

**Comments on the Negotiating Objectives for a
U.S. – United Kingdom Trade Agreement**

Docket Number USTR-2018—0036



January 15, 2019



FR Docket Number USTR-2018-0036
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Dear Sir/Madam:

On behalf of the U.S. Grains Council, we offer the following submission with respect to the request for comments on a proposed U.S.-United Kingdom Trade Agreement as USTR develops its negotiating objective and positions for the agreement. This submission responds to the request to identify the Council's general and product-specific negotiating objectives; relevant barriers to trade in goods and services; economic costs and benefits to U.S. producers and consumers of removal or reduction of tariffs and non-tariff barriers; treatment of specific goods; customs and trade facilitation measures; sanitary and phytosanitary measures (SPS) and technical barriers to trade and other trade-related measures or practices that undermine fair market opportunities.

As a soon to be past member of the European Union of 28-member states that represents the fifth largest global economy, a trade agreement will provide opportunities to expand free and fair trade, strengthen our economic and strategic relationship between our two countries, and help promote economic growth in the European region.

Again, thank you for the opportunity for the Council to provide our priority negotiating objectives. We look forward to continued collaboration as the negotiations commence.

Sincerely,

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U.S. Grains Council

Comments on Negotiating Objectives for a U.S.-United Kingdom Trade Agreement
Docket Number: USTR – 2018-0036
January 15, 2019
Washington, D.C.

Statement of the U.S. Grains Council

The U.S. Grains Council offers the following statement to the United States Trade Representative (USTR) with respect to participation with the United Kingdom (UK) in a proposed U.S. – UK Trade Agreement. The Council is a private, non-profit organization representing U.S. producers of corn, sorghum, barley and co-products such as ethanol, distiller's dried grains with solubles (DDGS), and corn gluten feed and meal, as well as associated agribusinesses.

Founded in 1960, the Council now has 10 international offices, representatives in an additional 15 locations and a network of consultants and partnerships that support programs in more than 50 countries. Our members, leadership and staff fundamentally believe exports are vital to global economic development and to U.S. agriculture's profitability.

At the outset, the Council believes that it is fundamental that food and agriculture issues are a key component of this bilateral agreement. The Council strongly supported the objectives of a trade agreement with the EU (which included the UK) similar to our support during the negotiations of the Transatlantic Trade and Investment Partnership (T-TIP). In addition, the recently signed U.S.-Mexico-Canada Agreement (USMCA) contains provisions in both market access and regulatory provisions that should serve as foundational language for negotiations in a U.S.- UK trade agreement.

As the United Kingdom represents the fifth largest global economy, a trade agreement with the UK will provide opportunities for free and fair trade and strengthen our economic and strategic relationship and help promote economic growth in the European Region.

Importance of UK Market for U.S. Feed Grains and Ethanol

The UK has a population of about 66 million people. Agriculture is intensive, highly mechanized and efficient by European standards, producing less than 60% of food needs with 1.5% of the labor force (476,000 workers). Around two-thirds of production is devoted to livestock, one-third to arable crops. In 2017, the value of food, feed and drink (FFD) exports increased by 8.2% to £22.0 billion (\$29 bn). The value of food, feed and drink imports increased by 7.1% to £46.2 billion (\$60 bn). As a result, the trade gap in food, feed and drink widened by 6.2% to £24.2 billion (\$32 bn).¹

In 2017, 60% of UK food, feed and drink exports were to countries in the European Union (EU). In comparison, 40% of UK FFD exports were to non-EU countries. 70% of UK FFD imports during the same period were from the EU, while only 30% of FFD imports into the UK were from non-EU countries.

Principal UK export destinations of food, feed and drink to the European Union in 2017 were the Irish Republic (£3.7 billion [\$5bn]), France (£2.3 billion [\$3 bn]), Netherlands (£1.5 billion [\$2 bn]) and Germany (£1.4 billion [\$1.8bn]). The principal European Union countries from which FFD

¹ Agriculture in the United Kingdom 2017, Department for Environment, Food and Rural Affairs

items were imported into the United Kingdom in 2017 were the Netherlands (£5.5 billion [\$7 bn]), France (£4.5 billion [\$5.6 bn]), Germany (£4.4 billion [\$5.7 bn]) and the Irish Republic (£4.3 billion [\$5.6 bn]).

Principal non-EU destinations of UK food, feed and drink exports in 2017 were the USA (£2.3 billion [\$3 bn]), China (£564 million [\$733 mn]) and Hong Kong (£460 million [\$598 bn]), while the main non-EU country from which food, feed and drink items were imported into the United Kingdom was the USA (£1.4 billion [\$1.8 bn]).

With respect to U.S. exports of feed grains and coproducts, Dried Distiller grains (DDGs) exports have ranged from 125 to 242 TMT or between 22% and 27% of total US exports to the EU from 2015 through 2018. U.S. corn exports have been intermittent ranging from 279 MT to 44,000 MT (0% to 11% of EU exports) over the same time period. Corn gluten feed and meal exports ranged from 40,000 MMT to 87,000 MMT and accounted for 8% to 15% of total EU exports. Barley and barley products were fairly consistent ranging from 1300 MT to 2100 MT and accounted for between 67 and 90% of U.S. exports to the EU. Grain sorghum exports have been virtually zero. Ethanol exports ranged widely from 151,000 gallons to 10.8 million gallons and accounted for zero to 36% percent of U.S. exports to the EU from 2015 through 2018.

Negotiation Objectives and Priorities

In mid-October, the Administration formally notified Congress of its intent to initiate trade negotiations on a trade with the United Kingdom as soon as it is ready after it exits from the European Union on March 29, 2019. Prior to the announcement, the U.S. and UK launched the U.S-UK Trade and Investment Working Group in July 2017 to begin laying the groundwork for a potential agreement.

The Council has had initial discussions with USTR on the initial efforts to separate the existing tariffs/TRQs from the remaining 27 EU member countries and other related issues, such as how will the existing EU Ethanol anti-dumping duty be addressed. The objective is secure maximum market access by eliminating and/or phasing out tariffs and tariff rate quotas. In addition, the agreement should seek strong provisions on SPS issues, Plant Breeding Innovation (PBI), pesticides, and biotechnology along with other regulatory provisions that will minimize potential non-tariff barriers.

The primary concern is that rather than operating under regulatory autonomy from the EU, the current Brexit Withdrawal Agreement continues to have the UK subject to the EU regulatory system—meaning biotech, pesticides, and other SPS issues will be just as intractable as they have been with the EU.

The draft agreement provides for a transitional period until the end of 2020. During this period (starting March 31, 2019, the Brexit date) the UK would leave the political institutions of the EU, losing its say and influence over rules and decisions, but it would continue to apply EU law in full. Little will change for businesses and citizens during that transitional period.

The withdrawal agreement includes a guarantee that there will be no physical border checks between Northern Ireland (part of the UK) and the Republic of Ireland - the major sticking point in recent weeks. The withdrawal agreement provides that Britain will honor all its financial commitments to Brussels under an agreed formula which is widely but conservatively estimated

to put the bill at some €40 billion (\$48 bn). The agreement maintains the existing EU residence and social security rights of more than three million EU citizens in the UK, and about one million UK nationals living on the continent.

Accompanying the Withdrawal Agreement is a Political Declaration. The Political Declaration describes the framework for the future relationship between the EU-27 and the UK. The negotiations on the detail of this framework will begin after March 28, 2019 and should be completed before the end of the transition period on December 31, 2020.

The Declaration provides that:

- the UK will have the ability to conduct an “independent trade policy”, meaning that it can negotiate trade deals with other countries such as the U.S. Both the EU and UK will have autonomy and ability to regulate their economic activities, including public health and environment with separate markets and distinct legal orders.
- to facilitate the movement of goods across borders, the EU and UK envisage comprehensive arrangements that will create a free trade area, combining deep regulatory and customs cooperation. Moreover, the UK can consider alignments with EU rules in relevant areas and cooperation with EU agencies.
- the contents of future UK trade deals with third countries would depend on the details agreed in the future deal between the EU-27 and the UK. While the UK will have its own market and legal order, it remains open how much the UK will align with the EU. More alignment between the UK and the EU means a more limited scope for a UK trade deal with other third countries, including with the U.S. Contrarily, the less aligned the UK will be with the EU, the more checks and controls of exports from the UK will be conducted by the EU and the more scope there will be for a meaningful trade agreement between the UK and other third countries such as the U.S.

The agreement was ratified by the EU-27 in the European Council on November 25. A vote on the withdrawal agreement by the UK parliament on December 11 was postponed until mid-January as it became obvious that it would fail. Judging by early reactions from some in the Conservative Party and the Democratic Unionists Party from Northern Ireland (on whose support Prime Minister depends), and the Labor Party.

It is unclear how this situation will unfold, but the prospect of a ‘no-deal’ scenario is becoming closer and such a scenario could have negative economic consequences for the UK, the EU, and the world, certainly in the short term, it could increase the potential for future UK policies and regulation that diverge from those of the EU. If that materializes, there would also be greater scope for regulatory alignment between the UK and the U.S. in a future trade deal.

Market Access for Goods

The EU limits the entry of lower priced grains from non-EU countries through quotas and a reference price system based on U.S. exchange prices and transportation costs. Corn tariffs are capped at 9 Euros (\$10.8) per MT, and there is a 242,000 MT duty-free quota available to all

exporters of corn. There is also an *abatimento* quota available for corn and co-products. Under this quota, tariffs are capped at 50 Euros (\$60) per MT, with 2 million MT for Spain and 0.5 million MT for Portugal. In the case of sorghum, tariffs are capped at 94 Euros (\$112.8) per MT, with an *abatimento* quota of 300,000 MT for Spain. For barley, tariffs are capped at 93 Euros per MT. Corn gluten products are subject to a 320 Euro (\$384) per MT tariff in the EU; however, the U.S. has exclusive access to a 10,000 MT quota with a tariff rate of 16 percent ad valorem. EU imports of DDGs are not currently assessed tariffs.

Assuming the UK adopts the reference price system, duties and remaining portions of quotas, the U.S. government should demand that the UK eliminate the price reference system and commit to maintaining zero duties on U.S. corn, barley, sorghum, DDGs, and co-products.

The EU tariffs for ethanol for fuel use differ depending on the ethanol content level: greater than 80 percent Ethanol – 19.2 Euro per hL; Ethanol at any strength – 10.2 Euro per hL. In addition, the EU has a number of trade preferences for individual countries, regional blocs, and trade development programs.

The United States is subject to an additional 62.30 Euro (\$74.8) per metric ton (bioethanol content basis) duty for ethanol due to an antidumping/countervailing duty (AD/CVD) decision against U.S. exports that went into effect beginning in 2012. The AD/CVD was in place five years, meaning that the European Commission should evaluate the need for duties in 2018. Blenders' tax credits were the policies at issue in the AD/CVD case. Since those policies have expired in the United States, it was expected that the AD/CVD would be removed upon the scheduled review. However, the Commission is conducting an expiry review on whether it should continue. The U.S. industry has filed documents challenging the extension and the faulty math that was used to calculate the original five-year duty.

The U.S. government should demand that the UK eliminate all tariffs on ethanol for fuel use as well as eliminate the anti-dumping duty if it remains applicable.

Asynchronous Biotechnology Policies

The **asynchronous approval process** between the U.S and the EU severely limits our ability to provide our traditional customers with corn and co-products (Dried Distiller Grains and Corn Gluten Feed and Meal) irrespective of competitive factors such as price and quality.

The EU risk assessment process by the European Food Safety Authority (EFSA) takes nearly 4.5 years, far beyond the 19-22 months prescribed by EU law. In addition to the increasing time for the European Food Safety Authority to approve biotechnology events, the risk management process involving the 28 Member States continues to extend beyond the 3-4 month process and when completed results in no qualified opinion for or against approval. Thus, it is left to the European Commission to resolve a final decision under a default procedure.

A continual complication is the increasing development of stacked events, in which two or more genetically modified (GM) traits are combined by means of conventional crossing. The absence of a workable EU standard on low level presence for unapproved traits is a further impediment.

The UK needs to establish regulatory autonomy from the EU system to regulate both biotechnology, and new plant breeding innovations and techniques. For this agreement, the Council would endorse the adoption of the biotechnology provisions that were included in the

U.S.-Mexico-Canada trade agreement (USMCA). Given the concern that trade disruptions could occur when a biotech trait is approved under a science-based regulatory system but not by an importing country, the provisions noted the **importance of Low Level Presence (LLP) and provides procedures for Parties to follow when the low-level presence of a biotech material is detected in a shipment of agricultural commodities or food products**. Since it is not possible to achieve zero tolerance, identification and implementation of a LLP maximum concentration value will be helpful. Appropriate and transparent regulatory procedures will allow the U.S. seed industry to continue progressing in adoption of biotechnology and advanced agriculture.

USMCA included the **recognition of modern biotechnology and the regulatory implications of both *in vitro* nucleic acid techniques, including recombinant deoxyribonucleic acid (rDNA) and direct injection of nucleic acid into cells or fusion of cells beyond the taxonomic family, that overcome natural physiological reproductive or recombinant barriers and that are not techniques used in traditional breeding and selection**. Given the current uncertainty of how the EU will regulate these new breeding techniques, particularly July ruling of the European Court of Justice that these new breeding techniques are considered GMOs and are subject to the EU's legislative framework on GMOs, we believe these provisions would enable efforts of the United Kingdom to work cooperatively on policies for products produced through new plant breeding techniques.

Finally, the agreement established a **Biotechnology Working Group under the Agriculture Working Group to exchange information issues, including on existing and proposed domestic laws, regulations and policies related to the trade of agricultural biotechnology products**. Most importantly, these provisions were made binding.

We would request that the administration reconsider our previous request in other trade agreements for language supporting a mutual recognition agreement with the United Kingdom on the safety determination of biotech crops intended for food, feed, and further processing. This would provide the UK another alternative as it transitions to a synchronous approval process. The most effective way to reduce the risk of trade disruptions and enable farmers and related industry sectors to access the most advanced technologies within a reasonable time is to eliminate the gap in product approvals through an agreement on mutual recognition of safety determinations of biotech-enhanced commodities for use as food, feed or further processing. Such an agreement, in addition to reducing risk to international trade and enabling innovation, would be consistent with existing international obligations and the current direction that the U.S. government and others are taking in the areas of regulatory cooperation.

Pesticides Regulation

Developments in EU policies and regulations pertaining to crop protection products have the potential to negatively impact future U.S. grains exports to the EU. A hazard-based approach to renewing the authorization of existing pesticides in Europe has resulted in an increasing number of active ingredients losing their authorization. This could lead to the reduction or removal of Maximum Residue Levels (MRLs) and Import Tolerances (ITs) of long-used products. Products that have approval in the U.S but not in the EU risk becoming subject to an MRL of 0.01 mg/kg default or an MRL at the Level of Detection (LOD) and could potentially see applications for ITs refused.

Again, the UK needs to establish its own independent policies and regulations on crop protection products. To help address these issues, the Council would advocate strongly for inclusion of the provisions of the Sanitary and Phytosanitary (SPS) measures included in USMCA into a U.S.-UK agreement as referenced below.

Sanitary and Phytosanitary Measures

Efforts to resolve outstanding bilateral **sanitary and phytosanitary (SPS)** disputes with all trading partners are important to create a free competitive environment, particularly within the European Union region. The U.S.- UK Agreement should include an SPS chapter laying out more detailed commitments relating to human health and animal/plant safety issues which would go beyond those found in the WTO SPS Agreement.

USMCA built on the already strong SPS chapter agreed to during the Trans Pacific Partnership (TPP) negotiations. High standards on **transparency, import notifications, and technical consultations prior to disputes**, among other provisions, should be helpful in establishing a baseline for future trade negotiations and serves as an ideal placeholder for the U.S. – United Kingdom agreement.

Such an agreement would provide **enforceable SPS obligations that build upon WTO rights and obligations. In fact, it goes beyond WTO, NAFTA and TPP obligations while still allowing each party to establish its own level of protection, while committing to avoid unnecessary barriers to trade. The Parties are to base measures on international standards or assessment of risk, and relevant scientific principles. It allows for provisional measures if an international standard or risk assessment does not exist. However, Parties commit to seeking additional information necessary for a more objective assessment of risk. Measures are to be applied only to the extent necessary to protect human, animal and/or plant life/health and in a manner that is not a disguised restriction to trade.**

It establishes a mechanism to resolve unwarranted barriers that block the export of U.S. food and agricultural products and it seeks to establish cooperation, communication and consultation between Parties to ensure that science-based SPS measures are developed and implemented in a transparent, predictable, and non-discriminatory manner. The Parties commit to select sanitary or phytosanitary measures that are not more trade restrictive than required to achieve the level of protection to be appropriate.

National Treatment of Goods

Import and Export Restrictions

The negotiations should ensure that countries do not maintain or expand other discriminatory trade barriers at the same time that they are eliminating tariffs or inventing new barriers to circumvent obligations. The national treatment and market access for Goods chapter should incorporate the broad World Trade Organization (WTO) obligations regarding import and export restrictions into a bilateral agreement as the fundamental framework for trade in goods between the Parties. In addition, the Goods chapter should prohibit import licensing conditioned on performance requirements, as well as prohibiting requirements that exporters establish contractual relationships with domestic distributors as a condition of importation.

Performance Requirements

Performance requirements impose obligations on companies, such as requiring that a certain level of goods or services be exported or that domestic goods and/or services be used in order to obtain preferential treatment for their imports. These requirements are used by some countries to unfairly discourage the use of imports even as tariffs are reduced. A bilateral U.S.-UK agreement should prohibit Parties from using performance requirements as a condition of qualifying for reduced tariffs.

Import Licensing

Complicated and unclear import licensing procedures can create costs and obstacles for exporters and can result in significant barriers to trade. The bilateral agreement should include requirements for Parties to notify each other of their import licensing procedures, including any conditions and eligibility requirements, and to regularly update these notifications. In addition, Parties should not apply import licensing procedures to bilateral goods without notifying all Parties of the license requirement and the reason for it.

Agricultural Export Subsidies

The agreement should contain a commitment by all Parties to eliminate agricultural export subsidies—which are considered among the most trade-distorting agricultural trade measures—on goods sold in both markets. The United States—which does not use agricultural export subsidies—has long sought to eliminate the use of such subsidies at the multilateral level. These provisions would also support the groundwork for global agricultural trade reform on export subsidies in the WTO.

Domestic Supports

If supporting producers, Parties should consider using domestic support measures with minimal or no trade or production effects to ensure transparency of domestic support programs.

Agriculture Safeguards

Originating agricultural goods traded under preference from any party should not be subject to any duties applied by a party pursuant to a special safeguard taken under the Agreement on Agriculture.

Food Security Export Restrictions

Provisions should provide for limits on export restrictions on foodstuffs to six months, requires notification of both Parties in advance when a country imposes such restrictions, and mandates consultation with interested importing countries if the restriction remains in place more than 12 months. This provision would be intended to discourage countries from imposing export restrictions on food and agricultural products as a means of protecting their domestic market from changes in the world market. When countries do so with respect to staple food products like rice and wheat, poor countries relying on the international market to import food supplies can suffer immediate and sharp crises in access to food.

State Trading Enterprises

Some countries have state trading enterprises that control exports of specific products. The negotiations should include provisions to agree to work together in the WTO to improve transparency around the operations of agricultural export state trading enterprises and agree on rules preventing these enterprises from receiving special governmental financing or trade-distorting restrictions on exports.

Technical Barriers to Trade

The Council supports provisions for a Technical Barriers to Trade chapter that build both on the WTO TBT agreement but also the USMCA TBT provisions and ensure that they facilitate trade, including eliminating unnecessary technical barriers to trade, enhancing transparency, and promoting greater regulatory cooperation and good regulatory practices.

The USMCA provisions requires Parties to apply decisions and recommendations adopted by the WTO TBT Committee that apply to standards, conformity assessment, transparency, and other areas. It requires **transparency and public consultation**. Parties are to **publish drafts of technical regulations and conformity assessment procedures and allow stakeholders in other countries to provide comments**. It also allows authorities to **address any significant issues raised by stakeholders and explain how the final measure achieves the stated objectives**. Also, it establishes a **Committee on Technical Barriers to Trade to monitor and strengthen implementation of the Chapter, to support coordination between the Parties, and to encourage the exchange of information.**

Good Regulatory Practices

An objective in past and proposed FTAs is the establishment of provisions to foster and open a fair and predictable regulatory environment for U.S. businesses promoting the use of widely-accepted good regulatory practices. This includes core principles such as transparency, impartiality and due process as well as coordination across governments to ensure a coherent regulatory approach. USMCA includes provisions **that provide more predictability and transparency in the development of regulations relevant to U.S. agriculture and associated products. The Council would offer its support for inclusion of these provisions in a U.S.-UK agreement.**

Customs Administration and Trade Facilitation

USMCA builds on TPP and the WTO Trade Facilitation agreements to help ensure that goods among the three countries will move quickly across borders, governed by facilitative and transparent procedures that require customs authorities to treat goods fairly and reduce conflicts of interest in customs administration. Similarly, the Council supports inclusions of these provisions as part of the negotiations for a U.S.-UK agreement.

Summary

The Council strongly supported the completion of the Trans-Atlantic Trade and Investment Partnership (TTIP), which at the time included the United Kingdom, in an effort to remove the existing tariffs and quotas, the anti-competitive price reference system and fundamentally address the regulatory challenges, particularly the long-term asynchronous biotechnology approval process and the lingering ethanol anti-dumping duty. In addition, the most recent challenge of increasing regulatory challenges facing pesticides will have major repercussions on U.S. feed and grains exports. The U.S. and the UK need to consider a transparent, science-based and systematic approach to normalize trade and avoid these tariff and non-tariff barriers.