

Minutes of the FSA board closed session on 20 January 2020

Rooms 605/606 Clive House London

Present:

Heather Hancock, Chair; David Brooks; Margaret Gilmore; Ruth Hussey; Colm McKenna; Mary Quicke Mark Rolfe; Timothy Riley.

Apologies

Stuart Reid.

Officials attending:

Emily Miles	-	Chief Executive
Catherine Bowles	-	Deputy Director, EU Exit, Regulatory & International Strategy
Phil Flaherty	-	Head of Trade Strategy
Theo Hawkins	-	Head of EU Exit and UK Frameworks
Chris Hitchen	-	Director of Finance and Performance
Maria Jennings	-	Director of Regulatory Compliance, People and Northern Ireland (NI)
Rick Mumford	-	Director of Science
Julie Pierce	-	Director of Openness, Data & Digital and Wales
Guy Poppy	-	Chief Scientific Adviser
Rebecca Sudworth	-	Director of Policy
Colin Sullivan	-	Chief Operating Officer

Apologies

Steve Wearne - Director of Science

1. EU Exit – Trade: Negotiation Objectives (CLO 20/01/01)

- 1.1 The Chair explained that she recognised there could be rare circumstances where public discussion of Board business relating to international trade could not happen because the sensitivity of Government's negotiations. However, where this was the case, the Board intended to put on the record the high-level advice it had provided to FSA officials. Furthermore, the CE and Chair would regularly review the opportunity to discuss the FSA's contribution to discussions around trade in a standard Board meeting, held in public, acknowledging that this might not be very often. She said that Board Members would receive updates on officials' contributions. Officials would revert to the Board for further advice where necessary and the Board would also be asked for direction should the Government negotiating position undermine the FSA's objectives.
- 1.2 The Chair invited Theo Hawkins, Head of EU Exit and UK Frameworks, to update the Board on issues relating to future trade agreement negotiating objectives. Theo gave an overview of his paper, outlining objectives setting a high-level framework going into negotiations.

**Food Standards Agency
Board Meeting – 20 January 2020**

- 1.3 Colm McKenna asked about the involvement of the UK's devolved nations in the development of the framework. Theo explained that FSA staff in both Wales and NI had been involved and were fully sighted on the work. He said he would also be in Aberdeen later in the week to discuss the approach with FSS. He added that, in terms of the level of engagement across departments, this had been varied, noting that there had been good engagement with Defra but that this was not replicated across all departments.
- 1.4 Ruth Hussey asked whether the wording in the paper was strong enough about devolution, noting that the paper said that the system the FSA would support would 'reflect devolved responsibilities.' She questioned whether this could be made stronger to make it clear that there was an obligation to incorporate devolved interests into the system. Theo said that there was a case for this but that it would need to be clear that there would, on occasion, be circumstances where the optimum solution for one part of the UK may be contrary to legislation that exists in another. Colm asked whether there might be such circumstances arising from the NI protocol. The Chief Executive (CE) said that this was one possible area of tension. The Chair said that she wanted it to be explicit that the FSA was going to discharge its responsibilities in the three countries.
- 1.5 The Chief Scientific Adviser (CSA) said that in some cases, it could be that the strictures imposed by objective c. i. to "agree the application of robust science and evidence under FTAs that permits consideration of other interests and legitimate factors when appropriate in decision making" could be sidestepped by claiming that it was not appropriate. The Chair suggested that objective c already said it would put the consumer first and that there was no need to include the words "when appropriate".
- 1.6 The Chair said that with that amendment, the Board was content and that she would put on record at the Board meeting that it is not usual for the Board to discuss things in private but that she was confident it was being handled the right way. She invited Phil Flaherty, Head of Trade Strategy, to remind the Board about the things that could trigger a change in regulation. Phil explained that there were three triggers. The first of these would emerge from part of a trade negotiation.
- 1.7 The CE added that the Risk Analysis process could be engaged but that the government would be able to change the legislation if it wanted. She said that this highlighted the need to make the case to government that the FSA is an asset to them and that it would be unwise to change arrangements. The CSA added that there was a difference across countries, whether the focus of regulation should be on process or outcome. He noted that, up until now, the UK had focussed on process, as had the EU, but that the US had a greater focus on the outcomes.
- 1.8 The Chair said that there should be another bullet point in the objectives saying that, if the FSA is being asked to significantly change the system, this would trigger the risk analysis process. Theo said that he had attempted to capture that under objective a) i. The Chair expressed concern about the current highly

**Food Standards Agency
Board Meeting – 20 January 2020**

regarded, understood and trusted arrangements being eroded and said that she would want a flag to be raised as soon as there is awareness that the regime is being changed. She added that food safety management should not be changed to enable an FTA.

- 1.9 Rebecca Sudworth said that it could not be the case that the FSA would accept someone else's word that a food was safe. The CE explained that this was not at risk but that the government could change the system to allow an FTA and that this would raise a flag for the risk analysis procedure to start. Chris Hitchen raised the risk of a more deregulatory focus in government and said that, while he agreed with all the previous points, it should be worded to ensure that it is not necessarily opposed to an outcomes focussed approach if it was implemented in such a way that food safety was not negatively impacted.
- 1.10 Phil Flaherty then outlined the second thing that could trigger a change in regulation, saying that this would be where a third country makes an application to put a product onto the UK market. The third way could be where there was a faction making a formal complaint within the WTO.
- 1.11 The Chair thanked Phil for reminding the Board of the ways in which a change in the regime could occur and suggested that point be added saying that if any of those things occur, that would raise a flag for the FSA to start the risk analysis process.

Proposed policy objectives for future agri-food trade deals

- 1) To ensure no reduction in public health protection for UK consumers. This includes:
 - a. ensuring food and feed safety are properly taken into account in FTAs, including that products and processes are only authorised to be placed on the domestic market following a robust UK risk analysis process where appropriate; and
 - b. seeking to preserve our right to regulate under the WTO SPS Agreement where necessary to set our own appropriate level of protection to protect consumers from risks arising from food and feed.

- 2) To, where appropriate, enable public health protection for UK consumers to be improved. This includes seeking opportunities to maximise:
 - a. the FSA's access to information and data from trading partners that facilitates protection of UK consumers; and
 - b. the scope for future collaboration with trading partners on food and feed safety.

- 3) To safeguard consumer confidence and interests by putting the consumer first, including:
 - a. agreeing the application of robust science and evidence under FTAs that permits consideration of other interests and legitimate factors when appropriate in decision making.
 - b. Securing and supporting as unified a system as possible across the UK, including respecting the specific circumstances of Northern Ireland, and meaningful engagement with all the DAs on food and feed safety trade, through agreed UKG-DA mechanisms.