record.

Q27 **Julian Sturdy:** I want to come back with a quick question, Emily. We talked about hormone beef, which is frozen at the moment. Is there any example of a ban that has been implemented on scientific grounds within the WTO sanitary agreement? Has anything been banned? Can you give us some examples?

**Emily Rees:** Of course. Every day, there are questions of specific pesticides that have been banned from use. There are a number of cases every day that affect these. Once the science is up to level and we can see that there is a direct impact, there is a way of enforcing rules at an international level under the rulebook.

Q28 **Julian Sturdy:** Could you give us an example of that?

**Dr von Westenholz:** The pesticide issue that we were talking about earlier is undertaken under SPS rules, so there are differentials in the EU approach to pesticide approvals and, therefore, the approach to minimum residue levels on imports in the EU.

Q29 **Julian Sturdy:** MRLs are very important on that side.

**Dr von Westenholz:** They are, and they are imposed under SPS protections.

Q30 **Julian Sturdy:** As an old example, was DDT part of that? Is that something that went through that sort of process?

**Dr von Westenholz:** Yes, that would have been a while ago, under slightly different regulatory arrangements. It was also a global issue too. In a number of the active ingredients that have been banned in the EU recently, restrictions on residue levels in those imports that also apply are undertaken under SPS. It is an SPS issue.

Q31 **Mrs Murray:** Can we turn to GATT and animal welfare? How difficult is it to discriminate between products on the basis of process or production methods under GATT?

**Emily Rees:** Process or production methods are governed by the WTO technical barriers to trade agreement. Essentially, there is a bit of grey space, if I may go there. Essentially, it comes back to this likeness test:



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is an egg an egg, or is chicken chicken? How do you decide what is a like product for agricultural products?

Under dispute 381, US-Tuna II, there was an agreement on what should constitute the likeness test under the TBT agreement. Essentially, there are four issues that we look at to assess whether a product is like to another. Do the products have the same physical properties—an egg and an egg? Do they have the same end use—to scramble eggs or to make a quiche? Do they have the same tariff classification? That is an important one—in this case, an egg and an egg. Here is the fourth one: does the difference between these two products affect consumer preferences? That is where I believe that there are still some questions at an international level on process and production methods, and the extent to which they affect consumer preferences.

Q32 **Chair:** Surely, that is where chicken, and chlorinated chicken, would come in?

**Mrs Murray:** Yes, absolutely.

**Chair:** It is safe to eat but do we necessarily want to eat it? Would that follow? In the American system, it does not kill the Americans, does it? They still live after eating this chicken, so you cannot say that the chlorination is wrong from a health point of view, but you could say that we do not particularly want to eat it because it has been through that process. Is it legitimate to argue that?

**Mrs Murray:** Animal welfare would come into that.

**Emily Rees:** I think we get back into Nick's earlier point that these are extremely technical issues. For instance, you would have to look at density levels in your production or at antimicrobial use to make that determination. You would also have to, in a certain way, prove that consumers have preferences based on those specific technical specifications, which would be slightly more complex. In addition, you would have to look into whether you have methods of production within the UK that are also on those density levels or the use of antimicrobials and such. It is a hugely technical, tedious process to look at these issues and see the extent to which they affect consumer preferences and, to Nick's earlier point, not only their preferences but their purchasing choices. We know that there is a difference between the two.

**James West:** Consumer preference is probably quite clear. When eggs were labelled to method of production, the sale of free-range eggs went from something like 20% to more than 50% of the market. In certain areas, you can show that there is genuine consumer preference or concern about a given product. Chlorinated chicken would be a fairly obvious one, or hormone-treated beef. One that is not talked about so much is ractopamine-fed pork. These are all things that the British consumer probably does not want on their plate, and the Government would be wise to make sure that they protect against that stuff coming in. I would point to the fact that consumers have a preference over how



they view British farming versus how some of this external produce is raised.

Q33 **Mrs Murray:** Moving on, can GATT article 20 exceptions on the protection of public morals be applied to animal welfare standards in farming?

**James West:** Emily will know more about this than I, but we think that it can. Historically, case law suggested that it could not but, as things have moved on, in more recent examples animal welfare has been used as a reason to ban a given product. In EC-Seal, there was a recognition that seal welfare was a public concern of EU citizens. I believe the same was the case in US-Shrimp, probably, in relation to shrimp nets and how turtles were being caught in those nets.

Britain prides itself on being a nation of animal lovers. If the EU can claim that there is public concern about animal welfare, the UK certainly can. Globally, citizens are concerned about animal welfare, so it is probably a very good defence for the Government to take, if challenged. Whether it would be 100% safe, who knows? You would find that out when the case was taken. My understanding is that the way it then works is that an action could be taken on the part of the other country that had made the complaint, so you would not necessarily then have to allow the import of that product but you might have to take some kind of compensation measure for that country. Our view is that article 20 and public morals are the way to defend against much of this stuff.

Q34 **Chair:** From the hardnosed lawyers' point of view, what are they going to make of it?

**Emily Rees:** I am not a lawyer, so I will put that disclaimer into place. Let us go back to the EC-Seal regime. It is a very important case but there are some technical specifications that we need to look at when it applies to agricultural products. The EC-Seal regime prohibited the import and marketing of seal furs within the European Union. In doing so, the WTO Appellate Body agreed that this was not a technical regulation because it did not impose product characteristics. The import conditions were based on the identity of the hunter and the purpose of the hunt. That is where there were indigenous exemptions that were also in part of the EC-Seal regime.

We talk a lot about the GATT 20 exemption because article 20(a) says that you can prohibit certain trade on the basis of public moral concerns. It is an exemption and, therefore, it needs to undergo what we call the chapeau test. It is terrible lingo but, essentially, it means that the measure needs to fall within 10 options, one being public moral concerns. In the case of the UK, I agree that it would not be too difficult to prove that British people are a nation of animal lovers and have a great amount of concern for the welfare of animals.



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It becomes slightly more complex in its application to agricultural produce in the second part of the test, which is that the measure must not be applied in an arbitrary manner which would discriminate between countries without reasonable justification or act as a disguised trade restriction. That means in practical terms that, for instance, if we were to consider, after the UK leaves the European Union, a prohibition on the marketing and import of foie gras, on the basis of an animal welfare concern, that exemption would probably work. You would need to put in a regulation and go through the hoops and hurdles required to get to that stage, but that is possible—also if we are looking at prohibiting the import and marketing of certain furs. But these are products that are not produced in the UK.

When we are talking about competing like products, we fall under a more technical scope and the likeness test would then intervene in looking at whether this measure is being put into place in a protectionist, discriminatory or arbitrary manner to protect, for instance, the interests of British farmers. That is how international law would look at such a case.

Q35 **Mrs Murray:** Could I take you back to chlorinated chicken? If we do not wash chicken in this country with chlorine, and we decide to not import chlorine-washed chicken from any other country, surely you are saying that that could be done.

**Emily Rees:** But you produce chicken here.

Q36 **Mrs Murray:** Yes, but we do not produce chicken in that way here.

**Emily Rees:** The point is that you would have to prove that your non-pathogen-reduction-washed chicken is not the same product as the other.

Q37 **Mrs Murray:** It would not be.

**Dr von Westenholz:** This is exactly the argument. It comes back to likeness. I would agree with your interpretation that it is not a like product; others would not. That is where you have to start looking at the precedent and jurisprudence around these issues.

Q38 **Chair:** If I were the Americans, I would say to you that, like it or not, that chicken is probably safer to eat than some of the processes we go through. We can argue about welfare conditions and antibiotics but, in terms of the chlorine wash itself, I am not sure that we have a leg to stand on.

**Dr von Westenholz:** This is exactly the argument. When your sole concern is around, say, food safety—and that is essentially a product issue—that argument sticks: that this is a chicken and this is a chicken, and the way they were produced is not relevant; we are concerned about the safety of it. Then you run into that issue. However, it goes back to what I said at the beginning about testing the limits of some of the existing rules, but also accepting that we are now in a world where there



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are legitimate concerns around the treatment of farmed animals, the impact of farming on the environment, et cetera.

There is a legitimate argument, which is still to be had, that they are not like products and that, if you have produced a product in a certain way, it is different. Maybe more to the point, we are going to get ourselves tied in knots if we go down this rabbit hole. Instead, we almost take a step back and look at ways, whether through other exemptions or using existing exemptions in GATT 20, of ensuring that these legitimate policy considerations about production methods are properly catered for in international trade laws. That is the question and you could go down rabbit holes worrying about what you can do within the existing interpretations. Maybe we just need to come up with some new rules.

Q39 **Julian Sturdy:** Just talking about production methods, I know we touched on this briefly, but where does the impact of AMR come into this? I will declare an interest as chair of the All-Party Group on Antibiotics and Antimicrobial Resistance. The high use of antibiotics in certain countries in farmed animals can have an impact on antimicrobial resistance globally going forward, so where does that, as a production method, come into WTO?

**Emily Rees:** This is what we are all trying to crack. I will be very honest with you. This is one of the areas where there is a huge grey zone at an international level. Antimicrobial resistance was not the issue of the day when we put the rulebook into place.

Q40 **Chair:** There must be a number of countries pursuing this line.

**Emily Rees:** I would like to come back to the chlorinated chicken part, because I have just come back here to the actual case as the complaint by the United States. I would like to remark that, in 2008, when the Commission had submitted the proposal to allow the importation of chicken treated with these pathogen-reduction treatments, the expert body, the Standing Committee on Plants, Animals, Food and Feed, rejected the Commission's proposal unanimously, with the United Kingdom abstaining. That abstention at the time would be brought back to the table in such a question.

**Chair:** Going on to Julian's question, it is apparent that, in the last few years, quite rightly, the use of antibiotics has become a big issue, so it cannot be just here in the UK or Europe. Across the world, there must be quite a bit of concern.

**Julian Sturdy:** There is an animal welfare issue, but the point is that, when we are talking about the coronavirus, AMR is being talked about as potentially a bigger global killer in the next 50 years than anything else. There is this moral issue out there, so that has to be tackled globally, but you say nothing is being done.

**Emily Rees:** The question is whether you argue it under a moral question.



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**Julian Sturdy:** I do not know. I am asking you that question.

**Emily Rees:** Or do you argue it as a means to protect human health?

**Chair:** That is sounder, I expect.

**Dr von Westenholz:** We come back to these rules having been created shortly after the end of the last war, in a very different political environment and with very different public concerns. AMR is a public health concern, but it is not a specific concern with the safety of the product. That is what most of the SPS rules are designed to deal with: there is a specific problem with the safety of the product. It might pose a risk to human, plant or animal health as a product.

The problem with overuse of antibiotics is what it does on a wide scale to resistance in large populations. The reason there is such a grey area over this is that the rules as written cannot deal with these sorts of threats. Either they need to start being interpreted in a different way or they need to be reviewed, notwithstanding the absolutely correct point Emily made about the state of the WTO and its readiness for a wide-scale reform agenda in any case.

Q41 **Chair:** You also have to rely on the country you are importing this meat from to tell you the truth about the way it was produced and the amount of antibiotics used. If the withdrawal period on the meat has been followed, you will not test for that in the meat, will you? Therefore, you rely entirely on a production method of that country and knowing that what you have been told is correct, or am I wrong?

**Dr von Westenholz:** That is why looking down the route of a certification scheme, to provide a common metric that producers all over the world can use for the standards they produce to, whether welfare, environment, food or safety, is important. That is no mean feat. I am not suggesting this is going to be done overnight, but it has to be a really important part of the solution.

Q42 **Chair:** I do not want to be politically incorrect and mention certain countries, but there are countries out there that would be quite suspect as to the reliability of that production. That is something else we need to open our eyes to, but I suppose legally it is difficult to enforce.

**Emily Rees:** Practically, how does the EU currently organise these things? The veterinary office of the European Commission, based in Ireland, has a number of inspectors, essentially. We send them out on import audits all year round to check these things. These are inspections of everything from fruit to meat products. Essentially, for any food that is imported across the world, we have these audits that take place. Once the audits come back clear and we consider the veterinary inspections of the exporting country adequate, we give trust to the other country that what it is saying is what it is doing.

Q43 **Chair:** We may have to do that ourselves in the future, then.



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**Emily Rees:** It is my understanding that the UK would have to take on its own veterinary inspections.

**Chair:** That is probably a legitimate question for us, not only to the Secretary of State, but to the Food Standards Agency at a later date. Thank you for that.

Q44 **Dave Doogan:** Building on any of your previous examples, what practical role, if any, can tariffs play in incentivising higher standards of imported food, in terms of food production, animal welfare and environmental impact?

**James West:** On tariffs, anything that is not covered by a free trade agreement is then covered by whatever tariff the Government have listed in their schedule with the WTO. The chances of the Government striking a trade deal with every country in the world, at least any time soon, is very slim. They have some priority countries, such as the EU, US, Australia and so on, but anyone who is not covered by an FTA will be importing at a set tariff. The EU has a set of tariffs and, generally speaking, they seem to protect against low-welfare or low-quality imports in most cases.

The UK listed some new tariffs recently, which were massive decreases on what the EU level was, and particularly for eggs. If I remember correctly, the tariff was zero. A zero tariff on eggs is just going to completely decimate the UK egg industry. The tariffs need to be set high enough to ensure we are not undercutting, as a result of imports from any other country that we import from. I would urge the Department for International Trade and, I guess, Defra to look again at those tariffs, to make sure we are not inadvertently decimating our standards and our producers as a result of dropping tariffs too severely.

Q45 **Dave Doogan:** In essence, then, that very much cheaper imported egg is achieved by very much lower standards of animal welfare in the market where that cheaper egg originated.

**James West:** Quite probably. There will inevitably be a range of production systems in any country, but, as I said earlier, generally speaking north-west Europe tends to have the highest standards, and the further you move away, the worse they get. In terms of eggs, you are probably looking more at egg powder or liquid egg, because of freshness issues in importing them from anywhere beyond our immediate neighbours, but, yes, they will quite possibly come from lower-welfare systems.

**Dr von Westenholz:** On that, we estimate that about 16% of the cost of production for eggs is due to the regulatory standards requirements around animal welfare, so that is an additional cost that UK egg producers shoulder. The reference was to the no-deal tariff the Government published last year, which they were going to apply in the case of leaving without a deal. On eggs and, indeed, on many cereals, wheat and barley for example, there were zero tariffs. In many other



areas, there were significantly reduced tariffs. Sheep meat was the only product where the tariff was maintained at its current level, but then we will be allowing a large volume of New Zealand sheep into the UK tariff-free under current commitments.

Our MFN tariffs are the tariffs we charge to anybody outside of those countries we have preferential agreements with. They are a blunt proxy tool for managing imports produced to lower standards. They do that job pretty well. The DIT has just closed the consultation on what tariff it should apply from 1 January next year and has tried to reassure some that it has forgotten all about the no-deal tariff, that was yesterday's news and this is going to take a different approach, but it is very clear that still the preference is for some sort of liberalisation.

On those sectors where we have high standards and we produce domestically, that carries with it significant risks. We are very concerned that, if you reduce tariffs to a level where it becomes cost-effective to import goods that are produced to lower standards, that will be a massive problem. These are exactly the sorts of issues we face outside of trade deals, and all the discussion about how we manage these issues of trade deals misses the point that this is as much an issue about what tariff we apply from next year.

**Emily Rees:** It is very important to keep in mind that, while there is much agricultural production here, the United Kingdom is still food dependent and must import food for the benefit of its citizens and consumers.

Going back to the specifics on tariffs, a lot of it will depend on the terms of trade with the European Union, because today a lot of the food the UK imports comes from the European Union. If, for whatever reason, there was no deal with the EU at the end of the year, those tariffs would also apply to that food, which means that perhaps you would be importing from New Zealand or from other parts of the world, simply because they are on par now at a competitive level, so there are real questions about that.

One point to make is that there is quite a large negotiation going on currently, on the basis of the agricultural quotas that the UK and the EU have split, which is the apportionment schedules process in Geneva in the WTO. That currently requires an agreement with the rest of the WTO membership. Under this proposal, the EU and the UK have split the amount of the agricultural quota available to the world between the European consumption and the UK consumption, so that will depend on every particular agricultural quota that we are talking about. Essentially, I am saying that, even under the new tariff regime, there is a quota system—one that is currently being negotiated and requires a wider vote from the WTO membership.

Q46 **Dave Doogan:** I have a supplementary for Nick. It is tempting to think that all egg production comes from high-volume output, but my



understanding is that many farms have an element of egg production. Over and above that, the egg industry in the UK can be used as a bellwether for what might happen to the broader agriculture sector if things go wrong in terms of imports, because that industry being subject to zero-tariff mass importation of cheaper product from elsewhere would have an almost overnight effect on egg production in the UK. Would it or would it not?

**Dr von Westenholz:** It would, for the reasons I mentioned: that there are higher costs of production in the egg sector across the board and those would be at threat of being undermined if we just removed any import tariffs on eggs. It is absolutely right that the issue is that you have lots of imports of liquid egg or powdered egg.

It would be a risk, but there are other sectors, equally, that we would be concerned about. We had a very good harvest last year. We are probably going to have a rubbish one this year because of the wet weather, but last year was good, which means we will probably be a net exporter of wheat, and usually most of that would be exported to Europe. There will be a tariff on that if we do not have a deal and, outside of a fairly small quota, quite a large tariff—up to about 50%. Nevertheless, this was one of the other products where the Government suggested reducing any tariffs whatsoever.

The sheep meat sector is one that has been well covered and the risks they face are well known, but Emily is absolutely right. This looks a bit different depending on whether we have a deal with the EU. The DIT consultation, for example, was predicated on the existence of a zero-tariff deal with the EU. The point we have made in our response to that was, “Well, that is great, but you need to be ready to do something very different if there is either no deal or if there are tariffs and quotas in any deal agreed at the end of the year.”

Q47 **Chair:** That leads me quite neatly on to the last question. Is our trade negotiation process responsive enough to the needs of food producers and consumers? It is probably over to you first, Nick, on that one. It is the million dollar question really.

**Dr von Westenholz:** We will find out, because we have not done it for 47 years. We are about to take the opportunity to embark on breakneck speed negotiations concurrently with some of the most fearsome trade negotiators around the world, but let us jump in at the deep end. The big concern here is on the level of parliamentary scrutiny, public scrutiny and public engagement with these deals. Many people have urged the Government to provide some sort of parliamentary role in ratifying any final agreements or even agreeing the mandates at the outset. That opportunity has already been missed, as those mandates have been published.

Q48 **Chair:** You will be quite happy with an amendment that we have agreed on this Committee to go down on the Agriculture Bill, which will be largely



along those lines, for Parliament to have much more scrutiny at the end of the deal. You must expect the Government to do negotiations and we cannot do that for them.

**Dr von Westenholz:** Of course. In many countries they have those sorts of safeguards that there is a meaningful role for Parliament. There is this conversation that has been had for a while about how legislation might be introduced or current Bills amended to safeguard standards, to restrict imports not produced to standards, et cetera. For the reasons we have discussed today, we can see that is a very difficult thing to do, but one of the ways you can do it is by putting in a role for Parliament to scrutinise the final trade deals and agree to those trade deals, if it is happy with them. That would include looking at the market access they give to agricultural goods and assessing whether that will lead to food that has been produced to lower standards coming into the UK.

Q49 **Chair:** The final part of this question is probably to Emily. Have the Government been open enough with the public about the trade-offs that may be required on food standards in trade agreements?

**Emily Rees:** I am not sure I am the best person to assess that.

**Chair:** We all make our own interpretations of that one.

**James West:** I would like to echo Nick's point that there needs to be a much greater role for Parliament in terms of scrutiny. That should be throughout the process, with potentially some kind of say on what the red lines are in any trade agreement, so this is where your chlorinated chicken might come in, and regular reporting back during the process to Parliament. That should probably be something beyond just a Government statement, where MPs have a genuine opportunity to hold Government to account.

In terms of ratifying the deal, it should not be a straight yes/no, and then it is through. It should be looking at it in more detail in the same way that you would amend a Government Bill. There should be a role for parliamentarians from that side. I believe that is already the case in the EU and the US, so it seems odd that we are not doing the same. The Government have a majority.

**Chair:** In the US, it is normally towards the end of the agreement that they scrutinise it in the Senate. I am not certain that the Government will give way on us following it all the way through, for the simple reason that they have had slight local difficulties for two and a half years over this. I cannot see them conceding that one, but I would like them to concede us being able to look at the final arrangement.

**James West:** Citizens should have a greater role and ability to input into these things. Nick mentioned the consultation with the DIT, but how well publicised is that? We are aware of it because we work in the sector, but what about members of the general public who have a concern about hormone-treated beef or whatever?



**Chair:** How do they feed that into the process?

**Emily Rees:** On process and parliamentary scrutiny, it is generally easier to organise parliamentary scrutiny throughout the negotiations, perhaps not always in public chambers because of the sensitivity of the negotiations per se, but once you reach a trade deal with your trade partner it is not open for negotiation. It is closed, so that is not the moment when you start renegotiating it, which is why these deals tend to go to an up-down vote.

Q50 **Chair:** As far as is practicable, we want to lay down some ground rules at the start, do we not? That is what we are trying to work on with Government. We get assurances, but we never quite know, when the actual trade agreement is being negotiated, whether that is happening, so it will be on us to keep that pressure all the way through.

**James West:** On your last question, I cannot remember exactly who worded it, but the negotiating mandate for the US-UK negotiation from DIT said, "We will not lower our own standards for animal welfare, environment and food safety." The subsequent paragraph said about not importing products that do not meet our food safety standards, but neglected to mention animal welfare, the environment and other areas. Hopefully that was an oversight and the same applies to imports, in terms of our domestic regulations.

**Chair:** Thank you very much. Welcome, Geraint. We are just about to finish, but you had another Select Committee this morning; is that right?

**Geraint Davies:** I had a Westminster Hall debate.

**Chair:** Quite understandable. I am glad you got here now. It is not that we are closing the meeting because you have arrived. We have just taken the evidence session. It has been a very good evidence session. Thank you very much. It reinforces our desire to have trade agreements rather than opening the world up to WTO arrangements with tariffs and other things, especially with the tariffs that were going to be levied by the EU on our trade, not necessarily reciprocally, so there are lots and lots of things now to be done.

If, when you leave here, you suddenly have a blinding flash that there is something you would like to have said to us, please let us have it in writing. We would be very happy to receive it. It has been a very good panel this morning. Thank you all. It has certainly given me and all the members food for thought, literally, and we will endeavour to act on it. We have plenty of questions now for the Secretary of State and probably for a session, which we will have to agree with the Committee, with the Food Standards Agency at some stage, on how it will manage future policing of sanitary and welfare arrangements in other countries that we trade and deal with. It will be an interesting one. Thank you very much.