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WWF Briefing – The US MMPA model for building Core Environmental Standards into Trade Policy

March 2021

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SUSTAINABLE FOOD AND FARMING: THE NEED FOR ENVIRONMENTAL STANDARDS

The UK government has been an international leader in developing a green agricultural policy, including through England adopting a ‘[public money for public goods](#)’-based support system for farming. Such an approach will be essential in making carbon-smart and nature restorative agriculture the new normal as almost all scientists believe it must. The same is true in its work to identify and develop policies that encourage adaptation of other environment and animal friendly agricultural practices.

But the success of these policies could be undermined if care is not taken by the Westminster government to establish an international trade policy framework that works in harmony with the UK’s environmental and agricultural policies. There is a legitimate concern that without adequate trade policy provisions, UK farmers could be undercut by imports of food produced to lower environmental and animal welfare standards. Trade policy should seek to ensure UK farmers are competing on a level playing field, where better account is taken by producers at home and overseas of the externalities involved in food production.

Surveys show that **74% of the public thinks that food produced in countries with lower standards should not be available in the UK** ([Which?](#)). This has been recognised in the Trade and Agriculture Commission’s [final report](#) which recommends launching a process to establish a set of UK core standards for imports, including standards on climate change, environmental, ethical and animal welfare measures. This is an important step forward. However, it is necessary to recognise that the effectiveness of these standards will depend on their design and how they are integrated with other aspects of trade policy.

There are a variety of mechanisms that the UK could consider in establishing its core environmental standards. One interesting approach comes from the United States.

THE US MARINE MAMMAL PROTECTION ACT

The US Marine Mammal Protection Act (MMPA) was enacted in 1972 in order to promote the conservation of marine mammals and their ecosystems. One of the first issues tackled by the US government under the MMPA was the extensive dolphin bycatch in tuna fisheries. The US experimented with a number of different rules and mechanisms to bring about a reduction in dolphin by-catch for tuna sold in the US. In the *Tuna-Dolphin* series of cases at the World Trade Organization (WTO), Mexico and other countries took issues with the US

extending its policy objectives to imported tuna. Ultimately, the US settled on a ‘tuna-safe’ labelling regime, and after amendments were made to it, the program was found by the WTO to be in compliance with the US’s international trade obligations.

In 2016, the US government issued new regulations under the MMPA. They come into full effect in 2022. Addressing impacts on marine mammals of foreign fisheries that export seafood to the US, these import provisions are far broader in scope than those that were the subject of challenges at the WTO at the end of the last century and the start of this one.

While both marine mammals and seafood are internationally shared resources, not all countries hold their fishing industries to standards that are of comparable effectiveness as those to which the US holds its industry with regard to protection of these shared resources. To level the playing field for its fishing industry, and to help achieve its marine mammal protection policy objectives, the US has established the MMPA import provisions rule.

If a foreign company wishes to export certain types of seafood (those that carry a risk of harming marine mammals) into the US, it must participate in a certification process. Access to the US market will be granted for seafood that is certified as coming from fisheries which are governed by marine mammal protections that are “comparable in effectiveness to U.S. standards.”

The US has been transparent about the certification process it is using; it has established generous transition time tables; it sought input from affected firms and nations around the world; and is offering assistance to impacted parties, including technical assistance to help nations make the changes needed to be granted market access.

The US has taken care in the creation of these import restrictions to ensure that they will be WTO compliant. There have been a number of WTO Appellate Body (AB) decisions that have affirmed the rights of member states to adopt import restrictive measures in furtherance of environmental policy. In the case known as *Shrimp-Turtle*, several nations took issue with a ban imposed by the US on the importation of shrimp and shrimp products. The ban was established out of concern about the number of sea turtles killed in shrimp fisheries internationally, which stood in contrast to the turtle-saving measures required of the US shrimp fishery. The AB found that the US was within its right to establish import measures aimed to protect sea turtles, but the AB took issue with the way the US initially structured its import ban. As with tuna, the US subsequently made adjustments – in this case removing discriminatory elements – to bring its trade mechanism into compliance with its WTO obligations. Through the body of case law at the WTO, there has been increasing clarity on how countries can ensure that trade mechanisms designed to protect the environment are WTO consistent. **As a general rule, the mechanisms established need to be fair and as minimally trade disruptive as possible.**

The US took the learnings from *Shrimp-Turtle* and the *Tuna-Dolphin* cases to heart in designing the 2016 MMPA import measures. The US is not demanding that its standards and policies be replicated. Rather, there is latitude and discretion in how comparable effectiveness is achieved. The US is not holding foreign firms to standards higher than those it requires of its own fishery sector, and it is committed to be equal in application of the importation regime across fisheries from all foreign nations.

APPLICABILITY IN THE BRITISH CONTEXT

Through the MMPA, the US aims to ensure that its market is not used to encourage fishing practices that undermine a core US environmental policy objective vis-à-vis shared resources. Similarly, **the UK government should seek to ensure that access to its market does not enable farming practices that run afoul of their environmental**

policy objectives of seeking to minimize harm done to globally shared natural resources - the climate, ecosystems, clean air, clean water, etc.

There are some who may view the establishment of universally applicable policy goals, of the sort that the US has established in its MMPA import measures, as too bold, and some who may feel that trade policy might be better set piecemeal, nation by nation, via international trade agreements. Although this patchwork approach might seem easier to deliver, it would create a much more complicated system for the UK to operate with different nations held to different standards according to what could be negotiated. In the long run this may end up being harder to deliver effectively and consistently. It may even risk giving the impression that core environmental policy goals of the UK are up for negotiation with other countries.

Establishing import measures deal by deal not only risks undermining domestic policy goals and reducing planet-saving opportunities, but it would also create disjointed import policies which would complicate negotiations and ongoing trading relationships with our partners. **International trade policy needs a guiding shape – it needs to be established in alignment with domestic policy objectives and core national values.**

The WTO allows for environmental protections. The MMPA’s import restrictions offer one elegant approach to meeting environmental policy objectives within the WTO framework.

To survive and retain relevance, the WTO is going to need to adapt to 21st century realities. The appointment of Dr. Ngozi Okonjo-Iweala as director-general of the WTO is a sign that powerful member states recognise this. At the behest of a growing number of member states and with her leadership, the trade framework at the WTO will be shifted in ways that bring it into increased harmonization with global environmental objectives.

Global Britain has a role to play in all of this. The UK, if it so chooses, could serve as a key proponent of greener trade and greener economic growth models, both through the trade policies it establishes for itself and through ideas it advances at the WTO.

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