House of Commons

International Trade Committee

UK trade negotiations: Agreement with Australia

Second Report of Session 2022–23

Report, together with formal minutes relating to the report

Ordered by the House of Commons
to be printed 4 July 2022

HC 117
Published on 6 July 2022
by authority of the House of Commons

The International Trade Committee

The International Trade Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for International Trade and its associated public bodies.

Current membership

Angus Brendan MacNeil MP (*Scottish National Party, Na h-Eileanan an Iar*) (Chair)

Mark Garnier MP (*Conservative, Wyre Forest*)

Paul Girvan MP (*DUP, South Antrim*)

Sir Mark Hendrick MP (*Labour, Preston*)

Tony Lloyd MP (*Labour, Rochdale*)

Anthony Mangnall MP (*Conservative, Totnes*)

Mark Menzies MP (*Conservative, Fylde*)

Lloyd Russell-Moyle MP (*Labour, Brighton, Kemptown*)

Martin Vickers MP (*Conservative, Cleethorpes*)

Mick Whitley MP (*Labour, Birkenhead*)

Mike Wood MP (*Conservative, Dudley South*)

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via www.parliament.uk.

Publication

© Parliamentary Copyright House of Commons 2022. This publication may be reproduced under the terms of the Open Parliament Licence, which is published at www.parliament.uk/site-information/copyright-parliament/.

Committee reports are published on the Committee's website at www.parliament.uk/tradecom and in print by Order of the House.

Committee staff

The current staff of the Committee are Eligio Cerval-Peña (Clerk), Jonathan Edwards (Committee Specialist), Leigh Gibson (Senior Specialist European Affairs Unit), Louise Glen (Committee Operations Manager), Professor Tony Heron (POST Parliamentary Academic Fellow), James Hockaday (Committee Specialist), Julian Mazowiecki (Committee Specialist), Adam McGee (Media Officer), Roxanne Michael (Committee Researcher), David Turner (Committee Specialist), Emily Unell (Second Clerk), Emily Unwin (Deputy Counsel), Beatrice Woods (Committee Operations Officer).

Contacts

All correspondence should be addressed to the Clerk of the International Trade Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 6957; the Committee's email address is tradecom@parliament.uk.

You can follow the Committee on Twitter using @CommonsIntTrade

Contents

Summary

The Government triggered the statutory 21-sitting-day scrutiny period for the UK-Australia Free Trade Agreement on 15 June, despite assurances that we would be allowed sufficient time to publish our report before this occurred. On 29 June, we asked the Government to schedule a debate on the Agreement between 13 and 19 July—and to extend the statutory period or allow the House the opportunity effectively to extend it by passing a substantive motion resolving that the treaty should not be ratified. In response to the Government's refusal to extend the scrutiny period, we reiterate our previous call to do so. If this does not happen, and a substantive motion on the Agreement is tabled, we recommend that Members vote against ratification, to allow more time for scrutiny.

The Secretary of State for International Trade failed to attend before us to answer questions on the Agreement on 29 June, despite a commitment to do so. This made it impossible for us to take into account her evidence on the new date agreed—6 July—and still publish our report before the very end of the scrutiny period. Consequently, we are obliged to publish our report now, before we have taken the Secretary of State's evidence.

The Agreement is likely to aid the UK's accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). The UK-Australia Agreement draws widely on the CPTPP, while also going beyond it in some respects and potentially conflicting with it in others. The Government should explain this. It should also clarify how the market-access provisions under the Agreement with Australia relate to its negotiating positions for bilateral market access discussions with other CPTPP members as part of the accession process.

The Government must publish a coherent trade strategy and give a clear sense of how each set of trade agreement negotiations serves its broader strategic vision.

The Agreement does not refer explicitly to the protection of human rights. The Government must explain what its negotiating position was on this.

The Agreement with Australia is the UK's first from-scratch trade agreement since leaving the EU. While the Government has insisted the Agreement does not set a precedent for future negotiations, it appears to contradict itself by seeing some provisions as precedent-setting.

We welcome the Agreement's liberal product-specific rules of origin for manufactured goods, which are likely to benefit UK exporters, notably in the automotive sector. However, applying such rules to UK imports poses the risk of third countries using them to circumvent UK tariffs. The Government must scope out this risk and carefully monitor it.

The Agreement makes no provision for any sort of cumulation of origin involving a third country.

The provisions in the Agreement on technical barriers to trade do little beyond reaffirming the parties' existing commitments. We regret that these provisions are not subject to the Agreement's dispute settlement provisions.

We are disappointed that the cosmetics Annex in the Chapter on technical barriers to trade does not explicitly confirm the UK's commitment to maintain its ban on animal testing.

We welcome the liberalisation of trade in processed food achieved by the Agreement. However, gains for UK exporters and consumers are likely to be modest.

The almost complete liberalisation of unprocessed agri-food trade with Australia is a significant step. The Government says other markets are more of a priority for Australian exports, and that Australian products are likely to displace imports from the EU. However, UK producers fear the UK being a potential fallback market if international trade flows change.

The Government has sought to cushion negative impacts on UK producers with long-lasting phase-in arrangements. Agri-food producers are concerned at what they see as the excessive size of the quotas that form a key part of the transitional arrangements. And UK red meat producers fear being disadvantaged by the effect of not setting quotas on a "carcase weight equivalent" basis.

Liberal product-specific rules of origin for processed food could encourage manufacturers to replace UK ingredients with imported ones. The Government must say what it has done to model such possible consequences and what it will do to monitor them.

The Agreement in Principle referred to "best endeavours" commitments to reach agreement on amending Australia's definition of whisky and implementing in the UK Australia's proposals under the Wine Agreement. It is disappointing that these are not present in the final Agreement. The Government must set out how, and when, it plans to address these issues.

We welcome the role of the new Trade and Agriculture Commission (TAC) in scrutinising the impact of trade agreements on UK agri-food production standards. The Government must ensure that the Commission has the time and resources necessary to fulfil its remit.

We welcome the fact that the Agreement does not change the UK's statutory Sanitary and Phytosanitary (SPS) protections, including its ban on importing hormone-treated beef. However, we note concerns that attempts could be made to try and undermine such protections by means of the SPS Committee under the Agreement, the provisions on equivalence of standards and the Chapter on good regulatory practices. It is regrettable that the Government did not negotiate any relaxations of Australia's strict bio-security controls, especially given the extent of UK concessions in respect of Australian agri-food exports; the Government must say whether—and, if so, how and when—it plans to address this issue under the Agreement. We welcome the Agreement's commitments on combating antimicrobial resistance and we are reassured by the continuance of UK SPS controls on antibiotic residues in imported meat. The Government must say what it will do under the Agreement to address the high level of antibiotic use in Australian production processes.

UK agri-food producers are concerned that the Agreement increases UK market access for food produced in ways that would be illegal in the UK, making for unfair

competition. TAC concluded that, while such concerns have generally been overstated, this is apparently not the case for goods produced using pesticides not permitted in the UK and canola oil produced from GM crops. We are disappointed that the Government has not acted on the suggestion that liberalising agri-food trade under UK trade agreements should be conditional on imports meeting core UK food production standards. The Government must say what it will do to monitor unfair competition for UK producers resulting from agri-food liberalisation—and how it will act to mitigate adverse consequences for UK producers' interests, and UK consumers' wishes and choices, from such competition. We are concerned about the potential undermining of voluntary food production standards in the UK as result of agri-food liberalisation under the Agreement. The Government must say what it will do to monitor, and potentially act on, this.

The Government has failed to secure any substantive concessions on the protection of UK Geographical Indications in Australia.

The Agreement's provisions on customs and trade facilitation cement pre-existing commitments, which aim to ensure that paperwork is minimised and goods are released quickly.

The Agreement's Chapter on trade remedies allows for transitional general bilateral safeguard measures, whereby the Parties can protect themselves against import surges.

The Agreement's provisions on trade in services have the effect of locking in current levels of market access, providing welcome certainty to businesses and individuals. There are also useful provisions to facilitate the achievement of mutual recognition of professional qualifications by regulatory bodies. Mechanisms under the Agreement to deliver further regulatory alignment in respect of trade in services may not be effective enough and the Government must say what it will do to seek improvement of these.

The Government must provide details of any assessment it has made of the expected increase in flows of businesspersons resulting from the Agreement's provisions on the mobility of persons. We welcome the planned changes to the Working Holiday Maker and Youth Mobility schemes, and the new Innovation and Early Careers Skills Exchange Pilot.

We welcome the Agreement's provisions on digital trade, which will help to boost e-commerce and improve online consumer protection. The Government must set out how it will fulfil its commitments on cross-border transfer of data under the Agreement while also maintaining current levels of protection for UK citizens' personal data. It must also say how its policy on granting data adequacy will interact with this and future free trade agreements—and give an unequivocal commitment that it will seek to avoid the loss of EU adequacy, which would be catastrophic for the UK.

Arrangements for a Strategic Innovation Dialogue under the Agreement may not be sufficient. The Government must set out how the Dialogue's effectiveness will be monitored.

The Agreement's investment provisions lock in the Parties' existing voluntary commitments on investment liberalisation and investor protection, giving investors

more certainty. The Government must explain how Investor-State Dispute Settlement came to be omitted from the Agreement and set out clearly how it intends in future trade negotiations to approach mechanisms for settling investment disputes.

The Agreement's provisions on intellectual property appear to make relatively few changes to current arrangements in either the UK or Australia, and it is difficult to pinpoint whether the UK made gains.

The Agreement's dedicated Chapter on the environment includes provisions on maintaining the approach to enforcement, and standard, of those laws and policies where not doing so would affect trade or investment between the Parties. While these are subject to the Agreement's dispute-settlement procedures, raising a successful dispute would be difficult, since it would have to be shown that an action had (or was intended to have) an impact on trade or investment between the Parties.

We welcome the inclusion in the Agreement of provisions on forced labour, modern slavery and human trafficking, but note the limitations of those provisions—notably the fact that enforceable provisions do not extend to supply chains.

We welcome the Agreement's dedicated Chapter on trade and gender equality. However, the arrangements for a Dialogue under the Agreement may not be adequate and the Government must set out how it intends to address this.

We commend the Government for taking into account potential adverse effects on developing countries from preference erosion due to the Agreement and its intention to monitor such effects. However, it must also set thresholds for taking remedial action, and say what such action would involve.

The Government has rightly highlighted the potential procurement opportunities for UK suppliers in Australia under the Agreement; it must help UK suppliers assess these opportunities. Our initial assessment of the implementing legislation in the Trade (Australia and New Zealand) Bill is that its content and provisions are necessary and proportionate.

A dedicated Chapter sets out the Parties' intention to help small and medium-sized enterprises take advantage of the Agreement.

The Agreement includes provisions on good regulatory practices in the design and implementation of regulatory measures.

In a dedicated Chapter, the Parties commit to transparency in relation to the Agreement and to undertaking anti-corruption measures.

The Government must confirm how Parliament will be made aware of, and be engaged in, the UK's consideration of proposed amendments to the Agreement by the Joint Committee—and say how it will engage Parliament in the wider body of work undertaken by bodies established under the Agreement. The Government must explain why there are such different approaches to the availability of dispute resolution mechanisms across the Agreement—and say how Parliament will be kept informed when a dispute resolution mechanism is triggered.

The interaction of the Agreement with the Ireland / Northern Ireland (NI) Protocol is complicated and opaque. The Government must say what it is doing to help those impacted. It must state what its understanding is regarding whether UK trade defence measures can apply in NI if there are no equivalent EU trade defence measures in place. It must also explain how it will inform and involve Parliament and the NI Executive where the Agreement operates differently in NI with regard to imports and how it will minimise resulting disruption to UK trade.

The Government should develop its capacity to collect and utilise qualitative evidence in its trade agreement Impact Assessments. For each future trade agreement, the Government must analyse the cumulative impacts of all agreements to date, across all sectors of the economy. Future Impact Assessments must also address the strategic importance of each agreement. The Government's assessment of the environmental impacts of the Agreement is welcome but could have gone further. Future Impact Assessments must take account of changes in emissions due to deforestation or land use change, and modelling must capture environmental impacts and the effects of environmental policy instruments. The Impact Assessment does not sufficiently assess the Agreement's impacts in the devolved nations and English regions. The Government should set out what it will do to ensure that future modelling better captures these impacts—and takes account of the specific impacts on NI arising from the interaction of agreements' interaction with the Ireland / NI Protocol. The Government must beware of overselling trade agreements. Impact Assessments must clearly communicate a realistic assessment of potential winners and losers (across different sectors and different parts of the UK) under each agreement. The Department for International Trade (DIT) must ensure that its modelling and choice of modelling approach for Impact Assessments are more transparent. The Department should publish its detailed workings for the modelling in the Australia Impact Assessment and commit to doing the same in future Impact Assessments. It must also commit to publishing key inputs and parameters that will be used in future Impact Assessment modelling. DIT should evaluate the practicability of compiling a single dataset that allows the comparison of trade agreement impacts on a like-for-like basis and publish a detailed explanation of its conclusions.

1 Scrutiny of the UK-Australia agreement

1. The Government undertook a public consultation on its negotiating objectives for a free trade agreement (FTA) with Australia in 2018, publishing a summary of responses the following year.[1] A document outlining the UK's strategic approach to negotiating an agreement was published in June 2020[2] and negotiations began later the same month.[3]

2. As part of our inquiry into UK trade negotiations, we took evidence from experts and stakeholders regarding the UK-Australia negotiations in September 2020.[4] We were briefed privately on the negotiations by senior officials from the Department for International Trade (DIT) in March 2021; by the then Secretary of State, Rt Hon Elizabeth Truss MP, and Chief Negotiator, Vivien Life, in May 2021; and by Ms Life and other officials in June 2021. Agreement in Principle was reached in June 2021,[5] and we took oral evidence on this from Ms Truss and Ms Life in July 2021.[6]

3. The UK-Australia FTA ("the Agreement") was signed on 16 December 2021 (UK time), and subsequently published and laid before Parliament as an unnumbered Command Paper, along with the Impact Assessment, the draft Explanatory Memorandum and publicity material.[7]

Our inquiry

4. On 17 December 2021, we launched our inquiry, asking for written submissions on the Agreement. On 2 February 2022, we were briefed about the Agreement in private by the Chief Negotiator and other senior DIT officials. We then took oral evidence from experts and stakeholders, as well as the Chair of the Trade and Agriculture Commission (TAC). The advice to the Secretary of State for International Trade, Rt Hon Anne-Marie Trevelyan MP, from the TAC was made available to us late on 8 April;[8] and we received the Secretary of State's report pursuant to section 42 of the Agriculture Act 2020 on 27

1 Department for International Trade, *Public consultation on trade negotiations with Australia: Summary of responses*, July 2019
2 Department for International Trade, *UK-Australia Free Trade Agreement: The UK's Strategic Approach*, June 2020
3 Department for International Trade, "Negotiations on the UK's future trading relationship with Australia: Update", press release, 14 July 2020
4 Oral evidence taken on 20 September 2020, HC (2019–21) 233, Qq159–195, Qq196–227
5 Department for International Trade, "UK-Australia FTA negotiations: agreement in principle", 17 June 2021
6 Oral evidence taken on 7 July 2021, HC (2021–2) 127
7 Department for International Trade, "Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia: Text of UK-Australia Free Trade Agreement and associated documents", 16 December 2021
8 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022

May 2022.[9] We are grateful to all those who took the time to provide us with written and oral evidence and to answer our survey, and to our team of specialist advisers[10] for their analysis and input, throughout our inquiry.

5. On 29 June, we published a short report on our experience of scrutinising the Agreement.[11] We did so due to the Government triggering the statutory 21-sitting-day period of parliamentary scrutiny, under the Constitutional Reform and Governance Act 2010 (CRaG), on 15 June—before we had seen the Secretary of State and so been able to conclude our inquiry and publish our report. The statutory scrutiny period (which is expected to end on 20 July) was triggered despite assurances that we would be allowed sufficient time to publish our report before this triggering occurred.[12] We asked the Government to meet its commitment to allow a debate on the Agreement in the House[13] by scheduling one between 13 and 19 July.[14] To allow the House time to consider our report, we also asked the Government either to extend the statutory period or to give the House the opportunity effectively to extend it by passing a substantive motion, at the end of the debate on the Agreement, resolving that the treaty should not be ratified.[15] In response, the Government declined to use its statutory power to extend the scrutiny period under CRaG. We subsequently asked the Secretary of State to reconsider her decision and extend CRaG.[16]

6. The Secretary of State had agreed to give evidence to us regarding the Agreement on 29 June. However, less than 12 hours before the meeting, we were informed that she would not be attending and offered to give evidence on 6 July instead—three weeks after the CRaG period was triggered.[17] This made it impossible for us to take into account her evidence and still publish our report before the very end of the scrutiny period under CRaG. Consequently, we are obliged to publish our report now—with the questions that we wished to ask the Secretary of State appearing in the places where her evidence should be. The topics that we wanted to question her about included the suggestion by her and her department in correspondence that we are somehow being unreasonable by asking the Government to adjust the scrutiny timetable to enable us to fulfil our remit.

7. Should the Secretary of State agree to extend the CRaG period following our most recent request, we will provide a further, short, report summarising her responses and any consequent reflections on or additions to the recommendations in this report.

---

9 Department for International Trade, *Report pursuant to Section 42 of the Agriculture Act 2020: UK-Australia Free Trade Agreement*, June 2022

10 Professor Christopher Dent; Dr Maria Garcia; Mr Kirk Haywood; Dr Anna Jerzewska; Dr Emily Jones; Professor Lauge Poulsen; Dr Gabriel Siles-Brügge; Professor Fiona Smith. We note the declared interests of: Professor Poulsen in respect of co-leadership on the Foreign, Commonwealth, and Development Office's Advanced Trade Policy programme (which does not involve providing policy advice); and Dr Siles-Brügge as regards providing specialist (non-remunerated) input to the UK National Audit Office for its report *Department for International Trade: Progress with trade negotiations*. Details of all specialist advisers' declarations of interest will be recorded in the Committee's formal minutes.

11 International Trade Committee, First Report of Session 2022–23, *UK trade negotiations: Scrutiny of Agreement with Australia*, HC444

12 Rt Hon Anne-Marie Trevelyan MP to Rt Hon Sir Lindsay Hoyle MP, 3 December 2021

13 Exchange of letters between Lord Grimstone and Baroness Hayter, 19 May 2022

14 International Trade Committee, First Report of Session 2022–23, *UK trade negotiations: Scrutiny of Agreement with Australia*, HC444, para 23

15 International Trade Committee, First Report of Session 2022–23, *UK trade negotiations: Scrutiny of Agreement with Australia*, HC444, para 25

16 Angus Brendan MacNeil MP to Rt Hon Anne-Marie Trevelyan MP, 29 June 2022

17 Q250

8. Throughout this inquiry, we have sought to engage positively with the Secretary of State and her department. However, we have received unhelpful responses and, most recently, briefings to the media from "DIT sources" about parts of the timeline of events, which seem to frame delays as our fault. To clarify this matter, Annex 1 of this report provides a summary of the main elements.

Scrutiny of implementing legislation

9. Introduction to Parliament of primary implementing legislation for the Agreement, contained in the Trade (Australia and New Zealand) Bill, occurred in the latter stages of our inquiry.[18] In view of this, and the narrow and technical scope of the legislation, we have only included brief consideration of it in this report.[19] However, we may choose to take a different approach in respect of implementing legislation for future FTAs.

Commendation to the House

10. We commend this report to Members and hope that its analysis of the Agreement (alongside that of the Environment, Food and Rural Affairs Committee),[20] together with the evidence we have taken in our inquiry, will prove helpful to the House in its deliberations.

11. **If the Government continues to refuse an extension of the 21-day scrutiny period, we reiterate our call for it to schedule a debate on the Agreement between 13 and 19 July and to table a substantive motion that would allow the House to vote against ratification.** ***In that event, we recommend that Members vote against ratification on this occasion, since this would have the effect of extending scrutiny of the Agreement, and allowing the House proper time to consider our reports and its views ahead of ratification.***

18 Trade (Australia and New Zealand) Bill [Bill 9 (2022–23)]

19 See Chapter 17 of this report.

20 Environment, Food and Rural Affairs Committee, First Report of Session 2022–23, *Australia FTA: Food and Agriculture*, HC 23

2 Context of the Agreement

First new agreement following Brexit

12. Prior to acceding to the European Economic Community (the European Union's predecessor) in 1973, the UK conducted its own trade policy. Regaining this ability was a significant argument advanced in support of Brexit before the referendum on EU membership in 2016. As a consequence of that referendum's outcome, the UK's membership of the European Union ended on 31 January 2020; and on 1 January 2021, following the end of the post-Brexit transition period, the UK ceased to be bound by EU trade policy.

13. Before the UK's formal exit from the EU, the Government had already signed or begun negotiating "trade continuity agreements", which "rolled over", as far as possible, the terms of EU trade agreements. During the post-Brexit transition period, the UK began negotiating entirely new FTAs and in December 2021 the agreement with Australia became the first such agreement to be signed.[21]

Indo-Pacific "tilt"

14. The Government's Integrated Review of Security, Defence, Development and Foreign Policy identified a trade agreement with Australia as an action required to support the UK's "tilt to the Indo-Pacific": a framework designed to establish the UK as the "European partner with the broadest and most integrated presence in the Indo-Pacific—committed for the long term, with closer and deeper partnerships, bilaterally and multilaterally."[22] The Integrated Review identified the importance of engagement in the Indo-Pacific: to further the UK's economic opportunities; to strengthen the UK's security partnerships; and to promote the UK's values, including those that underpin free trade.[23] The Government has also noted the importance of the UK's relationship with Australia, as a Five-Eyes partner, in addressing security challenges in the region.[24]

15. Had the Secretary of State attended to give evidence to us on 29 June, we would have asked her to elaborate on the ways in which the UK-Australia Agreement supports the UK's tilt to the Indo-Pacific.

Comprehensive and Progressive Agreement for Trans-Pacific Partnership

16. The Integrated Review noted that the UK would seek accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) in support of its "tilt to the Indo-Pacific".[25] DIT has characterised the UK-Australia Agreement as a "major step

21 The UK-Japan Comprehensive Economic Partnership Agreement, signed in October 2020, was treated as if it were a new agreement, but in fact it replicated the corresponding EU agreement to such an extent that it was effectively a roll-over agreement – International Trade Committee, Second Report of Session 2019–21, *UK-Japan Comprehensive Economic Partnership Agreement*, HC 914.

22 HM Government, *Global Britain in a competitive age: The Integrated Review of Security, Defence, Development and Foreign Policy*, CP 403, March 2021, p 66

23 HM Government, *Global Britain in a competitive age: The Integrated Review of Security, Defence, Development and Foreign Policy*, CP 403, March 2021, p 66

24 Ministry of Defence, *Defence in a Competitive Age*, CP 411, March 2021, p 29

25 HM Government, *Global Britain in a competitive age: The Integrated Review of Security, Defence, Development and Foreign Policy*, CP 403, March 2021, p 22

for UK trade in the Indo-Pacific", given Australia's support for UK accession to CPTPP, and the advantage UK exporters would have through gaining early access to the region's markets.[26]

17. The UK Trade Policy Observatory (UKTPO) agreed that the Agreement will help trade in the region, characterising it as a "steady step", with its main value lying "in policy development which may help the UK join the CPTPP, and as part of the Indo-Pacific tilt more broadly, rather than in its direct economic benefits". However, it cautioned that, while the Agreement appears to draw on, and even in places go beyond, the CPTPP, "in-depth analysis is needed as potential conflicts can also be seen in some of the detail".[27]

18. The Australian Government has committed to seeking no "additional [goods market] access or faster tariff reduction" concessions from the UK during bilateral negotiations relating to CPTPP accession.[28] While the UK Government considers that no trade agreement can be seen as setting a precedent for any other (as discussed further below), this does not preclude other CPTPP members pointing to the Agreement with Australia and demanding at least the same level of market access as part of CPTPP accession.

19. Had the Secretary of State attended to give evidence to us on 29 June, we would have asked her about the relationship between the UK-Australia Agreement and bilateral market access negotiations as part of the UK's application to accede to the CPTPP.

20. **There is little question that the Agreement is likely to aid the UK's accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership. We note that the UK-Australia Agreement draws widely on the Trans-Pacific Agreement, while also going beyond it in some respects and potentially being in conflict with it in others. *The Government should explain clearly how and why this has come about.***

21. ***The Government should clarify how the market access provisions under the Agreement with Australia relate to its negotiating positions for bilateral market access discussions with other Trans-Pacific Partnership members as part of the accession process.***

Overall trade strategy

22. The UKTPO noted that Australia only accounted for 1.6% of UK imports and 0.8% of UK exports in 2020, meaning "the overall economic impact of this agreement on the UK is expected to be extremely small".[29] While the Government has called Australia a "like-minded and key ally", and made the case for an FTA—highlighting common ground and trade opportunities—it has not been clear why Australia, specifically, was a strategic priority for securing an FTA before others, beyond reference to the CPTPP.

23. In addition to this Agreement, the FTA it has signed with New Zealand,[30] and its application to accede to the CPTPP, the Government is seeking new or revised FTAs

26 Department for International Trade, *Ten key benefits of the UK-Australia Free Trade Agreement*, December 2021, p 2

27 UK Trade Policy Observatory (AUS0028) paras 8–9. See also paras 53, 61, 62, 77 and 79 for the possible conflicts identified. For a detailed comparison of the UK-Australia Agreement with CPTPP, see Appendix 1 of this report.

28 Department for International Trade, "UK-Australia FTA negotiations: agreement in principle", 17 June 2021

29 UK Trade Policy Observatory (AUS0028) para 19

30 Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and New Zealand, February 2022

with Canada, the Gulf Cooperation Council, India and Mexico, among others. The Government's ambitious target of signing FTAs covering 80% of UK trade within three years of the UK's exit from the EU,[31] and the progress it had made and was expected to make,[32] underline the importance of a coherent and long-term approach to trade negotiations.

24. We have previously called on the Government to produce a single, coherent, trade strategy.[33] In December 2021, the National Audit Office recommended DIT bring together its trade strategy into one place, to outline "how its trade policy supports wider policy objectives and how it will use trade agreements alongside other levers to achieve its objectives".[34] When we pressed the issue again with the Secretary of State, her response was that she did "not want to embed something that becomes historic; I want to always have the fluidity to allow us to move forward".[35]

25. Friends of the Earth (FoE) told us that a trade strategy would be useful to help DIT lay out its general core standards, guiding principles, and facilitate assessment of the cumulative impacts of, and precedents set by, new trade deals.[36] Other witnesses additionally outlined the important role a trade strategy could play in helping DIT engage with negotiations in ways which would strengthen and define its positions on agri-food concessions,[37] climate change,[38] development,[39] and the environment.[40] Several civil society groups were critical of the Government for not engaging with them during the course of the negotiations with Australia.[41]

26. ***The Government must publish a coherent trade strategy which brings together its various priorities and dovetails with other strategies, including the Export Strategy. The trade strategy must set out clearly what kind of trading nation it wants the UK to be and how it will seek to achieve its aims, both through its broader trade policy and in negotiations with trade partners. The Government should also set out how it will engage with each prospective negotiating partner, giving a clear sense of how each negotiation serves its broader strategic vision.***

Values-driven trade policy

27. The Government has said that the UK's trade policy is based on "the core principles of democracy, human rights, free enterprise and high standards in areas like the environment, food, animal welfare and data",[42] and that it will use its trade policy "to support long-

31 HC Deb, 30 January 2020, col 961
32 Department for International Trade, *Annual Report and Accounts 2020–21*, HC 431, July 2021 pp 18–19; National Audit Office, *Progress with trade negotiations*, December 2021, pp 12, 56–58
33 See, for example, Oral evidence taken on 27 October 2021, HC (2021–22) 605, Q57 and Angus Brendan MacNeil MP to Rt Hon Anne-Marie Trevelyan MP, 8 November 2021.
34 National Audit Office, *Progress with trade negotiations*, December 2021, p 10
35 Oral evidence taken on 27 April 2022, HC (2021–22) 128, Q256
36 Friends of the Earth (AUS0009) para 28
37 Trade and Animal Welfare Coalition (AUS0015) para 28; RSPCA (AUS0004) para 33
38 Traidcraft Exchange (AUS0020) paras 7–9; National Farmers Union (AUS0034) para 74
39 Traidcraft Exchange (AUS0020) paras 7–9
40 Greener UK (AUS0021) paras 15–16
41 RSPCA (AUS0004) paras 31–4, Trade and Animal Welfare Coalition (AUS0015) paras 27–8, Sustain (AUS0023) para 57, National Farmers' Union (AUS0034) paras 55–57
42 HM Government, *Global Britain in a competitive age: The Integrated Review of Security, Defence, Development and Foreign Policy*, CP 403, March 2021, p 54

lasting development".[43] The Foreign Secretary has previously stated the importance of aligning trade with foreign policy objectives,[44] and (while International Trade Secretary) that the UK's trading policy was "values-driven" as well as "value-generating".[45]

28. While the Secretary of State previously highlighted the potential for trade to "raise up economic growth and opportunities for developing countries",[46] when we raised the matter of a values-driven trade policy with her in April, she emphasised that the mandate for trade negotiations did not take into account broader geopolitical concerns and told us that "trade deals are not the tool for, if you like, the broader diplomatic agreement discussions".[47]

Human rights

29. The Agreement does not include language on the protection of human rights, either in its preamble or in its substantive provisions. This is in contrast to, for example, the UK-Japan FTA (which was a "roll-over" agreement from the UK's time as a member of the EU) where, in the preamble, the Parties reaffirmed "their commitment to the Charter of the United Nations and [had] regard to the principles articulated in the Universal Declaration of Human Rights"; and a chapter on trade and sustainable development, which included provisions to:

> "recognise the importance of the principles concerning fundamental rights at work, decent work for all, and fundamental values of freedom, human dignity, social justice, security and non-discrimination for sustainable economic and social development and efficiency, as well as the importance of seeking better integration of those principles into trade and investment policies".[48]

30. Given that the UK-Australia Agreement is the first entirely new trade agreement that the UK has signed since leaving the EU, the absence of human rights provisions appears to represent a clear change of approach. It may set a precedent for future FTAs, but we have seen no reasoning from the Government to justify the exclusion of these terms.

31. This matter was raised in a letter dated 18 May 2022 from the Joint Committee on Human Rights (JCHR) to the Secretary of State for International Trade.[49] The Secretary of State's response, dated 30 May 2022, suggests that the Government may seek to advance human rights objectives through means other than FTAs, and suggests that, because it is not legally binding, including human rights provisions in the preamble would serve no purpose.[50] It is noteworthy that FTAs have frequently been used to signal commitments to

43 Foreign, Commonwealth and Development Office, *The UK Government's Strategy for International Development*, CP 676, May 2022, p 10
44 Foreign, Commonwealth and Development Office, "The return of geopolitics: Foreign Secretary's Mansion House speech at the Lord Mayor's 2022 Easter Banquet", 27 April 2022
45 Department for International Trade, "Chatham House speech: Liz Truss sets out vision for values-driven free trade", 29 October 2020
46 Oral evidence taken on 27 October 2021, HC (2021–22) 605, Q60
47 Oral evidence taken on 27 April 2022, HC (2021–22) 128, Qq248, 250
48 Foreign, Commonwealth and Development Office, *UK/Japan: Agreement for a Comprehensive Economic Partnership* [CS Japan No.1/2020], CP 311, October 2020
49 Rt Hon Harriet Harman MP to Rt Hon Anne-Marie Trevelyan MP, 18 May 2022
50 Rt Hon Anne-Marie Trevelyan MP to Rt Hon Harriet Harman MP, 30 May 2022

human rights, irrespective of whether the provisions have been relied on in disputes; and that the JCHR previously recommended that human rights clauses should be included in post-Brexit trade agreements.[51]

32. Had the Secretary of State attended to give evidence to us on 29 June, we would have asked her about the Agreement's lack of explicit provisions on the protection of human rights.

33. **We note that the Agreement does not refer to the protection of human rights. *We ask the Government to explain what its negotiating position was on the inclusion of language in either the preamble or the main text of the Agreement on the protection of human rights. If the Government favoured excluding such provisions, we ask it to explain why it did so. We also ask the Government to confirm whether its policy is to adopt the same approach in future trade agreement negotiations—including where it is renegotiating existing agreements that include human rights provisions.***

Setting precedents for other agreements

34. The Government has stated that this Agreement does not set a precedent for the content of future negotiations.[52] Ministers have particularly emphasised this when discussing some agri-food provisions.[53] The Minister for Trade Policy, Rt Hon Penny Mordaunt MP, told us that "the right approach is to treat each deal as a separate issue […] we are very clear about what our objectives are, and how we achieve them will differ from place to place."[54]

35. However, the Government has also cited instances where it considers the Agreement to set an international precedent by going beyond the standard provisions of similar FTAs. The Agreement in Principle with Australia noted the "precedent setting" nature of Article 16.4 on electronic procurement,[55] and DIT has described the Agreement's commitments to prevent modern slavery as "precedent-setting".[56] Stakeholders and civil society groups tended to believe that the Agreement is precedent-setting in terms of both gains made and concessions given by the UK.[57] This issue is particularly relevant for agri-food provisions.[58]

36. **The Agreement with Australia is the UK's first from-scratch trade agreement since leaving the EU. We note that, while the Government has insisted the Agreement does not set a precedent for future trade agreement negotiations, it has appeared to contradict itself by insisting that some provisions are precedent-setting. Given the**

51 Joint Committee on Human Rights, Seventeenth Report of Session 2017–19, *Human Rights Protections in International Agreements*, HC 1833 | HL 310

52 See, for example, HC Deb, 17 June 2021, col 460 and oral evidence taken on 27 October 2021, HC (2021–22) 127, Q269.

53 Oral evidence taken on 27 October 2021, HC (2021–22) 127, Qq269–273; Oral evidence taken on 7 July 2021, HC (2021–22) 127, Q162; Oral evidence taken before the Environment, Food and Rural Affairs Committee on 11 May 2022, HC (2022–23) 23, Qq421–422, 454–455

54 Oral evidence taken on 27 October 2021, HC (2021–22) 127, Q273

55 Department for International Trade, "UK-Australia FTA negotiations: agreement in principle", 17 June 2021

56 Department for International Trade, *Sustainability and inclusion in the UK-Australia Free Trade Agreement*, December 2021, p 2

57 See, for example: RSPCA (AUS0004); Friends of the Earth (AUS0009); WWF-UK (AUS0010); Trade and Animal Welfare Coalition (AUS0015); Northern Ireland Department for the Economy (AUS0030); Q5 [Alessandro Marongiu]; Q98; Q110; Q386.

58 See Chapter 4 of this report, where this is discussed further.

likelihood of future negotiating partners citing aspects of this Agreement as precedents, it is disappointing that the Government has not outlined how the Agreement with Australia fits into its wider strategic approach.

3 Trade in manufactured goods

Tariff liberalisation

37. The Agreement provides for the elimination of all tariffs on manufactured goods that are traded between the UK and Australia.[59] Most tariffs will be removed on entry into force of the Agreement, with phased liberalisation occurring only in respect of UK exports of steel to Australia.[60]

38. However, the effect of this tariff liberalisation in the manufactured goods sector is likely to be modest, given that trade in manufactured goods between the UK and Australia is already conducted on a relatively open basis. In its *Strategic Approach* document in 2020, the UK Government noted that the "trade-weighted" average (arrived at by dividing total tariff revenue by the total value of imports) for Australia's and the UK's applied tariffs (meaning those which are actually levied) on each other's goods stood at just 2% and 3% respectively.[61] While there is a range of applied tariff rates on particular goods, Australia's average tariffs across broad categories of goods are no higher than 5%.[62]

39. The UK Government has cited as a key benefit of the Agreement the lowering of prices for UK consumers, stating that the removal of tariffs on "swimwear, surfboards, and boots will boost choice for British consumers".[63] However, as the consumer group Which? pointed out, "The extent to which consumers will benefit from the reductions in tariffs that are included [in the Agreement] will depend on the rate of 'pass through' of lower import costs to consumers."[64]

40. The Government also states that removing UK tariffs on manufactured goods means that "UK manufacturers will benefit from cheaper access to important Australian machinery parts like hydraulic power engines and pressure-reducing valves which will allow them to be more competitive and grow their businesses."[65]

41. As regards UK exports, the Government says the removal of Australian tariffs on manufactured goods will benefit sectors including fashion and cars.[66] Alessandro Marongiu, of the Society of Motor Manufacturers and Traders (SMMT), described Australia

59 Department for International Trade, *UK-Australia Free Trade Agreement: Benefits for the UK*, December 2021, p 6. The provisions on trade in manufactured goods will apply differently where goods are imported from Australia to Northern Ireland as a result of the current terms of the Protocol on Ireland / Northern Ireland – see Chapter 21 of this report for more detail.

60 Department for International Trade, "UK-Australia FTA Chapter 2: Trade in Goods", 16 December 2021

61 Department for International Trade, *UK-Australia Free Trade Agreement: the UK's Strategic Approach*, June 2020, p 42. The UK tariff data referred to here is taken from the EU's Goods Schedules at the World Trade Organization. It should be noted that there are some modest differences between the EU's tariff schedule and the UK Global Tariff adopted by the UK following the end of the post-Brexit transition period.

62 Department for International Trade, *UK-Australia Free Trade Agreement: the UK's Strategic Approach*, June 2020, p 42

63 Department for International Trade, Ten Key Benefits of the UK-Australia Free Trade Agreement, 17 December 2021, p 1

64 Which? (AUS0012) para 9. See also Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 38.

65 Department for International Trade, "Ten Key Benefits of the UK-Australia Free Trade Agreement", 17 December 2021, p 1

66 Department for International Trade, "Ten Key Benefits of the UK-Australia Free Trade Agreement", 17 December 2021, p 1

as a "relatively small market for the UK automotive sector" but not an "insignificant one". He noted that the Agreement should allow "most if not all UK or British automotive manufacturers to avoid paying a 5% tariff on importing their products into Australia".[67]

Originating status of goods

Origin criteria

42. To qualify for preferential treatment under the Agreement, goods must comply with the rules of origin under Chapter 4 of the Agreement. Article 4.2 stipulates that a good shall be regarded as originating if it is:

- "wholly obtained or produced in the territory of one or both of the Parties";
- "produced entirely in the territory of one or both of the Parties, exclusively from originating materials"; or
- "produced entirely in the territory of one or both of the Parties using non-originating materials", provided that it satisfies the applicable product-specific rule under Annex 4B (discussed further below).

Origin procedures

43. Shanker Singham, of Competere Ltd, noted that the Agreement includes (under Article 4.19) streamlined processes for proving the originating status of goods, allowing importers to claim originating status using "importers' knowledge", a requirement "which is easier for companies to satisfy".[68] However, he noted that this still entailed providing documentary evidence and thought that, faced with that administrative burden, "Some people will simply say, 'I'd rather just pay the tariff.'"[69]

Cumulation of origin

44. The Agreement also provides for cumulation of origin, whereby inputs from one country can be treated as if they originated in another for the purposes of determining origin. Article 4.9 permits bilateral cumulation of origin, meaning that inputs from one party can be treated as originating from the other party. Thus, for instance, if UK raw materials were used to produce a good in Australia, that good would qualify for tariff-free treatment if it were exported to the UK.[70]

45. In contrast to some of the UK's roll-over trade agreements, the FTA with Australia makes no provision for any sort of cumulation of origin involving a third country (that is, one which is not itself party to the FTA). One form of such an arrangement is diagonal cumulation, where countries with overlapping FTAs form a single cumulation zone. Another form is extended cumulation (also known as cross-cumulation), where inputs

67 Q4
68 Q6
69 Q13
70 UK Trade Policy Observatory (AUS0028) para 37

from a country which is not a party to the FTA concerned are accepted as originating, regardless of whether there is an overlapping FTA with that third country or, if there is such an FTA, what rule of origin it involves.

46. The UK-Australia FTA mentions such forms of cumulation only in relation to the Working Group on Rules of Origin and Customs and Trade Facilitation established under the Agreement. This body's functions include "discussing the potential for applying cumulation with: (i) non-parties where each Party has a free trade agreement with the same non-party; and (ii) least-developed countries" (Article 4.29.2.e).

47. The UKTPO stated that "the lack of cumulation arrangements that go beyond bilateral cumulation (diagonal or extended cumulation) in the agreement is a missed opportunity". It "strongly recommend[ed] that in future agreements improved cumulation arrangements are negotiated".[71] Mr Singham thought there were "opportunities for improvement" of the Agreement in relation to cumulation although, regarding diagonal cumulation, he noted this was something "which no trade agreement really has".[72]

Product-specific rules of origin

48. The presence of extended cumulation in some of the UK's roll-over trade agreements has been to the benefit of certain sectors of UK manufacturing whose products contain a high proportion of overseas inputs. In the absence of such cumulation arrangements in the Agreement, those sectors are instead helped by means of liberal product-specific rules of origin.[73]

49. Mr Marongiu, of the SMMT, said that the UK automotive industry "is very well integrated with the European automotive sector", importing "large numbers of parts and components from the European Union".[74] Sam Lowe, of the consultancy Flint Global, explained that, whereas under the UK-Japan trade agreement the rule of origin for automotive products required at least 55% originating content, under the Agreement with Australia the minimum requirement was just 25%.[75] While this makes it easier for the UK automotive industry to take advantage of the Agreement, Mr Marongiu noted that "those businesses that are importing very large numbers of parts and components from the European Union might struggle, even with the low 25% origin requirement, to meet that threshold". He indicated that in "an ideal world", the UK and Australia would have dealt with this issue by agreeing cumulation provisions to give manufacturers "the ability to add the value of EU content into their calculations".[76] In addition, Mr Marongiu said that even those businesses which could comply with the 25% threshold would need to devote time and resources to creating systems that allowed them to demonstrate compliance. He thought that some might only reach that point some time after the Agreement had entered into force.[77]

50. Mr Lowe mentioned that a potential downside to the Agreement's liberal product-specific rules of origin was the risk that they could make it easier for third countries to

71 UK Trade Policy Observatory (AUS0028) para 5
72 Q6
73 Q23
74 Q21
75 Q23
76 Q21
77 Q12

circumvent UK tariffs. He cited the example of footwear. In this case, the rule of origin requires that, for any non-originating materials to obtain originating status, they must have been processed to the extent that they undergo a simple reclassification under the system whereby products are classified for tariff purposes. Mr Lowe said it was possible that Chinese soles and uppers could be shipped to Australia, assembled there into finished shoes and then exported to the UK tariff-free. He said it was not certain that this would happen, but it was a risk caused by "deciding on liberal rules of origin, rather than prioritising extended cumulation" in the Agreement.[78]

51. Had the Secretary of State attended to give evidence to us on 29 June, we would have asked her about the possibility of third countries using the Agreement's rules of origin provisions to circumvent UK tariffs.

52. **We welcome the fact that the Agreement includes liberal product-specific rules of origin for manufactured goods. These rules are likely to benefit UK exporters, notably in the automotive sector. However, we note that the application of such product-specific rules to imports from Australia potentially poses the risk of third countries using them to circumvent UK tariffs. *The Government must conduct a scoping study concerning this risk and carefully monitor any such impacts arising from the Agreement.***

Technical Barriers to Trade

Agreement on Technical Barriers to Trade

53. As members of the World Trade Organization (WTO), the UK and Australia are both parties to the Agreement on Technical Barriers to Trade ("the TBT Agreement"). This "aims to ensure that technical regulations, standards, and conformity assessment procedures are non-discriminatory and do not create unnecessary obstacles to trade", whilst also recognising "WTO members' right to implement measures to achieve legitimate policy objectives, such as the protection of human health and safety, or protection of the environment".[79]

54. Chapter 7 of the UK-Australia agreement, which contains TBT provisions, explicitly reaffirms the parties' rights and obligations under the TBT Agreement (Article 7.4). At the same time, as we were told by Shanker Singham, the Chapter "essentially repeats" the provisions of the WTO agreement.[80] Consequently, the Agreement includes, for instance, requirements on the parties to: consider accepting each other's regulations as equivalent where the parties' regulations achieve the same objective (Article 7.5); and base technical regulations and conformity assessment processes on international standards, guides and recommendations (Article 7.6).[81]

Committee on Technical Barriers to Trade

55. Under Article 7.12 of the Agreement, the parties establish a joint Committee on Technical Barriers to Trade. Its functions are to: monitor the operation and implementation

78 Q23
79 World Trade Organization, "Technical barriers to trade", accessed 5 May 2022
80 Q6
81 Which? (AUS0012) para 23

of the TBT Chapter; facilitate the exchange of information on matters relating to the Chapter; provide a means of seeking to resolve differences in relation to the Chapter; and consider matters referred to it by the Joint Committee established under the Agreement.

Conformity assessment

56. In 2019, the UK and Australia signed an agreement on the mutual recognition of conformity assessment (which rolled over the provisions of the equivalent agreement between Australia and the EU). Under this agreement, the parties undertake to recognise and accept checking, testing and certification of goods carried out by each other's designated conformity assessment bodies. Thus, the importing country will accept the competence and probity of the exporting country's assessment bodies in verifying that the exporting country's goods comply with the rules of the importing country. Under Article 7.7.4 of the UK-Australia FTA, the parties acknowledge the trade facilitation role of their Mutual Recognition Agreement and the importance of cooperating in accordance with that agreement. The parties also undertake to exchange information on conformity assessment mechanisms, to help facilitate acceptance of testing results (Article 7.7.2).[82]

Dispute settlement

57. The provisions in the TBT Chapter are not subject to the dispute settlement provisions under the Agreement. Mr Singham noted that the Agreement was unusual in this regard, since TBT provisions in FTAs are usually subject to dispute resolution arrangements.[83]

Outstanding regulatory issues

58. Richard Rumbelow, of Make UK, emphasised the importance of removing non-tariff barriers in order to liberalise trade. He noted that "technical barriers to getting your product accepted and being placed on the market" can "make a significant difference for a UK exporter going into a foreign market".[84] Mr Rumbelow said that the UK and Australia had "very different regimes and approaches when it comes to technical standards and regulations" and "different views as to how they can be applied".[85] Mr Marongiu, of the SMMT, regretted the fact that the Agreement did not include "a dedicated automotive annexe, which could have addressed some regulatory barriers specific to our sector."[86] Mr Rumbelow welcomed the creation under the Agreement of a framework to take forward negotiations on regulatory issues, but he cautioned that "at this stage it is an open door, rather than a solution that has been found".[87]

Cosmetics

59. The TBT chapter includes an Annex on cosmetics (Annex 7A) which seeks to provide greater clarity around regulations affecting trade in such products, as well as to lay the basis for closer regulatory alignment between the parties in the future. The Annex also stipulates (in language taken from the CPTPP) that neither party may require animal

82 Which? (AUS0012) para 23, Federation of Small Businesses (AUS0031) para 17
83 Q6
84 Q5
85 Q4
86 Q4
87 Q4. Outstanding TBT issues in relation to agri-food products are discussed in Chapter 4 of this report.

testing of a cosmetic product, "unless there is no validated alternative method available to assess safety". In addition, the parties are permitted to "consider the results of animal testing to determine the safety of a cosmetic product" (Chapter 7, Annex 7A, para 22). The Secretary of State's section 42 report states that "The testing of cosmetic products on animals remains banned in both the UK and Australia. Nothing in the FTA or the Annex changes this."[88]

60. Nevertheless, the RSPCA found Annex 7A "concerning, as it lacks detail and may enable a regression on the UK's animal welfare standards", given that it fails to commit the UK to maintaining its current ban on animal-testing of cosmetics "regardless of whether validated alternatives are available".[89] The Society also noted that the provision "completely fails to mention cosmetics ingredient testing, which is a significant omission".[90]

61. It is notable that the UK's trade agreement with New Zealand, in contrast to the agreement with Australia, states that "Each Party shall maintain its prohibitions on animal testing in its cosmetic products laws and regulations". In addition, the agreement with New Zealand includes a commitment that "Neither Party shall require that a cosmetic product or ingredient be tested on animals" without any conditionality regarding the availability of validated alternative methods of assessing the safety of a product.[91]

Medicines and medical devices

62. A side letter to the TBT Chapter deals with medicines and medical devices. In it, the Parties affirm their commitment to effective regulation in this area, ensuring the safety and fitness for purpose of medicines and medical devices, as well as undertaking to strengthen cooperation on issues of mutual interest.[92]

63. **We note that the provisions in the Agreement on technical barriers to trade do little beyond reaffirming the parties' existing multilateral and bilateral commitments. We regret that these provisions are not subject to the Agreement's dispute settlement provisions.**

64. **We are disappointed that the cosmetics Annex to the chapter on technical barriers to trade does not explicitly confirm the UK's commitment to maintain its ban on animal testing, in contrast to the recent trade agreement with New Zealand.**

88 Department for International Trade, *Report pursuant to Section 42 of the Agriculture Act 2020: UK-Australia Free Trade Agreement*, June 2022, p 8

89 RSPCA (AUS0004) para 15. See also Trade and Animal Welfare Coalition (AUS0015) para 13, UK Centre for Animal Law (AUS0019) para 3.

90 RSPCA (AUS0004) para 16. See also Trade and Animal Welfare Coalition (AUS0015) para 13, UK Centre for Animal Law (AUS0019) para 3.

91 Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and New Zealand, Article 7.15

92 Rt Hon Anne-Marie Trevelyan MP to Hon Dan Tehan MP, 16 December 2021

4 Agri-food trade

65. The Agreement significantly liberalises trade in agri-food products between the Parties.[93] The only agri-food products excluded from tariff liberalisation are pork, poultry, eggs (including certain egg products) and long-grained rice.[94] As discussed below, two issues in this regard have proved to be particularly contentious: provisions in the Agreement which seek to mitigate the impact on UK farming of tariff liberalisation; and the Agreement's potential impact on UK production standards for primary agri-food products.

Tariff liberalisation

Primary and semi-processed agri-food products

66. As already noted,[95] the baseline applied tariffs between the UK and Australia—the most-favoured nation (MFN) / WTO tariffs which the Parties currently levy on goods from countries with which they have no trade agreement—are similar. However, there is a marked discrepancy when it comes to tariffs on agricultural products—in respect of which the average trade-weighted (for trade with all countries) Australian tariff in 2019 was 2.3%, whereas the equivalent UK figure was 8.3%.[96] Most of Australia's applied agri-food tariffs are set at zero or 5% (the only notable exception is in respect of certain cheeses);[97] and Australia (which produces a lot more food than it consumes) is not a major market for UK exports of primary and semi-processed agri-food products.[98] This makes it likely that the majority of benefits from the liberalisation of trade in agricultural products will go to Australian exporters (and potentially UK consumers), while the costs will be borne by UK agri-food producers.

67. The National Farmers' Union (NFU) noted that Australian farmers have significantly lower costs of production than their UK counterparts. It stated that in Australia production costs for beef are 2.5 times smaller, and those for sheep meat 65% lower, than in the UK. The primary reason for this difference cited by the NFU was the much larger scale of production in Australia.[99] The NFU also stated that differences in climate further reduce costs of production in Australia, since animals are kept outside for longer than they are in the UK.[100] Differences in production costs are particularly pronounced for certain parts

93 The provisions on agri-food trade will apply differently where goods are imported from Australia to Northern Ireland as a result of the current terms of the Protocol on Ireland / Northern Ireland – see Chapter 21 of this report for more detail.

94 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 27. See also RSPCA (AUS0004) paras 12, 36, Trade and Animal Welfare Coalition (AUS0015) paras 6, 30, Compassion in World Farming (AUS0024) para 22, National Farmers' Union (AUS0034) para 82.

95 See Chapter 3 of this report.

96 World Trade Organization / International Trade Centre / UN Conference on Trade and Development, *World Tariff Profiles 2021*, pp 50, 89. The UK tariff data referred to here is taken from the EU's Goods Schedules at the WTO. There are some modest differences between the EU's tariff schedule and the UK Global Tariff, which now applies.

97 RSPCA (AUS0004) para 28, Trade and Animal Welfare Coalition (AUS0015) para 24, National Farmers' Union (AUS0034) para 15

98 National Farmers' Union (AUS0034) paras 6, 13, 15, Annex 1

99 National Farmers' Union (AUS0034) para 36. See also Farmers' Union of Wales (AUS0017) para 20.

100 National Farmers' Union (AUS0034) para 36

of the UK, such as Wales. According to the Farmers' Union of Wales "while the average Welsh cattle farm has 23 cows, 65% of Australian farms have between 100 and 400 head of cattle, while farms of over 5,400 cattle account for 30% of the country's beef cattle."[101]

68. Robert Hodgkins, a sheep farmer, pointed to the much lower costs of production for Australia sheep farmers compared to their UK counterparts.[102] According to the Agriculture and Horticulture Development Board (AHDB), the average costs of production for Australian lamb during 2018–20 stood at US$260 per 100kg, whereas the equivalent costs for the UK were US$380 per 100kg.[103]

69. Modelling for the Government's Impact Assessment for the Agreement shows long-run decreases in annual Gross Value Added of 0.7% (£94 million) for UK primary agriculture and 2.65% (£225 million) for the UK semi-processed food sector.[104] The Impact Assessment does, though, note that "this does not mean that these sectors will not grow in the future".[105] It also stresses that losses in these sectors will be offset by "growth in manufacturing sectors, in particular manufacture of motor vehicles and manufacture of machinery and equipment", as the economy rebalances in response to the effects of the Agreement.[106]

70. The Impact Assessment further states that the modelled long-run consequences of the Agreement for the UK agriculture and semi-processed foods sectors "are driven by increased import competition in the beef and sheepmeat sub-sectors". It acknowledges the limitations of the modelling in this regard, noting that several factors are not captured. These include: likely strong future growth in Asia-Pacific markets, which are already important for Australia; the impact of protections for UK agriculture under the Agreement; and the effect of UK consumers' preference to "Buy British".[107] The relative unimportance of the UK as an export market for Australian red meat has also been emphasised by the Secretary of State. She told the House in January 2022 that, while the UK accounted for just 0.1% of Australian beef exports in 2021, over 75% of Australia's beef exports and 70% of its sheepmeat exports went to Asia-Pacific markets in the same year.[108] The Impact Assessment also refers to "alternative modelling" (to that used in the Assessment). This suggests that: there will be "a reduction in gross [UK] output of around 3% for beef and 5% for sheepmeat as a result of liberalisation"; and "the increase in [Australian] imports will primarily displace beef imports from the EU and sheepmeat imports from New Zealand".[109]

71. In contrast to the Government's view, the NFU thought that removing tariffs was likely to facilitate the growth of Australian imports in areas such as "the red meat sector

101 Farmers' Union of Wales (AUS0017) para 19
102 Q199
103 Agriculture and Horticulture Development Board, "Lamb: international comparisons", accessed 29 June 2022
104 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, pp 6, 29, 30, 68. For detailed analysis of the Impact Assessment, see Chapter 22 of this report.
105 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 29
106 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 6; see also p 39
107 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 31
108 HC Deb, 5 January 2022, col 66
109 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 32

where UK's MFN tariffs range from 65%-113% for beef and 38–62% for lamb".[110] It also noted that the Australian meat industry saw the Agreement "as a means of significantly enhancing Australia's access to the UK's red meat market".[111] The food and farming lobby group Sustain noted that, in considering the Agreement's environmental impacts, the UK Government said its modelling suggested that increasing imports of Australian cattle meat are possible.[112] WWF-UK also noted that "Australia's top beef exporter" had predicted "a tenfold UK sales surge on the conclusion of the trade deal".[113] As regards consumers' preference for British products, Sustain pointed out that country-of-origin labelling does not apply to the food-service (catering) sector[114] and that a UK supermarket chain recently retreated from a "British only beef" policy, "citing price concerns".[115]

72. The AHDB noted that, while liberalisation of agri-food trade might not immediately have a dramatic effect on UK producers, changes in world markets could make the UK more of a target for Australian exports. For instance, if Australia lost its preferential trading arrangements with China, "the UK could be seen as a very attractive market as a destination for increased amounts of product."[116] Other bodies similarly drew attention to the possibility of the UK serving as a fallback market for Australian exporters if selling to Asian markets were to become more difficult.[117] The Northern Ireland Executive took the view that "There is no guarantee that Australian exporters will focus only on the Asian market for future growth opportunities".[118]

73. Regarding the Government's view that Australian beef imports are more likely to displace EU imports than UK domestic production, the Farmers' Union of Wales drew attention to the similarity of UK and EU farming systems (as well as the alignment of their production standards).[119]

74. The potential negative effects of the Agreement on the UK's primary and semi-processed agri-food sectors raise particular issues for those parts of the UK where these sectors have greater economic weight, notably the devolved nations.[120] The Scottish Government noted that it had written to the Government to express concern at "the implications of this agreement on farming communities in Scotland".[121] The Farmers' Union of Wales pointed out that the beef and lamb sectors (which the Government has indicated are most vulnerable to the effects of the Agreement) are particularly prominent in Welsh agriculture and central to the livelihoods of a large number of Welsh communities.[122]

110 National Farmers' Union (AUS0034) para 13
111 National Farmers' Union (AUS0034) para 14. See also Sustain (AUS0023) para 42.
112 Sustain (AUS0023) para 43. This relates to Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 47.
113 WWF-UK (AUS0010) para 28
114 Sustain (AUS0023) para 41
115 Sustain (AUS0023) para 44
116 Agriculture and Horticulture Development Board (AUS0033) para 10
117 Q200; RSPCA (AUS0004) para 28, WWF-UK (AUS0010) para 29, Trade and Animal Welfare Coalition (AUS0015) para 24, National Farmers' Union (AUS0034) paras 43–44
118 Northern Ireland Department for the Economy (AUS0030) para 8
119 Farmers' Union of Wales (AUS0017) para 25. The implications of the Agreement for UK food production standards are discussed later in this report chapter.
120 RSPCA (AUS0004) para 29, Trade and Animal Welfare Coalition (AUS0015) para 25, Compassion in World Farming (AUS0024) para 23, National Farmers' Union (AUS0034) paras 48–49
121 Scottish Government (AUS0025) para 4
122 Farmers' Union of Wales (AUS0017) para 18

75. The Northern Ireland Executive feared that, should EU beef exports to the UK be displaced by Australian exports, "this will be most significant for the Republic of Ireland and a surplus of beef on the Irish market will have negative consequences for the market in Northern Ireland".[123] In addition, the Executive was concerned that Australian beef and sheepmeat imports to Great Britain could reduce Northern Ireland's share in what is currently its most important market for these products, accounting for "around 70% by value of beef and sheep meat processed in Northern Ireland".[124]

76. Stakeholders pointed out that the effect of the Agreement on UK agriculture must be seen in the wider context of the precedents that it potentially sets for future trade agreements.[125] They also referred to the potential cumulative impact on UK agriculture of future FTAs, which will be all the greater if they follow the precedent set by the Agreement with Australia.[126]

Processed agri-food products

77. The Australian Government has noted that "UK tariffs on most Australian processed food exports will be eliminated on entry into force of the agreement". It cited "key outcomes" in this respect as the removal of high tariffs on biscuits, breakfast cereals, chocolate, pasta, confectionery, food supplements and olive oil.[127] The UK Government, meanwhile, has stated that UK consumers will benefit from the removal of tariffs on Australian imports, including processed food products such as the Tim Tam brand of biscuits.[128] As already noted in respect of manufactured goods,[129] how far the removal of tariffs will benefit consumers does depend on how much the lower cost of imports is "passed through".[130]

78. The Government has emphasised the benefit to UK consumers of removing tariffs on Australian wines.[131] The Wine and Spirit Trade Association (WSTA) noted that "The Australia FTA is set to remove tariffs of typically 6–9p per bottle on Australian wines."[132] This is such a modest amount that it will have less impact on the retail price of a bottle of wine than the consequences of fluctuations in currency exchange rates.[133] The WSTA noted it was likely that the price effects of tariff liberalisation would be more than negated by tax rises of "35p [per bottle] for a 13% abv [alcohol by volume] wine and 82p [per bottle] for a 15% abv wine" under the current UK Alcohol Duty Review.[134] Miles Beale,

123 Northern Ireland Department for the Economy (AUS0030) para 9
124 Northern Ireland Department for the Economy (AUS0030) para 14; see also para 9. The potential impact of the Agreement on Northern Ireland is complicated by the operation of the Ireland / Northern Ireland Protocol – see Chapter 21 of this report for more detail.
125 Hybu Cig Cymru – Meat Promotion Wales (AUS0006) paras 11, 17; Northern Ireland Department for the Economy (AUS0030) para 17; National Farmers' Union (AUS0034) para 61
126 Friends of the Earth (AUS0009) para 28, Farmers' Union of Wales (AUS0017) para 38, Compassion in World Farming (AUS0024) para 7, Northern Ireland Department for the Economy (AUS0030) para 19, National Farmers' Union (AUS0034) para 46
127 Department of Foreign Affairs and Trade [Australia], *Free Trade Agreement between Australia and the United Kingdom of Great Britain and Northern Ireland – Regulation Impact Statement: Final Assessment*, November 2021, para 83
128 Department for International Trade, Ten Key Benefits of the UK-Australia Free Trade Agreement, 17 December 2021, p 1
129 See Chapter 3 of this report.
130 RSPCA (AUS0004) para 30, Which? (AUS0012) para 9, National Farmers' Union (AUS0034) paras 50–51
131 Department for International Trade, Ten Key Benefits of the UK-Australia Free Trade Agreement, 17 December 2021, p 1
132 Wine and Spirit Trade Association (AUS0008) para 21
133 RSPCA (AUS0004) para 30
134 Wine and Spirit Trade Association (AUS0008) para 21

the Association's Chief Executive, said that, while eliminating tariffs on Australian wine would reduce import costs by £22 million per year, duty reform would add costs of £92 million per year in respect of Australian wine alone.[135]

79. The lifting of Australian tariffs will benefit UK exports of processed agri-food products, notably in the case of spirits (where Australia has an applied MFN tariff of up to 5%). Analysis commissioned by the drinks producer Pernod Ricard showed that "reducing Australian tariffs on gin and whisky to zero will boost all UK spirits exports by 23% (£41m) per annum by 2026". The company also pointed out that "Cutting the whisky tariff to zero will create a level playing field with Bourbon which has enjoyed tariff free access to Australia under the 2005 US-Australia FTA and will save roughly £1 million on the 300,000 cases of whisky we ship to Australia yearly."[136] Both Pernod Ricard and the WSTA note that Australia is an important and growing market for UK exports of spirits.[137]

80. **We welcome the liberalisation of trade in processed food achieved by the Agreement. Insofar as tariff cuts are passed through, this will benefit UK consumers—and UK exporters should also benefit. However, in both cases the gains are likely to be modest. Australia's existing applied tariffs are low; and, while the UK's applied tariffs for a few processed food products are significant, their removal from Australian imports will not make any noticeable difference at supermarket tills.**

Protections for UK agricultural producers

81. As discussed below, under the Agreement, UK agricultural producers will benefit from several transitional forms of protection (in addition to non-transitional protections under multilateral provisions, which are also discussed below). The transitional protections for UK producers are intended to help the sector adjust to the new trading arrangements with Australia. However, Nick von Westenholz of the NFU questioned the validity of this premise, arguing that "there is a question mark over whether, in any period of time, it is possible to adapt when there are such significant cost of production differences" between UK and Australian farming.[138]

Transitional tariff rate quotas

82. One means by which UK producers will be assisted in adapting to the liberalisation of agricultural tariffs under the Agreement is the phasing in of that liberalisation over varying periods for several sensitive products.[139] This is done by means of tariff rate quotas (TRQs), set out in Part 2B-2 of Annex 2A to Chapter 2 of the Agreement. Quantities imported within the quota amounts will be tariff-free, while quantities above the quotas will still be subject to the MFN tariff, payable for goods from WTO member countries with which the UK has no FTA (see Table 1).

135 Q241. See also Pernod Ricard (AUS0018) para 4.
136 Pernod Ricard (AUS0018) para 3
137 Wine and Spirit Trade Association (AUS0008) para 3, Pernod Ricard (AUS0018) para 3
138 Q202. See also National Farmers' Union (AUS0034) para 27.
139 On the Australian side, such phasing-in will also occur in respect of one sensitive agri-food product, namely cheese – Department for International Trade, "UK-Australia FTA Chapter 2: Trade in Goods", 16 December 2021. See also Department for International Trade, *Report pursuant to Section 42 of the Agriculture Act 2020: UK-Australia Free Trade Agreement*, June 2022, p 13.

Table 1: Transitional tariff rate quotas applicable to UK imports from Australia

TRQ no.	Product category	Notes
1	Beef	Annual increases in TRQs for 10 years (from 35,000 up to 110,000 tonnes per year); products then subject to Product-Specific Safeguard for five years
2	Sheep meat and goat meat	Annual increases in TRQs for 10 years (from 25,000 up to 75,000 tonnes per year); if imports amount to 95% or more of the TRQ in any two consecutive years, the quota in the next year will be reduced by 25%; products then subject to Product-Specific Safeguard for five years
3	Milk, cream, yoghurt and whey	Fixed TRQ of 20,000 tonnes per year for five years
4	Butter	Annual increases in TRQs for five years (from 5,500 up to 11,500 tonnes per year)
5	Cheese and curd	Annual increases in TRQs for five years (from 24,000 up to 48,000 tonnes per year)
6	Wheat and meslin	Fixed TRQ of 40,000 tonnes per year for four years
7	Barley	Fixed TRQ of 7,000 tonnes per year for four years
8	Long-grained rice	Fixed TRQ of 1,000 tonnes per year; no phase-out
9	Broken rice	Fixed TRQ of 11,500 tonnes per year for four years
10	Sugar	Annual increases in TRQs for five years (from 80,000 up to 160,000 tonnes per year)

Source: UK-Australia Free Trade Agreement, Annex 2A, Part 2B-2

83. The NFU queried the efficacy of these quotas. Citing the example of the beef TRQ, the NFU suggested that the Year 1 quota allocation to Australia of 35,000 tonnes represents around 10% of the "UK import requirement" and that the Year 10 quota of 110,000 tonnes would "amount to 30% of the UK's import requirement and more than 12% of total UK production".[140]

84. The NFU also pointed to what it sees as the lack of transparency regarding the modelling assumptions that have informed the size of the quotas. It stated: "the government has not published analysis or modelling to justify the amounts set, nor to provide reassurance to farmers that at the level set, the quota volumes will provide an effective safeguard during the tariff phase out period."[141]

85. In addition, the NFU was disappointed that the TRQ volumes will be measured according to "shipped product weight" rather than "carcase weight equivalent" (which uses a coefficient to account for the fact that not all parts of an animal's carcass are consumed). The difference between these different methodologies, according to the NFU, means that "A relatively small volume of high value imports, such as steak cuts of Australian beef entering under the TRQs has the potential to significantly disrupt domestic markets and

140 National Farmers' Union (AUS0034) para 19
141 National Farmers' Union (AUS0034) para 20

negatively impact British beef farmers."[142] It is noteworthy that, in contrast, the equivalent TRQ volumes in the UK-New Zealand agreement are expressed in terms of carcase weight equivalent.[143]

Transitional safeguard provisions

86. Under the Agreement, the UK Government will be able, within limits and only during a transitional period, to take measures to protect UK agricultural producers from the consequences of liberalising trade with Australia. These measures consist of two forms of safeguard (a temporary restriction on imports of a particular good where an unforeseen import surge is causing or threatening serious injury to a competing domestic industry). Different types of safeguard measures cannot be taken at the same time in respect of the same good (Article 3.12).

General bilateral safeguard

87. Parallel to the TRQs, and for five years after they cease to apply, will be the general bilateral safeguard mechanism (set out in Chapter 3 of the Agreement at Section D). This allows temporary import restrictions (relating to duty levels) to be imposed by either Party where increased imports of any product resulting from liberalisation of tariffs under the Agreement have been shown to cause or threaten serious injury to a particular industry.[144]

88. Mr Westenholz described the threshold for the general bilateral safeguard as a "tricky test" because of the need to demonstrate not just that domestic producers have been harmed or are threatened with harm but also that the source of such harm is specifically a good imported from Australia.[145] He stated that the impact on the UK of agricultural trade liberalisation is "likely to come about because of the cumulative effects of a number of trade deals that we are currently doing" and that it is "quite difficult to see how you could use those [general] bilateral safeguards, because they are country-specific."[146] The NFU also noted that bilateral safeguards will not be permanently available under the Agreement.[147]

Product-specific safeguards

89. Following the expiry of the UK's transitional TRQs in respect of beef and sheep / goat meat (10 years after the entry into force of the Agreement), these products will be subject to a Product-Specific Safeguard (PSS) mechanism under Part 2B-3 of Annex 2A to Chapter 2. The PSS authorises the UK to introduce tariffs of up to 20% once a specified import ceiling level has been reached (see Table 2).

142 National Farmers' Union (AUS0034) para 22; see also paras 3, 21, 30. See also Scottish Government (AUS0025) para 4.
143 Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and New Zealand, Chapter 2, Annex 2A
144 For more detail on the general bilateral safeguard provisions, see Chapter 6 of this report.
145 Q202
146 Q202. See also National Farmers' Union (AUS0034) para 26.
147 National Farmers' Union (AUS0034) para 28

Table 2: Product Specific Safeguard trigger ceilings

Year (from entry into force of the Agreement)	Quantity (tonnes)	
	Beef [TRQ 1]	Sheep meat and goat meat [TRQ 2]
11	122,000	85,000
12	134,000	95,000
13	146,000	105,000
14	158,000	115,000
15	170,000	125,000

Source: UK-Australia Free Trade Agreement, Annex 2A, Part 2B-3

90. The NFU questioned the likely effectiveness of the PSS on the grounds that it only applies between years 11 and 15 following the entry into force of the Agreement. It stated that, by that stage, the size of the quota will already be considerable, even without triggering the safeguard, using the example of beef, where 122,000 tonnes will be permitted in year 11, rising to 170,000 tonnes in year 15. It noted that the latter figure represents "almost half of the UK's total beef import requirement", and "at such significant proportions of total import requirement, it is hard to see how effective the product specific safeguards will be."[148]

Multilateral safeguard provisions

91. Under Article 3.5, the Parties reaffirm their rights and obligations under Article XIX of the General Agreement on Tariffs and Trade (GATT) 1994 and the WTO Agreement on Safeguards. These allow WTO members to impose safeguards in response to unexpected surges in imports of particular goods where doing so is necessary to protect domestic producers from harm. An alternative safeguard option available to the UK under a multilateral agreement is that deriving from the Special Safeguard Provisions under the WTO Agreement on Agriculture.

92. The option of imposing safeguards under these multilateral provisions is permanently available to the UK, in contrast to the temporary ability to impose general bilateral or product-specific safeguards under the UK-Australia Agreement. Safeguards under the WTO provisions also differ in that they are global (non-bilateral). Consequently, they must apply to all imports of the product concerned, regardless of the exporting country and so could not be targeted specifically at Australian agri-food imports.[149]

93. The stipulation in the UK-Australia Agreement that different sorts of safeguard cannot be applied simultaneously in regard to the same good (Article 3.12) also applies to safeguards under WTO provisions. (Other trade remedies—anti-dumping duties and countervailing duties—can, though, be used alongside safeguards, as these other remedies are aimed at dealing with different kinds of harm to domestic industry.)[150]

94. **The almost complete liberalisation of unprocessed agri-food trade with Australia is a significant step, especially given the UK's strong defensive interests and minimal**

148 National Farmers' Union (AUS0034) para 23. See also Q202.

149 For more detail on multilateral safeguard provisions, see Chapter 6 of this report.

150 For more information on the trade remedies provisions in the UK-Australia Agreement, see Chapter 6 of this report.

offensive interests. We note the Government says that other markets are more of a priority for Australian exports, and that Australian products are likely to displace imports from the EU. However, we also note producers' fear of the UK being a potential fallback market if international trade flows change.

95. **We acknowledge that the Government has sought to cushion negative impacts on UK producers with long-lasting phase-in arrangements. However, the duration of those arrangements is not necessarily a long period for the sectors concerned, given their lengthy planning horizons. We also note agri-food producers' views on what they see as the excessive size of the quotas that form a key part of the transitional arrangements. We note too that UK red meat producers fear being disadvantaged by the effect of not setting quotas on a "carcase weight equivalent" basis.**

Rules of origin

96. As already noted,[151] the Agreement includes (at Annex 4B) several liberal product-specific rules of origin, whereby products can qualify for preferential treatment despite having a high proportion of non-originating inputs. Product-specific rules of origin for processed and semi-processed agri-food products allow non-originating inputs to gain originating status through processing that leads to a change in product classification. The AHDB explained that this means "Biscuits made from imported flour and sugar, for example, will qualify for tariff-free access under the FTA."[152] The NFU noted that "a meat pie could be made of imported meat […] or malt could be made of imported barley […] and it would qualify as originating". It said that the lack of "non-originating content thresholds for value or volume" made it "easier for non-indigenous products to displace UK ingredients in products such as chocolate and other finished products".[153] The NFU recognised that "there is a need in food manufacturing to include imported materials alongside those domestically produced", but also argued that "there is a careful balance to be struck" and rules of origin "should not encourage the substitution of UK raw materials for imported alternatives beyond what is facilitated today".[154]

97. The Irish Whiskey Association welcomed the product-specific rule of origin for whiskies, as it "will protect traditional, long-standing supply chains in the Irish whiskey industry". Under the rule of origin, whiskey distilled in the Republic of Ireland but matured and blended in Northern Ireland will qualify for tariff-free status when exported to Australia.[155]

98. **We note concerns that liberal product-specific rules of origin for processed food products could encourage manufacturers to replace UK ingredients with imported ones. *The Government must say what it has done to model such possible consequences of these rules of origin—and what it will do, following entry into force, to monitor any such impacts.***

151 See Chapter 3 of this report.
152 Agriculture and Horticulture Development Board (AUS0033) para 9
153 National Farmers' Union (AUS0034) para 87
154 National Farmers' Union (AUS0034) para 88
155 Irish Whiskey Association (AUS0003) para 5

Technical Barriers to Trade

99. As already noted,[156] the Agreement's TBT provisions are set out in Chapter 7 and its Annexes.

Product labelling

100. The RSPCA welcomed the fact that the TBT Chapter (at Article 7.8) "affirms that any labelling applies to imported and home produced goods and seems to permit mandatory labelling of imported products provided the same labelling is applied to UK products".[157] The RSPCA did so in the context of concerns about the Agreement leading to increased imports of agri-food goods produced to lower animal-welfare standards than those applicable in the UK and the possible introduction of mandatory product labelling in this respect—currently being considered by the Department for Environment, Food and Rural Affairs (Defra)—to allow consumers to make informed choices.[158]

101. Sustain, on the other hand, expressed concern that Chapter 7's provisions on eliminating technical barriers and promoting greater regulatory cooperation between the Parties could be used to lower UK standards regarding the labelling of food products. It stated: "Australia uses the voluntary Health Star front-of-pack rating system, which has been criticised as flawed. Should Australia push for harmonising standards according to theirs, and should the UK accept, this could jeopardise proposed regulation currently under consideration to introduce traffic light labelling."[159]

Drinks sector

102. The WSTA stated that the TBT Chapter "will help with setting out general parameters for the introduction of new regulations"—but regretted the absence of certain provisions specifically relating to the drinks sector. It noted that the Agreement lacks an Annex on spirits (which the UK had proposed) and any mention of "Australian proposals on wine and organics"—both of which were explicitly referred to in the Agreement in Principle. The WSTA also indicated the absence from the FTA of any reference to the parties, as stated in the Agreement in Principle, committing "to use best endeavours to secure agreement in Australia to the UK proposal for a whisky definition in a form enforceable by domestic authorities and to implement in the UK Australia's proposals under the Wine Agreement".[160]

103. Under Australian law, whisky is defined as "a spirit obtained by the distillation of a fermented liquor of a mash of cereal grain in such a manner that the spirit possesses

156 See Chapter 3 of this report.

157 RSPCA (AUS0004) para 14. See also Trade and Animal Welfare Coalition (AUS0015) para 12.

158 RSPCA (AUS0004) paras 14, 30. See also Department for Environment, Food and Rural Affairs, *Government food strategy*, CP 698, June 2022, para 2.3.5. The Agreement's potential impact on food production standards is discussed later in the present chapter of this report.

159 Sustain (AUS0023) para 29

160 Wine and Spirit Trade Association (AUS0008) para 12, citing Department for International Trade, "UK-Australia FTA negotiations: agreement in principle", 17 June 2021, para 1.8. The UK-Australia Wine Agreement, signed in 2019, rolls over the provisions of an EU-Australia agreement covering matters such as authorised winemaking techniques, wine certification and labelling, and protected geographical indications of wines – Foreign and Commonwealth Office, *Agreement on Trade in Wine between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia*, CP 8, January 2019.

the taste, aroma and other characteristics generally attributed to whisky."[161] Under the joint Australia New Zealand Food Standards Code, it is defined as "an alcoholic beverage consisting of a potable alcoholic distillate […] produced by distillation of fermented liquor derived from food sources, so as to have the taste, aroma and other characteristics generally attributable to [whisky]".[162] The Scottish Government told us that "the issue of an enforceable definition for Scotch whisky in Australia is important to the whisky industry in Scotland, so it is unfortunate that the UK Government was not able to secure a commitment within this agreement".[163] According to Miles Beale, Chief Executive of the WSTA, this issue can, and should, be addressed "without reopening an entire free trade agreement".[164] The drinks manufacturer Pernod Ricard envisaged the sector addressing the issue through the TBT Committee under the Agreement and by means of provisions in the UK-New Zealand trade agreement.[165] Under the UK-New Zealand agreement's TBT annex on wine and distilled spirits, New Zealand must support any good-faith UK application to "to secure a standard for 'whisky' or 'whiskey' in accordance with the procedures for amendment of the Australia New Zealand Joint Food Standards Code".[166]

104. Accolade Wines said that certain winemaking operations, "such as blending, sweetening, carbonation/aeration, are not permitted to be undertaken in the UK on imported wine products under retained EU Regulation 1308/2008". These practices are, however, "commonly undertaken in Australia and at source in multiple other wine-producing countries as part of the ordinary winemaking process". The company argued that, if permitted in the UK, the currently-banned winemaking practices would form part of "an important part of a favourable business operating environment which can attract investment from Australia and other countries". It thought that, in the short term, "these considerations should be addressed in the ongoing review of the wine regulations to encourage reformulation, investment, and innovation".[167] Mr Beale, of the WSTA, told us that "mutual acceptance of wine-making practices" could be achieved through the CPTPP, as well as "through things like the World Wine Trade Group [which involves government and industry representatives from several wine-producing countries]".[168]

105. Had the Secretary of State attended to give evidence to us on 29 June, we would have asked her about the absence from the Agreement of provisions on Australia tightening its definition of whisky and the UK implementing Australia's proposals under the Wine Agreement.

106. **The Agreement in Principle referred to a UK-proposed annex on spirits and "Australian proposals on wine and organics", as well as "best endeavours" commitments to reach agreement on amending Australia's definition of whisky and implementing in the UK Australia's proposals under the Wine Agreement. It is disappointing that these are not present in the final Agreement.** ***The Government must set out how, and when, it plans to address the issues concerned.***

161 Australian High Commission, London (AUS0041)
162 Australia New Zealand Food Standards Code, Standard 2.7.5
163 Scottish Government (AUS0025) para 8
164 Q246
165 Pernod Ricard (AUS0018) para 7
166 Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and New Zealand, Chapter 7, Annex 7A, Section B, para 12
167 Accolade Wines (AUS0016) para 18. See also Direct Wine Holdings Ltd (AUS0013) para 22.
168 Q241

Production standards for primary agri-food products

107. Organisations representing UK farming, along with other civil society groups, have raised concerns about the prospect of FTAs that liberalise trade in primary agri-food products. They fear that the UK agri-food sector could face unfair competition from countries with lower food production standards and that there could be a consequent lowering of UK standards. Issues that have been raised in this regard relate to Sanitary and Phytosanitary (SPS) measures (to protect human, animal, or plant life or health), animal welfare and the environment.

108. These concerns were considered by the non-statutory TAC (convened by DIT) and the National Food Strategy review (commissioned by Defra, and conducted by the food entrepreneur Henry Dimbleby). Both proposed that removing tariffs on agri-food products under UK FTAs should be conditional on imported products meeting certain core food production standards. The Government's failure to take this approach in the agreement with Australia was criticised by a significant number of civil society organisations.[169] The recently published *Government food strategy* does not contain any commitment by the Government to making liberalisation of agri-food trade conditional on imports meeting a set of UK core standards.[170]

109. Had the Secretary of State attended to give evidence to us on 29 June, we would have asked her why the Government has not accepted the proposals by the original TAC and the National Food Strategy review that agri-food tariffs should only be liberalised where imports meet UK production standards.

110. Several organisations noted that, while matters relating to food standards fall within the competency of the devolved administrations, they have no power to exclude imported products on the basis of how they have been produced.[171]

Overall impact on protections for UK food production standards

Trade and Agriculture Commission's advice

111. Before the parliamentary scrutiny process for an FTA, under CRaG, can begin, the Secretary of State for International Trade must lay a report (pursuant to section 42 of the Agriculture Act 2020), regarding that FTA's impact on protections for UK food production standards. In preparing that report, the Secretary of State requests advice from the new TAC (which is distinct and separate from the original non-statutory TAC). The TAC's advice on the UK-Australia FTA was submitted to the Secretary of State on 31 March 2022. It was laid before Parliament and published on 13 April 2022.[172]

169 RSPCA (AUS0004) paras 1, 9, 28, 33, 36, Friends of the Earth (AUS0009) paras 26, 28, WWF-UK (AUS0010) paras 4, 8, 14, 15, 23, 47, Which? (AUS0012) paras 4, 22, Trade and Animal Welfare Coalition (AUS0015) para 28, UK Centre for Animal Law (AUS0019) paras 1, 2, 12, Greener UK (AUS0021) paras 4, 9, Sustain (AUS0023) paras 4, 11, 59, 62, Compassion in World Farming (AUS0024) paras 8, 35, British Veterinary Association (AUS0026) paras 20, 39, UK Trade Policy Observatory (AUS0028) para 82

170 Department for Environment, Food and Rural Affairs, *Government food strategy*, CP 698, June 2022, para 3.4.3

171 RSPCA (AUS0004) para 29, Trade and Animal Welfare Coalition (AUS0015) para 25, Sustain (AUS0023) paras 48–50

172 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022

112. The Chair of the TAC, Professor Lorand Bartels MBE, said that the Commission had been given an adequate amount of time (three months) to do its work and the resources provided had been "fine". He did, though, note that "we weren't given any resources to engage any outside consultants or any research" and consequently "we were entirely dependent on information that we found, information that came to us through our consultation process or information from the Government." While this approach did work, "A small consultancy budget might have made life a little bit easier."[173] He also noted that fulfilling the TAC's remit in respect of CPTPP accession is a daunting prospect: "figuring out what goes on in Australia is difficult. Figuring out what goes on in 11 countries where we don't even speak the languages, let alone have different legal and administrative cultures, is going to be completely impossible."[174]

113. The Commission set out to answer three questions regarding the Agreement:

(1) whether it requires the UK to change its levels of statutory protection in relation to animal or plant life or health, animal welfare and environmental protection—to which the answer was that it does not;

(2) whether it reinforces the UK's levels of statutory protection in these areas—to which the answer was that it does; and

(3) whether it otherwise affects the ability of the UK to adopt statutory protections in these areas—to which the answer was that it does not.[175]

Professor Bartels told us the Commission's overall message was that "there is nothing much to be scared of in this FTA. It should not change the picture all that much, in terms of standards."[176]

114. In considering the first question that it set out to answer (regarding whether the Agreement changes current levels of UK statutory protections), the TAC noted that the UK's right to regulate imports is explicitly enshrined in Article 31.1. This incorporates into the Agreement by reference the "general exceptions" provisions in Article XX of GATT 1994. These provisions allow WTO members to take measures (which would otherwise be inconsistent with GATT) on certain non-trade policy grounds, of which the TAC found that the following are specifically relevant to the Agreement: protecting public morals, protecting human, animal or plant life or health and conservation of exhaustible natural resources. (The general exceptions under GATT are subject to the proviso that they do not apply to measures which discriminate unjustifiably between countries or are a form of disguised protectionism.) In addition, the TAC noted, there are provisions that confirm the UK's continuing right to regulate in the chapters concerning the Environment (Chapter 22), and Animal Welfare and Antimicrobial Resistance (Chapter 25).[177]

115. In answering its second question (concerning whether the Agreement reinforces UK statutory protections), the TAC noted that Chapter 22 and Chapter 25 also contain provisions on the right to regulate that go beyond the Parties' obligations under WTO law.

173 Q164; see also Q169
174 Q193
175 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022, pp 10, 41–3; Q171
176 Q171
177 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022, pp 16–28, 41

Both chapters contain: "obligations to maintain and raise their levels of protection under their domestic laws" (Article 22.3.3 and Article 25.1.4); and "obligations preventing the parties from not properly implementing their existing laws in order to obtain a competitive advantage over the other" (Article 22.3.4, Article 22.3.6 and Article 25.1.3).[178] In addition, Chapter 22 (unlike Chapter 25) contains a set of minimum standards obligations in certain regards. All these provisions that go beyond WTO obligations involve obligations that are "hard" in the case of Chapter 22 (requiring the Parties to act in a certain way); and "soft" in the case of Chapter 25 (requiring the Parties to "endeavour" to act in a certain way). As regards the Environment Chapter (but not the Animal Welfare and Antimicrobial Resistance Chapter), all the provisions concerned are subject to the dispute settlement procedure under the Agreement.[179]

116. In addressing its third question (concerning whether the Agreement affects the UK's ability to adopt statutory protections), the TAC looked at the practical operation of the Agreement through bilateral organs and provisions that allow changes to be made by the parties. The TAC concluded that the Agreement might change through the operation of these mechanisms—and without parliamentary scrutiny (although any consequent changes to domestic law would follow normal parliamentary procedures). However, the powers involved do not constrain the UK's ability to adopt statutory protections. In addition, the TAC noted that the effective maintenance of the UK's border controls could be adversely affected by increased trade volumes resulting from the Agreement, if those controls are not resourced to an appropriate level.[180]

117. The TAC also looked, in answering its third question, at whether the Agreement might affect the UK's ability to regulate in response to concerns raised by domestic agri-food stakeholders regarding differences in UK and Australian food production standards. It concluded that: the UK does not lose its right to regulate, since WTO general exceptions are retained under the Agreement; and the UK has an enhanced right to regulate under the Agreement's environment and animal welfare chapters. In doing so, the TAC looked in some detail at the possibility of UK producers facing unfair competition from Australian imports in these areas.[181] Professor Bartels told us the TAC had concluded that "Ultimately the FTA does not make life difficult for UK agricultural producers in the way that was very much feared".[182] Apart from just two exceptions (both in relation to SPS issues), the Commission concluded that concerns which had been expressed about lower Australian standards potentially having an adverse impact on UK producers were "overblown".[183] Regarding the two cases where the TAC thought concerns about unfair competition might be justified, Professor Bartels said "If you want to stop products coming in that are made in those ways, then you have got to do it by not liberalising in the first place."[184] The TAC's analysis in this respect, and others, is further considered below under the relevant topic headings.

178 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022, p 30
179 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022, pp 29–32, 41
180 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022, pp 33–34, 41–2, 43
181 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022, pp 34–40, 42–43, 44–68
182 Q195
183 Q172
184 Q181

118. A member of the TAC, Mr von Westenholz of the NFU, denied that the Commission's findings meant that critics of the Agreement had sounded a false alarm over the issue of food production standards. He thought it was right to highlight the fact that nothing in the Agreement allows the UK to impose controls on imported products produced to lower standards than those which apply in the UK, above and beyond those controls permitted under WTO law. He also emphasised that TAC had had a "very specific and narrow" focus.[185]

119. **We welcome the role of the new Trade and Agriculture Commission in scrutinising the impact of trade agreements on UK agri-food production standards.** ***For future trade agreements, the Government must ensure that the Commission is provided with the time and resources necessary to fulfil its remit. This must include the provision of a dedicated budget for the commissioning of research.***

Food Standards Agency / Food Standards Scotland advice

120. In preparing the section 42 report, the Secretary of State also received joint advice from the Food Standards Agency (FSA) and Food Standards Scotland (FSS), which are non-ministerial departments of the UK and Scottish Governments respectively. They summarised their conclusions as follows:

- The UK-Australia FTA maintains existing food safety statutory protections in accordance with retained law.
- No changes to the UK food safety regulatory system are required to give effect to this FTA at the point of entry into force.
- The FTA text preserves the regulatory autonomy of the UK Government and devolved administrations with respect to matters of food safety and will not prejudge any future decisions in this regard, which will continue to be taken by health ministers across the UK informed by transparent advice on science and evidence from the FSA and FSS. This is key to upholding statutory protections in the future.[186]

The FSA / FSS analysis of the Agreement is referred to below under the relevant topic headings.

Section 42 report

121. The Secretary of State's section 42 report was laid before Parliament and published on 6 June 2022. In a joint Foreword, the Secretaries of State for International Trade and for Environment, Food and Rural Affairs, stated that the report "confirms that this agreement is consistent with maintaining our domestic regulatory standards, supported by the advice of the independent Trade and Agriculture Commission, the Food Standards Agency and Food Standards Scotland".[187] The report notes that the Agreement "will not result in new permissions or access for products which are otherwise not permitted or present in the

185 Q215
186 Department for International Trade, *Report pursuant to Section 42 of the Agriculture Act 2020: UK-Australia Free Trade Agreement*, June 2022, p 24
187 Department for International Trade, *Report pursuant to Section 42 of the Agriculture Act 2020: UK-Australia Free Trade Agreement*, June 2022, Ministerial Foreword

UK market prior to the agreement coming into force." It cites the TAC's conclusion that "In most cases […] there was not necessarily a general correlation between differing levels of statutory protections [between the UK and Australia] and either a potential increase in the volume of imports entering the UK or cost savings for Australian producers." It says that stakeholder concerns will be addressed through "strong cooperation commitments" by the Parties on areas such as animal welfare and the environment. It emphasises that the Parties' commitment to not lowering standards in order to undercut one another is stated on the face of the Agreement.[188] The conclusions of the section 42 report are referred to below under the relevant topic headings.

Sanitary and Phytosanitary measures

122. The Agreement's SPS provisions, which are set out in Chapter 6, include explicit references to the WTO Agreement on the Application of Sanitary and Phytosanitary Measures ("the SPS Agreement"). Under that agreement, WTO members can implement measures to protect human, animal or plant life or health, provided this is not done in a way that unjustifiably discriminates between countries or acts as a disguised form of protectionism. In Article 6.4 of the UK-Australia Agreement, the Parties "affirm their rights and obligations with respect to each other under the SPS Agreement". And in Article 6.5 they undertake to "ensure that their SPS measures are based on risk assessment in accordance with Article 5 and other relevant provisions of the SPS Agreement". Under Article 6.16, the Parties agree to establish a joint SPS Committee. Its role will include: monitoring implementation of the SPS Chapter; facilitating discussion and resolution of SPS issues; recommending mutually agreed proposals for amendments to the Chapter; and providing a forum for the exchange of information on each Party's SPS regulatory system. Under Article 6.18, the provisions of the SPS Chapter are excluded from the scope of the Agreement's dispute settlement mechanism.

123. TAC noted that, under the general exceptions provisions in Article 31.1, the UK will retain its right to regulate as regards SPS measures on the same basis as under WTO law—the relevant exception being that regarding measures necessary to protect the life or health of humans, animals and plants in the UK.[189] This is also noted in the section 42 report.[190]

Equivalence of measures

124. The SPS Agreement obliges an importing party to grant equivalent status to the exporting party's SPS measures if they achieve the same regulatory goals as those of the importing party—where this is objectively demonstrated by the exporting party.[191] Article 6.7.2 of the UK-Australia Agreement effectively reiterates this. Which? said "How this is applied will be important because many of the standards that matter to consumers are about how the level of protection is achieved, ie. the production process, not merely

188 Department for International Trade, *Report pursuant to Section 42 of the Agriculture Act 2020: UK-Australia Free Trade Agreement*, June 2022, p 13

189 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022, pp 21–22, 27, 28

190 Department for International Trade, *Report pursuant to Section 42 of the Agriculture Act 2020: UK-Australia Free Trade Agreement*, June 2022, p 12

191 Agreement on the Application of Sanitary and Phytosanitary Measures, Article 4

the end result." It feared that "International standards established by the UN's Codex Alimentarius Commission, if used as a reference, may also mean a lower level of protection than is currently required under UK law."[192]

125. Unlike the SPS Agreement, Article 6.7.2 states that the importing country has the final say on whether it accepts a rule of the exporting country as equivalent to one of its own. Shanker Singham, of Competere, argued that, in this respect, the UK-Australia Agreement is less liberalising than the SPS Agreement since, where the WTO agreement has an objective standard for determining equivalence, the UK-Australia Agreement has a subjective one—making it "WTO-minus".[193] Sam Lowe, of Flint Global, pointed out in response that, from another point of view, such as that of UK farmers, this aspect of the Agreement could be seen as a positive one.[194]

126. TAC took the view that the meaning of Article 6.7.2 is "not clear". It could mean that the importing Party "has an unfettered right to reject an equivalence request". Alternatively, it could be interpreted (as it was by the Australian High Commission in London) as a restatement of "the obvious fact that, in procedural terms, it is the importing party that makes the decision on equivalence" and must be interpreted in "good faith" as effectively consonant with the SPS Agreement. The key point for the TAC was that the Agreement "does not reduce the WTO rights of the UK to reject a request for equivalence; and, to the contrary, it may even enhance these rights".[195] The TAC also noted that a decision on equivalence "can be taken without the type of parliamentary scrutiny that would be required for a formal amendment of the agreement".[196] The section 42 report, in response, confirmed that "if the UK and Australia decided to amend the FTA to include a procedure for the recognition of equivalence, then this would be subject to Parliamentary Scrutiny under the Constitutional Reform and Governance Act 2010 (CRaG)."[197] It added that, were the Agreement to be materially or significantly amended, or replaced by a new treaty, "this would be subject to the full CRaG procedure". Furthermore, any changes to UK statutory protections or import regulations resulting from the Agreement would require legislation, which would need to be scrutinised and passed in the usual way.[198]

The precautionary principle

127. The UK's approach to SPS measures (like that of the EU) is broadly based on the "precautionary principle" (or "hazard-based" approach), which involves erring on the side of caution when there is scientific uncertainty about a potential danger to safety or health. Australia, in contrast, adheres (in common with the US) to the "risk-based" approach, which focuses on proven risks. UKTPO noted that the approach to SPS measures taken in the UK-Australia Agreement contrasts with that of the CPTPP, "which requires that measures are based on 'objective scientific evidence that is rationally related to the

192 Which? (AUS0012) para 20
193 Qq6, 8
194 Q9
195 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022, pp 19–20
196 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022, p 34
197 Department for International Trade, *Report pursuant to Section 42 of the Agriculture Act 2020: UK-Australia Free Trade Agreement*, June 2022, p 5
198 Department for International Trade, *Report pursuant to Section 42 of the Agriculture Act 2020: UK-Australia Free Trade Agreement*, June 2022, p 6

measures'", in line with the risk-based approach. At the same time, though, the SPS chapter contains "no explicit reference to the more restrictive precautionary approach to SPS measures currently applied by the UK, only to the more limited WTO version of the principle".[199] (This is contained in Article 5.7 of the SPS Agreement, whereby "In cases where relevant scientific evidence is insufficient, a [WTO] Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information".)[200] The Agreement's lack of a clear and unequivocal statement affirming the UK's right to continue applying the precautionary principle as it does currently was raised as a concern by several civil society groups.[201] The RSPCA thought that the SPS Chapter seemed in this respect to be "a retrograde step from the [Agreement in Principle] which stated that each country respected each other's SPS standards."[202]

128. The TAC noted that "It is not entirely clear from Article 6.5 of the FTA whether the UK's right to adopt provisional measures [along the lines of Article 5.7 of the SPS Agreement] has been maintained in the FTA." However, the Commission concluded that "it is unlikely that the parties would have wished to abandon their Article 5.7 rights under the WTO SPS Agreement; the ambiguity is probably best explained in terms of unclear drafting."[203] The FSA / FSS advice emphasised that "Nothing in [Article 6.5 of the Agreement] restricts the way in which the FSA and FSS carry out risk analysis for food and feed safety issues", which includes applying the precautionary principle.[204] The section 42 report stated directly in response to the TAC that "the FTA maintains the UK's right to take provisional or precautionary measures for human and animal health purposes and does not interfere with our existing WTO rights to take such an approach". The report further said the Government is clear that Article 6.5 of the Agreement permits "taking provisional measures where scientific evidence is insufficient, which is detailed in Article 5 of the SPS Agreement."[205]

Hormone-treated beef

129. A key issue for agri-food stakeholders and campaigners is whether the UK will retain its ban on imports of hormone-treated beef, which is widely produced in Australia.[206] This ban, which is one of the elements of the EU's SPS regime that the UK has carried over following Brexit, rests on the precautionary principle. The Government emphasised that the Agreement "does not create any new permissions for imports from Australia and hormone-treated beef will continue to be banned".[207] However, civil society groups argued that aspects of the Agreement could lead to the UK being put under pressure in future to rescind the ban. They referred in this regard to: the Agreement's ambivalence on

199 UK Trade Policy Observatory (AUS0028) para 77
200 Agreement on the Application of Sanitary and Phytosanitary Measures, Article 5
201 RSPCA (AUS0004) para 13, Which? (AUS0012) para 20, Trade and Animal Welfare Coalition (AUS0015) para 11, UK Centre for Animal Law (AUS0019) para 4, Compassion in World Farming (AUS0024) para 17
202 RSPCA (AUS0004) para 13; see also para 23
203 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022, p 18. See also Qq176–177.
204 Department for International Trade, *Report pursuant to Section 42 of the Agriculture Act 2020: UK-Australia Free Trade Agreement*, June 2022, p 21
205 Department for International Trade, *Report pursuant to Section 42 of the Agriculture Act 2020: UK-Australia Free Trade Agreement*, June 2022, p 5
206 The same issues apply to the UK's ban on imports of chlorine-washed chicken meat and ractopamine-fed pork—but trade in these two meats is not liberalised under the UK-Australia Agreement.
207 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 4

the precautionary principle; the potential use of the SPS Committee to push for regulatory change; provisions on equivalence of standards; and provisions in the Agreement's Chapter on Good Regulatory Practices.[208] Such concerns were said to be made more acute by the fact that the legality of the EU's ban on hormone-treated beef is subject to a longstanding challenge at the WTO.[209] The NFU emphasised the need to maintain "a meaningful testing regime at the UK border to ensure that our strict legal requirements of having no hormone treated beef sold on the UK market is enforced".[210]

130. The TAC concluded that the Agreement "does not change the WTO legal position" on the UK's hormone-treated beef ban (observing that "the issue has been litigated in the WTO, with inconclusive results"). It further concluded that, if it should be necessary for the UK to introduce a system of labelling to distinguish hormone-treated and hormone-free products, it is "highly unlikely" this would not be possible under WTO law.[211] The TAC also noted that Australia has an effective, EU-accredited, system for segregating hormone-treated and hormone-free beef herds.[212] The FSA / FSS advice noted that "The FTA does not include provisions that affect the existing UK ban on certain growth promoters used in meat production such as hormone treated beef, which applies to both domestic and imported foods."[213] The section 42 report summarised TAC's conclusions on this issue.[214]

Pesticides

131. Civil society groups also raised concerns about the difference between UK and Australian rules regarding the use of pesticides in agriculture. Mr von Westenholz of the NFU explained that the UK's risk-based (precautionary) approach to approving pesticides for such use "generally will lead to less pesticides being available for farmers". Australia's hazard-based system, on the other hand, means "there are products available in Australia for all sorts of different crops that are not available in the UK".[215] He said that UK sugar beet growers' production costs have been increased by important pesticides being taken out of use,[216] although he conceded that comparison with Australian sugar cane growers is difficult as "they are different crops".[217] Mr Mason, of Tate & Lyle Sugars, said that "not every pesticide is approved for every crop in every geography, for good reason". While there are some pesticides approved for use on sugar cane in Australia but not registered for sugar beet in the UK, several of those were registered for use on other crops in the UK. Also, there are some pesticides approved for use on beet in the UK that are not registered for use on cane in Australia. In addition, pesticides are more widely used on UK beet

208 The Agreement's provisions on Good Regulatory Practices are discussed in Chapter 19 of this report.
209 RSPCA (AUS0004) para 13, Which? (AUS0012) paras 3, 19–20, Trade and Animal Welfare Coalition (AUS0015) paras 11, 16, UK Centre for Animal Law (AUS0019) para 5, Sustain (AUS0023) para 10, Compassion in World Farming (AFTA0024) para 17. On Good Regulatory Practices provisions, see chapter 19 of this report.
210 National Farmers' Union (AUS0034) para 96
211 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022, pp 37, 45. See also Qq184–185.
212 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022, p 44
213 Department for International Trade, *Report pursuant to Section 42 of the Agriculture Act 2020: UK-Australia Free Trade Agreement*, June 2022, p 19
214 Department for International Trade, *Report pursuant to Section 42 of the Agriculture Act 2020: UK-Australia Free Trade Agreement*, June 2022, p 14
215 Q228
216 Q229
217 Q228

than on Australian cane. Mr Mason further argued that differences in income support for UK beet farmers and Australian cane farmers had to be set against any purported cost advantage to the latter from differing pesticide rules.[218]

132. Sustain stated that Australia: has Maximum Residue Limits for pesticides in agri-food products that are up to 200 times higher than the UK's; allows the use of 144 Highly Hazardous Pesticides (whereas the UK licences 73 such substances); and has no set period for reviewing pesticide approvals (in the UK, by contrast, authorisations must be reapproved after 15 years). The organisation also argued that the UK's pesticide standards could be jeopardised by Australia pushing for harmonisation of standards and the UK acceding to this.[219] Sustain argued that the Agreement could potentially increase imports of food produced in ways unacceptable to the British public, including in relation to the use of pesticides.[220] It also stated that the Secretary of State should be advised by the FSA and other relevant bodies on the possible consequences of "an increase in pesticide residues in food and the risk that more toxic pesticides may be allowed to appear as residues in food".[221] Other campaigning bodies noted that among the pesticides that are banned in the UK but permitted in Australia are neonicotinoids, which are harmful to pollinators and other insects.[222]

133. Which? argued that the provision in the Agreement permitting the adaptation of SPS measures to recognise regional conditions (under Article 6.6) "could be a concern if […] it resulted in the UK importing products that included residues of pesticides not permitted in the UK or above a permitted level."[223] The NFU, however, thought it was welcome that the Agreement established the principle whereby the Parties will be allowed "to take into account local pest and disease status of areas where goods are sourced from".[224]

134. The TAC noted it was inevitable that pesticide regimes would vary between different parts of the world, due to variations in local conditions. However, the Commission also noted that there is a fundamental difference between the UK's hazard-based system, inherited from the EU, and Australia's risk-based approach.[225] The TAC also noted, though, that the Agreement does not limit the UK's existing right under WTO law to set Maximum Residue Levels for pesticides in agri-food imports.[226] The FSA / FSS advice drew the same conclusion.[227] The TAC did accept that the Agreement could lead to increased exports to the UK of Australian agri-food products for which differing rules on the use of pesticides give Australian producers a cost advantage over their UK competitors. At the same time, the Commission also noted that the enforceable obligations on Australia to maintain and implement certain environmental laws (under the Environment Chapter)

218 Q230
219 Sustain (AUS0023) paras 30–33, 47
220 Sustain (AUS0023) para 22
221 Sustain (AUS0023) para 25
222 Friends of the Earth (AUS0009) paras 11, 16, WWF-UK (AUS0010) paras 6, 21, Greener UK (AUS0021) para 8
223 Which? (AUS0012) para 20
224 National Farmers' Union (AUS0034) para 93
225 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022, pp 45–46
226 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022, pp 37, 47
227 Department for International Trade, *Report pursuant to Section 42 of the Agriculture Act 2020: UK-Australia Free Trade Agreement*, June 2022, pp 19–20

could be relevant to pesticide use in that country.[228] Professor Bartels emphasised, though, that showing "there is at least a competitive effect of the reduction in, or failure to implement, domestic law" would be difficult.[229] The section 42 report summarised the TAC's conclusions on the issue of pesticides.[230]

Genetically-modified organisms

135. The TAC noted that growing genetically modified organisms (GMOs) in the UK requires approval under a precautionary regime (inherited from the EU) which means that there is little such production in the UK. It is, though, legal to market in the UK products (including imported ones) for animal or human consumption containing or produced from GMOs, provided that rules on the labelling of GM products are met. The UK's right to regulate in this regard is unaltered by the UK-Australia Agreement. The TAC noted that three GM crops are currently grown in Australia and that the UK-Australia Agreement reduces the tariffs on a product made from one of these crops, namely canola oil (derived from oilseed rape). Consequently, the TAC thought it possible that UK imports of Australian GM canola oil could increase, with Australian producers enjoying a cost advantage over UK producers due to the countries' differing approaches to regulating GM crops.[231] The FSA / FSS advice noted that any novel Australian GM food product would have to have its safety determined by the FSA / FSS before it could be imported to Great Britain.[232] The section 42 report summarised TAC's conclusions on the issue of GMOs and noted that any GMO imports into the UK "must undergo a rigorous safety assessment" led by the FSA and FSS.[233]

Antimicrobial resistance

136. Chapter 25 includes provisions on antimicrobial resistance (AMR)—that is, micro-organisms (bacteria, viruses, fungi and parasites) evolving so as to better withstand antimicrobial treatments. Misuse of medicines (such as antibiotics) in humans and animals is a significant factor in increasing and accelerating this trend.[234] Under Article 25.2, the Parties recognise the threat that AMR poses to human and animal health, and the need for a "One Health" approach (tackling all drivers of AMR, in humans, animals and the environment), in line with the World Health Organization's Global Action Plan on AMR.[235] The Parties undertake to promote reduced and more targeted use of antimicrobials in agriculture and to cooperate through relevant international forums on initiatives to address AMR. The Parties will also promote strengthened surveillance and monitoring of antimicrobial use, and facilitate the exchange of information, expertise

228 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022, pp 37, 42, 47–48. See also Qq181, 187.

229 Q190

230 Department for International Trade, *Report pursuant to Section 42 of the Agriculture Act 2020: UK-Australia Free Trade Agreement*, June 2022, pp 14–15

231 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022, pp 37, 50–51. See also Q181.

232 Department for International Trade, *Report pursuant to Section 42 of the Agriculture Act 2020: UK-Australia Free Trade Agreement*, June 2022, p 19

233 Department for International Trade, *Report pursuant to Section 42 of the Agriculture Act 2020: UK-Australia Free Trade Agreement*, June 2022, p 15

234 Department of Health and Social Care, Public Health England, Department for Environment, Food and Rural Affairs, Veterinary Medicines Directorate, "Antimicrobial resistance (AMR)", 16 May 2022

235 World Health Organization, *Global action plan on antimicrobial resistance* (January 2016)

and experiences as regards combatting AMR. In addition, Article 25.2 provides that the Committee on Cooperation created under the Agreement (at Article 27.4) shall consider matters relating to cooperation on AMR and support such cooperation. The provisions in Article 25.2 are not subject to the Agreement's dispute settlement process (Article 25.3).

137. These provisions were widely welcomed,[236] but there was disappointment (including on the part of the Scottish Government and Northern Ireland Executive)[237] that they did not go further. The provisions' unenforceability (since they are not subject to the Agreement's dispute settlement procedure) was noted,[238] as well as the lack of any obligations on the Parties to implement specific standards on AMR.[239] There was dissatisfaction that the Agreement liberalises trade in agri-food products regardless of differences in UK and Australian standards regarding the use of antimicrobials.[240] Sustain said that "Australia has very poor surveillance of on-farm antibiotic usage, still permits the use of antibiotics as growth promoters [which the UK does not] and in the case of pigs and poultry uses 16 times the amount of antibiotics as the UK does."[241] It further stated that UK farmers had voluntarily reduced the use of antibiotics by about 50% in the past five years and argued that "This progress could be put at risk if competition from cheap imports forces them to return to more intensive systems, using preventative antibiotics as an insurance policy against disease."[242] Sustain thought that the Agreement "has the potential to increase imports of food produced in ways that the UK public would find unacceptable—particularly with regard to the overuse of antibiotics".[243] It also argued that the FSA and other relevant bodies should advise the Secretary of State on "the risk of increased antimicrobial resistance from food imports from countries that overuse antibiotics".[244] FoE thought that "it appears likely that the overall impact of the deal will be to increase the complicity of UK supply chains in […] practices […] linked with growth in treatment-resistant disease".[245] The organisation also thought that "UK consumers will be made increasingly responsible" for the negative impacts of Australian practices such as the overuse of antibiotics.[246]

138. The TAC noted that in Australia: farmers have sought to reduce the use of antibiotics in recent years;[247] no antimicrobials used in human medicine are licensed for use as animal growth promoters; approval for the use of certain antimicrobials as growth promoters has been withdrawn; and most antimicrobials require a veterinary prescription. The

236 RSPCA (AUS0004) para 8, Friends of the Earth (AUS0009) para 12, Which? (AUS0012) para 21, Trade and Animal Welfare Coalition (AUS0015) para 4, UK Centre for Animal Law (AUS0019) para 7, British Veterinary Association (AUS0026) paras 3, 21, National Farmers' Union (AUS0034) para 73

237 Scottish Government (AUS0025) para 7, Northern Ireland Department for the Economy (AUS0030) para 11

238 Friends of the Earth (AUS0009) para 25, UK Centre for Animal Law (AUS0019) para 7

239 RSPCA (AUS0004) para 8, Friends of the Earth (AUS0009) para 25

240 RSPCA (AUS0004) para 8, Friends of the Earth (AUS0009) para 25, British Veterinary Association (AUS0026) paras 21, 39, Northern Ireland Department for the Economy (AUS0030) para 12

241 Sustain (AUS0023) para 46. See also Friends of the Earth (AUS0009) para 16, Compassion in World Farming (AUS0024) para 12.

242 Sustain (AUS0023) para 55

243 Sustain (AUS0023) para 22

244 Sustain (AUS0023) para 25

245 Friends of the Earth (AUS0009) para 25

246 Friends of the Earth (AUS0009) para 16

247 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022, p 48

Commission also pointed out that use of antimicrobials in agriculture varies between the UK and Australia partly because of variations in a range of local factors within and between the two countries.[248]

139. Regarding the UK's statutory protections, the TAC noted that the Agreement does not affect the UK's right, as under WTO law, to regulate imports to protect against any harmful effects of antimicrobial use in Australia. This includes the UK's right to continue setting Maximum Residue Levels regarding veterinary medicines in imported meat and other animal products.[249] The TAC did note "concerns that the transfer of antimicrobial resistance to humans through food may occur as a result of antibiotic-resistant bacteria on or in food", but did not address this point, as "food safety is beyond the scope of our mandate."[250]

140. The Commission accepted that antimicrobial use contributes to the profitability of livestock farming. However, the TAC noted that the highest level of antimicrobial use in Australian agriculture occurs in the pork and poultry sectors, in respect of which trade is not being liberalised under the Agreement (and which are not in any case major export sectors for Australia). Conversely, regarding beef and sheepmeat, where trade is being liberalised (and which are major Australian export sectors), TAC noted that antibiotic use is low in Australia, due to the local conditions under which animals are reared. As regards antimicrobial use in Australian crop and fruit growing, the Commission concluded that the position is "unclear".[251]

141. The FSA / FSS advice stated that the Agreement's provisions on AMR are in line with the approach that the FSA and the FSS are taking in relation to AMR research and surveillance. The two bodies also noted that "The 'Alliance to Save Our Antibiotics', whilst recognising that the FTA itself doesn't apply safeguards, has also welcomed the recognition between [the] UK and Australia of the importance of a transnational, 'One Health' approach to AMR in the FTA."[252]

142. The section 42 report noted that the Agreement's AMR provisions: do not change UK statutory protections or negatively affect the UK's right to regulate; only include measures relating to cooperation between the Parties; and are not covered by the Agreement's dispute settlement process. It did not refer to TAC's consideration of the AMR provisions.[253]

143. Had the Secretary of State attended to give evidence to us on 29 June, we would have asked her about the possible undermining of UK voluntary standards on antibiotic use in farming as a result of the Agreement increasing competition from imports produced to lower standards.

248 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022, p 48 footnote 89

249 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022, pp 37, 49

250 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022, p 49 footnote 91

251 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022, pp 37, 49

252 Department for International Trade, *Report pursuant to Section 42 of the Agriculture Act 2020: UK-Australia Free Trade Agreement*, June 2022, p 24

253 Department for International Trade, *Report pursuant to Section 42 of the Agriculture Act 2020: UK-Australia Free Trade Agreement*, June 2022, pp 10, 11, 12

Australia's bio-security controls

144. The NFU pointed out that opportunities for UK pig-meat exports to Australia continue to be limited by the existence of complex non-tariff barriers and suggested that this issue might be raised in the joint SPS Committee under the Agreement. The NFU explained that Australia has strict bio-security rules on the import of pig-meat, including requirements on the heat treatment and deboning of meat—but concessions regarding these requirements have been granted to Canada, New Zealand and Denmark. In addition, the NFU said, the inclusion of pig semen and frozen embryos in Australia's ban on live pig imports prevents UK farmers from accessing that country's market for genetic material.[254]

Animal welfare

145. Regarding Chapter 25, DIT states that "This is the first time Australia has included a dedicated animal welfare chapter in any FTA."[255] The provisions on animal welfare are set out in Article 25.1. The Parties recognise that animals are "sentient beings" and that improved welfare of farmed animals is linked to "sustainable food production systems" (Article 25.1.1). They affirm each other's right to regulate in respect of animal welfare (Article 25.1.2). The Parties undertake to "endeavour to ensure" they do not weaken or reduce levels of animal welfare protection in the interests of gaining a trade or investment advantage over each other (Article 25.1.3).[256] An undertaking is also given that they will "endeavour to ensure" high levels of animal welfare protection and to continue to improve such protection (Article 25.1.4). They further undertake to exchange information, expertise and experiences regarding animal welfare (Article 25.1.5) and to build on existing cooperation in this field (Article 25.1.6). A Joint Working Group on Animal Welfare will be formed by the Parties (Article 25.1.8) to provide a forum for cooperation, reviewing developments, promoting high animal welfare practices and sharing information (Article 25.1.9). The provisions in Article 25.1 are not subject to the Agreement's dispute settlement process (Article 25.3).

146. The presence in the Agreement of a dedicated animal welfare chapter was widely welcomed (particularly as it is the first ever agreed by Australia), as were its provisions.[257] The RSPCA stated that the chapter "is undoubtedly far reaching and probably the best yet written into any FTA".[258] However, it was noted that the chapter is unenforceable, since it is not subject to the Agreement's dispute resolution provisions.[259] More fundamentally,

254 National Farmers' Union (AUS0034) paras 6, 95

255 Department for International Trade, "UK-Australia Free Trade Agreement: chapter explainers", 16 December 2021

256 DIT states that: "this FTA is the first Australian FTA that has agreed a non-regression clause on animal welfare. Securing a commitment to non-regression on animal welfare standards means both countries must strive to uphold their current animal welfare standards and that neither country should lower their animal welfare standards to undercut the other" – Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 14; see also pp 4, 18 (where DIT refers to the Agreement including "non-regression and non-derogation clauses" on animal welfare standards).

257 RSPCA (AUS0004) paras 1, 7, Friends of the Earth (AUS0009) para 12, Which? (AUS0012) para 21, Trade and Animal Welfare Coalition (AUS0015) paras 4, 29, UK Centre for Animal Law (AUS0019) para 7, Compassion in World Farming (AUS0024) para 5, British Veterinary Association (AUS0026) para 21, National Farmers' Union (AUS0034) para 69, 73

258 RSPCA (AUS0004) para 7

259 Friends of the Earth (AUS0009) para 8, National Farmers' Union (AUS0034) para 71

civil society groups were highly critical of the fact that the chapter does nothing to prevent trade liberalisation under the Agreement from increasing UK market access for foods of animal origin produced in ways that would be illegal in the UK.

147. While Article 25.1.3 was welcomed, it was noted that it commits the Parties not to lower standards specifically in relation to gaining a trade or investment advantage, which is difficult to prove.[260] It was argued that a commitment to maintaining current standards is of little use when those of Australia are so low to begin with in comparison to the UK's.[261] It was noted that nothing in the Agreement would oblige Australian producers to treat any animal any differently to how they do at present.[262] The following practices in Australian agriculture were stated to be at odds with UK standards: feedlots (confined environments for fattening animals);[263] electro-immobilisation;[264] tail-docking, dehorning and castration without anaesthesia;[265] mulesing of sheep (removal of skin around the breech to prevent parasitic infections);[266] transport of live animals over long distances;[267] hot branding;[268] slaughter of non-stunned animals;[269] sow stalls;[270] and barren battery cages for poultry.[271]

148. Liberalising trade in goods produced to such low standards was said to mean that UK producers will face unfair competition, thereby potentially undermining UK (statutory and voluntary) standards.[272] This was said to be contrary to the Government's own commitments on upholding UK animal welfare standards.[273] It was also said to run counter to the wishes and expectations of consumers and the public in the UK.[274] According to the Farmers' Union of Wales, under the Agreement there would be "a net reduction in global animal welfare […] due to the displacement of food produced by those in the UK who are legally required bound by far higher standards than those required of Australian

260 RSPCA (AUS0004) para 7, Trade and Animal Welfare Coalition (AUS0015) para 5
261 RSPCA (AUS0004) para 7, Trade and Animal Welfare Coalition (AUS0015) para 5, Compassion in World Farming (AUS0024) para 5, Scottish Government (AUS0025) para 6, British Veterinary Association (AUS0026) para 22, Northern Ireland Department for the Economy (AUS0030) para 12, National Farmers' Union (AUS0034) para 63
262 Farmers' Union of Wales (AUS0017) para 31
263 RSPCA (AUS0004) paras 6, 9, 10, Trade and Animal Welfare Coalition (AUS0015) para 8, Compassion in World Farming (AUS0024) para 12, National Farmers' Union (AUS0034) para 75
264 Northern Ireland Department for the Economy (AUS0030) para 11
265 Farmers' Union of Wales (AUS0017) para 27, Sustain (AUS0023) para 45, Compassion in World Farming (AUS0024) para 12, Northern Ireland Department for the Economy (AUS0030) para 11
266 RSPCA (AUS0004) paras 6, 9, Trade and Animal Welfare Coalition (AUS0015) para 8, Farmers' Union of Wales (AUS0017) para 27, UK Centre for Animal Law (AUS0019) para 1, Sustain (AUS0023) para 45, Compassion in World Farming (AUS0024) para 12, Scottish Government (AUS0025) para 6, British Veterinary Association (AUS0026) paras 15–17, National Farmers' Union (AUS0034) para 73
267 RSPCA (AUS0004) paras 6, 9, Trade and Animal Welfare Coalition (AUS0015) para 8, National Farmers' Union (AUS0034) paras 5, 31, 73
268 RSPCA (AUS0004) para 10, Farmers' Union of Wales (AUS0017) para 27, UK Centre for Animal Law (AUS0019) para 1, Compassion in World Farming (AUS0024) para 12, Scottish Government (AUS0025) para 6, National Farmers' Union (AUS0034) para 73
269 British Veterinary Association (AUS0026) para 14
270 Farmers' Union of Wales (AUS0017) para 27, Sustain (AUS0023) para 45, Compassion in World Farming (AUS0024) para 12, Scottish Government (AUS0025) para 6, British Veterinary Association (AUS0026) para 12
271 Farmers' Union of Wales (AUS0017) para 27, Compassion in World Farming (AUS0024) para 12, Scottish Government (AUS0025) para 6, British Veterinary Association (AUS0026) para 12
272 Hybu Cig Cymru – Meat Promotion Wales (AUS0006) paras 4–6, 10, Friends of the Earth (AUS0009) para 2, WWF-UK (AUS0010) paras 10, 40, Trade and Animal Welfare Coalition (AUS0015) paras 7, 17, 21, 22, Scottish Government (AUS0025) para 6, National Farmers' Union (AUS0034) para 63
273 Hybu Cig Cymru – Meat Promotion Wales (AUS0006) para 8, Sustain (AUS0023) para 9, National Farmers' Union (AUS0034) paras 2, 71
274 WWF-UK (AUS0010) para 31, Which? (AUS0012) para 17, Trade and Animal Welfare Coalition (AUS0015) paras 21, 26, 30, Sustain (AUS0023) paras 12, 17, National Farmers' Union (AUS0034) para 31

farmers".[275] Concerns were also expressed that the Agreement could set an unwelcome precedent for FTA negotiations with other countries that have both lower animal welfare standards than the UK and offensive agri-food interests.[276]

149. Compassion in World Farming (CIWF) noted that the Secretary of State had appeared to indicate the Government had not pursued liberalisation of trade in pork, poultry and eggs under the Agreement because it was concerned about Australian production methods. CIWF was "puzzled" that such considerations had not applied when it came to liberalising trade in beef and lamb.[277] The NFU also noted this apparent double standard, observing that "the reality is that Australia is unlikely to have objected strenuously given the minimal export interests it has in these products".[278] The NFU did think that the exclusion of these products from liberalisation under the Agreement is "a welcome precedent for future deals such as the one with Mexico where we have concerns about unfair competition undercutting UK producers".[279] However, the RSPCA was sceptical regarding whether the Government would seek to maintain tariffs on these products in negotiations with trade partners that have offensive interests in those areas, such as Canada, India and Mexico.[280]

150. The TAC noted that, under the general exceptions provisions in Article 31.1, the UK will retain its right to regulate imports as regards animal welfare on the same basis as under WTO law—the relevant exception in this case being that regarding regulations to protect public morals.[281] Regarding the provisions in Article 25.1 on maintaining, improving and implementing statutory animal welfare protections, the TAC found these "significant, even if they are not fully comprehensive" and "even ground-breaking among free trade agreements."[282] It also noted that the UK retains the right to continue or to introduce food labelling requirements as regards method of production, including in relation to animal welfare standards.[283]

151. In addition, the TAC looked at six specific issues regarding claims about differences between UK and Australian animal welfare standards in agri-food production: mulesing without pain relief; transport conditions for cattle and sheep; hot branding of cattle; stunning and CCTV in abattoirs; feedlots; and pain relief during permitted procedures. It concluded that, in each case, concerns about possible unfair competition with UK producers were not valid.[284] The section 42 report referred to the TAC's consideration of these issues and noted that: the Agreement creates no "new permissions or authorisations for imports

275 Famers' Union of Wales (AUS0017) para 38
276 Trade and Animal Welfare Coalition (AUS0015) paras 10, 14, Compassion in World Farming (AUS0024) paras 6, 7, British Veterinary Association (AUS0026) para 3, National Farmers' Union (AUS0034) para 61
277 Compassion in World Farming (AUS0024) para 22. See also National Farmers' Union (AUS0034) para 82, RSPCA (AUS0004) para 12.
278 National Farmers' Union (AUS0034) para 82
279 National Farmers' Union (AUS0034) para 82
280 RSPCA (AUS0004) paras 1, 12, 36
281 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022, pp 22–23, 41
282 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022, p 41; see also pp 25–27, 29–32
283 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022, pp 37–39, 54–63
284 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022, pp 37–39, 42, 52–63

from Australia"; Australian wool farmers are committed to phasing out mulesing; and Australia is committed under the Agreement to cooperating on strengthening animal welfare standards.[285]

Environmental laws and policies

152. The Agreement's dedicated environment chapter obliges the Parties to maintain and improve their environmental laws and policies (Article 22.3.3). Two provisions oblige the Parties not to fail to effectively enforce their existing environmental laws "in a manner affecting trade or investment between the Parties" (Article 22.3.4); and not to "waive or otherwise derogate from" those laws "in order to encourage trade or investment between the Parties" (Article 22.3.6). As already noted, these are "hard" obligations (since they require the Parties to act in a certain manner); and they are covered by the dispute settlement process under the Agreement (subject to stipulations under Article 22.26). The provisions cover environmental laws and policies at all levels of Government in the UK (including the devolved jurisdictions), but only those at the federal level in Australia—excluding laws and regulations of states and territories (Article 22.1).

153. The NFU welcomed the presence in Chapter 22 of provisions "intended to uphold fair competition" but noted that "in many areas the UK already goes much further [than Australia] in terms of environmental protections".[286] Greener UK stated that "Australia's agricultural system does not meet the environmental standards that are required from UK farmers".[287]

154. Greener UK pointed to the fact that Australia has the highest deforestation rates in the Organisation for Economic Co-operation and Development (OECD), with "the rate of tree-cover loss rising by 34% in 2016–18, which was largely driven by livestock".[288] The NFU said that, according to a recent report, "more than 1.6 million hectares of forest had been cleared in Queensland in the five years up to 2018 and 73% of this was for beef production".[289] According to FoE, in the same state, "more than a hectare of bushland is cleared every two minutes, for beef and sheep production".[290] FoE also noted that DIT's own Impact Assessment "recognises that agricultural activities, especially beef and dairy production, contribute to deforestation in Australia".[291]

155. Some civil society groups drew attention to the impact of agricultural production on Australian water use and quality, as mentioned in the Impact Assessment.[292] Others linked the liberalisation of trade in agri-food goods with Australian policy in relation to

285 Department for International Trade, *Report pursuant to Section 42 of the Agriculture Act 2020: UK-Australia Free Trade Agreement*, June 2022, p 15
286 National Farmers' Union (AUS0034) para 66
287 Greener UK (AUS0021) para 8
288 Greener UK (AUS0021) para 8; see also para 4
289 National Farmers' Union (AUS0034) para 79. See also Sustain (AUS0023) para 35.
290 Friends of the Earth (AUS0009) para 16
291 Friends of the Earth (AUS0009) para 33. See Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, pp 50–51. See also Greener UK (AUS0021) para 13, Sustain (AUS0023) para 36. On deforestation and Australian agriculture, see also WWF-UK (AUS0010) para 6, Traidcraft Exchange (AUS0020) para 16, Sustain (AUS0023) para 5.
292 WWF-UK (AUS0010) paras 19, 44, Famers' Union of Wales (AUS0017) para 23, Professor Tim Lang, Professor Erik Millstone, Professor Terry Marsden (AUS0022) para 7. See Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 49.

greenhouse gas emissions and climate change. WWF-UK said "the UK has offered its biggest prize—tariff- and quota-free market access to key agricultural sectors—to a backmarker on climate action".[293] It was noted by several groups that DIT's Impact Assessment for the Agreement does not take into account emissions resulting from deforestation and changes in land use.[294] It was further noted that the Impact Assessment refers to the possibility of "carbon leakage" (displacement of emissions from one jurisdiction to another, due to differing climate rules and policies) resulting from increased imports of Australian beef.[295] Hybu Cig Cymru–Meat Promotion Wales drew attention to the climate-change implications of importing more food across such a large distance, stating that "Increasing the UK's dependence on foreign produce also risks importing food with a higher carbon footprint".[296]

156. Liberalising trade in goods produced to lower environmental standards than the UK's was alleged to mean there will be unfair competition for UK producers,[297] thereby potentially undermining UK standards.[298] This, it was said, was contrary to the Government's own commitments on upholding UK environmental standards.[299] It was also said that this runs counter to the wishes and expectations of UK consumers and the public.[300] According to the Farmers' Union of Wales, under the Agreement there would be "a net reduction in global […] environmental standards" as a result of low-standards imports from Australia displacing high-standards UK domestic products.[301] FoE said that the Agreement has "the potential to increase the UKs global footprint and complicity in environmental harms", since it does nothing to "prevent the exporting of environmental harms" by means of Australian imports displacing domestic UK food production.[302]

157. There were also concerns that the Agreement could set an unwelcome precedent for FTA negotiations with other countries that have lower environmental standards than the UK and offensive agri-food interests.[303] Attention was also drawn to potential cumulative environmental effects from several such trade agreements,[304] as a result of which, according to WWF-UK, "the UK risks significantly increasing its global environmental footprint,

293 WWF-UK (AUS0010) para 10. See also Friends of the Earth (AUS0009) para 2.
294 Friends of the Earth (AUS0009) para 33. See also Greener UK (AUS0021) para 13, Sustain (AUS0023) para 36.
295 Which? (AUS0012) para 34. See Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, pp 47–48.
296 Hybu Cig Cymru – Meat Promotion Wales (AUS0006) para 14. See also Professor Tim Lang, Professor Erik Millstone, Professor Terry Marsden (AUS0022) para 6.
297 Hybu Cig Cymru – Meat Promotion Wales (AUS0006) paras 4–6, 10, Friends of the Earth (AUS0009) para 2, WWF-UK (AUS0010), paras 3, 10, 13, 23, Farmers' Union of Wales (AUS0017) para 38, Greener UK (AUS0021) paras 5, 17, Sustain (AUS0023) para 15, Scottish Government (AUS0025) para 6, National Farmers' Union (AUS0034) paras 63, 75
298 Friends of the Earth (AUS0009) paras 2, 36, WWF-UK (AUS0010) paras 3, 6, 10, 11, 13, 23, 39, 40, Which? (AUS0012) para 22, Greener UK (AUS0021) paras 5, 17, Sustain (AUS0023) para 15, National Farmers' Union (AUS0034) para 66
299 Hybu Cig Cymru – Meat Promotion Wales (AUS0006) para 8, WWF-UK (AUS0010) paras 4, 12, Greener UK (AUS0021) para 8, Sustain (AUS0023) paras 9, 34, UK Trade Policy Observatory (AUS0028) para 14, National Farmers' Union (AUS0034) para 2
300 WWF-UK (AUS0010) paras 14, 31, 33, Which? (AUS0012) paras 2, 6, 12, 15, 17, 33, Sustain (AUS0023) paras 10–12, 17, National Farmers' Union (AUS0034) para 31
301 Famers' Union of Wales (AUS0017) para 38
302 See also WWF-UK (AUS0010) para 6.
303 Friends of the Earth (AUS0009) paras 2, 26, WWF-UK (AUS0010) paras 3, 11, National Farmers' Union (AUS0034) para 61
304 Friends of the Earth (AUS0009) paras 2, 28, WWF-UK (AUS0010) para 3, 42, 44, National Farmers' Union (AUS0034) para 46

offshoring environmental harm".[305] The NFU similarly foresaw "an environmental threat, as we offshore the environmental impacts of food production and export our emissions to countries producing food through systems without the same climate ambitions and environmental protections as the UK".[306]

158. The TAC noted that, under the general exceptions provisions in Article 31.1, the UK will retain its right to regulate imports on grounds of environmental protection on the same basis as under WTO law. The relevant exception in this case is that concerning regulations to conserve exhaustible natural resources, including non-living resources and living natural resources.[307] Regarding the provisions in Article 22.3 on maintaining, improving and implementing statutory environmental protections, the TAC found these (like the equivalent provisions on animal welfare) to be "significant, even if they are not fully comprehensive".[308] Specifically regarding Article 22.3.4 and Article 22.3.6, the TAC's analysis showed that, in order to raise a successful dispute under these provisions, it would be necessary to prove that setting aside a statutory protection has the effect (in the case of Article 22.3.4) or the intention (in the case of Article 22.3.6) of conferring a trade advantage. While the TAC noted that "It is usually easier to demonstrate effect than intention",[309] Professor Bartels pointed out that it is no easy task to prove that "reduction in, or failure to implement" a domestic law has a competitive effect, commenting "that is difficult to prove, for sure".[310] Professor Bartels emphasised that this provision does not allow the UK to impose its own environmental laws on Australia, and that to seek such a provision in an FTA is "not normal" and could be seen as a form of "colonialism".[311]

159. The TAC also looked at two specific issues regarding claimed differences in UK and Australian environmental standards in agri-food production. Regarding deforestation, the TAC accepted that there could be increased UK imports of Australian goods produced on deforested land but noted that the Australian meat industry has a voluntary commitment to achieve net zero emissions by 2030. The Commission noted that, under WTO law, the UK could restrict imports in relation to net deforestation.[312] Concerning climate change, the TAC said it had no evidence that the Agreement would increase UK imports of Australian goods produced in a more emission-intensive way than equivalent UK products—or, if this were to happen, that Australian producers would have an unfair cost advantage. The TAC did, though, have evidence that increased emissions from transporting goods to the UK would be negligible. It also noted that the Agreement does nothing to change the UK's position under WTO law as regards measures to combat climate change.[313] The Section 42 report repeats the TAC's conclusions on deforestation and climate change.[314]

305 WWF-UK (AUS0010) para 44
306 National Farmers' Union (AUS0034) para 77
307 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022, pp 23–24, 41
308 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022, p 41; see also pp 27, 29–32. See also Qq186–7.
309 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022, p 31
310 Q190
311 Q188
312 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022, pp 39–40, 64–66
313 Department for International Trade, *Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement*, CP 663, April 2022, pp 40, 67–68
314 Department for International Trade, *Report pursuant to Section 42 of the Agriculture Act 2020: UK-Australia Free Trade Agreement*, June 2022, pp 15–16

160. **We welcome the fact that the Agreement does not change the UK's statutory Sanitary and Phytosanitary protections, including its ban on importing hormone-treated beef. However, we note concerns that attempts could be made to try and undermine such protections by means of the Sanitary and Phytosanitary Committee under the Agreement, the provisions on equivalence of standards and the Chapter on Good Regulatory Practices.**

161. **It is regrettable that the Government did not negotiate any relaxations of Australia's strict bio-security controls, such as those on pork imports, especially given the extent of UK concessions in respect of Australian agri-food exports. *The Government must say whether—and, if so, how and when—it plans to address this issue through the Sanitary and Phytosanitary Committee under the Agreement.***

162. **We welcome the commitments in the Agreement on combating antimicrobial resistance and we are reassured by the continuance of UK Sanitary and Phytosanitary controls on antibiotic residues in imported meat. *The Government must say what it will do through the Sanitary and Phytosanitary Committee under the Agreement to address the high level of antibiotic use in Australian production processes.***

163. **We note the concerns of UK agri-food producers that the Agreement increases UK market access for food produced in ways that would be illegal in the UK, making for unfair competition. We also note the new Trade and Agriculture Commission's conclusion that, while such concerns have generally been overstated, this is apparently not the case in respect of goods produced using pesticides not permitted in the UK and canola oil produced from GM crops.**

164. **The non-statutory Trade and Agriculture Commission and Henry Dimbleby's National Food Strategy review suggested making liberalisation of agri-food trade under UK trade agreements conditional on the other Party meeting core UK food production standards. We are disappointed that the Government has not acted on this suggestion. *The Government must say what it will do to monitor the impacts of any unfair competition for UK producers resulting from liberalising trade in agri-food goods whose production is subject to different rules in the UK and Australia. It must also say how it will act to mitigate adverse consequences for UK producers' interests, and UK consumers' wishes and choices, arising from such competition.***

165. **We are concerned about the potential undermining of voluntary food production standards in the UK as result of agri-food liberalisation under the Agreement. *The Government must say what it will do to monitor, and potentially act on, this possible consequence of the Agreement.***

Protected Geographical Indications

166. The UK applies geographical indications (GIs) to food, drink and agricultural products with "a geographical connection or that are made using traditional methods". By protecting a product with a GI, the UK seeks to guarantee a product's "characteristics

or reputation, authenticity and origin".[315] UK GIs are not owned by any individual or business. The UK GI scheme only protects product names registered in Great Britain; Northern Ireland's GIs are protected by the EU's GI scheme.[316]

167. By comparison, Australia has two systems for GIs: GIs for wine (managed by Wine Australia) and a certified trade mark system for all other products. GIs in Australia—as with other trade marks—are owned by legal entities, who grant permission to other producers to use the GI under certain conditions.[317]

168. The Government states that, for the UK's agriculture, food and drink sectors, "This deal could see a wide range of iconic UK products given protected Geographical Indication (GI) status in Australia in the future."[318] The Agreement's provisions on GIs are contained in Section D of Chapter 15 (on Intellectual Property).[319] The provisions recognise that GIs can currently be protected "through a trade mark or *sui generis* [one-off] system, or other legal means" (Article 15.31) and ensure that both parties have transparent procedures in place for applying for and recognising new GIs.

169. Much of the section on GIs focuses on what will happen if Australia signs an international agreement with another party that might provide a "new standard of protection" for geographical indications. This may be an indirect reference to Australia's ongoing negotiations with the European Union.

170. Article 15.32 provides for the possibility that Australia may sign another international trade agreement which "includes obligations concerning a system or standard of protection for geographical indications for spirits, agricultural products or foodstuffs"—in effect "a new standard of protection". If this happens, the UK and Australia will enter into consultations within four months of the Agreement being signed, with a view to amending the UK-Australia FTA so that it provides "no less favourable treatment […] in relation to the protection of geographical indications". In this case, the UK would also be able to provide a list of its current geographical indications that it would like to see included in Australia's "new standard of protection".

171. Article 15.34 states that, if an agreement with a third party is not reached within two years of this agreement, the Section on GIs should be reviewed by the joint Committee on Intellectual Property Rights set up under the Agreement. The review "shall consider the Parties' interests and sensitivities concerning the protection of geographical indications for spirits, agricultural products, and foodstuffs."

172. In addition to these provisions in the Agreement, there is an exchange of side letters (which are not legally binding) between the Parties. In this, the Australian Minister for Trade, Tourism and Investment confirms the "mutual understanding" reached between the UK and Australia that, in accordance with Article 15.33, if a future agreement is signed with a third party, the UK intends to seek protection for its current list of GIs in Australia.

315 Department for Environment, Food and Rural Affairs, "Protected geographical food and drink names: UK GI schemes", 4 January 2021

316 UK Intellectual Property Office, "Trade marks and geographical indications", 17 December 2020

317 IP Australia, "Geographical indications", 26 February 2019

318 Department for International Trade, *UK-Australia Free Trade Agreement: Benefits for the UK*, December 2021, p 4

319 Other aspects of the agreement concerning intellectual property are dealt with in Chapter 12 of this report.

The letters also note that, in this eventuality, Australia will still "examine and publish for opposition under its domestic requirements, the list of geographical indications notified to Australia by the United Kingdom, as soon as reasonably practicable".[320]

173. The Agreement's GI provisions were not well received by stakeholders. The NFU thought it "incredibly disappointing and a genuinely missed opportunity that the government has failed to reach an agreement with Australia on the use of GIs despite the significant market access concession that has been granted in favour of Australia".[321]

174. **The Government has failed to secure any substantive concessions on the protection of UK Geographical Indications in Australia—relying instead on that country's ongoing negotiations with other trade partners. This is another example of the Government failing to secure an obvious benefit in exchange for the extensive concessions it has given on liberalising agri-food imports.**

Food security

175. The Farmers' Union of Wales said that the Agreement risks jeopardising the UK's food security "through the displacement of domestic production and/or through additional reliance on food produced many thousands of miles away as opposed to in neighbouring countries".[322] Similar arguments were made by other stakeholders[323] and academics.[324] Both Mr Hodgkins the sheep farmer and Mr von Westenholz of the NFU thought that such concerns were all the more relevant in the context of the instability caused by the Russia-Ukraine conflict.[325]

176. Had the Secretary of State attended to give evidence to us on 29 June, we would have asked her about the consequences for UK food security of the Agreement potentially undermining domestic production and replacing imports from nearby countries with products from much further away. We would also have asked about the potential for tariff cuts under the Agreement to offset the cost-of-living crisis for UK consumers.

320 UK-Australia Free Trade Agreement: Australia side letter regarding Geographical Indications, 16 December 2021
321 National Farmers' Union (AUS0034) para 85
322 Famers' Union of Wales (AUS0017) para 12
323 Hybu Cig Cymru – Meat Promotion Wales (AUS0006) para 14, Sustain (AUS0023) para 16, National Farmers' Union (AUS0034) para 77
324 Professor Tim Lang, Professor Erik Millstone, Professor Terry Marsden (AUS0022) paras 7–8
325 Qq199, 210

5 Customs and trade facilitation

177. The Agreement's provisions on customs and trade facilitation are set out in Chapter 5. Overall, this appears to cement pre-existing commitments under multilateral agreements, which aim to ensure that paperwork for goods is minimised and that, wherever possible, they are released quickly. Article 5.3 reaffirms both Parties' "rights and obligations" under the WTO's Trade Facilitation Agreement and agreement to conform—where possible—to the World Customs Organization's standards and practices.

178. The Government has stated that the deal "cuts red tape" for SMEs by helping to ensure that goods are released from customs quickly.[326] Richard Rumbelow, from Make UK, told us that, among the reasons for supporting the Agreement, were "some commitments behind the scenes in terms of customs clearance and faster access to market for goods when reaching the port".[327] These appear largely to include replicating existing commitments, such as maintaining electronic systems for customs declarations (Article 5.4); and allowing traders or operators that meet specified criteria to benefit further from simplified paperwork through an Authorised Economic Operator programme (Article 5.6). The UK and Australia already have Authorised Economic Operator programmes (Australia's is known as the Australian Trusted Trader scheme).[328]

179. In addition, both Parties agree to "endeavour to adopt or maintain" a single window customs system (Article 5.15) This is effectively a portal into which exporters, importers and those involved with transport to input all the customs and border information needed once, and in one place. The Federation of Small Businesses (FSB) particularly welcomed this provision.[329] The UK Government held a consultation on a UK Single Trade Window in February 2022,[330] but the outcome of the consultation had not yet been published when we completed our report.

180. Under Article 5.7, the Parties agree to "adopt or maintain" expedited customs procedures "while maintaining appropriate customs control and selection". Article 5.8, on the release of goods, ensures that "in normal circumstances" goods should be released within 48 hours of arrival and expedited shipments should be released within six hours, provided that all relevant information has been obtained beforehand. This appears to offer a lesser commitment than the UK currently gives: the UK's National Clearance Hub currently says that if exporters have already provided the correct documentation, goods should be cleared within two hours for air and road freight imports and for all exports and three hours for marine freight imports that arrive between 8am and 3pm, or by 8am the following day if they arrive after 3pm.[331] We have not been able to find similar information about the timelines for customs procedures in Australia. In written evidence, however, the NFU said, "It is welcome that perishable goods will be expedited to clear customs within six hours, and we believe similar outcomes could be pushed for with other negotiating partners."[332]

326 Department for International Trade, Ten Key Benefits of the UK-Australia Free Trade Agreement, 17 December 2021
327 Q4. See also National Farmers' Union (AUS0034) paras 89–90.
328 Australian Government, "Australia's Economic Operator Program", October 2018
329 Federation of Small Businesses (AUS0031) paras 11–13
330 Cabinet Office, UK Single Trade Window - Policy discussion paper, 11 February 2022
331 HM Revenue and Customs, Clearing goods entering, leaving or transiting the UK, 9 May 2022
332 National Farmers' Union (AUS0034) para 90

181. In addition, Article 5.10 provides greater certainty for producers and exporters by ensuring that they can apply for an "advance ruling" from the importing Party on matters including tariff classification and whether a good originates in accordance with the rules of origin and origin procedures of the Agreement. The exporter or producer should receive an advance ruling "as expeditiously as possible and in no case later than 90 days after it receives a request" (Article 5.10). Currently, the UK gives advance rulings within 120 days of an application being accepted.[333]

182. The Government's Customs Explainer says that a further benefit of the Chapter is that "traders will not be required to use customs brokers to import or export goods".[334] Article 5.18 of the Agreement itself states that neither Party should "publish measures on the use of customs brokers" and that they should "apply transparent and objective rules if and when licensing brokers". However, both Parties are already committed to doing this under the World Customs Organisation's Revised Kyoto Convention.[335]

333 HM Revenue and Customs, "The Taxation (Cross-border Trade) Act 2018", January 2022, pp 20, 24

334 Department for International Trade, Customs in the UK-Australia Free Trade Agreement (Customs Explainer), 17 December 2021

335 World Customs Organization, Revised Kyoto Convention (2008), Chapter 8 (Relationship between the customs and third parties) and List of Contracting Parties to the Revised Kyoto Convention

6 Trade remedies

183. Chapter 3 of the Agreement contains provisions on trade remedies—temporary measures that are applied to imports in certain very specific circumstances. There are three types of trade remedy: anti-dumping measures, anti-subsidy measures and safeguards. Anti-dumping measures protect against products being sold by one country's producers in another country at less than the domestic price in the home country or less than the cost of production. Anti-subsidy (or countervailing) measures can be applied where imported goods are cheaper than their domestic counterparts because they have benefitted from prohibited subsidies. Safeguarding measures protect domestic producers against the impact of a sudden surge of imports for a particular product, giving them time to adjust. Members of the WTO are subject to rules for the imposition of trade remedies under several agreements.

184. While Chapter 3 includes provisions on all three types of trade remedy, it focuses mainly on safeguarding measures. Section A includes a list of agreed definitions for the Chapter. Section B covers both anti-dumping and anti-subsidy measures. Under this Section, each Party reaffirms its rights and obligations under Article VI of GATT 1994, the Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures (Article 3.2), and provisions on the investigation of alleged injury to domestic producers and the lesser-duty rule (limiting the scale of anti-dumping duties). Noticeably, the Chapter has little similarity to the CPTPP, except for Article 3.11 on compensation, which is a near-verbatim copy of the relevant article in the CPTPP.[336]

185. On safeguard measures, the Parties reaffirm their rights and obligations under Article XIX of GATT 1994 and the Agreement on Safeguards (Article 3.5). Article 3.6 provides general (as distinct from product-specific)[337] bilateral safeguard measures in case a good that originates from the other Party and has been subject to customs duty reduction or elimination is imported in such significant quantities that it threatens to or causes serious injury to one country's domestic industry. In this case, the Parties agree that they can suspend further customs duty reduction or elimination or increase the rate of customs duty on that good. However, if a customs duty were to be added or raised, it could not exceed the lesser of the current most favoured nation applied customs duty rate or the most favoured nation applied rate of customs duty on the good in effect on the day that the Agreement came into force. Bilateral safeguard measures will normally last only two years—and cannot be extended by more than a further two years (Article 3.7.2). And no bilateral safeguard measure can be maintained beyond the transition period for the good concerned—which ends five years after the completion of the reduction or elimination of the relevant tariff under the Agreement (Article 3.7.6). Article 3.11 ensures that, if a Party applies bilateral safeguards measures in one area, "mutually agreed trade liberalising compensation" should be given in another.

186. In Article 3.8 the Parties agree that, in order to apply such a measure, a Party must have conducted an investigation by a "competent authority"—as defined by the WTO's Safeguards Agreement. The Parties agree that any investigation should not last more than one year, but that an extension can be agreed in exceptional circumstances.

336 For a detailed comparison of the UK-Australia Agreement with CPTPP, see Appendix 1 of this report.
337 See Chapter 4 of this report.

187. Article 3.10 also allows the UK and Australia to apply bilateral safeguard measures on a provisional basis before the relevant authority has completed its investigation. A provisional safeguard can be applied only if, by delaying doing so, damage to a domestic industry would be caused that would be "difficult to repair" and if there is "clear evidence" that imports have increased due to a customs reduction or elimination, and those imports have caused or have threatened to cause serious injury. Provisional safeguards can be applied for up to 200 days. However, if an investigation does not find that the import of the good in question has caused or threatens to cause serious injury, the increased customs duty paid should be refunded (Article 3.10.4).

188. Under Article 3.12, neither Party can maintain two or more of the following concurrently in respect of the same good: a general bilateral safeguard under the Agreement; a safeguard under Article XIX of GATT 1994 and the WTO Agreement on Safeguards; a safeguard under the WTO Agreement on Agriculture; and a product-specific safeguard under Chapter 2 of the Agreement.[338]

338 For more detail on product-specific safeguards, see Chapter 4 of this report.

7 Trade in services

189. Australia is a significant market for UK services. In yearly rankings of the UK's trading partners by the value of total service exports, Australia is consistently placed in the top 20. Insurance and pension service exports are particularly notable, in which Australia consistently ranks behind only the United States and Canada in terms of total value of UK exports.[339]

190. Dr Minako Morita-Jaeger, Policy Research Fellow at the UKTPO, noted that the CPTPP appears to have been used as a template for many of the services provisions in the Agreement. Importantly, though, she added that "the rules are more comprehensive and some provisions are more in depth than those in the CPTPP".[340]

Cross-cutting disciplines on foreign entry

191. Chapter 8 of the Agreement sets out a binding framework for cross-border trade in services between the parties. This includes prohibiting: limitations on market access (Article 8.5); and requirements for suppliers to maintain a local presence (Article 8.6). Provisions on domestic regulation require the parties to maintain regulations which are predictable, transparent, and timely (Article 8.8).

National Treatment and Most Favoured Nation treatment

192. Article 8.3 addresses National Treatment (non-discrimination between overseas businesses and domestic businesses) for service suppliers in terms which are standard in FTAs. Similarly, Article 8.4 is a standard, forward-looking "Most Favoured Nation" clause (whereby the parties' service suppliers may obtain treatment no less favourable than treatment accorded to those of a non-party to the Agreement, both now and in the future).

Sector-specific market access commitments

Financial services

193. In a similar fashion to Chapter 8 of the Agreement, Chapter 9 (on Financial Services) sets out a binding framework for financial services pertaining to suppliers or investors of each party, and cross-border financial service suppliers. The principal provisions of the Chapter (with some exceptions): reciprocally establish national treatment for financial service suppliers and investors in line with local arrangements (Article 9.5); prohibit limitations on market access (Article 9.6); and prohibit any requirement for cross-border suppliers to maintain a local presence (Article 9.7). Additionally, the chapter: prohibits nationality requirements on boards of directors (Article 9.9); prohibits restrictions on the other party's suppliers' transfer of business-related information (Article 9.12); and establishes reciprocal access to payment and clearing systems (Article 9.13). The Chapter contains a standard MFN condition (Article 9.8), and disapplies several of the transparency provisions of Chapter 26 on Good Regulatory Practices and Chapter 28 on

339 Office for National Statistics, *UK trade in services: service type by partner country, non-seasonally adjusted*, 27 January 2022.

340 Q29. For a detailed comparison of the UK-Australia Agreement with CPTPP, see Appendix 1 of this report.

Transparency and Anti-Corruption (Article 9.11). As with the Chapter on Cross-Border Trade in Services, the parties have lodged lists of non-conforming measures (Article 9.10); these are contained in Annex III to the Agreement.

194. The City of London Corporation welcomed the Financial Services chapter "from the perspective of business continuity" for its crystallisation of market openness in law and the resultant facilitation of long-term business decisions.[341] The UKTPO also praised the chapter, describing it as "comprehensive and high standard" and further noted that it represents a development from the text of the CPTPP "to improve legal clarities and reflect business needs, financial regulatory authorities' policy needs and consumer benefits."[342]

Market access barriers

195. In joint written evidence to the Lords International Agreements Committee, the City of London Corporation and TheCityUK identified several market access barriers within the financial services sector which they hoped might be addressed in the Agreement. One such barrier, the Australian Securities and Investments Commission's (ASIC) licensing regime, was identified as an area from which the UK could either negotiate an exemption or establish more effective operationalisation. They explained that ASIC had:

> repealed the Sufficient Equivalence Relief which allowed UK financial services firms to service wholesale clients in Australia on the basis that they were regulated by the Financial Conduct Authority (FCA).

They also noted that "The new licensing regime will significantly increase the cost of providing financial services through imposing new compliance burdens on UK based firms going forward."[343] A similar sentiment was shared by Octopus Group, which additionally noted that the new regime was "time consuming and difficult" and posed a "potential barrier to the growth of the fintech and asset management sectors."[344]

196. The Agreement contains no provision to directly address the questions around the compliance of UK firms with ASIC's licensing regime. Instead, it establishes a framework for regulatory cooperation between the two parties (Article 9.24). The City of London Corporation welcomed this framework and emphasised that "Although many [Financial and Professional Services] barriers may not be addressed though FTA negotiations it is important they are recognised as a basis for discussion in regulatory dialogues".[345] Professor Daniel Hodgson, Chairman at CityUnited Project, similarly noted that the Agreement "does not change that much, but it does open opportunities, and the opportunities are there to be exploited".[346]

Financial Services Regulatory Cooperation

197. The final article of the Financial Services Chapter notes that "The Parties shall promote and seek to further develop regulatory cooperation in financial services" (Article

341 City of London Corporation (AUS0027) para 10
342 UK Trade Policy Observatory (AUS0028) para 44
343 City of London Corporation (AUS0027); TheCityUK (AUT0019), para 11 [Submitted to the Lords International Agreements Committee]
344 Octopus Group (AUT0006) paras 13–15 [Submitted to the Lords International Agreements Committee]
345 City of London Corporation (AUS0027) para 16
346 Q38

9.24). Annex 9C establishes the framework for regulatory cooperation and creates the Joint Financial Regulatory Forum ("the Forum")—the Annex's principal facilitatory body. The Forum is a platform designed to "facilitate regulatory cooperation between the parties so as to [enhance and promote financial services and markets, and protect consumers, amongst other objectives]" (Articles 9C.1 and 9C.4). It is required to meet at least once per year and is composed of Government and public sector financial service regulator representatives (Article 9C.4).

198. The regulatory cooperation Annex was welcomed in oral and written evidence. The City of London Corporation described the inclusion of regulatory cooperation dialogues in FTAs as a "welcome development". The Corporation noted that, while "discussions are often already occurring between regulators, the formalisation of the process with important markets for the [financial and professional services] sector enables further certainty and potential gains".[347] John Cooke, Chairman of the Liberalisation of Trade in Services Committee at TheCityUK, stated that a key benefit of the Agreement is the creation of a framework of regulatory cooperation to enable the parties to take advantage of the benefits offered in the services provisions.[348] He further called for a "big and consistent effort by both sides" to utilise this framework to the fullest extent, along with proactive cooperation between regulators and officials to identify and address potential problems.[349]

Telecommunications

199. The Agreement contains a dedicated chapter on Telecommunications (Chapter 12) which codifies the terms of the reciprocal access and operations of the parties' respective sectors. TechUK noted that the chapter contains provisions that ensure:

> service suppliers have access to public telecommunications networks on a timely, reasonable and non-discriminatory basis. It also commits the two countries to work together on security and diversification in the telecommunications sector, including on infrastructure and technologies.[350]

200. The UKTPO noted that the Chapter is based on the corresponding provisions of the CPTPP but contained some updates to account for "certain technological developments", such as clarifying the legal position in relation to the rules of the WTO.[351] Which? additionally noted that further negotiations would be required before the consumer benefits contained in the Chapter, such as the potential to cooperate to reduce roaming charges, could be realised.[352]

Express Delivery Services

201. Express delivery services—defined in the Agreement as the services engaged to expedite posted items—fall within the scope of the Chapter on Cross-Border Trade in Services. However, a dedicated section (Annex 8A) also applies to this area (Article 8.2). Annex 8A requires each party to: define the scope of its postal monopolies "on the basis of

347 City of London Corporation (AUS0027) para 17
348 Q43
349 Q43
350 techUK (AUS0029) para 12
351 UK Trade Policy Observatory (AUS0028) para 41
352 Which? (AUS0012) para 7

objective criteria"; and maintain any universal service obligations "in a transparent, non-discriminatory, and impartial manner" (Annex 8A, Article 2). The Annex further places obligations on the parties to: prevent postal monopolies from subsidising the services of competitive express delivery service suppliers; ensure its postal monopoly suppliers act in accordance with National Treatment and Market Access provisions in the Cross-Border Trade in Services Chapter and the Investment Chapter; prevent the provision of a universal service as a prerequisite for licensing; prevent charges being imposed on express delivery services for the purposes of funding the supply of a different delivery service; and require any regulator to act impartially, non-discriminatorily, transparently, and independent of any supplier of express delivery services (Annex 8A, Article 3).

202. The UKTPO welcomed the dedicated Annex, and noted that:

> Since courier services is Australia's most restricted services according to the OECD services restrictiveness index, the clauses such as the ban on cross-subsidies by a postal monopoly and strict rules not to abuse a postal monopoly position (Ar. 3) are expected to facilitate UK services suppliers' business.[353]

International Maritime Transport Services

203. Annex 8B to Chapter 8 contains sector-specific provisions on International Maritime Transport Services. The Annex clarifies that, in areas of potential textual conflict, the overarching provisions in Chapter 8 and Chapter 13 (on Investment) prevail. It requires each party to allow international vessels of the other party's flag, or supplying the other party's services, access to ports, port infrastructure, maritime auxiliary services, customs facilities, and the assignment of loading and unloading facilities on terms no less favourable than those accorded to a non-party (Annex 8B, Article 3.2). In addition, such vessels must be permitted (subject to authorisation) to: re-position empty containers; and provide feeder services between ports (Annex 8B, Article 3.2). The Annex prohibits: cargo-sharing arrangements for maritime transport services with a non-party; and the imposition by a Party of a requirement that cargo be transported exclusively by vessels registered, owned, or controlled by that party or its nationals (Annex 8B, Article 3.3). The limiting of the scope of the Annex to international maritime transport appears to exclude any application to cabotage (the transport of goods from port to port within the home waters of the Parties).

204. The UKTPO welcomed the dedicated Annex and noted that "the non-discriminatory treatment principle provides more legal certainty to UK services providers, such as UK shipping companies and ships flying the UK flag, in accessing ports and related services."[354]

Right to regulate

General exceptions

205. Under Article 31.1.3, the "general exceptions" provisions in Article XIV of the General Agreement on Trade in Services (GATS) are incorporated by reference into the

353 UK Trade Policy Observatory (AUS0028) para 43
354 UK Trade Policy Observatory (AUS0028) para 46

UK-Australia agreement. These provisions allow WTO members to take measures (that would otherwise be inconsistent with GATS) on certain non-trade policy grounds, such as protection of the environment, public health or public morals, and prevention of deceptive practices.

Non-conforming measures

206. Article 8.7 details the parties' non-conforming measures—those areas where the parties are, and intend to remain, non-compliant with the regime created under the Agreement. These specific non-conforming areas are outlined in Annex I to the Agreement and maintain exemptions in specific areas from one or more of the following articles in Chapter 8: National Treatment; Most-Favoured Nation; Market Access; and Local Presence (Article 8.7). Annex II details similar non-conforming areas where the parties may "adopt new or more restrictive" measures (Annex II). Additionally, each Annex includes non-conforming measures relating to Chapter 13 (on Investment).[355]

207. FTAs operate either a more restrictive "positive list" or a less restrictive "negative list" approach to non-conformity: the former extends the provisions of the Agreement to defined sectors; the latter extends the provisions of the Agreement to all sectors less the defined exceptions. The "negative list" approach is used in this agreement. Additionally, in the case of Annex I, the Agreement includes a "ratchet mechanism" for future liberalisation. The parties may maintain their non-conforming measures but, in the event that there is unilateral liberalisation of any of the measures in Annex I, the new level of openness becomes locked-in, and the relevant Party is unable to revert to the restrictions currently attached to the measure in Annex I (Article 8.7).

208. The parties' schedules under Annex I and Annex II include many of their respective health services' functions, along with aspects of publicly funded utilities, education and postal services.[356]

209. The UKTPO noted that Australia has 47 non-conforming measures in the Agreement, compared to just 14 in the CPTPP.[357] It also noted that most of these measures are implemented at the sub-national level of Government and warned that the Agreement might, therefore, fail to mitigate the barriers currently faced by UK businesses at this level.[358] The UKTPO did caution that the number of non-conforming measures does not in and of itself indicate how far Australia restricts trade in services. Determining this would require analysis regarding the actual measures applied in each sector.[359]

Legitimate public welfare objectives

210. Article 8.3 (footnote 5) clarifies (in language that follows CPTPP and USMCA) that determining "like circumstances" for the purposes of the provisions on National Treatment and on MFN treatment "depends on the totality of the circumstances", including "whether the relevant treatment distinguishes between services or service suppliers on the basis of legitimate public welfare objectives".[360]

355 The Agreement's provisions on investment are discussed in Chapter 11 of this report.
356 Dr Joshua Paine (AUS0014) para 17
357 UK Trade Policy Observatory (AUS0028) para 53
358 UK Trade Policy Observatory (AUS0028) para 55
359 UK Trade Policy Observatory (AUS0028) para 57
360 Professor David Collins (AUS0002) para 7. See also Q31.

Health services carve-out

211. The exclusions and exceptions that apply to both parties' health services under Chapter 8 and the parties' schedules at Annex I and Annex II are explicitly recalled in Article 31.7.

Audio-visual services carve-out

212. Audio-visual services are carved out from the scope of the cross-cutting services provisions in Chapter 8 (under Article 8.2) and the sector-specific services provisions on telecommunications in Chapter 12 (under Article 12.2). There are also carve-outs for this sector elsewhere in the Agreement.[361]

213. The UKTPO noted that there are also carve-outs of audio-visual services in the Trade and Cooperation Agreement and the UK-Japan Agreement—but not in the CPTPP. The Observatory recommended that "The reason for excluding audio-visual services [from the UK-Australia agreement] ought to be clarified."[362] It is notable, though, that the Producers Alliance for Cinema and Television argued in 2020 that "including the audio-visual sector in any trade deal with Australia risks undermining the existing legislative and regulatory interventions that make the Public Service Broadcasting system and the wider UK film and TV production sector so successful".[363] And, prior to negotiating with Australia, the Government acknowledged the need to protect "the UK's public service broadcasting model".[364]

Domestic regulation provisions

214. Article 8.8 outlines the parties' commitments on the principles underpinning domestic licensing and qualification requirements and procedures, and technical standards. It commits each party to regimes which are objective, transparent, accessible, inclusive, streamlined, equitable, and which do not deliver assessments arbitrarily (Article 8.8). The UKTPO noted that while the text of the CPTPP has been used as a template for Chapter 8, Article 8.8 is more detailed as it reflects the WTO's plurilateral *Reference Paper on Services Domestic Regulation*.[365] Article 8.8 additionally incorporates language from Article 155 of the UK-EU Trade and Cooperation Agreement which prevents regulators from exercising their decision-making powers in an arbitrary manner.

Professional qualifications and licensing

215. The mutual recognition of professional qualifications (MRPQs) has been addressed in previous UK FTAs, most notably the Trade and Cooperation Agreement with the EU. However, the UK-Australia Agreement is the first UK FTA in which this issue is addressed through a standalone chapter (Chapter 10).[366]

361 See Chapters 9, 11 and 17 of this report.
362 UK Trade Policy Observatory (AUS0028) para 61
363 Pact (AUT0024) para 1.1 [Submitted to the Lords International Agreements Committee]
364 Department for International Trade, *UK-Australia Free Trade Agreement: the UK's Strategic Approach*, June 2020, p 20
365 UK Trade Policy Observatory (AUS0028) para 43
366 UK Trade Policy Observatory (AUS0028) para 48

216. The scope of the Chapter explicitly includes "accountancy and auditing services, architectural services, engineering services, legal services, and other types of professional services" (Article 10.2). It also makes further provisions for legal services, as discussed below. The Agreement does not itself establish mutual recognition of qualifications in these sectors. Instead, it encourages the parties' regulatory bodies to "establish and operate systems for recognition of professional qualifications" (Article 10.5) This distinction was noted and accepted by witnesses. Mr Cooke, of TheCityUK, emphasised that "[for services] an FTA is much more the start of a process".[367] Our assessment of Chapter 10 considers the extent to which a solid groundwork for the mutual recognition of professional qualifications has been laid.

Utility of provisions on the mutual recognition of professional qualifications

217. The UKTPO noted that:

> According to the OECD restrictiveness index (2020), […] professional services, such as accounting services and engineering services are […] among the least restrictive services sectors of Australia. In this regard, there may be lower gains from an FTA unless the UK and Australia successfully achieve mutual recognition for specific professional services.[368]

218. However, Alan Vallance, Chief Executive Officer of the Royal Institute of British Architects (RIBA), welcomed the crystallisation within the Agreement of mechanisms by which to achieve mutual recognition. He noted that steps towards MRPQ are already underway in the architectural sector; the sector's regulatory bodies are talking to each other about it, as are equivalent bodies for other professions—but these discussions are somewhat open-ended. Chapter 10 "provides a framework within which they all then complete" the process of achieving mutual recognition.[369] Mr Vallance was overwhelmingly positive about the direct benefits to British architects:

> A framework of recognition of qualifications and enacting all that will be fantastic for potential opportunities for UK architects, and it goes the other way as well—for architects from Australia who want to come to work in big UK practices it is great.[370]

219. A similarly upbeat tone was struck by the City of London Corporation, which said:

> the FTA incorporates many of the legal services sector's key asks for greater recognition of qualifications […]. The accounting sector have also welcomed the included plans […] to mutually recognise qualifications. […] As recognition of professional qualifications [is] determined at the sub-federal level and by domestic professional bodies, the practical success of these provisions will hinge on their collaboration. That being said, the FTA provides the framework for this increased cooperation.[371]

367 Q48
368 UK Trade Policy Observatory (AUS0028) para 49
369 Q52
370 Q30
371 City of London Corporation (AUS0027) para 14

Legal services

220. The Law Society of England and Wales outlined the importance of legal services as a business enabler, noting that:

> Nearly all international commercial transactions require the services of lawyers from two or more jurisdictions and this can be done most effectively where foreign and domestic firms can work together.[372]

221. UK lawyers in Australia, so far as they are qualified, already have the right to practise: UK law; international law; and other foreign, but non-Australian, law. Reciprocal arrangements exist for Australian lawyers practising in the UK. While it does not extend these rights, the Agreement's recitation of the *status quo* (Article 10.7) has been welcomed "both as precedent and for the certainty it provides to legal service suppliers."[373]

222. The area of perhaps greater potential significance is the establishment of a Legal Services Regulatory Dialogue to: consider matters relating to legal re-qualification; business structures as vehicles for legal services; and share information and knowledge on related regulatory matters. The Dialogue has the power to keep the Professional Services Working Group updated on the progress of its work, and is encouraged to meet annually for at least the first three years from the Agreement entering into force (Article 10.8). The Law Society of England and Wales welcomed the Dialogue, and stated that:

> agreements between relevant bodies can facilitate the recognition of solicitors' qualifications and experience (academic and in practice) for the purposes of dual-qualification; create a forum to discuss relevant issues such as access to host country courts, conflict between host and home state rules of professional conduct and recognition of business structure; as well as encourage greater cooperation between domestic regulatory and representative bodies.[374]

However, it added that "these benefits do not accrue upon entry into force and […] will require further resource, discussion and developments from the relevant sector regulators".[375]

Professional Services Working Group

223. The Agreement establishes, as its principal MRPQ mechanism, a Professional Services Working Group (Article 10.6), which is designed to help "facilitate the sharing of knowledge and expertise on professional services, accreditation, standards and regulation" (Article 10.3). However, as the UKTPO notes, "it is only the relevant bodies of specific professional services that are able to develop systems for the recognition of professional qualifications" and, although they may be invited to participate, they do not themselves form part of the Professional Services Working Group (Article 10.6).[376]

372 Law Society of England and Wales (AUS0011) para 2
373 Law Society of England and Wales (AUS0011) para 35
374 Law Society of England and Wales (AUS0011) para 37
375 Law Society of England and Wales (AUS0011) para 39
376 UK Trade Policy Observatory (AUS0028) para 50

Statutory barriers

224. While the Agreement creates a mechanism for professional regulatory bodies to arrange informally for mutual recognition of qualifications, many of these bodies are prevented from doing so by statutory obligations. The Professional Qualifications Act 2022 does to some extent mitigate such statutory restrictions in respect of some professional bodies. The Act creates a power for Ministers to require specified regulatory bodies to determine "whether qualifications and experience gained outside of the UK should be treated […] as if they were a specified UK qualification".[377] However, this power does not make recognition by a UK professional body contingent on a reciprocal arrangement by its Australian equivalent. Nor can it be exercised unless the Minister is satisfied that the regulation is necessary "for the purpose of enabling the demand for the services of the profession", such as to mitigate a skills shortage.[378] While the Act additionally allows Ministers to authorise professional bodies to enter into "regulator recognition agreements", the explanatory notes outline that these:

> cannot be used to change regulators' abilities to recognise overseas qualifications or to determine who can practise in the UK. Regulators will only be able to implement recognition arrangements through their existing provisions to recognise and assess overseas qualifications and overseas applicants.[379]

225. However, it is worth noting that the Act contains specific provisions for the architecture profession, and the Chief Executive of the Architects Registration Board (ARB) has noted that the Act:

> will enable ARB to enter agreements with regulators in other countries so that UK architects can more easily register and practise internationally and international architects can register and practise in the UK. These Mutual Recognitional Agreements, in which we are already in advanced stages of negotiation with the USA, Australia and New Zealand, will ensure standards are maintained and the public can remain confident that only suitably qualified and competent architects can practise in the UK.[380]

226. **The Agreement's provisions on trade in services have the effect, broadly speaking, of locking in current levels of market access, thereby providing welcome certainty to businesses and individuals.**

227. **There is clearly an appetite from stakeholders for free trade agreements to establish mutual recognition of professional qualifications. While this Agreement does not go that far, it does contain useful provisions to facilitate the achievement of mutual recognition by the Parties' respective regulatory bodies.**

228. **We are not wholly convinced that the mechanisms in place to deliver further regulatory alignment in respect of trade in services are as effective as they might be.**

377 Explanatory Notes to the Professional Qualifications Bill [HL Bill 2 (2021–22) –EN]

378 Professional Qualifications Act, Clause 2; Explanatory Notes to the Professional Qualifications Bill [HL Bill 2 (2021–22) –EN]

379 Professional Qualifications Act, Clause 4; Explanatory Notes to the Professional Qualifications Bill [HL Bill 2 (2021–22) –EN]

380 Department for Business, Energy and Industrial Strategy, "New law in place to strengthen UK professions", 28 April 2022

The committees set up for this purpose should meet more than once a year and involve regulators, as well as Government representatives. ***The Government must say what it will do to seek amendments to the Agreement in this respect.***

8 Mobility of persons

Businesspersons

229. The commitments set out in Chapter 11 and its Annex on mobility for businesspersons from the UK and Australia give greater certainty and increase access, and were broadly welcomed in evidence. For movement into Australia, the commitments cover: business visitors; installers and services; intra-corporate transferees; independent executives; and contractual service suppliers (Article 11.2.1). The Agreement stipulates that "the right of entry and temporary stay, movement and work for an equal period to that of the business person" (Annex IV.F) must be granted on application to the spouses and dependants of intra-corporate transferees, independent executives and contractual service suppliers staying in Australia for at least a year.

230. The UKTPO observed that the Government has "achieved […] to a certain degree"[381] its negotiating objective of increasing "opportunities for UK service suppliers and investors to operate in Australia by enhancing opportunities for business travel".[382] We were told that the mobility provisions "will facilitate servicing client projects in the market";[383] and that these provisions are welcomed by the UK tech sector.[384]

231. The provisions withdraw UK businesspersons from Australia's Skilled Migration Occupation List, removing the uncertainty over visas that the Law Society of England and Wales had identified as a "significant difficulty to trade in legal services".[385] However, the Law Society remained uncertain whether issues it had previously raised—about whether the visa structure facilitated dual qualification, and whether solicitors would continue to be eligible for the Temporary Skill Shortage visa—had been addressed.[386]

Intra-corporate transferees

232. The Agreement increases the permitted duration of stay for a businessperson transferred from the UK to an Australian company location from two years to four years. This change was valued,[387] and—alongside the ending of labour market testing—seen as likely to "help alleviate some of the uncertainty and bureaucracy around the movement of people".[388]

Contractual service suppliers

233. The FSB expressed concerns that some of the provisions are restrictive, noting that contractual service suppliers "must in some cases possess at least six years' professional experiences in addition to a university degree or equivalent qualification, as well as the relevant professional qualifications required under Australian law".[389]

381 UK Trade Policy Observatory (AUS0028) para 47
382 Department for International Trade, *UK-Australia Free Trade Agreement: The UK's Strategic Approach*, June 2020, p 10
383 Q107 [Sabina Ciofu]
384 techUK (AUS0029) para 11
385 Law Society of England and Wales (AUS0011) para 18
386 Law Society of England and Wales (AUS0011) para 24
387 Q54
388 City of London Corporation (AUS0027) para 11
389 Federation of Small Businesses (AUS0031) para 20

Impact

234. The groups of businesspersons involved in the respective commitments made by Australia and the UK are not directly comparable, with the UK giving some commitments where Australia does not reciprocate—for instance, regarding independent professionals. The Impact Assessment states that the Agreement's mobility clauses "will make it easier for UK professionals to travel for work".[390] However, the Impact Assessment gives no details of the expected consequential impacts, meaning it is unclear whether Australian professions will have more or easier access, leading to greater potential flow in one direction or the other, and what this would mean for UK businesses.

235. Had the Secretary of State attended to give evidence to us on 29 June, we would have asked her why the UK and Australia do not give identical commitments on the mobility of businesspersons under the Agreement—and what this means regarding the benefits of these provisions for each Party.

236. ***The Government must provide details of any assessment it has made of the expected increase in flows of businesspersons, and the associated economic impact, as a result of the Agreement. It must also commit to providing this information for future trade agreements in its published impact assessments.***

Side letters

237. Alongside the Agreement, the UK and Australia have exchanged (legally non-binding) side letters, setting out "mutual understandings" on mobility provisions.[391]

Working Holiday Maker and Youth Mobility schemes

238. The existing Working Holiday Maker and Youth Mobility schemes are extended to cover stays of up to three years and people aged from 18 to 35. The requirement for UK nationals to do certain kinds of work, including farm work, to be eligible for Australia's Working Holiday Maker visa is also removed.

239. These changes—to be implemented within two years of the Agreement coming into force, and to come into effect at a date to be agreed—have been welcomed.[392] However, Mr Vallance, of RIBA, suggested the age range should be extended further to avoid excluding "somebody on the other side of the fence who is slightly north of 35 and who wants to make a contribution and cannot yet do so".[393]

Agriculture and agribusiness

240. There are undertakings by Australia and the UK to continue offering routes for these sectors and provide greater clarity on mobility via a Joint Declaration.[394] Part of the

390 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 4

391 UK-Australia Free Trade Agreement: Australia side letter related to provisions on mobility; UK-Australia Free Trade Agreement: UK side letter related to provisions on mobility

392 Federation of Small Businesses (AUS0031), para 21

393 Q47

394 UK-Australia FTA: joint declaration on agriculture and agribusiness workers

mobility arrangements review will consider "Australia's offer to commence discussions with the UK on participation by UK citizens in the Australian Agriculture Visa",[395] as set out in the Joint Declaration.

241. The NFU welcomed the provisions but did not see the Agreement as solving "the challenge UK farmers, growers and the wider agriculture supply chain faces in having access to sufficient seasonal and permanent workers". It was concerned that the points-based system would still present barriers to workers from Australia, making "using migrant labour generally less viable for UK businesses".[396]

Innovation and Early Careers Skills Exchange

242. Australia also undertakes to run an exchange pilot for "UK early career professionals and experienced professionals involved in innovation",[397] starting within a year of the Agreement coming into force. The Innovation and Early Careers Skills Exchange Pilot will be implemented within one year of entry-into-force of the Agreement. The Law Society of England and Wales noted that until "further detail on this pilot is released, it is difficult to comment on its potential impact".[398]

Review

243. The side letters also contain an undertaking by the Parties to conduct a review of mobility arrangements, to commence two years after entry-into-force of the Agreement and conclude within a year. The review will cover matters including progress in achieving the commitments on the revised Working Holiday Maker and Youth Mobility schemes, and the results of the Innovation and Early Careers Skills Exchange Pilot.

244. **We welcome the planned changes to the Working Holiday Maker and Youth Mobility schemes, and the new Innovation and Early Careers Skills Exchange Pilot. We note that it is planned to review the pilot scheme when it may have been in operation for as little as one year. *The Government must work with the Australian Government to ensure that the review of the pilot only takes place when the scheme has been in operation long enough for its impact to be properly evaluated.***

395 UK-Australia Free Trade Agreement: Australia side letter related to provisions on mobility, para 19(b)
396 National Farmers' Union (AUS0034) para 99
397 Department for International Trade, *Explanatory Memorandum on the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, June 2022, para 4.36
398 Law Society of England and Wales (AUS0011), para 18

9 Digital and data

245. The Government has stated that the Agreement is "setting new global standards in digital" with "cutting-edge agreements in areas where Britain is a world leader, including in digital and tech".[399] The Agreement includes a Chapter on digital trade that, according to the Explanatory Memorandum, "supports areas like e-commerce, electronic signatures, free flows of data and tackling spam". It also "maintains personal data protections standards for UK consumers whilst facilitating the free flow of data and saves UK businesses from the unnecessary cost of storing their data in Australia by removing unjustified data localisation requirements".[400]

246. We received evidence that the Agreement was "strategically" important both for the UK's accession to the CPTPP and for the UK's "leadership in international digital trade policy".[401] Although we heard that CPTPP is a "baseline" and "an important group of countries to be part of",[402] witnesses told us it would be good if this Agreement becomes a new "benchmark for how the UK negotiates its own trade deals" and use it as a "reference model […] to help build global consensus on new additional trade deals".[403]

247. Under the Agreement, there are a number of provisions seeking to increase digital trade, covering electronic transmissions (Article 14.3), domestic electronic transactions frameworks (Article 14.4), the conclusion of contracts by electronic means (Article 14.5), electronic authentication and electronic trust services (Article 14.6), digital identities (Article 14.7), paperless trading (Article 14.8) and electronic invoicing (Article 14.9). A further set of provisions concern digital security, as regards source code (Article 14.18), Commercial Information and Communication Technology Products that Use Cryptography (Article 14.19) and cybersecurity (Article 14.20). Consumers appear to be the focus of provisions on open internet access (Article 14.15), online consumer protection (Article 14.16) and unsolicited commercial electronic messages, that is "spam" (Article 14.17). Furthermore, there are key provisions on data, covering cross-border transfer of information by electronic means (Article 14.10), the location of computing facilities (Article 14.11) and personal information protection (Article 14.12). Finally, there are provisions covering open government data (Article 14.13), data innovation (Article 14.14) and general co-operation (Article 14.21).

248. The chapter on digital trade does not apply to audio-visual services, financial services suppliers, or non-conforming measures listed under Chapter 8 (Cross-border trade in services) and Chapter 13 (Investment) and only partially applies to government procurement and information held by or on behalf of the Parties (Article 14.1 and Article 14.2).[404]

249. Witnesses described the chapter as a "gold standard" globally in the level of commitments regarding digital trade.[405] Although the Government's Impact Assessment notes that in 2019 the UK exported £4.3 billion worth of services to Australia via digital

399 Department for International Trade, UK and Australia sign world-class trade deal, 16 December 2021
400 Department for International Trade, *Explanatory Memorandum on the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, June 2022, para 4.41
401 techUK (AUS0029)
402 Q118
403 Q122 [Eunice Lim]
404 See Chapters 7, 11 and 17 of this report.
405 Q107 [Sabina Ciofu]; Q110

delivery despite the absence of a FTA, we heard that "the difference to business will be immediate" with this Agreement and that UK businesses "will be able to access the Australian market with greater certainty".[406] We received evidence that the real value of the Agreement will result from future regulatory dialogue and co-operation[407] and that the "more apparent, or more substantial, benefits will come over time and will depend on the continued commitment of both sides to develop the provisions further".[408] We also received evidence that the provisions recognising the validity of electronic contracts and signatures and removing obstacles surrounding electronic transactions "will provide direct benefits for consumers" and that "the focus on online consumer protection" was welcome.[409] Our attention was also drawn to the provisions on source code, of particular relevance to algorithms and Artificial Intelligence (AI), where concerns have been raised about possible impediments to effective regulation in future.[410]

Data

250. The Government's Impact Assessment also submits that the commitments made in the Agreement "do not alter or undermine the UK's domestic legislation on personal data protection. Onward transfers to third parties are still governed by the UK's Data Protection Act 2018".[411] Nonetheless, although according to one witness the text "clearly shows an intent by the parties to balance the free flow of data with protection of citizens' rights",[412] we received evidence about the potential risks to UK citizens' data,[413] with Australia's Privacy Act described by the earlier witness as not having the "same comprehensive nature" as the UK's General Data Protection Regulation (GDPR).[414]

251. Unlike the UK, Australia has not been granted an adequacy decision by the EU. Nor has Australia yet been granted adequacy by the UK. We heard that if the UK did grant an adequacy decision for Australia, there would be a risk of inconsistency with the EU's GDPR "and, therefore, the UK could lose its adequacy from the EU."[415] Although the risks posed by the Agreement were not accepted by all witnesses,[416] we also heard that the Agreement "needs to be understood in the broader context of UK law and Government policy" and its interplay with digital trade and the cross-border flows of personal data.[417] Witnesses agreed that the risks of losing EU adequacy lay "not so much because of this particular trade agreement", but around the future direction of UK GDPR.[418]

252. Finally, we also heard a warning that if in future the UK signs agreements and provides adequacy decisions for countries "that do not have comparable levels of protection", then

406 Q107 [Sabina Ciofu]
407 Professional and Business Services Council (AUS0007), techUK (AUS0029)
408 Q107 [Sabina Ciofu]
409 Which? (AUS0012)
410 Emily Jones, Danilo Garrido Alves, Beatriz Kira, Rutendo Tavengerwei (AUS0035). There are also provisions related to AI in the agreement's dedicated chapter on innovation (Chapter 20); this is dealt with in Chapter 10 of this report.
411 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021
412 Q123
413 UK Trade Policy Observatory (AUS0028), Which? (AUS0012)
414 Q123
415 Q123
416 Q125 [Sabina Ciofu and Eunice Lim]
417 Q123
418 Qq133, 137

"that will weaken the protections that UK citizens enjoy, because once data about us is transferred to those other countries then the lower standards will be what is governing and failing to protect the data".[419]

253. Had the Secretary of State attended to give evidence to us on 29 June, we would have asked her about guarantees for UK consumers that their data will be protected to the same high standard in Australia as it is in the UK, if the Agreement enters into force.

254. **We welcome the Agreement's forward-looking provisions on digital trade, which will help to boost e-commerce and improve online consumer protection between the UK and Australia. However, it is important to strike the right balance between digital liberalisation and the protection of personal data.**

255. ***The Government must set out clearly and precisely how it intends to fulfil its commitments on cross-border transfer of data under this Agreement while also maintaining current levels of protection for UK citizens' personal data. It must also set out how its policy on granting data adequacy will interact with this and future free trade agreements. The Government must give an unequivocal commitment that it will seek to avoid the loss of EU adequacy—which would be catastrophic for the UK.***

419 Q126 [Swee Leng Harris]

10 Innovation

256. The agreement contains "the world's first dedicated Innovation Chapter in a free trade agreement",[420] focused on improving cooperation around innovation and helping the Agreement remain relevant. BSA | The Software Alliance welcomed the provisions as facilitating "closer collaboration between Australia and the UK on innovation to support trade and economic growth".[421] The provisions are excluded from the Agreement's dispute settlement provisions (Chapter 30).

Artificial Intelligence and Emerging Technologies

257. The chapter recognises the increasing importance and potential benefits of emerging technologies, and commits the Parties to cooperating "in activities aimed at encouraging the development and adoption of emerging technologies, and facilitating trade in related products and services" (Article 20.4.2).

258. Article 20.4.3 acknowledges "the importance of developing governance frameworks for the trusted, safe, and responsible use of emerging technologies that will help realise the benefits of these technologies". It does not make a firm commitment on action, but says the Parties will "endeavour to […] collaborate on, and promote the development and adoption of, governance frameworks that support the trusted, safe, and responsible uses of emerging technologies". We were told that "the AUS-UK FTA is less ambitious than the Australia-Singapore [Digital Economy Agreement]",[422] which has commitments on cooperation in competition policy in digital markets (Article 16) and cooperation to address online harms (Article 18).[423]

Strategic Innovation Dialogue

259. The agreement establishes a Dialogue to:

> consider how trading arrangements can best keep pace with major technological developments, to share and develop best practice in innovation policy, and to identify further areas of cooperation to promote and facilitate innovation in the UK and Australia.[424]

The Dialogue must meet within a year of the Agreement coming into force, then "at least once every two years, unless the Parties agree otherwise" (Article 20.5.7).

260. The City of London Corporation told us that the Dialogue's role in "the development of international standards and facilitating trade in emerging technologies" was "very

420 Department for International Trade, *Explanatory Memorandum on the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, June 2022, para 4.42
421 BSA | The Software Alliance (AUS0039)
422 Emily Jones, Danilo Garrido Alves, Beatriz Kira, Rutendo Tavengerwei (AUS0035) para 3(a)
423 Australia-Singapore Digital Economy Agreement, December 2020
424 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 22

welcome".[425] We also heard that the Dialogue "provides the opportunity for industry on both sides to come together and create the innovation partnerships that are so important for industry, academia and research".[426]

261. However, we were also told that the Dialogue's remit omitting digital rights promotion "limits its relevance for consumer and labour groups", and that future agreements should encourage "cooperation in the promotion of the digital rights of consumers and citizens, including cooperation in important areas like digital competition and online harms".[427]

262. techUK noted that "continued engagement with stakeholders in the economy and broader society will be key for reaping the full benefits of the agreement".[428] The Dialogue "may consult with or seek advice from" stakeholders but does not have an active role for them in the Dialogue, unlike the Digital Economy Dialogue established in the UK-Singapore Digital Economy Agreement, which "may include participation from" stakeholders whose "inclusive participation" is encouraged.[429]

263. **We question the extent to which the Strategic Innovation Dialogue's two-year meeting interval and stakeholder involvement is sufficient to allow it to be impactful. *The Government must set out how the Dialogue will be monitored for effectiveness, and what the arrangements will be for making details of its meetings public.***

Free Trade Agreements and Digital Economy Agreements

264. We were told that some of the innovation provisions are "cutting edge and are poised to become standard in FTAs".[430] Sabina Ciofu thought it would be "great" if the Agreement's innovation provisions became "a benchmark for how the UK negotiates its own trade deals".[431]

265. However, as noted above, the Australia-Singapore and UK-Singapore Digital Economy Agreements (DEAs), go further in places—for example, on online harms, or setting up Digital Economy Dialogues with active stakeholder participation. As the Government continues to negotiate both new free trade and digital economy agreements, it is unclear how innovation-related issues will be addressed across the two types of agreement.

266. Had the Secretary of State attended to give evidence to us on 29 June, we would have asked her about the Government's approach to negotiating innovation-related issues through DEAs in some cases and FTAs in others.

267. ***The Government must clarify how innovation-related provisions will be addressed across free trade agreements and digital economy agreements. It must show it has a coherent, clear and consistent approach in this regard.***

425 City of London Corporation (AUS0027) para 12
426 Q109 [Sabina Ciofu]
427 Emily Jones, Danilo Garrido Alves, Beatriz Kira, Rutendo Tavengerwei (AUS0035) para 19
428 techUK (AUS0029) para 17
429 Foreign, Commonwealth and Development Office, Digital Economy Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Singapore , CP 634, March 2022, Article 8.61-V
430 Professor David Collins (AUS0002) para 30
431 Q122

11 Investment

268. We heard from the City of London Corporation that, in 2019, the UK was the second largest overseas investor in Australia and the second largest recipient of Australian investment. According to the Corporation: "The stock of UK FDI in Australia was £35.6 billion in 2018, while Australia invested £15.9 billion in the UK."[432]

269. UKTPO pointed out that, among OECD nations, Australia is relatively restrictive of inward investment.[433] The UK, by contrast, has long been very open to overseas investment.[434]

270. The agreement's investment provisions are set out in Chapter 13. These broadly have the effect of locking in the parties' existing voluntary commitments on: investment liberalisation (eliminating restrictions on the right of foreign investors to invest in a host country); and investor protection (guarding against political risks faced by foreign investors in a host countries). In so doing, the provisions give investors more certainty. Chapter 13 is broadly similar to the equivalent chapter in CPTPP, albeit with some notable exceptions.[435]

Definitions of protected investors and investments

271. Article 13.1 sets out the scope of what counts as an investor and an investment for the purposes of the provisions in Chapter 13. Professor David Collins, of City, University of London, told us that this Article contains "a very wide definition of investment", which is "[in] keeping with modern investment agreements".[436] However, according to Dr Joshua Paine, of Bristol University, Article 13.1 "places significant limitations on which actors qualify as an 'investor of a Party' and which kinds of economic activities qualify as an 'investment'".[437]

272. Dr Paine noted that the Agreement (in contrast to the CPTPP) does not cover "shell companies" (which do not have their own business activities, but exist for a purpose such as minimising tax liabilities). He also noted, among other things, that the Agreement allows dual nationals of the UK and Australia potentially to claim protection for an investment as if they were an overseas investor when they are actually a resident citizen of the country concerned.[438]

Investment liberalisation

Market access

273. Article 13.4 prevents each party from setting up or maintaining restrictions on market access by the other party's investors on a quantitative basis (relating to: number of enterprises; total value of transactions or assets; number of operations or quantity of

432 City of London Corporation (AUS0027) para 3
433 Q29; UK Trade Policy Observatory (AUS0028) paras 41, 54
434 International Trade Committee, Third Report of Session 2021–22, *Inward Foreign Direct Investment*, HC 124
435 For a detailed comparison of the UK-Australia Agreement with CPTPP, see Appendix 1 of this report.
436 Professor David Collins (AUS0002) para 11
437 Dr Joshua Paine (AUS0014) para V
438 Dr Joshua Paine (AUS0014) paras 1–3

output; amount of foreign capital; and number of persons employed). This applies to such restrictions at both national and sub-national level.[439] In addition, Article 13.4 forbids each party from placing any restrictions on market access by the other party's investors by requiring them to operate through a specific type of legal entity or in a joint venture with a domestic enterprise. These market-access disciplines are subject to certain exceptions, as discussed further below.

274. There is no equivalent to Article 13.4 in the investment chapters of either the CPTPP or the US-Mexico-Canada Agreement (USMCA). Very similar provisions do, though, exist in the UK-EU Trade and Cooperation Agreement and in the UK-Japan FTA.[440]

National Treatment and Most Favoured Nation treatment

275. Article 13.5 obliges the parties (in wording that follows the CPTPP and USMCA) to grant National Treatment to the other party's investors, giving them the right to invest on the same terms as those accorded "in like circumstances" to domestic firms. In respect of government at the regional (sub-national) level, the National Treatment obligation applies only within each unit of government, not between such units (Article 13.5.3). This means that, for instance, a given Australian state is obliged to treat a UK investor no worse than it would treat a domestic investor, but that state is not obliged to accord the investor a better standard of treatment that is provided by another Australian state.[441]

276. Article 13.6 contains an MFN provision in respect of investment (using similar wording to that found in the CPTPP and USMCA). This requires each party to grant the other's investors no less favourable treatment than it accords "in like circumstances" to those of any non-party to the Agreement. Consequently, if either party grants better treatment in future to a third country, this will extend automatically to the other party under the UK-Australia agreement.[442]

Prohibition on performance requirements

277. Article 13.11 prohibits (using language close to that of the CPTPP and USMCA) each party from imposing "performance requirements" on investors from the other party. Requirements thus prohibited include stipulating that a certain quantity of domestic inputs be used or that there be a transfer of technology to domestic producers.[443] Dr Paine noted that this Article "includes all of the prohibitions on performance requirements in the CPTPP, as well as certain additional prohibitions on performance requirements that the UK has also agreed to in other recent FTAs", such as with the EU and Japan.[444]

278. According to Professor Collins, the provisions in this Article "are among the most detailed such performance requirements seen in any modern FTA". He noted that the "tying of an investment incentive to trade distorting performance requirements" is prohibited, while "investment incentives linked to other kinds of performance are expressly permitted by Article 13.11.3, a highly progressive development for an FTA".[445]

439 Professor David Collins (AUS0002) para 16, Dr Joshua Paine (AUS0014) para 17
440 Dr Joshua Paine (AUS0014) para 17
441 Professor David Collins (AUS0002) para 18, Dr Joshua Paine (AUS0014) para 8
442 Professor David Collins (AUS0002) para 18, Dr Joshua Paine (AUS0014) para 8
443 Professor David Collins (AUS0002) para 20, Dr Joshua Paine (AUS0014) para 15
444 Dr Joshua Paine (AUS0014) para 15
445 Professor David Collins (AUS0002) para 20

Prohibition on nationality or residency requirements

279. Article 13.12 prohibits (in unqualified fashion, in contrast to the CPTPP and USMCA) each party from requiring that a senior manager or director of an enterprise from the other party be of a particular nationality or subject to a residency requirement.[446]

Investor protection

Minimum standard of treatment

280. Article 13.7 requires (in terms that follow the CPTPP and USMCA) each party to accord a minimum standard of treatment to investors from the other party, "in accordance with applicable customary international law principles, including fair and equitable treatment and full protection and security".[447] (Annex 13A confirms the parties' shared understanding of "customary international law".)

Expropriation and compensation

281. Article 13.9 contains provisions (which closely follow their equivalents in the CPTPP and USMCA) on expropriation and nationalisation. The article sets out the circumstances under which one party may expropriate or nationalise an enterprise belonging to an investor from the other party.[448] (Annex 13B confirms the parties' shared understanding of the application of Article 13.9.)

Right to regulate

282. Article 13.17 explicitly acknowledges (in language that follows the CPTPP and USMCA) each party's right to implement any measure "that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental, health, or other regulatory objectives." Professor Collins noted that "This is among the wider such provisions contained in recent FTAs, affording a good deal of policy space to the UK and Australia in relation to public policy, particularly since it is framed in self-judging language."[449]

General exceptions

283. Dr Paine noted that the "general exceptions" provisions in Article XX of GATT 1994 and Article XIV of GATS, which are incorporated by reference into the FTA, are applied to the investment chapter (under Articles 31.1.1 and 31.1.3).[450] This is not an approach taken in the CPTPP.

446 Professor David Collins (AUS0002) para 17, Dr Joshua Paine (AUS0014) para 16
447 Professor David Collins (AUS0002) para 12, Dr Joshua Paine (AUS0014) paras 4–5
448 Professor David Collins (AUS0002) para 12, Dr Joshua Paine (AUS0014) paras 6–7
449 Professor David Collins (AUS0002) para 13. See also Dr Joshua Paine (AUS0014) para 13.
450 Dr Joshua Paine (AUS0014) paras 9–11. For further discussion of the role of "general exceptions" in the Agreement, see Chapters 4 and 7 of this report.

284. Dr Paine questioned whether the application of general exceptions to investment provisions is "a desirable strategy for protecting policy space", given that it has not proved so "in the limited investor–State case law that has been decided under treaties containing such general exceptions provisions".[451]

Investment and the environment

285. In Article 13.18, the parties "recall the provisions of this Agreement that are applicable to promoting mutually supportive investment and environmental outcomes and that are consistent with the sovereign right of each Party to set its levels of environmental protection". The Article explicitly cross-references to relevant provisions, including the dedicated chapter on the environment (Chapter 22). Dr Paine states that "At most Article 13.18 would act as interpretative context that would serve to remind an interpreter of the investment chapter of these other aspects of the FTA, and the importance that the Agreement accords to the right of each Party to set its levels of environmental protection."[452]

Non-conforming measures

286. Certain provisions in Chapter 13 on investment liberalisation are subject to reservations under both parties' "negative list" schedules relating to existing non-conforming measures (Annex I) and potential future non-conforming measures (Annex II). The specified provisions are: Article 13.4 (Market Access); Article 13.5 (National Treatment); Article 13.6 (MFN Treatment); Article 13.11 (Performance Requirements); and Article 13.12 (Senior Management and Boards of Directors). Listing non-conforming measures allows the parties to protect regulatory policy space and effectively carve out certain public services from the scope of the provisions concerned.

287. Australia's schedules of non-conforming measures in respect of investment provisions are more extensive than the UK's. Australia's lists are also more substantial than their equivalent under the CPTPP. UKTPO noted that Australia's schedules under the agreement with the UK set out 37 non-conforming measures in respect of investment—compared to just seven in its CPTPP schedules.[453]

Legitimate public welfare objectives

288. Article 13.5 (footnote 9) clarifies (in language that follows the CPTPP and USMCA) that determining "like circumstances" for the purposes of the provisions on National Treatment and on MFN treatment "depends on the totality of the circumstances", including whether the distinction made between investors or investments relates to "legitimate public welfare objectives".[454]

289. A similar qualification (which also reproduces wording in the CPTPP and USMCA) is included in Article 13.11.9, stipulating that certain restrictions on performance requirements are not to be construed as preventing a party from "adopting or maintaining measures to protect legitimate public welfare objectives" (subject to certain qualifications).

451 Dr Joshua Paine (AUS0014) para 10
452 Dr Joshua Paine (AUS0014) para 14
453 UK Trade Policy Observatory (AUS0028) para 53
454 Dr Joshua Paine (AUS0014) para 8

290. Likewise, Annex 13B confirms (again in language that follows the CPTPP and USMCA) the parties' shared understanding that non-discriminatory regulatory actions "to protect legitimate public welfare objectives […] do not constitute indirect expropriations, except in rare circumstances".

Health services carve-out

291. The exclusions and exceptions that apply to both parties' health services under Chapter 13 and the parties' schedules under Annex I and Annex II are explicitly recalled in Article 31.7.

Audio-visual services carve-out

292. While the majority of the Investment chapter applies to audio-visual services, the sector is not bound by the articles on Market Access, National Treatment, MFN Treatment, Performance Requirements, and Senior Management and Boards of Directors (Article 13.2). This is consistent with carve-outs for audio-visual services in other parts of the Agreement.[455]

Settling investment disputes

293. Some international investment agreements include Investor-State Dispute Settlement (ISDS) provisions, which grant investors the right to raise disputes on their own behalf against host states in cases of alleged violation of provisions on investor protection. Such provisions have become very controversial, due to the perception amongst civil society groups and others that ISDS has a strong adverse effect on states' right to regulate.

294. In contrast to the CPTPP and USMCA, the UK-Australia agreement does not include any provision for ISDS.[456] Consequently, any investment dispute under the Agreement could only be dealt with through its general (state-state) dispute settlement procedure, laid down in Chapter 30. Instead of being able to raise a dispute directly against a party to the Agreement, an aggrieved investor would be obliged to ask their own government to bring a case on their behalf.

295. The absence of ISDS from the Agreement was welcomed by civil society organisations.[457] However, FoE thought there had been "little transparency or discussion on the issue" and it was "unclear whether ISDS was omitted to any degree due to public concern, or simply ruled out by Australian negotiators".[458] Others were concerned at the possible prospect of the UK taking on ISDS commitments through accession to CPTPP.[459]

296. ***The Government must explain how Investor-State Dispute Settlement came to be omitted from the Agreement and set out clearly how it intends in future negotiations on trade agreements to approach the issue of mechanisms for settling investment disputes.***

455 See chapters 7, 9 and 17 of this report.
456 Professor David Collins (AUS0002) para 14
457 Friends of the Earth (AUS0009) para 31, Traidcraft Exchange (AUS0020) para 18, Greener UK (AUS0021) para 7
458 Friends of the Earth (AUS0009) para 31
459 Traidcraft Exchange (AUS0020) para 20, Greener UK (AUS0021) para 7, TUC (AUS0037) paras 12–13

Sanctions

297. Article 13.10, which obliges each party to permit the transfer of funds "freely and without delay into and out of its territory", includes the caveat that it cannot be "construed to prevent a Party from applying its law relating to the imposition of economic sanctions in good faith" (Article 13.10.6). Such a provision does not exist in the CPTPP.[460] Professor Collins thought this a "sensible and timely rule".[461]

Investment screening

298. The agreement allows for the application of increased investment-screening thresholds for UK investors in Australia, meaning that fewer UK investments will be subject to review by the Foreign Investment Review Board (this is set out as part of Australia's schedule under Annex I).[462]

299. In addition, under Annex 13C, decisions by either party under their domestic frameworks for screening foreign investments are excluded from the scope of the Agreement's dispute settlement procedure.[463]

460 Professor David Collins (AUS0002) para 19, Dr Joshua Paine (AUS0014) para 19
461 Professor David Collins (AUS0002) para 19
462 Professor David Collins (AUS0002) para 15
463 Dr Joshua Paine (AUS0014) para 18

12 Intellectual Property

300. The intellectual property (IP) provisions of the Agreement are set out in Chapter 15.[464] Many of the provisions in this Chapter are verbatim copies of the associated provisions in CPTPP. Some of the IP provisions go beyond those in the CPTPP, while others appear to be looser than their equivalents in CPTPP.[465]

301. Article 15.5 establishes a joint Committee on Intellectual Property Rights to "consider matters relating to the implementation and operation of this Chapter", including reviews associated with the provisions on protected geographical indications.[466] The Committee will meet "as necessary" to perform its functions to oversee consultations into geographical indications, but otherwise will meet within a year of the Agreement coming into force, and will agree how frequently to meet after that.

302. Overall, the Agreement appears to make relatively few changes to current IP arrangements in either the UK or Australia, and it is difficult to pinpoint whether the UK made gains. Many of the provisions in Chapter 15 contain broad, rather than specific, commitments. For example, Article 15.16 says that both Parties will "endeavour" to cooperate between their patent offices on their search and examination work. Similar commitments to endeavour to achieve an outcome include those regarding efforts towards the harmonisation of trademark systems (Article 15.29) and to cooperate to "enhance the understanding of issues connected with traditional knowledge associated with genetic resources, and genetic resources" (Article 15.18).

303. The Chartered Institute of Patent Attorneys told us that it was "very pleased" that the FTA "appears to be consistent with our membership of international treaties such as the European Patent Convention (EPC)."[467]

304. The Government's Impact Assessment says that the "agreement includes a provision on reciprocal arrangements for artist resale royalties" and that "once in place" they "will provide new income streams for our visual artists".[468] However, the provisions in Article 15.61 appear to be much looser than this implies, committing both parties to enter into consultations to conclude reciprocal arrangements for artists' resale rights. Similarly, in Article 15.60 both Parties agree to "discuss measures to ensure adequate remuneration" for performers and producers of phonograms (sound recordings).

305. In Article 15.55, both Parties agree to "make all reasonable efforts" to accede to the Hague Agreement Concerning the International Registration of Industrial Designs. The UK is already a member of the Hague Agreement, whereas Australia has not yet acceded to it, and there is no clarification about what "all reasonable efforts" might involve.

306. Articles 15.48 and 15.49 cover data exclusivity for agricultural and pharmaceutical products, respectively.[469] The Parties agree that, if undisclosed test or other data is required for a new product to be placed on the market, a third party cannot place the same or a

464 Provisions relating specifically to protected Geographical Indications are dealt with in Chapter 4 of this report.
465 For a detailed comparison of the UK-Australia Agreement with CPTPP, see Appendix 1 of this report.
466 On protected geographical indications, see Chapter 4 of this report.
467 Chartered Institute of Patent Attorneys (AUS005) para 2
468 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 22
469 Data exclusivity is the period during which the holder of marketing authorisation for a product that has been developed on the basis of test data has the sole right to benefit from that data.

similar product on the market—if based on that data, or on the marketing approval for it—unless it receives permission from the person who previously submitted the data, for 10 years for agricultural products and five years for pharmaceuticals. The UK already has provisions for protecting such information for 10 years for agricultural products and eight years for pharmaceutical products, whereas Australia currently protects new agricultural products for 10 years and new pharmaceutical products for five years. It appears that the Government did not make gains in this area.

307. The Explanatory Memorandum also notes that secondary legislation will be required in order to extend UK copyright protection to Australian wired broadcasts.[470]

308. Article 15.88 covers limitations on liability on internet service providers (ISPs) in which both Parties agree that conditions under which they qualify should include—"where practicable"—the ISP taking action to prevent access to materials that might infringe copyright or related rights. Dr Emily Jones and her co-authors noted that the language in Article 15.88 is simultaneously more detailed than the corresponding provisions in the UK-Japan agreement, and less prescriptive than those in the CPTPP. In the UK-Japan agreement, both Parties are only required to take appropriate measures to limit liability, rather than to establish a system for doing so. The limitations on liability in the UK-Japan agreement also only apply to copyright and other IP infringement, whereas the inclusion of "related rights" in this Agreement creates the possibility that this could apply to other types of content.[471] As noted by Dr Jones and her colleagues, by contrast, the provisions in the CPTPP—which mirror those in USMCA—require parties to "establish safe harbours for internet platforms and to adopt a 'notice and take down' mechanism."[472]

309. Article 15.89 also ensures that the civil judicial authorities of both Parties should be able to grant an injunction (or blocking order) to prevent access to an online location outside their territory, which infringes copyright or related rights in the territory of that Party.

470 Department for International Trade, *Explanatory Memorandum on the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, June 2022, para 5.6

471 Emily Jones, Danilo Garrido Alves, Beatriz Kira, Rutendo Tavengerwei (AUS0035) para 22

472 Emily Jones, Danilo Garrido Alves, Beatriz Kira, Rutendo Tavengerwei (AUS0035) para 22

13 The environment

310. Chapter 22 is a dedicated chapter on the environment. FoE noted that, although the Secretary of State told the House this is the first Australian FTA with such a chapter, this is not actually the case.[473] Some key aspects of this Chapter's provisions have already been noted.[474] It contains general provisions concerning: the maintenance and improvement of environmental laws and policies (Article 22.3.3); and maintaining the approach to enforcement, and standard, of those laws and policies where not doing so would affect trade or investment between the Parties (Article 22.3.4 and Article 22.3.6). The Chapter also includes various minimum standards obligations (Article 22.8, Article 22.10, Article 22.12 and Article 22.13). These provisions are all "hard" obligations, requiring the Parties to act in a certain manner. They apply to environmental laws at all levels of Government in the UK, but only those at the federal level in Australia (Article 22.1).

311. Had the Secretary of State attended to give evidence to us on 29 June, we would have asked her about the possibility of environmental laws being weakened in Australia at the level of states and territories.

312. The Chapter also includes specific commitments in areas including trade in environmental goods and services (Article 22.6), air quality (Article 22.9), biodiversity (Article 22.14), and conservation (Article 22.16). Chapter 22 draws heavily on the CPTPP and, in some places, the USMCA.[475]

313. While the Chapter was broadly welcomed, environmental NGOs and academic experts drew attention to what they regarded as the often-vague nature of the language used in its provisions.[476] Sarah Williams, of Greener UK, said the issue is not the absence of enforcement measures—unlike other chapters, such as Gender and Development, the environmental provisions are subject to the Agreement's dispute-settlement procedures—but rather the "quite broad, quite vague and aspirational" nature of the provisions.[477] Most provisions in the Chapter do not require specific actions; among the few exceptions are the provisions on Marine Wild Capture Fisheries (Article 22.12), Conservation and Illegal Wildlife Trade (Article 22.16) and the establishment of an Environment Working Group (Article 22.21).

314. It was pointed out that raising a dispute in respect of several provisions in the Chapter would entail a "trade and investment test". This means that the complaining Party would have to show not only that something had been done or not done in relation to an environmental law, but also that this had (or was intended to have) an impact on trade or investment between the Parties. Sarah Williams said it was "notoriously difficult to prove" such an impact[478] (a point also made by the Chair of TAC, as already noted).[479] Ruth Bergan, of the Trade Justice Movement, cited the example of a 2014 dispute, focused

473 Friends of the Earth (AUS0009) para 13
474 See Chapter 4 of this report.
475 For a detailed comparison of the UK-Australia Agreement with CPTPP and the USMCA, see Appendix 1 of this report.
476 Friends of the Earth (AUS0009), WWF-UK (AUS0010), Traidcraft Exchange (AUS0020), Greener UK (AUS0021)
477 Q64
478 Q64
479 See Chapter 4 of this report.

on such a provision (although it related to labour issues rather the environment), that was brought by the US against Guatemala under an FTA. The US lost this case, as it was unable to demonstrate that the actions in question gave Guatemala a trade or investment benefit.[480]

315. Differences in the environmental performances of the UK and Australia were commented on by NGOs.[481] As already noted, Australian agriculture's record on environmental protection was particularly criticised by civil society groups.[482] Much criticism of Australia's environmental record centres on the issue of climate change. Greener UK, for instance, stated:

> Australia's record on climate action is poor. The Sustainable Development Report 2021 scored Australia last out of 193 countries for action to reduce global greenhouse gas emissions and during the COP26 conference in Glasgow, Australia did not increase its 2030 climate commitments. As the UK strived to show global climate leadership as COP26 president, it is surprising that at the same time it prioritised the Australia deal.[483]

316. The Government has noted that Article 22.5 affirms the Parties' commitment to address climate change, including under the 2015 Paris Agreement (to which both countries are parties). DIT states that "This is the first time Australia has included a dedicated Article on Climate Change in an FTA."[484] However, this provision omits mention of the Paris Agreement's target of limiting global warming to 1.5 degrees Celsius—and leaked correspondence reportedly indicated that the UK acceded to a demand by Australia to remove reference to this target from the draft FTA.[485] In October 2021, when the Agreement was still being negotiated, the Secretary of State denied to us that reference to the 1.5-degree target had been removed at Australia's behest.[486]

317. FoE noted that the UK's negotiating objectives for the Agreement contained a small but potentially significant difference to those for negotiations with New Zealand.[487] In that case, the UK Government's objective was to "seek sustainability provisions, including on environment and climate change, that meet the shared high ambition of both parties on these issues".[488] The corresponding passage in respect of Australia, however, did not include the word "high" in otherwise identical wording.[489] FoE claimed this omission suggests "that Australia's poor track record on environmental issues has not only remained unchallenged in this FTA but has actively shaped what the UK government sought to achieve within it".[490]

318. The UK Centre for Animal Law, while welcoming much of Chapter 22, criticised the lack of "stronger language" in the provision in Article 22.16 regarding the Convention

480 Q66
481 Friends of the Earth (AUS0009), WWF-UK (AUS0010), Traidcraft Exchange (AUS0020), Greener UK (AUS0021)
482 See Chapter 4 of this report.
483 Greener UK (AUS0021) para 6
484 Department for International Trade, *Report pursuant to Section 42 of the Agriculture Act 2020: UK-Australia Free Trade Agreement*, June 2022, p 10
485 Qq71–72; Friends of the Earth (AUS0009), Traidcraft Exchange (AUS0020), Greener UK (AUS0021)
486 Oral evidence taken on 27 October 2021, HC (2021–22) 605, Q70
487 Friends of the Earth (AUS0009) para 5
488 Department for International Trade, *UK-New Zealand Free Trade Agreement: The UK's Strategic Approach*, June 2020, p 12
489 Department for International Trade, *UK-Australia Free Trade Agreement: The UK's Strategic Approach*, June 2020, p 12
490 Friends of the Earth (AUS0009) para 5

on International Trade in Endangered Species of Wild Fauna and Flora. It argued that this provision "could also have been expanded to other endangered species, particularly whales".[491]

319. As well as the Agreement's specific provisions in relation to the environment, the question also arises of the overall environmental impact of the FTA. DIT's Impact Assessment concludes that "Overall greenhouse gas emissions associated with UK-based production are largely unchanged from the FTA", with "higher emissions from increased economic activity" being "offset by a shift in output away from sectors with relatively high emissions".[492] However, DIT notes that its estimates "do not take into account emissions due to deforestation or land use change"[493]—a point which was highlighted by civil society groups.[494] WWF-UK stated that this was a "significant omission and means that the GHG [greenhouse gas] emissions estimated are likely to be significantly underestimated".[495]

320. DIT's conclusion that the Agreement has a neutral impact on emissions also rests on "Excluding emissions associated with greater transport activity".[496] The Department's estimates "suggest that the increase in emissions associated with transport of goods could be between around 0.1 and 0.3 MtCO2e [Metric tons of carbon dioxide equivalent] each year, a 31 to 40% increase in transport emissions associated with trade with Australia." DIT notes that its estimates "do not account for the future decarbonisation of international shipping".[497] The Agreement does contain a provision on ship pollution (Article 22.10). However, this involves only a general commitment by the Parties to "take measures to prevent the pollution of the marine environment from ships" (in accordance with minimum standards under the 1973 International Convention for the Prevention of Pollution from Ships) and to cooperate on matters including pollution and emissions from ships. In November 2021, the Secretary of State told us that the Secretary of State for Transport "is very passionate about leading the way and helping […] decarbonisation in shipping, working through a number of research and development programmes and, indeed, with industry".[498]

321. Several civil society groups expressed concern that, by increasing trade over a large distance, the Agreement was bound to increase emissions.[499] Sarah Williams noted that "progress on decarbonising the shipping industry is very slow" and that there is currently "no obligation on operators or ports to deploy renewable fuels in that sector".[500] The former New Zealand Trade Minister Sir Lockwood Smith, though, thought that high fuel costs would lead to "major changes in propulsion fuels in the future".[501] Gerald Mason, of Tate & Lyle Sugars, emphasised that the carbon footprint of goods is determined much more

491 UK Centre for Animal Law (AUS0019) paras 9–10
492 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 45
493 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 46
494 Friends of the Earth (AUS0009), WWF-UK (AUS0010), Greener UK (AUS0021)
495 WWF-UK (AUS0010) para 21
496 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 45
497 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 46
498 Oral evidence taken on 24 November 2021, HC (2021–22) 817, Q36
499 Hybu Cig Cymru – Meat Promotion Wales (AUS0006) para 14, Which? (AUS0012) paras 6, 16, Professor Tim Lang, Professor Erik Millstone, Professor Terry Marsden (AUS0022) para 6
500 Q84
501 Q86

by how they are produced than by how far they travel. He said that "There is more freight carbon with cane sugar [than with sugar made from domestic beet crops], but there is a lot less agricultural and processed carbon". Taking this into account, the two products were "broadly comparable" in their carbon footprints.[502]

322. One civil society group, Traidcraft Exchange, expressed concern at the Agreement's "provisions liberalising public procurement and restricting 'local content requirements.' These could impact the Government's ability to support green suppliers, and domestic green industries and transitioning workers, respectively." At the same time, it noted that the Agreement "does not include patent waivers and flexibility for green technology".[503]

502 Q226
503 Traidcraft Exchange (AUS0020) para 21

14 Labour

323. Chapter 21 of the Agreement covers labour provisions and, in common with several other chapters, there is considerable overlap between these and the equivalent provisions in the CPTPP. However, the provision on the right to regulate (Article 21.2) is unique to the Agreement, while those on modern slavery (Article 21.7) and gender discrimination in the workplace (Article 21.8) are more detailed than the equivalent clauses in the CPTPP.[504]

International Labour Organization Declaration of Fundamental Principles

324. Article 21.3 of the Agreement states that the "The Parties affirm their obligations as members of the ILO [International Labour Organization], including those stated in the ILO Declaration, regarding labour rights within their territories".

325. Rosa Crawford, Policy Officer at the TUC, expressed her disappointment that the Agreement "does not contain commitments to ILO core conventions and an obligation for both parties to ratify and respect those agreements", and that it contained "a much weaker commitment to just the ILO declaration". She noted that Australia is yet to ratify the ILO minimum age convention and that "there is nothing that the trade unions can use in this agreement to make sure that that convention is ratified".[505]

326. Victoria Hewson, of the Institute of Economic Affairs, offered a different perspective, telling us that "states have a right to set their own rules and to have their own customs and practices in their own market".[506] Professor Emily Reid, of the University of Southampton, noted that the Declaration "creates a kind of obligation upon Australia to respect and promote the rights, including those contained in the minimum age convention, which it has not ratified". She added that: "The declaration is weak, but it gets a set of rights potentially on the table, or at least into the landscape, that would not otherwise be there if the reference was simply to conventions".[507]

Forced labour, modern slavery and human trafficking

327. The Agreement includes provisions on forced labour, modern slavery and human trafficking, all of which go further than the equivalent provisions in the CPTPP. The Government has said that the modern slavery provisions are "world leading" and "go beyond existing precedent".[508]

328. It is notable that the Agreement makes explicit reference to the Parties striving to ensure that both public-sector and private-sector entities "take appropriate steps to prevent modern slavery in their supply chains" (Article 21.7.2). Among other things, this provision commits each Party to adopting or maintaining ("to the extent it considers appropriate") measures that "require responsible business conduct and supply chain transparency in respect of private sector entities operating in its territory, including regular public

504 For a detailed comparison of the UK-Australia Agreement with CPTPP, see Appendix 1 of this report.
505 Q92
506 Q96
507 Q96
508 Department for International Trade, *Explanatory Memorandum on the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, June 2022, para 4.56

reporting on steps taken" (Article 21.7.2 (b)). Professor Reid said that it was "striking […] that the parties commit to lengthy commitments as to what they will require of private parties", since most agreements "do not usually go to the level of the parties committing themselves to certain expectations of private actors within the state".[509]

329. However, Rosa Crawford described the enforcement mechanisms for the forced labour provisions as "very weak" because they are still subject to each "parties' own laws and regulations", meaning they do not amount to "a process whereby there could be penalties if modern slavery or human trafficking is found in supply chains, which is what trade unions want".[510]

330. Similarly, Professor Reid told the Committee that, while the Chapter contains lengthy provisions on modern slavery, they "do not really have very much in the way of teeth." She noted that "We see an international commitment being undertaken but questions are being asked as to whether or not one of the parties is reaching its own domestic standards", concluding the chapter "is good but it has its limitations".[511]

331. **We welcome the inclusion in the Agreement of provisions on forced labour, modern slavery and human trafficking, but note the limitations of those provisions—notably the fact that enforceable provisions do not extend to supply chains.**

509 Q97
510 Q97
511 Q97

15 Trade and Gender Equality

332. The Agreement includes a chapter on Trade and Gender Equality (Chapter 24). There are also gender-related clauses in various other chapters of the Agreement.

333. The Chapter recognises "the importance of advancing gender equality and women's economic empowerment across [the] Agreement" (Article 24.1.2), and both parties affirm their commitment to the *WTO Joint Ministerial Declaration of Trade and Women's Economic Empowerment* (Article 24.1.3). The chapter largely focuses on cooperation between the UK and Australia; the Parties commit to "undertake cooperation activities, as appropriate, that support women workers, business owners and entrepreneurs to access the full benefits and opportunities created by [the] Agreement" (Article 24.2.1).

334. The Parties also commit to establish "a Dialogue on Trade and Gender Equality" (Article 24.3.1). The Dialogue "may consider any matter that the Parties consider appropriate to advance gender equality and women's economic empowerment in the Parties' trade and investment relationship" (Article 24.3.2) and "shall report on the progress of its work to the Committee on Cooperation" (Article 24.3.4).

335. We asked Dr Silke Trommer, Senior Lecturer in Comparative Public Policy at the University of Manchester, about the significance of the Dialogue. She highlighted that the Agreement commits Parties to establish a "Dialogue" as opposed to a formal Committee. Dr Trommer noted that "other chapters in the agreement set up Committees" and that "gender chapters in other FTAs (notably Canada and Chile's gender chapters) set up Committees". Dr Trommer argued that "the choice of word 'dialogue' implies that this is a more informal type of intergovernmental cooperation". Furthermore, she added that there is a lack of clarity on how the Dialogue will operate or what its purpose is, and no requirement for the Dialogue to meet within a set timeframe or with any specified regularity.[512]

The explicit gender-related clauses in other chapters of the Agreement focus three themes: anti-discrimination, found in the Cross Border Trade in Services, Financial Services and Labour chapters;[513] diversity promotion, found in the Financial Services, Digital Trade, Government Procurement and Small and Medium-Sized Enterprises chapters;[514] and cooperation, found in the Labour, Government Procurement and Cooperation chapters.[515] These provisions are a mix of binding commitments and "best endeavours" language.

336. The Trade and Gender Equality chapter, and any matters arising under it, are not subject to dispute settlement provisions. The majority of the gender-related provisions in other chapters are subject to dispute settlement provisions, but several of the clauses are not legally binding.

337. **We welcome the Agreement's dedicated chapter on trade and gender equality. However, we note that: the chapter only establishes a "Dialogue", rather than a formal joint committee; there is no requirement for the Dialogue to meet within a set time or with any frequency; and there is no clarity on how it will operate, including its**

512 Dr Silke Trommer (AUS0040)
513 Article 8.8.3 (d), Article 9.11.6 (e), Article 21.8
514 Annex 9C.8.2, Article 14.21 (f)
515 Article 21.12.6(c), Article 27.2.2(b)

interactions with stakeholders. ***The Government must set out how it intends to address these issues under the terms of the Agreement and this must include specifying its intentions regarding the frequency of the Dialogue's meetings.***

16 Development

338. The Agreement includes a standalone chapter (Chapter 23) dedicated to development co-operation, which DIT noted is "the first ever […] within a bilateral FTA between two advanced economies".[516] There is considerable overlap between the Development chapter in the Agreement and the equivalent chapter in the CPTPP, but the provisions in the Agreement are less detailed than in the CPTPP.[517] Chapter 23 recognises the "value in undertaking joint development activities relating to trade and investment" and goes on to list a number of examples that these joint activities "may include" (Article 23.2). It also excludes its provisions from the scope of the Agreement's dispute settlement mechanism (Article 23.4).

339. Dr Trommer told us that the Chapter contained "no commitment towards any particular type of action", adding that, despite a stated desire to cooperate, it does not "make policymakers meet, discuss and take action". She also noted that the Chapter does not explicitly refer to existing cooperation mechanisms at the WTO, including Aid for Trade and the Integrated Framework.[518]

340. DIT's Impact Assessment considered the Agreement's potential contribution to preference erosion, which "occurs when preferential tariff rates to the UK market are extended to other countries, reducing the competitive advantage of exporting countries which already benefit from these preferential rates", something particularly important for developing countries. It found that "the risks of trade diversion from preference erosion from this agreement are not substantial", though. The Department concluded that the risk of trade diversion is most substantial for raw cane sugar, of which Australia is "a significant producer and exporter".[519] Referring to DIT's analysis, Traidcraft Exchange noted that preference erosion as a result of the Agreement is a particular risk for Belize, Guyana and Jamaica in relation to sugar, and for Botswana and Namibia regarding beef and fruit.[520] Dr Trommer also warned of the risk posed by the Agreement for developing countries, likewise citing the cane sugar and beef sectors.[521] Regarding cane sugar, however, Gerald Mason, Senior Vice President of Tate & Lyle Sugars, suggested that the risks of preference erosion are negligible, because traditional sugar exporters from African, Caribbean and Pacific (ACP) countries have already dramatically reduced or stopped altogether their exports to the UK. He said this was a result of the deregulation of the EU beet sugar market, which reduced the competitiveness of ACP sugar.[522] Mr Mason said that Caribbean producers are increasingly supplying more local markets.[523] He emphasised that ACP sugar producers, as well as being in decline and producing at high cost, "cannot meet the ethical and environmental standards that our market wants now"[524]—whereas Australian suppliers "produce to the highest ethical and environmental standards",[525]

516 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 23
517 For a detailed comparison of the UK-Australia Agreement with CPTPP, see Appendix 1 of this report.
518 Q104
519 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 34
520 Traidcraft Exchange (AUS0020) para 24
521 Q105
522 Qq232–237. See also Tate & Lyle Sugars (AUS0042) para 3.
523 Q249. See also Tate & Lyle Sugars (AUS0042) para 8.
524 Q248
525 Q224

which is what customers now want.[526] Mr Mason said that Tate & Lyle Sugars would continue buying about 15% of its sugar from ACP producers operating as smallholders, since they meet the criteria for sugar marketed under the Fairtrade designation.[527] Tate & Lyle Sugars suggested that sugar suppliers in developing countries could be helped to "achieve the highest ethical and environmental certifications through highly targeted programs" in relation to issues such as child labour.[528]

341. Chapter 23 provides that "Each Party may monitor and assess the role this Agreement plays in relation to development" (Article 23.2). DIT says it will do so, paying particular attention to changes in trade flows of raw cane sugar as well as several other goods, "particularly where they originate in smaller and less diversified developing countries".[529] Traidcraft Exchange, however, argued that "This is not sufficient without explicit thresholds and steps for action."[530] Moreover, the organisation thought that such thresholds and steps for action could have been included in a more comprehensive version of the development chapter.[531]

342. Had the Secretary of State attended to give evidence to us on 29 June, we would have asked her about the Government's approach to potential preference erosion resulting from the Agreement.

343. **We commend the Government for taking into account potential adverse effects on developing countries from preference erosion and its intention to monitor such effects. *However, it must also set thresholds for taking remedial action, and say what such action would involve.***

526 Q225
527 Q237. See also Tate & Lyle Sugars (AUS0042) para 14.
528 Tate & Lyle Sugars (AUS0042) para 13
529 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 34
530 Traidcraft Exchange (AUS0020) para 24
531 Traidcraft Exchange (AUS0020) para 23

17 Preventing market distortions

Competition policy and consumer protection

344. Chapter 17 of the Agreement outlines the Parties' commitments on competition policy and consumer protection, including maintaining competition laws designed to prevent anti-competitive practices. It also sets out the minimum standards of fairness for judgments under anti-competitive laws and requires the parties to ensure their domestic regimes allow redress to be sought from a court when a business or property has been harmed by violations of national competition law. In the UK, the Competition and Markets Authority (CMA), as the UK's competition regulator, engages the provisions of the Chapter. The Agreement requires the CMA to remain "operationally independent" and committed to enforcing domestic competition laws in a non-discriminatory and transparent way. (Articles 17.1–17.4)

345. On consumer protection, the Agreement requires the Parties to maintain legislation to guard against: misleadingly advertised or sold, or defective, goods; and services which are not delivered "with appropriate care or skill". There is scope, although not an obligation, for cooperation between the CMA and its Australian equivalent, the Australian Competition and Consumer Commission (ACCC), which the Agreement notes should only be conducted where it is compatible with Parties' law and important interests, and where there are available resources. (Article 17.5, Article 17.6)

346. The inclusion in FTAs of dedicated provisions in these areas was noted by Bill Kovacic, Non-Executive Director at the Competition and Markets Authority, as a growing trend which reflects "sound judgment" about their importance. He argued that such provisions increased both Parties' businesses confidence that each Party would fairly and effectively apply its laws, and discourage any impeding of markets through restraining competition policies, giving their consumers confidence "that they will be treated well, regardless of the origin of the firm that is providing goods and services".[532]

347. The chapter is similar, but not identical, to the competition policy chapter of the CPTPP. Mr Kovacic told us that "The divergences point in the direction of improvements", and highlighted three examples in Article 17.1: the requirement for the parties' competition laws to "address mergers with substantial anti-competitive effects" (Article 17.1.1(c)); the requirement to maintain an "operationally independent national competition authority" (Article 17.1.4), thus helping to strike the balance between accountability and autonomy; and the extension of the application of competition law to state owned enterprises (SOEs) (Article 17.1.5).[533]

348. While witnesses were impressed with the scope and strength of the Chapter, they also had thoughts on where the Government could go further still. Eduardo Pérez Motta, Former President of the International Competition Network, suggested that the application of a bespoke dispute resolution mechanism could be a "state of the art

532 Q140

533 Q143. For a detailed comparison of the UK-Australia Agreement with the CPTPP, see Appendix 1 of this report.

advance".[534] Mr Kovacic made two further suggestions for improvements: the instigation of a periodic assessment of the efficacy of the provisions in the Chapter; and a greater focus on information sharing "as a component of law enforcement and policy making".[535]

349. However, we note the consensus amongst witnesses that the Chapter demonstrates a progressive and effective initiative to further competition policy and consumer protection. Mr Kovacic told us he expected it to help the CMA and the ACCC to deepen their "culture of examination and reflection about existing [anti-competitive] policies" and help set a "level of experimentation and improvement [in excess of] each jurisdiction acting alone".[536] Mr Pérez Motta added that the Agreement improves on the CPTPP, which he called "one of the two most advanced agreements in the chapter of competition and consumer protection".[537]

Government procurement

350. Government procurement is addressed in Chapter 16 of the Agreement. The UK and Australia are both parties to the plurilateral Agreement on Government Procurement (GPA) at the WTO. While the provisions in the Chapter deviate textually from the GPA in some ways, as discussed below, most of the two texts' corresponding clauses are substantively similar or identical. Where market access commitments are the same, the Chapter therefore has the effect of reaffirming commitments under the GPA.

Textual divergences from the Agreement on Government Procurement

351. Professor Albert Sánchez-Graells, of the University of Bristol's Law School, noted several differences between the Agreement's procurement chapter and the GPA. He identified three articles as entirely new: Environmental, Social and Labour Considerations (Article 16.17); Ensuring Integrity in the Procurement Process (Article 16.18); and Facilitation of Participation by SMEs (Article 16.21). Several other divergences seemingly made consequential amendments to reflect the bilateral nature of the Agreement, or to make relatively minor changes.[538]

534 Q146
535 Q148
536 Qq141–142
537 Q144
538 Lord Grimstone to Baroness Hayter, 21 March 2022

National treatment and non-discrimination

Table 3: Comparison of an extract of the National Treatment and Non-Discrimination sections of the GPA and UK-Australia FTA

Text of the GPA (Article IV)	Text of the UK-Australia FTA (Article 16.4.1)
With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of **any other Party and to the suppliers of any other Party offering the goods or services of any Party**, treatment no less favourable than the treatment the Party, including its procuring entities, accords to: a) domestic goods, services and suppliers**;** **and** **b) goods, services and suppliers of any other Party**	With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of **the other Party** and to the suppliers of **the other Party**, treatment no less favourable than the treatment that the Party, including its procuring entities, accords to domestic goods, services, and suppliers.

Note: Textual differences are shown in bold.

Sources: Agreement on Government Procurement, UK-Australia Free Trade Agreement

352. Article 16.4.1 concerns national treatment and non-discrimination and deviates from the corresponding provision in the GPA (see Table 3). Professor Sánchez-Graells noted that the FTA's alteration of the GPA's national treatment clause "ostensibly seek[s] to remove the parts of the [clauses] that refer to domestically established suppliers offering goods of GPA parties other than the UK and Australia".[539] He said this could be interpreted literally—suggesting that either Parties' suppliers "are protected under the national treatment regime, even if they offer goods or services from third parties, whether those are GPA or not"—or systematically—suggesting implicitly "that suppliers are only protected as long as they offer UK or AUS goods or services".[540]

353. Professor Sánchez-Graells highlighted that deviation poses "significant legal uncertainty" in instances such as these where the FTA creates a regime which is more restrictive than that created by the GPA. He identified that, to avoid breaching their GPA obligations on national treatment, each Party "must refrain from any discrimination of UK/AUS suppliers offering goods or services originating anywhere in the 'GPA club'". He added that "the mere existence of the legal uncertainty resulting from such deviation is undesirable".[541]

354. While there is a concern that deviations from the GPA in the Agreement could cause complications for suppliers, Anne Petterd, Partner at Baker McKenzie, was dismissive of the idea that suppliers are guided by the texts of international agreements. She instead noted that, at least in instances where they are seeking remedial action, a greater concern is for how recourse can be obtained under Australian local law.[542]

539 Professor Albert Sánchez-Graells (AUS0036) para 15
540 Professor Albert Sánchez-Graells (AUS0036) paras 16–17
541 Professor Albert Sánchez-Graells (AUS0036) paras 18–20
542 Q154

Procurement by electronic means

355. Article 16.4 requires the UK and Australia to conduct covered procurement in relation to each other's suppliers using electronic means. This is a broadening of the two parties' commitments under the GPA (see Table 4), as well as Australia's obligations under its domestic Commonwealth Procurement Rules. The FTA additionally and explicitly extends the requirement to publish procurement notices electronically to entities at the sub-central level (Article 16.6.1). This is a requirement which is absent from the GPA.[543]

Table 4: Comparison of the Use of Electronic Means sections of the GPA and FTA

Text of the GPA (Article IV)	Text of the FTA (Article 16.4.4)
	When conducting covered procurement, a procuring entity shall use electronic means: **(a) for the publication of notices; and** **(b) to the widest extent practicable, for information exchange and communication, the publication of tender documentation in procurement procedures, and for the submission of tenders.**
When conducting covered procurement by electronic means, a procuring entity shall: a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access.	When conducting covered procurement by electronic means, a procuring entity shall: (a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and (b) **establish and** maintain mechanisms that ensure the integrity **of information provided by suppliers**, including requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access.

Note: Textual differences are shown in bold.

Sources: Agreement on Government Procurement, UK-Australia Free Trade Agreement

356. While witnesses welcomed the extension to sub-central entities of procurement by electronic notices, Ms Petterd noted that this was largely consistent with existing practice in Australia. She also noted the importance of enshrining established practice in rules, and argued that the absence of clear rules potentially puts foreign bidders at a disadvantage.[544]

357. The Government stated that Chapter 16 goes "significantly beyond" the baseline set by the GPA—as well as in terms of its market access commitments (see below)—and singled

543 World Trade Organization, Government Procurement Agreement
544 Q155

out, by way of illustration, the requirement to conduct procurement electronically.[545] It is clear that the Government Procurement chapter, when read in conjunction with the Digital Trade chapter, does contain several notable improvements on the GPA. This applies in particular to the coverage of the provisions on Conclusion of Contracts by Electronic Means (Article 14.5) and on Electronic Authentication and Electronic Trust Services (Article 14.6). Recognition of electronic signatures was in particular noted by Professor Sánchez-Graells as an important feature in determining the "practical relevance" of the procurement chapter.[546]

Alterations to market access schedules

358. Chapter 16 is accompanied by Annex 16A, which is split into two parts: the Schedule of Australia, and the Schedule of the United Kingdom. The schedules outline the commitments each Party has made to the other on: the entities covered by the Chapter's provisions; the thresholds at which those provisions are engaged; and any exceptions. Most of the commitments in the two schedules are identical to each party's corresponding commitments under the GPA.[547]

359. DIT has noted that the Agreement "gives UK firms guaranteed access to bid for an additional £10 billion worth of Australian public sector contracts per year".[548] The Impact Assessment outlined the methodology by which this figure was obtained,[549] but Professor Sánchez-Graells noted how difficult it is to quantify this figure, or to assess its accompanying analysis, in the absence of a "detailed or itemised impact assessment".[550]

360. Professor Sánchez-Graells noted that the availability to UK suppliers of contracts procured by the Australian Financial Security Authority (AFSA), a benefit highlighted by the Government,[551] is not entirely new, as AFSA procurement contacts are already available to UK suppliers under the provisions of the GPA.[552] The Agreement reclassifies AFSA from an 'other' entity to a central government entity, and thus lowers the threshold at which UK suppliers to AFSA can engage with the tendering process on non-discriminatory terms. However, while the suggestion that AFSA contracts are wholly new is misleading, the additional AFSA procurement now potentially available to UK suppliers is likely to be substantial, based on the figures available at AusTender.[553]

361. Professor Sánchez-Graells said that it is unclear exactly how well-placed UK suppliers are to take full advantage of the opportunities conferred by additions to, or reclassifications within, the market access schedules. He gave the example of "railroad concessions, where apparently Australia is planning to massively invest in future years". Given that 70% of

545 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 21
546 Q156
547 Divergences between Australia's market access commitments under Annex 16A and those under the GPA are set out in Annex 2 of this Report.
548 Department for International Trade, "UK and Australia sign world-class trade deal", 16 December 2021
549 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 21 (footnote 34)
550 Q157
551 Department for International Trade, UK-Australia Free Trade Agreement: Benefits for the UK, December 2021, p 15
552 Q156
553 AusTender, Contracts by Threshold, accessed 22 April 2022

such concessions in the UK itself are "operated by groups of a foreign ownership", he wondered "how much capacity there is in the industry in the UK to go and tender for those opportunities in Australia".[554]

362. Similarly, the Scottish Government noted that, while companies trading with Australia would be likely to see benefits, "the size of the Australian market and geographical distance are likely to be limiting factors".[555] However, techUK stated that there would be "great access to government procurement contracts, at federal, state and territory level",[556] perhaps demonstrating the comparative ease with which service providers will be able to take advantage of procurement opportunities in contrast to those exporting goods.

363. Understanding exactly how, during negotiations, each additional entity's inclusion on the Schedule of Australia was identified as a benefit for the UK would help more easily determine the significance of the Agreement's procurement opportunities. It would also help explain the inclusion of entities such as the Asbestos Safety and Eradication Agency, the Climate Change Authority, and the Parliamentary Budget Office. According to AusTender, none of these three listed entities procured any goods or services in the five most recent financial years which would be classed as covered procurement under the Agreement.[557] The schedule also includes the Australian National Preventative Health Agency, which, as far as we can tell, does not exist. A similarly-named Australian National Preventive Health Agency effectively ceased to operate in 2014, and nothing has been procured in its name since.[558]

364. Had the Secretary of State attended to give evidence to us on 29 June, we would have asked her about the Government's approach to seeking access to particular Australian public bodies under the Agreement's government procurement provisions.

365. **The Government has rightly highlighted the potential procurement opportunities that some new (or reclassified) entities offer to UK suppliers under the Agreement.** ***The Government must publish its assessment of each procuring entity under the Agreement, to help UK suppliers assess the procurement opportunities presented; and it must commit to publishing equivalent details alongside all future trade agreements.***

Implementation through primary legislation

366. The Government Procurement Chapter is the only part of the Agreement which requires the passage of primary legislation in the UK before it can take effect. On 11 May 2022, the Government introduced the Trade (Australia and New Zealand) Bill to give effect to the Chapter's provisions, and their equivalents in the UK-New Zealand FTA.[559] We include some limited initial thoughts on the Bill here. Though we did not have time to seek in-depth evidence on this, we are grateful to Professor Sánchez-Graells for quickly providing some advice.

554 Q156
555 Scottish Government (AUS0025) para 3
556 techUK (AUS0029) para 15
557 Our analysis of the procurement figures for each of these entities excludes procurement for research programmes, as under Annex 16A (Schedule of Australia) Section E. The Climate Change Authority is not recorded as procuring any goods or services in financial years 2016/17, or 2017/18.
558 AusTender, Contracts by Threshold, accessed 22 April 2022
559 Trade (Australia and New Zealand) Bill [Bill 9 (2022–23)]

367. The Explanatory Notes make clear that the Bill is transitionary: upon enactment, it will give legal effect to the procurement provisions in the Australia and New Zealand agreements before being repealed and superseded by a Procurement Act. The House of Commons Library notes that successive Governments have ensured the UK's domestic laws are in line with its treaty obligations prior to ratification.[560] Giving legal effect to the procurement Chapter through the dedicated Trade (Australia and New Zealand) Bill, rather than as part of a Procurement Bill passed later this Session, therefore ensures the Agreement can be ratified at the earliest opportunity.[561]

368. The Bill, as introduced, allows the Government or a Devolved Administration to make regulations to either "implement the government procurement chapters" of the Australia and New Zealand Agreements, or to address "matters arising out of, or related to, those Chapters".[562] Regulations made by statutory instrument under these provisions are subject to the negative procedure, and may be made prior to ratification of the FTAs with Australia and New Zealand.[563] The Government outlines a number of instances where it expects to use these powers.

369. First, the Explanatory Notes state that the Bill, once enacted, would allow secondary legislation to be made to "extend the duties owed by contracting authorities, and remedies available in [existing secondary] legislation to the suppliers of the relevant countries".[564] It is not explicitly stated how this change will manifest itself, but Professor Sánchez-Graells suggested that it would be a case of adding the Australia and New Zealand FTAs to the list in Schedule 4A of the Public Contracts Regulations 2015 to ensure the extension of the UK's procurement obligations to suppliers of those countries.[565]

370. Second, regulations under Clause 1 may be used to amend rules relating to "(i) unknown contract values, (ii) notices advertising procurements, and (iii) termination of awarded contracts."[566]

i) **Unknown contract values:** The Chapter notes that the estimate of the total value of the procurement over the course of its lifetime will be used to determine whether it should be classed as 'covered procurement'. A procurement for which the lifetime value is unknown is automatically deemed to be 'covered procurement' unless it is otherwise exempt (Article 16.2). This is more generous than the existing provision under the Public Contracts Regulations 2015, which multiplies the monthly value of a contract by 48 to estimate the total contract value. The regulations therefore require amendment through statutory instruments made under the Bill, once enacted.[567]

560 *How Parliament treats treaties*, Briefing Paper 9247, House of Commons Library, June 2021, p 18
561 Explanatory Notes to the Trade (Australia and New Zealand) Bill [Bill 9 (2022–23) –EN], pp 4–5
562 Trade (Australia and New Zealand) Bill, Clause 1 (1) [Bill 9 (2022–23)]
563 Trade (Australia and New Zealand) Bill, Schedules 2–3 [Bill 9 (2022–23)]
564 Explanatory Notes to the Trade (Australia and New Zealand) Bill [Bill 9 (2022–23) –EN], pp 4–5
565 Professor Sánchez-Graells (AUS0043) para 4
566 Explanatory Notes to the Trade (Australia and New Zealand) Bill [Bill 9 (2022–23) –EN], p 8
567 The Public Contracts Regulations 2015, regs. 6(17)(b); Professor Sánchez-Graells (AUS0043)

ii) **Notices advertising procurements:** Article 16.6 of the Agreement details requirements for procurement notices which, in the event of deviations from the UK's current procurement regulations, could be given legal effect through regulations made under the Bill, once enacted.[568]

iii) **Termination of awarded contracts:** Professor Sánchez-Graells noted that the need to make regulations to amend existing secondary legislation on the termination of awarded contracts, as outlined in the Explanatory Notes, was "a little puzzling, as the [Australia and New Zealand] FTAs do not contain explicit rules on contract termination", although he speculated that there may be a need to broaden the existing statutory grounds for termination.[569]

371. Third, in the event of a change in the name or website name of a procuring entity, or a machinery of government change, the Agreement allows a party to accordingly rectify its market access schedule, following the provision of notice to the other party. In other circumstances, where a modification to the market access schedule constitutes a more substantial change, the Agreement sets out procedures on compensatory measures and objections from the other party (Article 16.20). Clause 1, Article 1(a) of the Trade (Australia and New Zealand) Bill gives legal effect to any modifications and rectifications made between ratification of the Agreement and enactment of the expected Procurement Bill.[570]

372. Finally, Clause 1, Article 1(b) of the Bill allows (although does not oblige) changes made to the UK's domestic procurement law under the Bill, once enacted, to be extended to include suppliers under any agreement.[571] Where the provisions in the agreement with Australia are more generous than those legally accorded to the suppliers of non-parties, no legal conflict results.[572]

373. **The Trade (Australia and New Zealand) Bill was introduced to the House towards the end of our inquiry. Consequently, we have not considered its provisions in great depth. However, our initial assessment of the Bill has left us satisfied that its content and provisions are necessary and proportionate. We emphasise that, for primary implementing legislation required by a free trade agreement, a degree of advanced notice under embargo would help us to scrutinise it alongside the agreement. Such advanced notice would be especially helpful where implementing legislation entails substantial changes to UK domestic law.**

374. The Explanatory Notes to the Trade (Australia and New Zealand) Bill do not include an explanation of the Secretary of State's statement,[573] under section 19(1)(a) of the Human Rights Act 1998,[574] on compatibility with the European Convention on Human Rights. The Government has undertaken, in Cabinet Office guidance, to give such an explanation

568 Professor Sánchez-Graells (AUS0043)
569 Professor Sánchez-Graells (AUS0043)
570 Explanatory Notes to the Trade (Australia and New Zealand) Bill [Bill 9 (2022–23) –EN], p 8
571 Explanatory Notes to the Trade (Australia and New Zealand) Bill [Bill 9 (2022–23) –EN], p 8; Professor Sánchez-Graells (AUS0043)
572 Professor Sánchez-Graells (AUS0043)
573 Explanatory Notes to the Trade (Australia and New Zealand) Bill [Bill 9 (2022–23) –EN], para 46
574 Human Rights Act 1998

in Explanatory Notes on legislation.[575] ***We ask the Government to revise the Explanatory Notes to the Trade (Australia and New Zealand) Bill to include an explanation for the statement of compatibility with the European Convention on Human Rights.***

State-owned enterprises

375. The Agreement replicates almost verbatim the dedicated state-owned enterprises (SOEs) chapter and associated annexes in the CPTPP. The Agreement's SOE provisions differ from the CPTPP's only in that the former include: carve outs for audio-visual services (Article 18.2.7(b))[576] and any activity supporting indigenous people (Article 18.2.8); and a weak commitment by the Parties to cooperate "where appropriate" on SOE regulation in international fora, particularly the WTO and OECD (Article 18.11.2(a)).[577]

376. The main effect of this Chapter is to prevent SOEs and designated monopolies discriminating against the other Party's companies when they buy or sell goods and services, and to require these decisions to be based on commercial considerations (Article 18.4). It also restricts non-commercial assistance that can be shown to give SOEs an unfair advantage if it harms the other Party's domestic industry (Article 18.6).

377. However, the Chapter contains extensive exceptions and carve-outs. SOEs may disregard the requirement to act purely on commercial considerations (Article 18.4.1(a)) provided this does not treat foreign-owned businesses in its territory less favourably than domestically-owned firms (Article 18.4.1(c)(ii)). (In effect an Australian SOE could choose not to buy UK imports for political reasons, but would have to treat the Australian subsidiary of a British company the same as any other local business.) SOEs may also disregard these requirements in an (undefined) economic emergency (Article 18.13.1(a)) or to provide financial services to support imports, exports, or investments outside their home market, provided they do not replace or offer more favourable terms than commercial financial services (Article 18.13.2).

378. SOEs not owned by the central government (for example Powerlink Queensland in Australia or Scottish Water in the UK) are not covered by most of the provisions of the Agreement. These exceptions are in line with Australia's reservations in the CPTPP, with the UK having adopted the same (Annex 18-D (a)). The Agreement commits the UK and Australia to further negotiations within five years on extending the its provisions to cover them but with no further requirements or objectives (Annex 18-C(a)).

379. The Agreement also includes provisions to increase transparency, including requiring the parties to provide information on their SOEs and their activities (Article 18.10). It also specifies that UK and Australian courts and regulatory bodies will not grant special treatment to SOEs from the UK, Australia or any other country (Article 18.5)—the Agreement emphasises elsewhere that this includes not granting any exceptions to SOEs in the application of competition law (Article 17.1.2), a provision that Bill Kovavic told us was "a useful additional provision".[578]

575 Cabinet Office, "Guide to Making Legislation", 2022. See, in particular, para 10.95 and Chapter 11.

576 The Agreement also includes carve outs for the audio-visual sector in respect of: trade in services, including sector-specific provisions on telecoms (see Chapter 7 of this report); digital trade (see Chapter 9 of this report); and investment (see Chapter 11 of this report).

577 For a detailed comparison of the UK-Australia Agreement with CPTPP, see Appendix 1 of this report.

578 Q143

18 Small and Medium-sized Enterprises

380. The Agreement sets out the Parties' intention to help small and medium-sized enterprises (SMEs)[579] take advantage of its provisions. As with SME chapters in similar trade agreements, it is excluded from the dispute settlement mechanism (Article 19.6). Trade facilitation measures elsewhere in the Agreement are also expected to assist SMEs.[580]

381. The Chapter contains only two firm commitments. First, the parties will both establish a website containing the text and a summary of the Agreement as well as information for SMEs (Article 19.2.1). As this commitment is very similar to the provisions under the CPTPP, Australia's website is already live,[581] although the UK-Australia Agreement includes an additional commitment that will require it to add a link to an electronically searchable database of customs duties, tariff rate quotas and rules of origin (Article 19.2.4).

382. The second commitment is that each Party will establish a contact point between themselves to facilitate communication and information sharing on matters related to SMEs (Article 19.3).

383. The Agreement suggests activities the parties "may undertake" to strengthen cooperation on SMEs (Article 19.4). These are very close to the responsibilities of the Committee on SMEs established under the CPTPP, with the addition of identifying non-tariff barriers to trade (Article 19.4.2(d)) and exchanging information on SME participation in digital trade (Article 19.4.2(e)).[582]

384. The FSB told us that over 50% of its members found non-tariff barriers played a role in their decision of where to do business, compared to 29% for tariffs. It stated that "overall the FTA has the potential to make an important difference to UK SMEs that trade or are considering trading with Australia" but regretted the fact that the Agreement does not create a dedicated SME Committee as the CPTPP does. It said that this would have ensured that SMEs benefit from the implementation of the Agreement, which it regards as crucial to the Agreement's success.[583]

579 In the Good Regulatory Practice chapter of the agreement, SME is defined to mean "small and micro businesses" but this definition is limited to that chapter (Article 26.5 Footnote 2).

580 Federation of Small Businesses (AUS0031)

581 Australian Government, Department of Foreign Affairs and Trade, "Small and Medium-sized Enterprises and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)", accessed 3 June 2022

582 For a detailed comparison of the UK-Australia Agreement with CPTPP, see Appendix 1 of this report.

583 Federation of Small Businesses (AUS0031)

19 Good Regulatory Practices

385. Chapter 26 of the Agreement concerns good regulatory practices in the design and implementation of regulatory measures, which for the UK are defined as legislation "related to any matter covered by [the] Agreement and in relation to a business activity", excluding taxation, grants given by public authorities, and anything connected with public sector procurement (Article 26.1).

386. The Chapter applies insofar as it is consistent with the regulatory provisions of other Chapters in the Agreement; where provisions in other Chapters are inconsistent with the provisions of Chapter 26, the provisions in the other Chapters prevail (Article 26.12). Provisions in the Chapter are not subject to the dispute settlement process (Article 26.13).

387. The Chapter seeks to "promote good regulatory practices" as a means to enhance "bilateral trade and investment, as well as economic growth and employment" (Article 26.2). It details the effective review processes, consultation arrangements, and accompanying impact assessments which are desirable within the legislative process, and promotes a transparent and accessible regulatory environment (Articles 26.3–26.9). The Chapter also sets out the regulatory cooperation arrangements between Australia and the UK (Articles 26.10–26.11).

388. The Chapter creates binding commitments on the parties to establish points of contact (Article 26.11) and to cooperate to facilitate implementation of the Chapter (Article 26.10). Each party "shall endeavour" to fulfil the aims of other Articles but is under no binding obligation.

389. The Articles, and their status as binding commitments or best endeavours, closely follow those in the CPTPP. There are some additional measures found in the Agreement with Australia: a commitment to public consultation (Article 26.6); and a commitment to an online regulatory register (Article 26.8). However, the Agreement's provisions on a coordination and review process (Article 26.3) are less developed, there is no requirement on advance notification of regulation under its impact assessment provisions (Article 26.5), and retrospective review of regulatory measures only applies to "major regulatory measures" (Article 26.9). In addition, while the CPTPP establishes a Committee on Regulatory Coherence, to which the Parties have to notify their implementation of the Chapter, there is no equivalent body established under the Agreement with Australia.[584]

584 For a detailed comparison of the UK-Australia Agreement with CPTPP, see Appendix 1 of this report.

20 Transparency and anti-corruption

390. The Agreement's transparency provisions in Chapter 28 require that all matters related to the Agreement—including laws, regulations, procedures and administrative rulings—shall be made publicly available (Article 28.2) and shall be administered consistently, impartially and reasonably (Article 28.3). This also includes maintaining impartial and independent tribunals or procedures for "prompt review and, if warranted, correction of a final administrative action with respect to any matter covered by this Agreement." (Article 28.4)

391. The second part of the chapter deals with anti-corruption measures. In Article 28.8, both Parties affirm their "resolve to prevent and combat bribery" and recognise "importance of regional and multilateral initiatives to prevent and combat bribery and corruption in matters affecting international trade or investment". These include the United Nations, the OECD, the WTO, the Financial Action Task Force and the G20. The Parties also "affirm their adherence" to the Anti-Bribery Convention and the United Nations' Convention Against Corruption.

392. Chapter 30—on Dispute Settlement—applies to this Chapter, except for Article 28.13 (Application and Enforcement of Measures to Prevent and Combat Bribery and Corruption).

21 Implementation and governance

Ongoing implementation of the Agreement

393. The UK-Australia agreement, once in force, is not a static agreement. It will require ongoing implementation steps and may be amended over time.

The Joint Committee

394. The Agreement establishes a Joint Committee, composed of representatives of the UK and Australia at the level of Ministers or senior officials (Article 29.1). The Joint Committee is tasked with considering any matters relating to the implementation or operation of the Agreement. This includes overseeing the work of all committees and working groups established by the Agreement. The Joint Committee may also issue interpretations of the Agreement, which will then bind dispute settlement panels.

Amending the Agreement

395. The Agreement confirms that the UK and Australia may agree amendments to the Agreement, which will enter into force after the necessary domestic steps have been completed (Article 32.2). The Government's Explanatory Memorandum clarifies that this process would engage the parliamentary scrutiny process set out in CRaG.[585]

396. In addition, the Agreement provides for a simpler mechanism to make amendments in specified instances, where the Joint Committee (that is, both the UK and Australia) agrees (Article 29.2). This approach is available to amend: i) the tariff commitment schedules, provided the amendment accelerates tariff elimination; ii) product specific rule of origin requirements; and iii) the Agreement's Schedules on government procurement. Where this mechanism is used, the amendments will enter into force following the exchange of diplomatic notes between the Parties. The Government's Explanatory Memorandum makes no suggestion that the parliamentary scrutiny process under CRaG would be engaged for any such amendments.

397. Had the Secretary of State attended to give evidence to us on 29 June, we would have asked her about the Government's approach to measuring the effectiveness of joint bodies established under the Agreement—and how wider scrutiny of those bodies will be enabled. We would also have asked about the implementation of provisions in the Agreement where the Parties undertake to use their best endeavours to do something or commit themselves to cooperate in some respect. In addition, we would have asked about the potential for the Agreement to be amended through the Joint Committee in some circumstances without engaging formal parliamentary scrutiny in the UK.

398. ***We ask the Government to confirm how Parliament will, in a timely manner, be made aware of, and be engaged in, the UK's consideration of proposed amendments to the Agreement by the Joint Committee. The Government should also inform us how it will engage Parliament in the wider body of work undertaken by the Joint Committee and other bodies established under the Agreement.***

585 Department for International Trade, *Explanatory Memorandum on the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, June 2022, para 4.3

Dispute resolution

399. Chapter 30 of the FTA sets out the Agreement's main dispute settlement provisions, which apply to all disputes regarding the interpretation or application of the Agreement—unless otherwise provided in the text (Article 30.4). In the event of a dispute, the provisions allow for (but do not require) consultation between the UK and Australia in advance of the establishment of a formal dispute settlement panel. The FTA's dispute settlement provisions are not exclusive: if an alternative forum is available, under a different international agreement, in which to seek to resolve the dispute, either Party may elect to use it.

400. If the UK or Australia is found by the panel not to have complied with the FTA's requirements, they will be required to comply with the findings of the panel's final report (Article 30.14). The FTA allows for use of temporary remedies, which may include suspending concessions under the Agreement, if either party does not comply with the final report (Article 30.16).

401. As noted in the preceding chapters of this report, the FTA's dispute settlement provisions do not apply consistently across the whole Agreement. Some of the FTA's chapters are not subject to the dispute settlement provisions,[586] while other FTA chapters are subject to a modified version of the main dispute settlement provisions.[587]

402. ***We ask the Government to explain why there are such different approaches to the availability of dispute resolution mechanisms across the Agreement. We also ask the Government to explain how Parliament will be kept informed when a dispute under the Agreement leads to a dispute resolution mechanism being triggered.***

Interaction with the Protocol on Ireland / Northern Ireland

Overview

403. While the FTA applies to the United Kingdom of Great Britain and Northern Ireland, it also makes clear that it may in some respects apply differently in Northern Ireland than in the rest of the UK (Article 1.2.3). This is because the UK / EU Withdrawal Agreement, setting out the terms of the UK's exit from the EU, includes a Protocol on Ireland / Northern Ireland (the Protocol) which establishes special arrangements for the trade in goods between Northern Ireland and countries outside the EU (including the UK).[588] The FTA makes clear that it should not stand in the way of implementing the UK's obligations under the Protocol.

586 These are: SPS measures, Animal Welfare and Antimicrobial Resistance, TBT (see Chapter 3 of this report), Competition Policy and Consumer Protection, SMEs, Good Regulatory Practice, Development, Trade and Gender Equality, Innovation and Cooperation. Decisions under parties' foreign investment screening frameworks and the substantive provisions of the Trade Remedies chapter are also not subject to the dispute settlement provisions.

587 This applies to Chapter 22 (Environment), Chapter 9 (Financial Services), Chapter 21 (Labour) and Chapter 28 (Transparency and Anti-Corruption).

588 The Protocol forms part of the 2019 UK / EU Withdrawal Agreement. Analysis of the impact of the Protocol in this report is based on the existing text of the Protocol as agreed by the UK and EU in October 2019. The situation described may change as a result of the Northern Ireland Protocol Bill [Bill 12—EN (2022–23)], which is now before Parliament.

404. Under the Protocol, Northern Ireland remains bound by EU laws relating to the EU's single market and customs union when trading in goods, and so must comply with specified EU customs and trade-related laws. This may reduce the benefits that can be derived from the UK's FTA by importers in Northern Ireland as compared with those in Great Britain and create an extra layer of uncertainty for businesses in Northern Ireland. Much may depend on where a trader is in the supply chain (as a producer or an importer).

405. For example, a business in Northern Ireland may have to pay a higher EU tariff to import goods from Australia rather than a lower (or zero) UK tariff for businesses in Great Britain. This could be helpful for producers in Northern Ireland but costly for consumers. Goods imported into Northern Ireland have to meet EU animal welfare standards, potentially reducing opportunities for non-EU produce and segmenting the UK's domestic market. The real-world implications of the ways in which this FTA (and others concluded by the UK) affect producers, importers and consumers in Northern Ireland and in the rest of the UK will be experienced differently by different actors and are only likely fully to emerge as the FTA is implemented; they will require careful monitoring.

406. Written evidence from the Northern Ireland Department for the Economy stated that the interactions between the UK's FTAs and the Protocol's obligations are complex and create two particular areas of uncertainty: "the extent to which NI importers and consumers can access the full range of goods covered by the agreement, and […] the effect on the competitiveness of NI suppliers within the UK".[589]

407. This section of the report provides a brief overview of the provisions of the Protocol that impact the UK's FTAs including the UK-Australia FTA. It then considers three areas (tariffs, trade defence measures, and regulatory standards) which illustrate the complex interactions between these two agreements.

Relevant requirements established by the Protocol

408. The Protocol makes clear that Northern Ireland is part of the UK's customs territory and may benefit from trade agreements concluded by the UK with non-EU third countries, subject to the important proviso (reflected in Article 1.2.3 of the Australia FTA) that these arrangements "do not prejudice the application of the Protocol".[590] Equally, EU customs laws (including EU tariffs) and specified EU laws relating to the regulation and movement of goods, continue to apply in Northern Ireland. These include EU trade remedies (such as anti-dumping measures) and EU laws relating to the environment, food safety and animal welfare.

409. In addition, Northern Ireland is bound by obligations stemming from the EU's agreements with third countries insofar as they relate to trade in goods. So, for example, provisions in an FTA between the EU and a third country allowing simplified rules of origin procedures would apply to imports to Northern Ireland from that third country, even if the UK also had an FTA with the same country with different rules of origin provisions.[591]

589 Northern Ireland Department for the Economy (AUS0030) para 23

590 Ireland / Northern Ireland Protocol, Article 4

591 While there is currently no EU free trade agreement with Australia, negotiations have been underway since June 2018 but were put on hold in 2021 when Australia cancelled a deal with France to build a fleet of conventional submarines and announced a trilateral security partnership with the US and UK.

Tariffs and the Protocol

Exporting goods from Northern Ireland

410. Goods produced in Northern Ireland and exported to Australia will enjoy the same preferential market access under the UK's FTA with Australia as goods produced in the rest of the UK, provided they meet the rules of origin requirements set out in the Agreement. For these purposes, local Northern Ireland content will count as UK content.

Importing goods into Northern Ireland

411. EU customs rules apply in Northern Ireland and EU customs duties or tariffs will apply to goods brought into Northern Ireland which are considered "at risk of subsequently being moved into the [European] Union".[592] UK customs duties or tariffs will only apply to goods which are considered not to be at risk of onward movement to the EU. The aim of these provisions is to ensure that Northern Ireland is not used as a backdoor for goods to enter the EU's single market without paying the EU's tariffs (or complying with the EU's regulatory requirements, considered further below).

412. The criteria for determining whether a good is or is not "at risk" are set out in a Decision agreed by the EU and the UK in December 2020.[593] Under this Decision, goods imported directly into Northern Ireland from Australia will pay the EU tariff in either of the following circumstances:

a) the EU tariff applicable to those goods under the EU's Common Customs Tariff (or under any future EU FTA with Australia) is higher than the applicable UK tariff; or

b) the importer is a 'trusted' trader authorised under the UK Trade Scheme[594] importing the goods for use or consumption in Northern Ireland and the difference between the applicable EU and UK tariff for the goods is 3% or more of their customs value.

413. In practice, EU tariffs are likely to be higher and more goods considered to be at risk of entering the EU market where the UK has concluded a zero-tariff, zero-quota deal or one with phased tariff reductions with a country, such as Australia, with whom the EU does not have a comparable trade deal. Whether the UK or EU tariff applies to goods imported directly into Northern Ireland from Australia will vary from product to product—it will be necessary in each case to compare the tariffs applicable under the terms of the UK's FTA and (for as long as the EU does not have a similar agreement with Australia) under the EU's Common Customs Tariff.

414. By way of example, if Australian honey is imported directly into Northern Ireland, it is likely to pay the EU tariff (of 17.3%) rather than the UK tariff (zero-rated when the FTA enters into force), unless the EU agrees with Australia to reduce its tariffs on honey imports.

592 Ireland / Northern Ireland Protocol, Article 5

593 See Decision No 4/2020 of the EU/UK Withdrawal Agreement Joint Committee on the determination of goods not at risk.

594 HM Revenue and Customs, "Apply for authorisation for the UK Trader Scheme if you bring goods into Northern Ireland"

Risks and benefits for Northern Ireland producers

415. The operation of the Protocol may mean that Northern Ireland's domestic market is better protected against cheaper produce shipped directly from Australia than the rest of the UK's domestic market as, in many cases, a higher EU tariff will apply. It may nonetheless pose a risk to Northern Ireland producers in their own domestic (NI) market. This is because a higher EU tariff would not apply to Australian produce brought into Northern Ireland via Great Britain, provided the trader concerned participates in the UK Trader Scheme and can demonstrate that the produce is for final sale or use in Northern Ireland. Whether there are benefits for consumers in Northern Ireland will therefore depend on the status of the traders bringing Australian goods to the market and their capacity to fulfil the requirements of the UK Trader Scheme.

416. There may also be a risk to Northern Ireland producers who supply the Great Britain market. Article 6 of the Protocol says that there should be unfettered market access for goods (including agricultural produce) moving from Northern Ireland to the rest of the UK. However, a zero-tariff, zero-quota deal or one with phased tariff reductions puts producers in Northern Ireland (over time) on the same footing as Australian producers, without the same benefits that may flow from greater economies of scale or cost savings from different methods of production. The increased availability of cheaper Australian produce in Great Britain's market could result in a reduced market share for NI producers.

Tariff rate quotas

417. Under EU law,[595] any TRQs granted by the EU to a third country are not available for goods brought into Northern Ireland from that country. In principle, Northern Ireland should be able to benefit from any TRQs granted by the UK to Australian producers under the Australia FTA but, for the reasons set out above, it will be necessary in each case to apply the "at risk" criteria. Often, the EU tariff will apply since it is likely to be higher than the applicable UK tariff under the Australia FTA, though this may well change if the EU concludes a similar trade deal with Australia.

418. In practice, therefore, using the example of beef meat: existing EU tariffs on Australian imports are higher than the UK tariffs that will apply within the TRQs when the FTA comes into force. While these remain the applicable EU tariffs (in the absence of an EU-Australia FTA):

- if there is remaining capacity in the UK's TRQ, EU tariffs will be higher than UK tariffs, meaning that the EU tariff is likely to apply to imports to Northern Ireland; however
- if there is no remaining capacity in the UK's TRQ, EU tariffs are likely to be similar to UK tariffs, meaning UK tariffs may apply to imports to Northern Ireland.

419. If, as the UK has done, the EU agrees an FTA with Australia that phases out tariffs over time using TRQs, these lower-tariff TRQs would not be available to Northern Ireland

595 Regulation (EU) 2020/2170 on the application of EU Tariff Rate Quotas and other import quotas

importers. Accordingly, the situation for those importers would remain as above—where the UK TRQ was not yet fully utilized, it is likely that EU tariffs would apply, but Northern Ireland importers would not be able to access the lower-tariff EU TRQ.

420. **The interaction of the Agreement with the Ireland / Northern Ireland Protocol is complicated and opaque.** ***We ask the Government to clarify what it is doing, and how it is engaging with Northern Ireland stakeholders (including the Northern Ireland Executive and Northern Ireland importers), to ensure that sufficient support is available to help those impacted by these provisions to navigate this complex situation.***

Trade defence measures

421. Under the Protocol, EU trade defence laws continue to apply to Northern Ireland.[596] It is unclear whether trade defence measures taken by the UK under the FTA, to protect the UK's domestic market or specific producer interests, would apply in Northern Ireland. They could not apply to the extent that they conflicted with measures taken by the EU which apply in Northern Ireland under the Protocol. The position remains uncertain if there are no conflicting or inconsistent EU measures. UK measures might be considered to prejudice the application of the Protocol if given effect to in Northern Ireland, as they relate to an area that is governed for Northern Ireland by "obligations" which flow from the EU's trade policy and agreements with third countries.

422. ***The Government must state what its understanding is regarding whether UK trade defence measures can apply in Northern Ireland if there are no equivalent EU trade defence measures in place.***

Regulatory alignment and divergence: environment and agriculture

423. EU laws that relate to the regulation of the environment, food safety and animal welfare, and associated official controls, continue to apply in Northern Ireland under the Northern Ireland Protocol. These EU laws apply as amended over time ('dynamic alignment'). For example, EU SPS (sanitary and phytosanitary) measures, which may affect the importation of Australian agricultural products, will continue to apply in Northern Ireland. This remains the case even if the regulatory approach is changed in the rest of the UK to adapt to trade realities (for example, by changing the standards or the production processes which a product must meet). Northern Ireland would not be able to make corresponding changes.

424. Written evidence from the Northern Ireland Department for the Economy states that: "the extent to which NI importers / consumers will be able to access goods under the terms of the UK-Australia FTA is limited to the extent to which product standards and regulations are aligned with, and in scope of, the Ireland/Northern Ireland Protocol".[597]

425. The mechanics of the FTA mean that it could work to widen changes in regulation over time. The Environment Working Group set up under the FTA is authorised to consider and seek to address issues relating to the trade in environmental goods and services, including those that are potential non-tariff barriers (Article 22.6). If the Environment Working Group were to consider, for example, the approach to energy labelling for certain goods in

596 The Agreement's trade defence provisions are discussed in Chapter 6 of this report.
597 Northern Ireland Department for the Economy (AUS0030) para 1

the UK and Australia, then, because Northern Ireland is currently bound by relevant EU law in this matter (by virtue of the Protocol), any steps to address a barrier to trade that conflicted with applicable EU law would not apply to imports to Northern Ireland.

426. ***We ask the Government to explain: i) how it will inform and involve Parliament and the Northern Ireland Executive when differences in regulations operating in Northern Ireland and the rest of the UK mean that the Agreement will operate differently, with regard to imports, in these areas; and ii) what mechanisms will be used to minimise disruption to trade across the UK as a result of such differences.***

Impact Assessment

427. The Impact Assessment does not seek to account for the different impacts of the FTA in Northern Ireland.[598]

598 This point is considered in Chapter 22 of this report.

22 Impact Assessment

428. FTA Impact Assessments are intended to "provide Parliament and the public with a comprehensive assessment of the potential long run impacts of the negotiated agreement."[599] They are produced by DIT and scrutinised by the Regulatory Policy Committee (RPC). The Impact Assessment for the UK-Australia Agreement states that it sets out an "assessment of the economic, social and environmental impacts of the agreement".[600] The assessment largely rests upon economic modelling; the main model utilised is a Computable General Equilibrium (CGE) Model.

429. Overall, the evidence we received suggested that the economic modelling utilised in the Impact Assessment is sound. Joe Francois, Professor of International Economics at the University of Bern, agreed that a "CGE model is about as good as it is going to get for the purpose of assessing" the impacts of an FTA,[601] and UKTPO stated that the "quantitative modelling appears sensibly done".[602] However, evidence also outlined several areas for improvement of the economic model and of DIT's communication and presentation of the model.

Modelling

Qualitative forms of evidence

430. The CGE model in the Impact Assessment uses a data baseline formulated from the GTAP10 dataset from 2014, with key updates to account for changes in the UK and Australia's trading relationships.[603] Non-tariff measure inputs for goods and services were estimated using a "gravity model", which also utilises data from the GTAP database from 2004, 2007, 2011 and 2014.[604]

431. DIT's Expert Panel Modelling Review found that the Impact Assessment's "CGE modelling relies almost exclusively on "econometric estimates of key economic relationships (elasticities) and trade costs (including non-tariff barriers)", and recommended that DIT develop its evidence base.[605] We heard from Professor Tony Venables, the Chair of the Expert Panel, that it would be beneficial for DIT to complement its modelling with qualitative forms of evidence, such as in-depth case studies and engagement with stakeholders and sector experts. Professor Venables told us that qualitative evidence is "enormously valuable", particularly in "sectors that are difficult to model […] such as foreign direct investment, innovation and services".[606] He explained that qualitative evidence helps to "build a model of a particular sector in detail" while removing "some

599 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 10
600 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 4
601 Oral evidence taken on 23 March 2022, HC (2021–22) 127, Q394
602 UK Trade Policy Observatory (AUS0028) para 1
603 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 26
604 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 62
605 Department for International Trade, "Trade modelling review expert panel: report", 31 January 2022
606 Oral evidence taken on 23 March 2022, HC (2021–22) 127, Q395

of the very stylised assumptions".[607] Professor Francois added that industry experts can provide sense checks on the results of economic modelling. He told us that the United States International Trade Commission provides a good international example of utilising "qualitative modelling" within trade modelling.[608]

432. **The Government's Impact Assessment modelling relies heavily on econometric estimates, with limited use of valuable qualitative forms of evidence.** ***The Government should take steps to develop its capacity to collect and utilise qualitative forms of evidence in its Impact Assessments, including both as complementary forms of evidence and to inform quantitative modelling.***

Cumulative impacts

433. The Impact Assessment models the isolated, or incremental, impact of the Agreement. The model estimates the long-run levels of economic variables (for example UK GDP), with and without the implementation of the Agreement, and compares the estimated levels.[609] The model incorporates the Parties' other recently-signed FTAs, for example the UK-Japan Agreement, into its baseline. However, the Impact Assessment does not model the cumulative impact of trade agreements, for example the joint impact of the UK-Australia and UK-Japan Agreements. Mr Price outlined this in oral evidence, explaining that Impact Assessments "are not looking at lots of other policy changes […] They are trying to separate out […] just what the agreement itself is achieving."[610]

434. Stakeholders expressed concern that the Impact Assessment did not assess, or communicate to stakeholders, the cumulative impact of trade agreements. FoE stated that the lack of "consideration of the cumulative impacts of the multiple FTAs currently under negotiation, means it is difficult to fully comprehend and mitigate potential negative effects".[611] The NFU and the Northern Ireland Department for the Economy commented that an assessment of the cumulative impacts of new FTAs should be compiled and updated as new FTAs are agreed.[612] They commented on the importance of this for the UK agricultural sector,[613] where the Northern Ireland Department for the Economy highlighted that "the cumulative impact of FTAs is likely to put further pressure on UK agriculture".[614] Mr von Westenholz also noted that the harmful impact on "for example, beef and lamb in the UK is likely to come about because of the cumulative effects of a number of trade deals that we are currently doing", including New Zealand.[615]

435. Had the Secretary of State attended to give evidence to us on 29 June, we would have asked her about the possibility of compiling Impact Assessments that take account of the cumulative impacts of all trade agreements to date.

607 Oral evidence taken on 23 March 2022, HC (2021–22) 127, Q395
608 Oral evidence taken on 23 March 2022, HC (2020–21) 127, Q397
609 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 25
610 Oral evidence taken on 23 March 2022, HC (2021–22) 127, Q351
611 Friends of the Earth (AUS0009) para 36
612 Northern Ireland Department for the Economy (AUS0030) para 22, National Farmers' Union (AUS0034) para 46
613 The impact of the Agreement on the UK agri-food sector is considered more fully in Chapter 4 of this report.
614 Northern Ireland Department for the Economy (AUS0030) para 19
615 Q202

436. ***For each future trade agreement, the Government must undertake or commission an analysis of the cumulative impacts of the UK's new trade agreements to date, across all sectors of the economy, to be laid before the House as part of the Impact Assessment for that agreement.***

437. FoE expressed dissatisfaction that the Impact Assessment does not consider the impact the Agreement will have on the Government's negotiation of future agreements, and the possible cumulative impact this will have on certain policy areas and industries.[616] WWF-UK explained that the Agreement provides "a baseline level of access" to "a relatively small economy […] on which future trade partners will rely". It highlighted the cumulative impact this could have on UK agriculture, if the Agreement sets a precedent of "zero tariff, zero quota market access" to the UK agriculture market. It also underscored the cumulative impact this could have on environmental policy.[617]

438. The Impact Assessment only briefly acknowledges that the Agreement is a "step towards UK accession to the CPTPP".[618] It provides no analysis of how this Agreement will impact UK accession to CPTPP.[619]

439. **We are disappointed that the Impact Assessment did not consider the strategic importance of the Agreement to the UK's future trade negotiations, including the benefit it may bring to the UK's accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.** ***Future Impact Assessments must address this aspect of trade agreements.***

Non-economic impacts

440. In October 2021, Rt Hon Penny Mordaunt MP, Minister of State for Trade Policy, told us that DIT was moving "to deepen the expertise" as regards coverage of non-economic topics, such as food safety, animal welfare and the environment, in FTA Impact Assessments.[620] The Impact Assessment for the Agreement with Australia states that it includes an "assessment of the economic, social and environmental impacts the agreement".[621] However, its coverage of non-economic impacts is very limited in scope. On animal welfare and antimicrobial resistance, and gender equality, the Impact Assessment only summarises the commitments in the FTA and provides no significant analysis.[622] While there is a chapter on "Impacts on the environment",[623] as previously discussed, civil society groups found the coverage of environmental issues in the Impact Assessment to be insufficient.[624]

616 Friends of the Earth (AUS0009) para 27
617 WWF-UK (AUS0010) para 43
618 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 13
619 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 13. See also UK Trade Policy Observatory (AUS0028) paras 8, 31.
620 Oral evidence taken on 27 October 2021, HC (2021–22) 127, Q274
621 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 4
622 Department for International Trade, Impact Assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia, December 2021, pp 18, 23
623 Department for International Trade, Impact Assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia, December 2021, pp 42–52
624 See Chapter 13 of this report.

441. FoE commented that the Impact Assessment does not mention the "changes to the UK's consumption footprint, either in terms of emissions or ecological impacts" or consider "what impact the animal welfare and antimicrobial resistance chapter might have in practice".[625] FoE and Greener UK called for DIT to produce Environmental Impact Assessments,[626] while the Scottish Government called for DIT to "undertake more detailed sustainability impact assessments".[627]

442. DIT's Expert Panel Modelling Review recommended that DIT "develop extensions of the core CGE model that capture environment impacts and environmental policy instruments".[628] Professor Venables commented that DIT should incorporate the "carbon impact of changes in trade and the location of industry" and the interactions with carbon markets into Impact Assessments. He highlighted that this is important as "Carbon border adjustments are likely to be trade policy instruments in the not too far distant future".[629]

443. **We welcome the Government's initial assessment of the environmental impacts of the Agreement. However, the Impact Assessment could go further in its assessment. *The Government must ensure future Impact Assessments take account of changes in emissions due to deforestation or land use change, when assessing an agreement's impact on emissions, and extend its modelling approach so as to capture environmental impacts and the effects of environmental policy instruments.***

Impacts on devolved nations and English regions

444. The Impact Assessment includes estimates of the Agreement's impacts on the different nations of the UK. The modelling produces these estimates utilising "the differing composition of economic activity across UK regions and nations".[630] However, these estimates are subject to significant limitations. Tammy Holmes, Deputy Director of Trade Agreements Analysis at DIT, explained that the model "assumes that all nations of the UK benefit from the agreement like one another".[631] Furthermore, the Impact Assessment outlines that the model does not fully incorporate the "differences in patterns of production" across the UK, nor does it explicitly consider "the varying trade patterns of individual sectors across each part of the UK".[632] Finally, a key limitation of the modelling is that "it does not explicitly take account of any impacts arising from the Protocol on Ireland/Northern Ireland".[633]

625 Friends of the Earth (AUS0009) paras 15, 25
626 Friends of the Earth (AUS0009) paras 35, 36, Greener UK (AUS0021) para 14
627 Scottish Government (AUS0025) para 11
628 Department for International Trade, "Trade modelling review expert panel: report", 31 January 2022
629 Oral evidence taken on 23 March 2022, HC (2021–22) 127, Q399
630 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 73
631 Oral evidence taken on 23 March 2022, HC (2021–22) 127, Q389
632 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 74
633 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 74

445. The Scottish Government stated that it was "vital that the UK Government undertake […] more detailed analysis of the impact on the different nations of the UK".[634] While, DIT's Expert Panel Modelling Review made recommendations that DIT significantly develop its approach to assessing regional impacts.[635]

Northern Ireland

446. Explaining why the Impact Assessment did not explicitly consider the impacts of the Protocol, Ms Holmes told us that DIT's modelling does not currently have the capacity "to distinguish between the impacts on Northern Ireland and those on any other nation".[636] She added that DIT will look into modelling that can take into account the impacts arising from the Protocol, and "try to achieve" this. However, Ms Holmes noted that "it is not something that we have been able to achieve so far".[637]

447. Had the Secretary of State attended to give evidence to us on 29 June, we would have asked her about the Government's plans to incorporate into its economic modelling of trade agreements the effects of the Ireland / Northern Ireland Protocol.

448. Our brief analysis of the Protocol indicates that the impact of the Australia FTA on trade in goods and on the costs and benefits for businesses and consumers will be different in Northern Ireland to the rest of the UK. The Northern Ireland Department for the Economy noted that its officials have struggled to gain "greater clarity and assurances around the interaction of trade policy and the Protocol".[638]

449. **The Government's Impact Assessment does not sufficiently assess the Agreement's impacts in the devolved nations and English regions. A notable deficiency in this regard is the inability of the Government's modelling to assess the specific impacts on Northern Ireland arising from the Agreement's interaction with the Ireland / Northern Ireland Protocol.** ***The Government should set out the steps it is taking to ensure that modelling in future Impact Assessments is able to distinguish, with greater specificity, between the impacts on each UK nation, as well as individual English regions. The Government must ensure that future Impact Assessments include more detailed information on the impacts of the interaction between the relevant agreement and the Ireland / Northern Ireland Protocol.***

Presentation and communication

Understanding the model

450. The Impact Assessment provides a description of the CGE model,[639] an outline of the modelling inputs,[640] and an explanation of the method for assessment of various impacts

634 Scottish Government (AUS0025) para 11
635 Department for International Trade, "Trade modelling review expert panel: report", 31 January 2022
636 Oral evidence taken on 23 March 2022, HC (2021–22) 127, Q389
637 Oral evidence taken on 23 March 2022, HC (2021–22) 127, Q390
638 Northern Ireland Department for the Economy (AUS0030) para 23
639 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 58
640 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 62

(including outlines of the limitations of these methods).[641] However, we received evidence which suggested that the Impact Assessment did not provide sufficient information on its methodology and workings to enable full scrutiny of the modelling.

451. The UKTPO commented that "considerably more information could be provided" in the Impact Assessment "to enable more comprehensive assessment and scrutiny of the model". It added that it would have been "useful to have more detailed information regarding the reductions in market barriers at the level of aggregation at which the model is run, and then the results on output, trade, and prices to be given at the same level of disaggregation".[642]

452. DIT's Expert Panel Modelling Review also recommended that DIT should publish the "key estimates of inputs and parameters" in the model and should "support [the model's] results with illustrative model calculations, clearly demonstrating how results are arrived at".[643] Professor Venables said it is important that specialists are able to undertake "back-of-the-envelope" calculations to ensure that DIT's estimates are sensible.[644]

Modelling changes

453. The modelling employed in the Impact Assessment differs from the modelling employed in DIT's Scoping Assessment of the UK-Australia FTA.[645] The changes to the modelling reflect the Department's ongoing, and longer-term, modelling development, informed by the discussions of DIT's Modelling Review Expert Panel, prior to the conclusion of the Panel's review.[646]

454. The modelling changes led to notable differences in the estimated impacts of the Agreement. Notably, the final Impact Assessment estimates that the long-run change in UK GDP due to the Agreement will be a 0.08% increase,[647] whereas the Scoping Assessment estimated the change to be a 0.02% increase in a deeper trade liberalisation agreement (and 0.01% in a scenario with less liberalisation).[648]

455. The Impact Assessment explains that the technical changes to the model mean that the results from the Impact Assessment and Scoping Assessment are not directly comparable.[649] Ms Holmes of DIT also noted that the purpose of the Scoping Assessment is to give a sense of scale of the impacts of the Agreement.[650]

456. The UKTPO commented that "the difference in the numbers between the scoping assessment and the impact assessment […] does not reflect any 'massaging' of the numbers",

641 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, pp 73–88
642 UK Trade Policy Observatory (AUS0028) para 1
643 Department for International Trade, "Trade modelling review expert panel: report", 31 January 2022
644 Oral evidence taken on 23 March 2022, HC (2020–21) 127, Q396
645 Department for International Trade, *UK-Australia Free Trade Agreement: The UK's Strategic Approach*, June 2020, Chapter 4
646 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 25
647 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, pp 5, 24, 28, 66
648 Department for International Trade, UK-Australia Free Trade Agreement: The UK's Strategic Approach, June 2020, Chapter 4
649 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 25
650 Oral evidence taken on 23 March 2022, HC (2020–21) 127, Q353

but instead reflects changes to the modelling. However, it added that "considerably more information could [have been] provided […] to understand what is driving the difference in results between the scoping assessment and the impact assessment".[651]

457. A notable, and method-based, change to DIT's modelling was in relation to the model specification.[652] The Impact Assessment model "relies on an Armington trade theory specification",[653] whereas the initial Scoping Assessment utilised a Melitz-style specification.[654] Richard Price, Chief Economist for DIT, said the Department changed its approach because the Melitz-style specification was empirically inconsistent and less widely used than the Armington specification.[655] Ms Holmes added that the Melitz model is not sufficiently supported by literature.[656]

Regulatory Policy Committee rating

458. The RPC is an "independent better regulation watchdog",[657] sponsored by the Department for Business, Energy and Industrial Strategy. The RPC considers whether an Impact Assessment is "fit for purpose" by rating "the quality and robustness of the analysis and evidence presented".[658] The RPC and DIT worked together to develop a "checklist for [their] expectations of what a good free trade agreement impact assessment would look like". The RPC utilises this checklist to rate Impact Assessments.[659]

459. We heard in evidence from Stephen Gibson, the Chair of the RPC, and Dr Cave, a member of the RPC, that the initial, draft version of the Impact Assessment, which was submitted to the RPC for scrutiny, was rated "not fit for purpose".[660] Mr Gibson outlined that the initial Impact Assessment "tended to exaggerate and presentationally focus on the benefits [of the Agreement], with very limited mention of the costs" and "presented a level of certainty and accuracy" the RPC "did not believe was supported by the underlying evidence and modelling".[661] Mr Gibson and Dr Cave agreed that once the RPC raised the areas of concern with DIT, DIT addressed and resolved them.[662] This enabled the RPC to rate the final Impact Assessment as "fit for purpose".

460. ***The Government must beware of overselling trade agreements. Impact Assessments must clearly communicate a realistic assessment of potential winners and losers (across different sectors and different parts of the UK) under each agreement.***

651 UK Trade Policy Observatory (AUS0028) para 22
652 A model specification determines "which independent variables should be included in or excluded" from the underlying equations of an economic model. The specification is based on economic theory; different specifications focus on different economic mechanisms. See Michael Patrick Allen, *Understanding Regression Analysis* (1997), pp 166–170.
653 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 58
654 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 59
655 Oral evidence taken on 23 March 2022, HC (2021–22) 127, Q379
656 Oral evidence taken on 23 March 2022, HC (2021–22) 127, Q380
657 Oral evidence taken on 23 March 2022, HC (2021–22) 127, Q371
658 Regulatory Policy Committee, "RPC Opinion: UK-Australia Free Trade Agreement", December 2021, p 2
659 Oral evidence taken on 23 March 2022, HC (2021–22) 127, Q371
660 Oral evidence taken on 23 March 2022, HC (2021–22) 127, Q372
661 Oral evidence taken on 23 March 2022, HC (2021–22) 127, Q373
662 Oral evidence taken on 23 March 2022, HC (2021–22) 127, Qq373, 376

461. **There is a need for greater transparency and detail in the Government's Impact Assessments. The Impact Assessment for the UK-Australia agreement provides some detailed information regarding its economic modelling, but this is insufficient to enable thorough scrutiny. Greater transparency will enhance external trust in Impact Assessments.** ***The Department for International Trade must ensure that its modelling and choice of modelling approach are more transparent. The Department should publish its detailed workings for the modelling in the Australia Impact Assessment and commit to doing the same in respect of modelling of future Impact Assessments. It must also commit to publishing key inputs and parameters that will be used in future Impact Assessment modelling.***

Comparison across trade agreements

462. DIT states that "the scale of impacts across DIT analyses are not directly comparable" due to modelling changes across different assessments.[663] Direct comparison between the Australia and New Zealand Impact Assessments is possible because they use the same modelling approach.[664] However, different approaches were used for the Australia and New Zealand Scoping Assessments, the Impact Assessment for the UK-Japan Agreement and the CPTPP Scoping Assessment.[665]

463. We have previously expressed concern that an inability to draw direct comparisons between DIT's analyses of different agreements limits our capacity to scrutinise agreements. We requested that DIT publish a dataset that would allow "like-for-like comparison of impact assessments for all new FTAs, from the UK-Japan Comprehensive Economic Partnership Agreement onwards".[666] However, DIT has said that this will not be possible, with no further explanation.[667]

464. **The Government has explained that its modelling of the impacts of trade agreements is not comparable between agreements where the economic modelling is not done on the same basis.** ***DIT should evaluate the practicability of compiling a single dataset that allows the comparison of trade agreement impact modelling on a like-for-like basis, and should publish a detailed explanation of its conclusions.***

663 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 59
664 Rt Hon Anne-Marie Trevelyan MP to Angus Brendan MacNeil MP, 17 November 2021
665 Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, p 59
666 Angus Brendan MacNeil MP to Rt Hon Anne-Marie Trevelyan MP, 18 November 2021
667 Rt Hon Anne-Marie Trevelyan MP to Angus Brendan MacNeil MP, 10 December 2021

Conclusions and recommendations

Scrutiny of the UK-Australia agreement

1. If the Government continues to refuse an extension of the 21-day scrutiny period, we reiterate our call for it to schedule a debate on the Agreement between 13 and 19 July and to table a substantive motion that would allow the House to vote against ratification. *In that event, we recommend that Members vote against ratification on this occasion, since this would have the effect of extending scrutiny of the Agreement, and allowing the House proper time to consider our reports and its views ahead of ratification*. (Paragraph 11)

Context of the Agreement

2. There is little question that the Agreement is likely to aid the UK's accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership. We note that the UK-Australia Agreement draws widely on the Trans-Pacific Agreement, while also going beyond it in some respects and potentially being in conflict with it in others. *The Government should explain clearly how and why this has come about*. (Paragraph 20)

3. *The Government should clarify how the market access provisions under the Agreement with Australia relate to its negotiating positions for bilateral market access discussions with other Trans-Pacific Partnership members as part of the accession process*. (Paragraph 21)

4. *The Government must publish a coherent trade strategy which brings together its various priorities and dovetails with other strategies, including the Export Strategy. The trade strategy must set out clearly what kind of trading nation it wants the UK to be and how it will seek to achieve its aims, both through its broader trade policy and in negotiations with trade partners. The Government should also set out how it will engage with each prospective negotiating partner, giving a clear sense of how each negotiation serves its broader strategic vision*. (Paragraph 26)

5. We note that the Agreement does not refer to the protection of human rights. *We ask the Government to explain what its negotiating position was on the inclusion of language in either the preamble or the main text of the Agreement on the protection of human rights. If the Government favoured excluding such provisions, we ask it to explain why it did so. We also ask the Government to confirm whether its policy is to adopt the same approach in future trade agreement negotiations—including where it is renegotiating existing agreements that include human rights provisions*. (Paragraph 33)

6. The Agreement with Australia is the UK's first from-scratch trade agreement since leaving the EU. We note that, while the Government has insisted the Agreement does not set a precedent for future trade agreement negotiations, it has appeared to contradict itself by insisting that some provisions are precedent-setting. Given

the likelihood of future negotiating partners citing aspects of this Agreement as precedents, it is disappointing that the Government has not outlined how the Agreement with Australia fits into its wider strategic approach. (Paragraph 36)

Trade in manufactured goods

7. We welcome the fact that the Agreement includes liberal product-specific rules of origin for manufactured goods. These rules are likely to benefit UK exporters, notably in the automotive sector. However, we note that the application of such product-specific rules to imports from Australia potentially poses the risk of third countries using them to circumvent UK tariffs. *The Government must conduct a scoping study concerning this risk and carefully monitor any such impacts arising from the Agreement*. (Paragraph 52)

8. We note that the provisions in the Agreement on technical barriers to trade do little beyond reaffirming the parties' existing multilateral and bilateral commitments. We regret that these provisions are not subject to the Agreement's dispute settlement provisions. (Paragraph 63)

9. We are disappointed that the cosmetics Annex to the chapter on technical barriers to trade does not explicitly confirm the UK's commitment to maintain its ban on animal testing, in contrast to the recent trade agreement with New Zealand. (Paragraph 64)

Agri-food trade

10. We welcome the liberalisation of trade in processed food achieved by the Agreement. Insofar as tariff cuts are passed through, this will benefit UK consumers—and UK exporters should also benefit. However, in both cases the gains are likely to be modest. Australia's existing applied tariffs are low; and, while the UK's applied tariffs for a few processed food products are significant, their removal from Australian imports will not make any noticeable difference at supermarket tills. (Paragraph 80)

11. The almost complete liberalisation of unprocessed agri-food trade with Australia is a significant step, especially given the UK's strong defensive interests and minimal offensive interests. We note the Government says that other markets are more of a priority for Australian exports, and that Australian products are likely to displace imports from the EU. However, we also note producers' fear of the UK being a potential fallback market if international trade flows change. (Paragraph 94)

12. We acknowledge that the Government has sought to cushion negative impacts on UK producers with long-lasting phase-in arrangements. However, the duration of those arrangements is not necessarily a long period for the sectors concerned, given their lengthy planning horizons. We also note agri-food producers' views on what they see as the excessive size of the quotas that form a key part of the transitional arrangements. We note too that UK red meat producers fear being disadvantaged by the effect of not setting quotas on a "carcase weight equivalent" basis. (Paragraph 95)

13. We note concerns that liberal product-specific rules of origin for processed food products could encourage manufacturers to replace UK ingredients with imported

ones. *The Government must say what it has done to model such possible consequences of these rules of origin—and what it will do, following entry into force, to monitor any such impacts.* (Paragraph 98)

14. The Agreement in Principle referred to a UK-proposed annex on spirits and "Australian proposals on wine and organics", as well as "best endeavours" commitments to reach agreement on amending Australia's definition of whisky and implementing in the UK Australia's proposals under the Wine Agreement. It is disappointing that these are not present in the final Agreement. *The Government must set out how, and when, it plans to address the issues concerned.* (Paragraph 106)

15. We welcome the role of the new Trade and Agriculture Commission in scrutinising the impact of trade agreements on UK agri-food production standards. *For future trade agreements, the Government must ensure that the Commission is provided with the time and resources necessary to fulfil its remit. This must include the provision of a dedicated budget for the commissioning of research.* (Paragraph 119)

16. We welcome the fact that the Agreement does not change the UK's statutory Sanitary and Phytosanitary protections, including its ban on importing hormone-treated beef. However, we note concerns that attempts could be made to try and undermine such protections by means of the Sanitary and Phytosanitary Committee under the Agreement, the provisions on equivalence of standards and the Chapter on Good Regulatory Practices. (Paragraph 160)

17. It is regrettable that the Government did not negotiate any relaxations of Australia's strict bio-security controls, such as those on pork imports, especially given the extent of UK concessions in respect of Australian agri-food exports. *The Government must say whether—and, if so, how and when—it plans to address this issue through the Sanitary and Phytosanitary Committee under the Agreement.* (Paragraph 161)

18. We welcome the commitments in the Agreement on combating antimicrobial resistance and we are reassured by the continuance of UK Sanitary and Phytosanitary controls on antibiotic residues in imported meat. *The Government must say what it will do through the Sanitary and Phytosanitary Committee under the Agreement to address the high level of antibiotic use in Australian production processes.* (Paragraph 162)

19. We note the concerns of UK agri-food producers that the Agreement increases UK market access for food produced in ways that would be illegal in the UK, making for unfair competition. We also note the new Trade and Agriculture Commission's conclusion that, while such concerns have generally been overstated, this is apparently not the case in respect of goods produced using pesticides not permitted in the UK and canola oil produced from GM crops. (Paragraph 163)

20. The non-statutory Trade and Agriculture Commission and Henry Dimbleby's National Food Strategy review suggested making liberalisation of agri-food trade under UK trade agreements conditional on the other Party meeting core UK food production standards. We are disappointed that the Government has not acted on this suggestion. *The Government must say what it will do to monitor the impacts of any unfair competition for UK producers resulting from liberalising trade in agri-food goods whose production is subject to different rules in the UK and Australia.*

It must also say how it will act to mitigate adverse consequences for UK producers' interests, and UK consumers' wishes and choices, arising from such competition. (Paragraph 164)

21. We are concerned about the potential undermining of voluntary food production standards in the UK as result of agri-food liberalisation under the Agreement. *The Government must say what it will do to monitor, and potentially act on, this possible consequence of the Agreement*. (Paragraph 165)

22. The Government has failed to secure any substantive concessions on the protection of UK Geographical Indications in Australia—relying instead on that country's ongoing negotiations with other trade partners. This is another example of the Government failing to secure an obvious benefit in exchange for the extensive concessions it has given on liberalising agri-food imports. (Paragraph 174)

Trade in services

23. The Agreement's provisions on trade in services have the effect, broadly speaking, of locking in current levels of market access, thereby providing welcome certainty to businesses and individuals. (Paragraph 226)

24. There is clearly an appetite from stakeholders for free trade agreements to establish mutual recognition of professional qualifications. While this Agreement does not go that far, it does contain useful provisions to facilitate the achievement of mutual recognition by the Parties' respective regulatory bodies. (Paragraph 227)

25. We are not wholly convinced that the mechanisms in place to deliver further regulatory alignment in respect of trade in services are as effective as they might be. The committees set up for this purpose should meet more than once a year and involve regulators, as well as Government representatives. *The Government must say what it will do to seek amendments to the Agreement in this respect*. (Paragraph 228)

Mobility of persons

26. *The Government must provide details of any assessment it has made of the expected increase in flows of businesspersons, and the associated economic impact, as a result of the Agreement. It must also commit to providing this information for future trade agreements in its published impact assessments*. (Paragraph 236)

27. We welcome the planned changes to the Working Holiday Maker and Youth Mobility schemes, and the new Innovation and Early Careers Skills Exchange Pilot. We note that it is planned to review the pilot scheme when it may have been in operation for as little as one year. *The Government must work with the Australian Government to ensure that the review of the pilot only takes place when the scheme has been in operation long enough for its impact to be properly evaluated*. (Paragraph 244)

Digital and data

28. We welcome the Agreement's forward-looking provisions on digital trade, which will help to boost e-commerce and improve online consumer protection between the UK and Australia. However, it is important to strike the right balance between digital liberalisation and the protection of personal data. (Paragraph 254)

29. *The Government must set out clearly and precisely how it intends to fulfil its commitments on cross-border transfer of data under this Agreement while also maintaining current levels of protection for UK citizens' personal data. It must also set out how its policy on granting data adequacy will interact with this and future free trade agreements. The Government must give an unequivocal commitment that it will seek to avoid the loss of EU adequacy—which would be catastrophic for the UK.* (Paragraph 255)

Innovation

30. We question the extent to which the Strategic Innovation Dialogue's two-year meeting interval and stakeholder involvement is sufficient to allow it to be impactful. *The Government must set out how the Dialogue will be monitored for effectiveness, and what the arrangements will be for making details of its meetings public.* (Paragraph 263)

31. *The Government must clarify how innovation-related provisions will be addressed across free trade agreements and digital economy agreements. It must show it has a coherent, clear and consistent approach in this regard.* (Paragraph 267)

Investment

32. *The Government must explain how Investor-State Dispute Settlement came to be omitted from the Agreement and set out clearly how it intends in future negotiations on trade agreements to approach the issue of mechanisms for settling investment disputes.* (Paragraph 296)

Labour

33. We welcome the inclusion in the Agreement of provisions on forced labour, modern slavery and human trafficking, but note the limitations of those provisions—notably the fact that enforceable provisions do not extend to supply chains. (Paragraph 331)

Trade and Gender Equality

34. We welcome the Agreement's dedicated chapter on trade and gender equality. However, we note that: the chapter only establishes a "Dialogue", rather than a formal joint committee; there is no requirement for the Dialogue to meet within a set time or with any frequency; and there is no clarity on how it will operate, including its interactions with stakeholders. *The Government must set out how*

it intends to address these issues under the terms of the Agreement and this must include specifying its intentions regarding the frequency of the Dialogue's meetings. (Paragraph 337)

Development

35. We commend the Government for taking into account potential adverse effects on developing countries from preference erosion and its intention to monitor such effects. *However, it must also set thresholds for taking remedial action, and say what such action would involve.* (Paragraph 343)

Preventing market distortions

36. The Government has rightly highlighted the potential procurement opportunities that some new (or reclassified) entities offer to UK suppliers under the Agreement. *The Government must publish its assessment of each procuring entity under the Agreement, to help UK suppliers assess the procurement opportunities presented; and it must commit to publishing equivalent details alongside all future trade agreements.* (Paragraph 365)

37. The Trade (Australia and New Zealand) Bill was introduced to the House towards the end of our inquiry. Consequently, we have not considered its provisions in great depth. However, our initial assessment of the Bill has left us satisfied that its content and provisions are necessary and proportionate. We emphasise that, for primary implementing legislation required by a free trade agreement, a degree of advanced notice under embargo would help us to scrutinise it alongside the agreement. Such advanced notice would be especially helpful where implementing legislation entails substantial changes to UK domestic law. (Paragraph 373)

38. *We ask the Government to revise the Explanatory Notes to the Trade (Australia and New Zealand) Bill to include an explanation for the statement of compatibility with the European Convention on Human Rights.* (Paragraph 374)

Implementation and governance

39. *We ask the Government to confirm how Parliament will, in a timely manner, be made aware of, and be engaged in, the UK's consideration of proposed amendments to the Agreement by the Joint Committee. The Government should also inform us how it will engage Parliament in the wider body of work undertaken by the Joint Committee and other bodies established under the Agreement.* (Paragraph 398)

40. *We ask the Government to explain why there are such different approaches to the availability of dispute resolution mechanisms across the Agreement. We also ask the Government to explain how Parliament will be kept informed when a dispute under the Agreement leads to a dispute resolution mechanism being triggered.* (Paragraph 402)

41. The interaction of the Agreement with the Ireland / Northern Ireland Protocol is complicated and opaque. *We ask the Government to clarify what it is doing, and how it is engaging with Northern Ireland stakeholders (including the Northern Ireland*

Executive and Northern Ireland importers), to ensure that sufficient support is available to help those impacted by these provisions to navigate this complex situation. (Paragraph 420)

42. *The Government must state what its understanding is regarding whether UK trade defence measures can apply in Northern Ireland if there are no equivalent EU trade defence measures in place.* (Paragraph 422)

43. *We ask the Government to explain: i) how it will inform and involve Parliament and the Northern Ireland Executive when differences in regulations operating in Northern Ireland and the rest of the UK mean that the Agreement will operate differently, with regard to imports, in these areas; and ii) what mechanisms will be used to minimise disruption to trade across the UK as a result of such differences.* (Paragraph 426)

Impact Assessment

44. The Government's Impact Assessment modelling relies heavily on econometric estimates, with limited use of valuable qualitative forms of evidence. *The Government should take steps to develop its capacity to collect and utilise qualitative forms of evidence in its Impact Assessments, including both as complementary forms of evidence and to inform quantitative modelling.* (Paragraph 432)

45. *For each future trade agreement, the Government must undertake or commission an analysis of the cumulative impacts of the UK's new trade agreements to date, across all sectors of the economy, to be laid before the House as part of the Impact Assessment for that agreement.* (Paragraph 436)

46. We are disappointed that the Impact Assessment did not consider the strategic importance of the Agreement to the UK's future trade negotiations, including the benefit it may bring to the UK's accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership. *Future Impact Assessments must address this aspect of trade agreements.* (Paragraph 439)

47. We welcome the Government's initial assessment of the environmental impacts of the Agreement. However, the Impact Assessment could go further in its assessment. *The Government must ensure future Impact Assessments take account of changes in emissions due to deforestation or land use change, when assessing an agreement's impact on emissions, and extend its modelling approach so as to capture environmental impacts and the effects of environmental policy instruments.* (Paragraph 443)

48. The Government's Impact Assessment does not sufficiently assess the Agreement's impacts in the devolved nations and English regions. A notable deficiency in this regard is the inability of the Government's modelling to assess the specific impacts on Northern Ireland arising from the Agreement's interaction with the Ireland / Northern Ireland Protocol. *The Government should set out the steps it is taking to ensure that modelling in future Impact Assessments is able to distinguish, with greater specificity, between the impacts on each UK nation, as well as individual English regions. The Government must ensure that future Impact Assessments include more detailed information on the impacts of the interaction between the relevant agreement and the Ireland / Northern Ireland Protocol.* (Paragraph 449)

49. *The Government must beware of overselling trade agreements. Impact Assessments must clearly communicate a realistic assessment of potential winners and losers (across different sectors and different parts of the UK) under each agreement.* (Paragraph 460)

50. There is a need for greater transparency and detail in the Government's Impact Assessments. The Impact Assessment for the UK-Australia agreement provides some detailed information regarding its economic modelling, but this is insufficient to enable thorough scrutiny. Greater transparency will enhance external trust in Impact Assessments. *The Department for International Trade must ensure that its modelling and choice of modelling approach are more transparent. The Department should publish its detailed workings for the modelling in the Australia Impact Assessment and commit to doing the same in respect of modelling of future Impact Assessments. It must also commit to publishing key inputs and parameters that will be used in future Impact Assessment modelling.* (Paragraph 461)

51. The Government has explained that its modelling of the impacts of trade agreements is not comparable between agreements where the economic modelling is not done on the same basis. *DIT should evaluate the practicability of compiling a single dataset that allows the comparison of trade agreement impact modelling on a like-for-like basis, and should publish a detailed explanation of its conclusions.* (Paragraph 464)

Annex 1: Summary of Committee-Department communications relating to Secretary of State's evidence session

1) During our scrutiny, DIT was unable to provide the information we reasonably requested about scrutiny timings, but also was unhelpful when we sought to arrange our evidence session with the Secretary of State. Subsequent briefings out have presented a partial snapshot of our attempts to resolve the issue, implying that we had been less helpful or flexible than DIT in seeking to arrange a date. Consequently, we have decided—exceptionally—to provide a summary of the main communications between the Committee, its staff and DIT in relation to this matter, to set the record straight.

Date	Communication
Thursday 31 March	Committee letter: Following continued Government refusal to provide assurances about the remaining timeline for scrutinising the FTA, the Chair called on the Secretary of State to give evidence from 10am to midday on Thursday 28 April unless answers to existing questions are given within a week.[668]
Thursday 7 April	No response received.
Wednesday 13 April	DIT letter: Secretary of State does not directly respond to specific call to give evidence though does offer to speak to Committee in new Session, i.e. on or after Tuesday 10 May.[669]
Thursday 14 April	Committee letter: Chair notes lack of specific response and asks for one by Tuesday 19 April.[670]
Tuesday 19 April	No response received
Friday 22 April	DIT letter: Secretary of State does not answer question about attendance to give oral evidence on 28 April.[671] DIT email: Covering message to letter stated that the Secretary of State couldn't attend the session due to pre-existing commitments and asked for public details of session to be removed from Committee website. Committee emails: Asked for information about why the commitments couldn't be rearranged given notice provided. Agreed to update public details.
Wednesday 27 April	Oral evidence on the work of DIT: During public meeting Secretary of State agrees to give evidence on the FTA week commencing 9 May, or by the end of May.[672]

668 Angus Brendan MacNeil MP to Rt Hon Anne-Marie Trevelyan MP, 31 March 2022
669 Rt Hon Anne-Marie Trevelyan MP to Angus Brendan MacNeil MP, 13 April 2022
670 Angus Brendan MacNeil MP to Rt Hon Anne-Marie Trevelyan MP, 14 April 2022
671 Rt Hon Anne-Marie Trevelyan MP to Angus Brendan MacNeil MP, 22 April 2022
672 Oral evidence taken on 27 April 2022, HC (2021–22) 128, Q199

Date	Communication
Thursday 28 April	Committee email: Seeks options for Secretary of State attendance for week commencing 9 May. DIT email: Reply offering one hour (10.30–11.30) on Wednesday 11 May. Committee email: Notes original request was for two hours, so would expect—and likely to need—the full time. Asks for request for two hours to be passed back.
Friday 29 April	DIT email: Confirms Secretary of State can only commit to one hour on Wednesday 11 May. Committee email: Reiterates request for full two hours, and offers the morning or afternoon of Tuesday 24 May, Wednesday 25 May or Thursday 26 May, asking for a response by end of the day on Wednesday 4 May.
Wednesday 4 May	No response received.
Thursday 5 May	Committee letter: Following up on Secretary of State's commitment and seeking her involvement to ensure two hours are made available. Asks for reply by end of Monday 9 May.[673] DIT email: Replies saying Secretary of State has ongoing commitments for all the times offered, instead offering 90 minutes on Wednesday 11 May. Committee email: Confirms that, due to DIT previously saying that only an hour could be offered on 11 May, Chair has limited availability. Asks DIT to consider prioritising the evidence session over other commitments. Also extends previous offer to the equivalent three days the following sitting week. Asks for reply by the afternoon of next day. DIT email: Asks for confirmation that 90 minutes on 11 May definitely not possible. Committee email: Notes that Committee originally asked two hours, and when told only an hour was possible for 11 May moved to finding alternatives, with members making other plans for the time. Asks for confirmation that DIT's response is that, rather than consider the dates offered, wants to stick with offering 90 min session on 11 May only. DIT email: Confirms Secretary of State's office keen to proceed with 11 May session. Committee email: Confirms Chair's view that there are now diary issues with the next two weeks, and his request that, if the Secretary of State can't make the dates offered, a junior minister be provided instead. Notes that this has gone beyond what can be resolved at official level, so Chair asks Secretary of State to call him directly to resolve. DIT email: Acknowledges email and notes aim to send response tomorrow morning.

673 Angus Brendan MacNeil MP to Rt Hon Anne-Marie Trevelyan MP, 5 May 2022

Date	Communication
Friday 6 May	Committee email (afternoon): Follows up seeking response. DIT emails: Confirms waiting for response from Secretary of State's office, and hoping to update soon. Later confirms Secretary of State content for another minister to attend and waiting for confirmation of their availability.
Wednesday 11 May	Committee email: Seeking update, noting had hoped that, given number of options offered, a minister would be able to prioritise and confirm attendance very quickly. DIT email: Confirms receipt and aim to get response as soon as possible.
Thursday 12 May	Committee letter: Chair seeks Secretary of State's urgent intervention to unblock ongoing issue and secure a date for evidence to be taken.[674]
Tuesday 17 May	Committee email: Asks for update on response to the letter sent on 12 May. Notes that it is very late to confirm an evidence session next week and that the Committee already has other meetings planned for the week beginning 6 June after the May recess. Asks DIT to confirm which junior minister could attend, and on which of the offered dates/times. DIT email: Agrees dates next week looking unlikely and recommends the Committee postpones any plans until minister confirmed. Says will confirm minister and proposed dates by the end of the week. Committee email: Notes now at point where close to unreasonable to ask Committee to plan an extra session for following week, so assuming will be week after recess.
Monday 23 May	Committee email: Following up as no reply received and Committee expressing serious concerns over continued delay. DIT email: Confirming receipt of email and that seeking update urgently.

674 Angus Brendan MacNeil MP to Rt Hon Anne-Marie Trevelyan MP, 12 May 2022

Date	Communication
Monday 30 May	DIT email: Offers Monday 20 June, 10–1130am, for Secretary of State session. Committee email: Notes may be difficult as outside House sitting times and asks if other dates or times are possible as well. Also asks if it's possible to have the full two hours the Committee initially called for, to avoid a repetition of situation where previously told more time wasn't possible but then told it was when Committee offered other dates. DIT email: Confirms offer is the only date/time available. Committee email: Asks for confirmation that no other dates will be made available to Committee around that date/time, e.g. in the two preceding sitting weeks or the week after, and that the idea of getting a junior minister instead has now been dropped. DIT email: Asks for confirmation if offer is possible, and confirms the Secretary of State will give evidence to the Committee. Committee email: Notes Chair's confirmation date/time does not work and that he is unhappy with the continued approach from DIT so will likely be writing to the Secretary of State.
Tuesday 31 May	Committee letter: Chair expresses concerns to Secretary of State about difficulty arranging an evidence session, with just a single date being offered across four sitting weeks and still for less than the two hours specified. Notes that, as official-level discussions haven't resolved the issue, asking her to reply directly in writing or person, by the end of Tuesday 7 June.[675] DIT call: Offer of alternate date: Thursday 23 June from 830–1030am. Committee response: Notes this isn't all in House sitting times and Committee currently planning to be on an overseas visit. Asks for all the possible options to be presented in one go, not one-by-one, to allow Committee to make an informed decision about best available option.
Monday 6 June	DIT email: Offered Secretary of State evidence session on Wednesday 29 June, for two hours from 10am.
Wednesday 8 June	Committee email: Confirms Committee agreement to see Secretary of State on the offered day and time, noting the assumption that the CRaG scrutiny period will not be triggered beforehand and seeking an update on timing accordingly. Also asks for Secretary of State time for evidence on the UK-New Zealand FTA. DIT email: Confirms receipt and intention to reply on New Zealand session request.
Thursday 9 June	Committee email: Notes CRaG query also for response. No response received.
Tuesday 14 June	DIT letter: Secretary of State notifies Committee of intention to trigger CRaG period the following day.[676]

675 Angus Brendan MacNeil MP to Rt Hon Anne-Marie Trevelyan MP, 31 May 2022

676 Rt Hon Anne-Marie Trevelyan MP to Angus Brendan MacNeil MP, 14 June 2022

Date	Communication
Wednesday 15 June	Committee letter: Chair notes to Secretary of State that agreement to the session was on the explicit assumption that the CRaG period would not be triggered before the evidence session.[677]

677 Angus Brendan MacNeil MP to Rt Hon Anne-Marie Trevelyan MP, 15 June 2022

Annex 2: Australia's government procurement market access commitments

1) Table A outlines the entities listed in the Schedule of Australia in Annex 16A to the Chapter on Government Procurement which were not featured in Australia's market access schedule under the GPA. Table B lists those entities which were present under the GPA, but which have been reclassified under this agreement. (Entities whose listing in Annex 16A creates a divergence from the GPA purely as a result of machinery of government changes have not been listed here.)

Table A: Market access commitments made by Australia to the UK that are not present in the Agreement on Government Procurement

Entities added	Level
Asbestos Safety and Eradication Agency	Central Government
Australian Building and Construction Commission	Central Government
Australian Commission for Law Enforcement Integrity	Central Government
Australian Institute of Family Studies	Central Government
Australian National Preventative Health Agency	Central Government
Australian Skills Quality Authority (National Vocational Education and Training Regulator)	Central Government
Cancer Australia	Central Government
Clean Energy Regulator	Central Government
Climate Change Authority	Central Government
Digital Transformation Agency	Central Government
Independent Parliamentary Expenses Authority	Central Government
National Disability Insurance Scheme Quality and Safeguards Commission	Central Government
National Faster Rail Agency	Central Government
National Health and Medical Research Council	Central Government
National Health Funding Body	Central Government
National Mental Health Commission	Central Government
National Recovery and Resilience Agency	Central Government

Entities added	Level
North Queensland Water Infrastructure Authority	Central Government
Office of the Auditing and Assurance Standards Board	Central Government
Office of the Special Investigator	Central Government
Organ and Tissue Authority	Central Government
Parliamentary Budget Office	Central Government
Sport Integrity Australia	Central Government
Tertiary Education Quality and Standards Agency	Central Government
Canberra Institute of Technology	Sub-Central Government (Australian Capital Territory)
City Renewal Authority	Sub-Central Government (Australian Capital Territory)
Major Projects Canberra	Sub-Central Government (Australian Capital Territory)
Suburban Land Agency	Sub-Central Government (Australian Capital Territory)
Department of Corporate and Digital Development	Sub-Central Government (Northern Territory)
Department of Education	Sub-Central Government (Northern Territory)
Department of Infrastructure, Planning and Logistics	Sub-Central Government (Northern Territory)
Adelaide Cemeteries Authority	Sub-Central Government (South Australia)
Adelaide Festival Centre Trust	Sub-Central Government (South Australia)
Adelaide Venue Management Corporation	Sub-Central Government (South Australia)
HomeStart Finance	Sub-Central Government (South Australia)
Public Trustee	Sub-Central Government (South Australia)
Return to Work Corporation of South Australia	Sub-Central Government (South Australia)
South Australian Forestry Corporation	Sub-Central Government (South Australia)
South Australian Water Corporation	Sub-Central Government (South Australia)
Urban Renewal Authority	Sub-Central Government (South Australia)
West Beach Trust	Sub-Central Government (South Australia)

Entities added	Level
Brand Tasmania	Sub-Central Government (Tasmania)
Director of Inland Fisheries	Sub-Central Government (Tasmania)
Integrity Commission; Macquarie Point Development Corporation	Sub-Central Government (Tasmania)
Marine and Safety Tasmania	Sub-Central Government (Tasmania)
Royal Tasmanian Botanical Gardens	Sub-Central Government (Tasmania)
State Fire Commission	Sub-Central Government (Tasmania)
Infrastructure Victoria	Sub-Central Government (Victoria)
Office of the Victorian Information Commissioner	Sub-Central Government (Victoria)
Australian Digital Health Agency	Other
Independent Hospital Pricing Authority	Other
Murray-Darling Basin Authority	Other
National Portrait Gallery of Australia	Other
Regional Investment Corporation	Other

Source: UK-Australia Free Trade Agreement, Annex 16A

Table B: Market access commitments made by Australia to the UK that were present in the Agreement on Government Procurement but have been reclassified

Entities reclassified	Level
Australian Communications and Media Authority	Moved from "Other" to "Central Government"
Australian Competition and Consumer Commission	Moved from "Other" to "Central Government"
Australian Financial Security Authority	Moved from "Other" to "Central Government"

Entities reclassified	Level
Australian Fisheries Management Authority	Moved from “Other” to “Central Government”
Australian Prudential Regulation Authority	Moved from “Other” to “Central Government”
Australian Securities and Investments Commission	Moved from “Other” to “Central Government”
Great Barrier Reef Marine Park Authority	Moved from “Other” to “Central Government”

Source: UK-Australia Free Trade Agreement, Annex 16A

Appendix 1: Comparison with the Pacific and US-Mexico-Canada agreements

Notes on Mapping Analysis

1) The mapping analysis in this Appendix examines the extent to which the wording of the UK-Australia Agreement's Articles (across all 32 of its Chapters) matches or resembles that of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and / or the US-Mexico-Canada Agreement (USMCA).[678]

2) The key in the table details the grading system used regarding degrees of similarity. The length of each Article has also been graded, to help assess the relative significance of the similarity level. The main observations and findings from the mapping analysis are as follows:

- There are considerable and comparably high levels of derivative similarity between the UK-Australia Agreement and both the CPTPP and USMCA.
- In some chapters, the UK-Australia Agreement is more similar to the USMCA than to the CPTPP.
- Degrees of similarity with the CPTPP and USMCA vary significantly from one Chapter to another of the UK-Australia Agreement.
- While the UK-Australia Agreement has a similar number of chapters to the other two agreements, it has less extensive content overall (mainly because it is an agreement between just two countries, whereas the CPTPP and USMCA are multi-country agreements) and is quite streamlined compared to both other agreements.

678 We are grateful to Professor Christopher Dent for producing the mapping analysis contained in this Appendix.

Art	INITIAL PROVISIONS AND GENERAL DEFINITIONS (Chapter 1) – 8 pages	Length	CPTPP (Chap 1–11pgs)	USMCA (Chap 1–8pgs)
1.1	Establishment of a Free Trade Area	V. Short	Verbatim	Verbatim
1.2	Relation to Other Agreements	Mid	Partial	Very Partial
1.3	Laws and regulations and their amendments	V. Short	No Similarity	No Similarity
1.4	General Definitions	V. Long	Very Close	Very Close

Art	TRADE IN GOODS (Chapter 2) – 8 pages*	Length	CPTPP (Chap 2–30pgs)	USMCA (Chap 2–20pgs)
2.1	Definitions	Short	Very Close	Very Close
2.2	Scope	V. Short	Verbatim	Near Verbatim
2.3	National Treatment	V. Short	Verbatim	Verbatim
2.4	Classification of Goods	V. Short	No Similarity	No Similarity
2.5	Treatment of Customs Duties	Short	Very Close	Verbatim
2.6	Goods Re-entered after Repair or Alteration	Short	Near Verbatim	Very Close
2.7	Application of Non-Tariff Measures	Short	No Similarity	Very Close
2.8	Technical Consultations on Non-Tariff Measures	Short	No Similarity	Very Close
2.9	Import and Export Restrictions	V. Short	Verbatim	Very Close
2.10	Import Licensing	Short	Near Verbatim	Very Close
2.11	Administrative Fees and Formalities	Short	Very Close	Very Close
2.12	Export Duties, Taxes or Other Charges	V. Short	Near Verbatim	Very Close
2.13	Export Subsidies	V. Short	Partial	No Coverage
2.14	Export Licensing	Short	Very Close	Very Close
2.15	Remanufactured Goods	Short	Very Partial	Very Partial
2.16	Committee on Trade in Goods	Long	Close	Close

Art	TRADE REMEDIES (Chapter 3) – 8 pages	Length	CPTPP (Chap 6–6pgs)	USMCA (Chap 10–24pgs)
3.1	Definitions	Mid	Close	No Similarity
3.2	General Provision	V. Short	No Similarity	No Similarity
3.3	Investigations	Mid	No Similarity	No Similarity
3.4	Lesser-duty Rule	V. Short	No Coverage	No Coverage
3.5	General Provisions and Transparency	Short	Very Close	No Similarity
3.6	Application of a Bilateral Safeguard Measure	Short	Close	No Similarity
3.7	Duration and Scope	Mid	Very Close	No Similarity
3.8	Investigation Procedure	Short	No Similarity	No Similarity
3.9	Notification and Consultation	Mid	Verbatim	No Similarity
3.10	Provisional Application of a Bilateral Safeguard Measure	Mid	No Similarity	No Similarity
3.11	Compensation	Short	Verbatim	No Similarity
3.12	Non-cumulation	V. Short	No Coverage	No Similarity
3.13	Non-application of Dispute Settlement	V. Short	No Coverage	No Coverage

Art	RULES OF ORIGIN AND ORIGIN PROCEDURES (Chapter 4)–21 pages*	Length	CPTPP (Chap 3–25pgs)	USMCA (Chap 4–14pgs)
4.1	Definitions	V. Long	Verbatim	Very Close
4.2	Origin Criteria	Short	Verbatim	Verbatim
4.3	Wholly Obtained or Produced Goods	Long	Verbatim	Verbatim
4.4	Regional Value Content	Short	Very Close	Very Close
4.5	Materials Used in Production	Short	Verbatim	Partial
4.6	Value of Materials Used in Production	Short	Verbatim	Verbatim
4.7	Further Adjustments to the Value of Materials	Mid	Near Verbatim	Very Close
4.8	Recovered Materials and Remanufactured Goods	V. Short	Verbatim	Verbatim
4.9	Accumulation	V. Short	Verbatim	Verbatim
4.10	Tolerance	Short	Very Close	Very Close
4.11	Fungible Goods or Materials	V. Short	Verbatim	Verbatim
4.12	Accessories, Spare Parts, Tools, and Instructional or Other Info. Materials	Short	Very Close	Very Close
4.13	Packaging Materials and Containers for Retail Sale	V. Short	Very Close	Very Close
4.14	Packing Materials and Containers for Shipment	V. Short	Verbatim	Verbatim
4.15	Indirect Materials	V. Short	Verbatim	Verbatim
4.16	Sets of Goods	Short	Verbatim	Close
4.17	Non-Alteration	V. Short	Close	Close
4.18	Claims for Preferential Tariff Treatment	Mid	Close	No Coverage
4.19	Basis of a Declaration of Origin or Importer's Knowledge	Mid	Verbatim	No Coverage
4.20	Discrepancies	V. Short	Close	No Coverage
4.21	Waiver of Declaration of Origin	V. Short	Near Verbatim	No Coverage
4.22	Obligations Relating to Importation	Mid	Very Close	No Coverage
4.23	Record Keeping Requirements	Short	Verbatim	No Coverage
4.24	Verification of Origin	V. Long	Close	No Coverage
4.25	Determinations on Claims for Preferential Tariff Treatment	Mid	Verbatim	No Coverage
4.26	Refunds and Claims for Preferential Tariff Treatment after Importation	Short	Verbatim	No Coverage
4.27	Penalties	V. Short	Verbatim	No Coverage
4.28	Confidentiality	V. Short	Partial	No Coverage
4.29	Working Group on Rules of Origin and Customs and Trade Facilitation	Mid	Very Partial	No Coverage

Art	CUSTOMS PROCEDURES AND TRADE FACILIATATION (Chapter 5)–14 pages	Length	CPTPP (Chap 5–10pgs)	USMCA (Chap 7–24pgs)
5.1	Definitions	V. Short	No Coverage	No Coverage
5.2	Scope	V. Short	No Coverage	No Coverage
5.3	Customs Procedures and Facilitation of Trade	Short	Very Partial	No Coverage
5.4	Data, Documentation and Automation	Short	Partial	No Similarity
5.5	Transparency and Publication	Mid	Partial	Partial
5.6	Simplified Customs Procedures	Short	No Coverage	No Coverage
5.7	Expedited Shipment	Mid	Near Verbatim	Near Verbatim
5.8	Release of Goods	Long	Verbatim	Near Verbatim
5.9	Risk Management	Short	Close	Verbatim
5.10	Advance Rulings	Long	Very Close	Very Close
5.11	Customs Valuation	V. Short	No Similarity	No Similarity
5.12	Review and Appeal	Short	Close	Close
5.13	Penalties	Short	Close	Close
5.14	Customs Cooperation	Short	Very Partial	Very Partial
5.15	Single Window	V. Short	No Coverage	Partial
5.16	Transit and Transhipment	Short	No Coverage	No Coverage
5.17	Post-clearance Audit	Short	No Coverage	Close
5.18	Customs Brokers	V. Short	No Coverage	Partial
5.19	Temporary Admission of Goods	Short	Very Close	Very Close
5.20	Perishable Goods	Mid	No Coverage	No Coverage
5.21	Confidentiality	Short	Partial	Partial
5.22	Working Group on Rules of Origin and Customs and Trade Facilitation	V. Short	No Coverage	No Similarity

Art	SANITARY AND PHYTOSANITARY MEASURES (Chapter 6) – 11 pages*	Length	CPTPP (Chap 8–16pgs)	USMCA (Chap 11–21pgs)
6.1	Definitions	Short	Very Partial	Very Partial
6.2	Objectives	Short	Very Partial	Partial
6.3	Scope	V. Short	Very Close	Near Verbatim
6.4	Affirmation of the SPS Agreement	V. Short	Verbatim	Partial
6.5	Science and Risk Assessment	V. Short	Near Verbatim	Near Verbatim
6.6	Adaption to Regional Conditions	Long	Very Close	Close
6.7	Equivalence	Short	Close	Close
6.8	Trade Conditions	Short	No Coverage	No Coverage
6.9	Audit and Verification	Long	Close	Close
6.10	Certification	Short	Close	Close
6.11	Import Checks and Fees	Short	Close	Close
6.12	Emergency SPS Measures	Mid	Partial	Partial
6.13	Cooperation	V. Short	Partial	Partial
6.14	Transparency, Notification and Information Exchange	Short	Close	Close
6.15	Technical Consultations	Short	Very Partial	Very Partial
6.16	Committee on SPS Measures	Mid	Close	Close
6.17	Competent Authorities and Contact Points	Short	Close	Near Verbatim
6.18	Non-Application of Dispute Settlement	V. Short	No Similarity	No Similarity

Art	TECHNICAL BARRIERS TO TRADE (Chapter 7) – 7 pages*	Length	CPTPP (Chap 8–16pgs)	USMCA (Chap 11–21pgs)
7.1	Definitions	V. Short	No Similarity	No Similarity
7.2	Objectives	V. Short	Verbatim	No Similarity
7.3	Scope	Short	Near Verbatim	Partial
7.4	Affirmation of the TBT Agreement	V. Short	Very Partial	Very Partial
7.5	Technical Regulations	V. Short	No Similarity	Very Partial
7.6	International Standards, Guides, and Recommendations	Short	Partial	Partial
7.7	Conformity Assessment Procedures	Mid	Very Partial	Very Partial
7.8	Marking and Labelling	Mid	No Coverage	No Similarity
7.9	Transparency	Short	Close	Close
7.10	Cooperation and Trade Facilitation	Short	Partial	Partial
7.11	Information Exchange	V. Short	Very Partial	Very Partial
7.12	Committee on Technical Barriers to Trade	Short	Very Partial	Very Partial
7.13	Contact Points	V. Short	Very Partial	Very Partial
7.14	Dispute Settlement (non-application of)	V. Short	No Coverage	No Coverage
7.15	Annex	V. Short	No Similarity	No Similarity

Art	CROSS-BORDER TRADE IN SERVICES (Chapter 8) – 17 pages*	Length	CPTPP (Chap 10–14pgs)	USMCA (Chap 15–11pgs)
8.1	Definitions	Long	No Similarity	No Similarity
8.2	Scope	V. Long	Verbatim	Verbatim
8.3	National Treatment	V. Short	Near Verbatim	Near Verbatim
8.4	Most-Favoured-Nation Treatment	V. Short	Verbatim	Verbatim
8.5	Market Access	Mid	Verbatim	Verbatim
8.6	Local Presence	V. Short	Verbatim	Verbatim
8.7	Non-Conforming Measures	Mid	Verbatim	Verbatim
8.8	Domestic Regulation	V. Long	Partial	Partial
8.9	Recognition	Mid	Verbatim	Verbatim
8.10	Denial of Benefits	Short	Verbatim	Verbatim
8.11	Transparency	Short	Verbatim	No Coverage
8.12	Payments and Transfers	Short	Verbatim	Verbatim
8.13	Committee on Services and Investment	Mid	No Coverage	No Coverage

Art	FINANCIAL SERVICES (Chapter 9)–24 pages*	Length	CPTPP (Chap 11–19pgs)	USMCA (Chap 17–18pgs)
9.1	Definitions	V. Long	Close	Close
9.2	Scope	Long	Verbatim	Verbatim
9.3	Prudential Exception	Short	No Similarity	No Similarity
9.4	Specific Exceptions	Short	Partial	Partial
9.5	National Treatment	Mid	Verbatim	Verbatim
9.6	Market Access	Mid	Close	Close
9.7	Local Presence	Short	No Coverage	No Coverage
9.8	Most-Favoured-Nation Treatment	Short	Very Close	Very Close
9.9	Senior Management and Boards of Directors	V. Short	Verbatim	Verbatim
9.10	Non-Conforming Measures	Long	Very Close	Very Close
9.11	Transparency	V. Long	Partial	Partial
9.12	Financial Data and Information	Mid	No Coverage	No Coverage
9.13	Payment and Clearing	V. Short	Verbatim	Verbatim
9.14	Performance of Back-Office Functions	Short	Close	No Coverage
9.15	Self-Regulatory Organisations	Short	Near Verbatim	Near Verbatim
9.16	Electronic Payments	Mid	No Coverage	No Coverage
9.17	Financial Services New to the Territory of a Party	Short	No Coverage	No Coverage
9.18	Financial Services New to the Territories of both Parties	Short	No Coverage	No Coverage
9.19	Sustainable Finance	Short	No Coverage	No Coverage
9.20	Recognition of Prudential Measurest	Short	Verbatim	Verbatim
9.21	Institutional Provisions	V. Short	No Similarity	No Similarity
9.22	Consultations	Mid	Verbatim	Very Close
9.23	Dispute Settlement	Mid	Partial	Partial
9.24	Financial Services Regulatory Cooperation	V. Short	No Similarity	No Similarity

Art	PROFESSIONAL SERVICES AND RECOGNITION OF PROFESSIONAL QUALIFICATIONS (Chapter 10)–7 pages	Length	CPTPP (Annex 10a)	USMCA
10.1	Definitions	Short	No Similarity	No Coverage
10.2	Scope	Short	No Similarity	No Coverage
10.3	Objectives	Short	No Similarity	No Coverage
10.4	General Principles for Professional Services	Mid	No Similarity	No Coverage
10.5	Recognition of Professional Qualifications	Short	No Similarity	No Coverage
10.6	Professional Services Working Group	Mid	No Similarity	No Coverage
10.7	Legal Services	Mid	No Similarity	No Coverage
10.8	Legal Services Regulatory Dialogue	Mid	No Similarity	No Coverage

Art	TEMPORARY ENTRY FOR BUSINESS PERSONS (Chapter 11)–5 pages	Length	CPTPP (Chap 12–5pgs)	USMCA (Chap 16–4pgs)
11.1	Definitions	Short	Near Verbatim	Close
11.2	Scope	Short	Near Verbatim	Very Close
11.3	Application Procedures	Short	Verbatim	Verbatim
11.4	Grant of Temporary Entry	Mid	Very Close	Very Close
11.5	Provision of Information	Short	Close	Close
11.6	Relation to Other Chapters	Mid	No Similarity	No Similarity
11.7	Dispute Settlement	Mid	Verbatim	Verbatim
11.8	Cooperation on Return and Readmissions	Mid	No Similarity	No Similarity

Art	TELECOMMUNICATIONS (Chapter 12)–17 pages	Length	CPTPP (Chap 13–21pgs)	USMCA (Chap 18–19pgs)
12.1	Definitions	Long	Very Close	Very Close
12.2	Scope	Mid	Near Verbatim	Near Verbatim
12.3	Approaches to Regulation	Short	Verbatim	Verbatim
12.4	Access and Use	Long	Verbatim	Verbatim
12.5	Access to Essential Facilities and Unbundled Network Elements	Short	No Similarity	No Similarity
12.6	Resale	Short	Verbatim	No Similarity
12.7	Competitive Safeguards	Short	Verbatim	Verbatim
12.8	Treatment by Major Suppliers	V. Short	Verbatim	Verbatim
12.9	Interconnection with Suppliers	Short	No Similarity	No Similarity
12.10	Interconnection with Major Suppliers	Mid	Verbatim	Verbatim
12.11	Number Portability	V. Short	Verbatim	Verbatim
12.12	Access to Numbers	V. Short	Verbatim	Verbatim
12.13	International Mobile Roaming	Mid	Near Verbatim	Close
12.14	Submarine Cable Landing Stations and Systems	Short	Close	Close
12.15	Independent Regulatory Authorities	Short	Verbatim	Near Verbatim
12.16	Universal Service	Short	Verbatim	No Coverage
12.17	Licensing and Authorisation Process	Short	Near Verbatim	No Coverage
12.18	Scarce Resources	Mid	Very Close	No Coverage
12.19	Flexibility in the Choice of Technology	Short	Very Close	Very Close
12.20	Resolution of Telecommunications Disputes	Mid	Near Verbatim	Near Verbatim
12.21	Transparency	Mid	Near Verbatim	Near Verbatim
12.22	Enforcement	Short	Verbatim	No Coverage
12.23	Relation to International Organisations	V. Short	No Similarity	No Similarity
12.24	Cooperation	Short	No Similarity	No Similarity
12.25	Confidentiality	V. Short	No Similarity	No Similarity

Art	INVESTMENT (Chapter 13)–19 pages*	Length	CPTPP (Chap 9–34pgs)	USMCA (Chap 14–15pgs)
13.1	Definitions	Long	Very Close	Near Verbatim
13.2	Scope	Mid	Close	Close
13.3	Relation to Other Chapters	Short	Verbatim	Verbatim
13.4	Market Access	Mid	No Coverage	No Coverage
13.5	National Treatment	Short	Verbatim	Verbatim
13.6	Most-Favoured-Nation Treatment	Short	Verbatim	Verbatim
13.7	Minimum Standard of Treatment	Mid	Verbatim	Verbatim
13.8	Treatment in Case of Armed Conflict or Civil Strife	Mid	Verbatim	Verbatim
13.9	Expropriation and Compensation	Long	Verbatim	Verbatim
13.10	Transfers	Mid	Verbatim	Verbatim
13.11	Performance Requirements	V. Long	Verbatim	Verbatim
13.12	Senior Management and Boards of Directors	V. Short	Near Verbatim	Very Close
13.13	Non-Conforming Measures	Long	Very Close	Close
13.14	Subrogation	Short	Verbatim	Verbatim
13.15	Special Formalities and Information Requirements	Short	Verbatim	Verbatim
13.16	Denial of Benefits	Short	Verbatim	Verbatim
13.17	Investment and Environmental, Health, and other Regulatory Objectives	V. Short	Verbatim	Verbatim
13.18	Investment and the Environment	Short	No Coverage	No Coverage
13.19	Corporate Social Responsibility	Short	Close	Close

Art	DIGITAL TRADE (Chapter 14)–15 pages	Length	CPTPP (Chap 14–10pgs)	USMCA (Chap 19–10pgs)
14.1	Definitions	Long	Close	Close
14.2	Scope and General Provisions	Mid	Partial	Partial
14.3	Customs Duties	V. Short	Verbatim	Verbatim
14.4	Domestic Electronic Transactions Framework	Short	Close	Close
14.5	Conclusion of Contracts by Electronic Means	Short	No Coverage	No Coverage
14.6	Electronic Authentication and Electronic Trust Services	Mid	Close	Close
14.7	Digital Identities	Short	No Coverage	No Coverage
14.8	Paperless Trading	Short	Partial	Very Partial
14.9	Electronic Invoicing	Short	No Coverage	No Coverage
14.10	Cross-Border Transfer of Information by Electronic Means	Short	Near Verbatim	Close
14.11	Location of Computing Facilities	Short	Verbatim	No Similarity
14.12	Personal Information Protection	Mid	Verbatim	Verbatim
14.13	Open Government Data	Short	No Coverage	Near Verbatim
14.14	Data Innovation	Short	No Coverage	No Coverage
14.15	Open Internet Access	Short	No Coverage	No Coverage
14.16	Online Consumer Protection	Short	Partial	Partial
14.17	Unsolicited Commercial Electronic Messages	Mid	Very Close	Near Verbatim
14.18	Source Code	Short	Very Close	Very Close
14.19	Commercial Information and Communication Technology Products that Use Cryptography	Mid	No Coverage	No Coverage
14.20	Cybersecurity	Mid	No Similarity	Near Verbatim
14.21	Cooperation	Mid	Partial	Partial

Art	INTELLECTUAL PROPERTY (Chapter 15)–48 pages	Length	CPTPP (Chap 18–68pgs)	USMCA (Chap 20–62pgs)
A	**GENERAL PROVISIONS**	–	–	–
15.1	Definitions	V. Long	Very Close	Very Close
15.2	Objectives	V. Short	Verbatim	Verbatim
15.3	Principles	Short	Verbatim	Verbatim
15.4	Understandings in Respect of this Chapter	Short	Verbatim	Verbatim
15.5	Nature and Scope of Obligations	Short	Close	Very Close
15.6	Understandings Regarding Certain Public Health Measures	Short	Very Partial	Very Partial
15.7	International Agreements	Short	Very Close	Very Close
15.8	National Treatment	Short	Close	Very Partial
15.9	Transparency	Short	Verbatim	Verbatim
15.10	Application of Chapter to Existing Subject Matter and Prior Acts	Short	Verbatim	Verbatim
15.11	Exhaustion of Intellectual Property Rights	V. Short	Verbatim	Verbatim
15.12	Genetic Resources, Traditional Knowledge & Traditional Cultural Expressions	V. Short	No Similarity	No Coverage
B	**CO-OPERATION**	–	–	–
15.13	Contact Points for Cooperation	V. Short	Close	Close
15.14	Cooperation	Mid	Partial	No Similarity
15.15	Committee on Intellectual Property Rights	Long	Close	Close
15.16	Patent Cooperation and Work Sharing	Short	Verbatim	Verbatim
15.17	Public Domain	V. Short	Verbatim	No Similarity
15.18	Cooperation in Traditional Knowledge Associated with Genetic Resources	Short	Verbatim	No Coverage
15.19	Cooperation on Request	V. Short	Verbatim	Verbatim
C	**TRADE MARKS**	–	–	–
15.20	Types of Signs Registrable as Trade Marks	V. Short	Near Verbatim	Near Verbatim
15.21	Collective and Certification Marks	V. Short	Verbatim	Verbatim
15.22	Rights Conferred	Short	Very Close	Very Close
15.23	Exceptions	V. Short	Verbatim	Verbatim
15.24	Well-Known Trade Marks	Short	Partial	Partial
15.25	Procedural Aspects of Examination, Opposition and Cancellation	Short	Verbatim	Verbatim
15.26	Bad Faith Applications	V. Short	No Similarity	No Similarity
15.27	Electronic Trade Marks Systems	V. Short	Verbatim	Verbatim
15.28	Term of Protection for Trade Marks	V. Short	Verbatim	Verbatim
15.29	Efforts toward the Harmonisation of Trade Mark Systems	V. Short	No Coverage	No Coverage
15.30	Domain Names	Short	Very Partial	Very Partial

Art	INTELLECTUAL PROPERTY (Chapter 15)–48 pages (contd)	Length	CPTPP (Chap 18–68pgs)	USMCA (Chap 20–62pgs)
D	**GEOGRAPHIC INDICATIONS**	–	–	–
15.31	Procedures for the Recognition and Protection of Geographical Indications	Mid	Very Close	Very Close
15.32	System and Standard of Protection for Geographical Indications	Mid	No Similarity	No Similarity
15.33	Protection of Geographical Indications	Mid	No Similarity	No Similarity
15.34	Consultations on Geographical Indications	Short	No Similarity	No Similarity
15.35	Amendments Relating to Geographical Indications	V. Short	No Similarity	No Similarity
E	**PATENTS AND DATA**	–	–	–
15.36	Rights Conferred	Short	No Similarity	No Similarity
15.37	Patentable Subject Matter	Short	Very Close	Very Close
15.38	Exceptions	V. Short	Verbatim	Verbatim
15.39	Experimental Use	V. Short	No Coverage	No Coverage
15.40	Regulatory Review Exception	Short	Close	Close
15.41	Other Use Without Authorisation of the Right Holder	V. Short	Very Close	Very Close
15.42	Patent Filing	V. Short	Verbatim	Very Partial
15.43	Amendments, Corrections and Observations	Short	Partial	Close
15.44	Publication of Patent Applications	Short	Verbatim	No Similarity
15.45	Information Relating to Published Patent Applications and Granted Patents	Short	Verbatim	Close
15.46	Conditions on Patent Applicants	V. Short	No Coverage	No Coverage
15.47	Extension of the Duration of Rights Conferred by a Patent	Short	No Similarity	No Similarity
F	**UNDISCLOSED TEST OR OTHER DATA**	–	–	–
15.48	Protection of Undisclosed Test or Other Data for Agri Chemical Products	Short	Partial	Partial
15.49	Protection of Undisclosed Test or Other Data for Pharmaceutical Products	Short	No Coverage	Close
G	**REGISTERED INDUSTRIAL DESIGNS**	–	–	–
15.50	Protection of Registered Industrial Designs	Short	Partial	Partial
15.51	Duration of Protection	V. Short	No Coverage	Close
15.52	Multiple Design Applications	V. Short	No Coverage	No Coverage
15.53	Improving Industrial Design Systems	V. Short	Verbatim	No Coverage
15.54	International Classification System for Industrial Designs	V. Short	No Coverage	No Coverage
15.55	International Registration of Industrial Designs	V. Short	Close	No Coverage

Art	INTELLECTUAL PROPERTY (Chapter 15)–48 pages (contd)	Length	CPTPP (Chap 18–68pgs)	USMCA (Chap 20–62pgs)
H	**COPYRIGHT AND RELATED RIGHTS**	–	–	–
15.56	Authors	Short	Very Close	Very Close
15.57	Performers	Short	No Similarity	No Similarity
15.58	Producers of Phonograms	Short	No Similarity	No Similarity
15.59	Broadcasting Organisations	V. Short	No Similarity	No Similarity
15.60	Broadcasting and Communication to the Public of Phonograms	V. Short	No Similarity	No Similarity
15.61	Artist's Resale Right	Short	No Similarity	No Similarity
15.62	Limitations and Exceptions	Short	Very Close	Very Close
15.63	Balance in Copyright and Related Rights Systems	V. Short	Verbatim	Verbatim
15.64	Term of Protection	Mid	No Coverage	No Coverage
15.65	Collective Management Organisations	Short	Close	Close
15.66	Technological Protection Measures	Mid	Very Close	Very Close
15.67	Rights Management Information	Short	Verbatim	Very Partial
15.68	Application of Art. 18 of Berne Convention & Art. 14.6 of TRIPS Agreement	V. Short	Partial	Close
I	**TRADE SECRETS**	–	–	–
15.69	Treade Secrets	Short	Verbatim	No Similarity
J	**ENFORCEMENT**	–	–	–
15.70	General Obligations	Short	Verbatim	Close
15.71	Availability of Civil Enforcement	V. Short	No Coverage	No Coverage
15.72	Measures for Preserving Evidence	Short	No Similarity	No Similarity
15.73	Provisional and Precautionary Measures	Short	Partial	Partial
15.74	Right to Information	Short	No Coverage	Close
15.75	Injunctions	Short	Partial	Partial
15.76	Corrective Measures	V. Short	No Coverage	Close
15.77	Damages	V. Short	No Coverage	No Coverage
15.78	Costs	V. Short	Verbatim	No Coverage
15.79	Safeguards	V. Short	No Coverage	No Coverage
15.80	Administrative Procedures	V. Short	Close	No Coverage
15.81	Border Measures	V. Short	Close	No Coverage
15.82	Criminal Offences	V. Short	Close	No Coverage
15.83	Penalties	V. Short	Close	No Coverage
15.84	Seizure, Forfeiture and Destruction	V. Short	Close	No Coverage
15.85	Ex Officio Enforcement	V. Short	Close	No Coverage
15.86	Liability of Legal Persons	V. Short	Close	No Coverage
15.87	General Obligations on Enforcement in the Digital Environment	Short	Close	No Coverage
15.88	Limitations on Liability of Internet Service Providers	Short	Close	No Coverage
15.89	Blocking Orders	Short	Close	No Coverage
15.90	Procedures for Domain Registrars	V. Short	Close	No Coverage
15.91	Disclosure of Information	V. Short	Close	No Coverage
15.92	Transparency of Judicial Decisions and Administrative Rulings	Short	Close	No Coverage
15.93	Voluntary Stakeholder Initiatives	V. Short	Close	No Coverage
15.94	Public Awareness	V. Short	Close	No Coverage
15.95	Specialised Enforcement Expertise, Information & Domestic Coordination	Short	Close	No Coverage
15.96	Environmental Considerations in Destruction & Disposal of Infringing Goods	V. Short	Close	No Coverage

Art	GOVERNMENT PROCUREMENT (Chapter 16)–32 pages*	Length	CPTPP (Chap 15–28pgs)	USMCA (Chap 13–25pgs)
16.1	Definitions	Long	Near Verbatim	Near Verbatim
16.2	Scope	V. Long	Verbatim	Verbatim
16.3	General Exceptions	Short	Verbatim	Verbatim
16.4	General Principles	Long	Verbatim	Verbatim
16.5	Information on the Procurement System	Short	Close	Close
16.6	Notices	Long	Near Verbatim	Near Verbatim
16.7	Conditions for Participation	Mid	Verbatim	Verbatim
16.8	Qualification of Suppliers	V. Long	Near Verbatim	Near Verbatim
16.9	Technical Specifications and Tender Documentation	V. Long	Very Close	Very Close
16.10	Time-Periods	Long	Very Close	Very Close
16.11	Negotiations	Short	Verbatim	Verbatim
16.12	Limited Tendering	Long	Verbatim	Verbatim
16.13	Electronic Auctions	Short	No Coverage	No Coverage
16.14	Treatment of Tenders and Awarding of Contracts	Mid	Verbatim	Verbatim
16.15	Transparency of Procurement Information	Mid	Verbatim	Verbatim
16.16	Disclosure of Information	Short	Verbatim	Verbatim
16.17	Environmental, Social and Labour Considerations	Short	No Coverage	No Coverage
16.18	Ensuring Integrity in Procurement Practices	Short	Close	Verbatim
16.19	Domestic Review Procedures	Long	Close	Verbatim
16.20	Modifications and Rectifications to Annex	Long	Partial	Partial
16.21	Facilitation of Participation by SMEs	Short	Verbatim	Verbatim
16.22	Co-operation	Short	Close	Close

Art	COMPETITION POLICY AND CONSUMER PROTECTION (Chapter 17) – 6 pages	Length	CPTPP (Chap 16–7pgs)	USMCA (Chap 21–6pgs)
17.1	Competition Law and Authorities	Short	Very Close	Very Close
17.2	Procedural Fairness in Competition Law Enforcement	Short	Close	Close
17.3	Private Rights of Action	Short	Verbatim	No Coverage
17.4	Transparency	Mid	Verbatim	Partial
17.5	Consumer Protection	Short	Partial	Partial
17.6	Cooperation on Competition Policy and Consumer Protection	Mid	Very Partial	Very Partial
17.7	Consultation	Mid	Very Close	Very Close
17.8	Non-Application of Dispute Settlement	Mid	Verbatim	Verbatim

Art	STATE-OWNED ENTERPRISES AND MONOPOLIES (Chapter 18)–23 pages*	Length	CPTPP (Chap 17–20pgs)	USMCA (Chap 22–20pgs)
18.1	Definitions	V. Long	Verbatim	Verbatim
18.2	Scope	V. Long	Verbatim	Near Verbatim
18.3	Delegated Authority	V. Short	Verbatim	Verbatim
18.4	Non-discriminatory Treatment and Commercial Considerations	Long	Verbatim	Verbatim
18.5	Courts and Administrative Bodies	Short	Verbatim	Verbatim
18.6	Non-commercial Assistance	Mid	Verbatim	Close
18.7	Adverse Effects	V. Long	Verbatim	Near Verbatim
18.8	Injury	Long	Verbatim	Verbatim
18.9	Application to Sub Central SOEs and Designated Monopolies	Short	Verbatim	Verbatim
18.10	Transparency	V. Long	Verbatim	Verbatim
18.11	Cooperation	Mid	No Similarity	No Coverage
18.12	Contact Points	V. Short	Verbatim	Verbatim
18.13	Exceptions	V. Long	Verbatim	Verbatim
18.14	Further Negotiations	V. Short	Verbatim	Verbatim
18.15	Process for Developing Information	V. Short	Verbatim	Verbatim

Art	SMALL AND MEDIUM-SIZED ENTERPRISES (Chapter 19) – 5 pages	Length	CPTPP (Chap 24–3pgs)	USMCA (Chap 25–6pgs)
19.1	General Provisions	Mid	No Coverage	Partial
19.2	Information Sharing	Long	Close	Very Close
19.3	Contact Points on SMEs	Short	No Coverage	No Coverage
19.4	Cooperation to Increase Trade and Investment Opportunities for SMEs	Mid	Very Close	Close
19.5	Other Provisions that Benefit SMEs	V. Short	No Coverage	Partial
19.6	Non-Application of Dispute Settlement	V. Short	Verbatim	Verbatim

Art	INNOVATION (Chapter 20) – 5 pages	Length	CPTPP (Chap 24–3pgs)	USMCA (Chap 25–6pgs)
20.1	Definitions	V. Short	No Coverage	No Coverage
20.2	Objective	V. Short	No Coverage	No Coverage
20.3	General Provisions	Short	No Coverage	No Coverage
20.4	Cooperation to Increase Trade and Investment Opportunities for SMEs	Mid	No Coverage	No Coverage
20.5	Other Provisions that Benefit SMEs	Long	No Coverage	No Coverage
20.6	Non-Application of Dispute Settlement	Short	No Coverage	No Coverage
20.7	Non-Application of Dispute Settlement	V. Short	No Coverage	No Coverage

Art	LABOUR (Chapter 21)–11 pages	Length	CPTPP (Chap 19–14pgs)	USMCA (Chap 23–15pgs)
21.1	Definitions	Short	Verbatim	Verbatim
21.2	Right to Regulate and Levels of Protection	Short	No Coverage	No Coverage
21.3	Statement of Shared Commitment	V. Short	Verbatim	Very Close
21.4	Labour Rights	Short	Verbatim	Verbatim
21.5	Non Derogation	Short	Verbatim	Verbatim
21.6	Enforcement of Labour Laws	Short	Verbatim	Very Close
21.7	Modern Slavery	Mid	Partial	Partial
21.8	Non-Discrimination and Gender Equality in the Workplace	Short	Very Partial	Partial
21.9	Corporate Social Responsibility	V. Short	Verbatim	No Coverage
21.10	Public Awareness and Procedural Guarantees	Mid	Verbatim	Verbatim
21.11	Public Submissions	Short	Verbatim	Very Close
21.12	Cooperation	Long	Near Verbatim	Very Close
21.13	Committee on Cooperation	V. Short	No Similarity	No Similarity
21.14	Contact Points	V. Short	Very Close	Very Close
21.15	Public Engagement	V. Short	Near Verbatim	Very Close
21.16	Labour Consultations and Dispute Settlement	Long	Verbatim	Near Verbatim

Art	ENVIRONMENT (Chapter 22)–23 pages*	Length	CPTPP (Chap 20–24pgs)	USMCA (Chap 24–29pgs)
22.1	Definitions	Mid	Verbatim	Verbatim
22.2	Objectives	Short	Verbatim	Close
22.3	General Commitments	Mid	Near Verbatim	Close
22.4	Multilateral Environmental Agreements	Short	Verbatim	Partial
22.5	Climate Change	Mid	No Coverage	No Coverage
22.6	Environmental Goods and Services	Short	Verbatim	Verbatim
22.7	Circular Economy	Mid	No Coverage	No Coverage
22.8	Ozone Depleting Substances and Hydrofluorocarbons	Mid	Close	Close
22.9	Air Quality	Short	No Coverage	Very Close
22.10	Protection of the Marine Environment from Ship Pollution	Mid	Verbatim	Verbatim
22.11	Marine Litter	Short	No Coverage	Very Close
22.12	Marine Wild Capture Fisheries	V. Long	Verbatim	Close
22.13	Sustainable Forest Management and Trade	Mid	No Coverage	Very Close
22.14	Trade and Biodiversity	Mid	Verbatim	Verbatim
22.15	Invasive Alien Species	Short	Verbatim	Verbatim
22.16	Conservation and Illegal Wildlife Trade	Long	Verbatim	Verbatim
22.17	Corporate Social Responsibility	V. Short	Verbatim	Verbatim
22.18	Opportunities for Public Participation	Short	Verbatim	No Similarity
22.19	Public Submissions	Short	Very Close	No Similarity
22.20	Cooperation Frameworks	Mid	Very Close	Close
22.21	Environment Working Group	Mid	Very Close	Close
22.22	Environment Contact Points	V. Short	No Similarity	No Similarity
22.23	LEnvironment Consultations	Mid	Verbatim	Near Verbatim
22.24	Joint Committee Consultations	Short	Verbatim	Near Verbatim
22.25	Ministerial Consultations	V. Short	Verbatim	Near Verbatim
22.26	Dispute Resolution	Short	Very Close	Near Verbatim

Art	DEVELOPMENT (Chapter 23) – 2 pages	Length	CPTPP (Chap 23–5pgs)	USMCA
23.1	General Provisions	Short	Very Close	No Coverage
23.2	Joint Development Activities	Short	Very Partial	No Coverage
23.3	Committee on Cooperation	V. Short	Very Partial	No Coverage
23.4	Non-Application of Dispute Settlement	V. Short	Verbatim	No Coverage

Art	TRADE AND GENDER EQUALITY (Chapter 24) – 3 pages	Length	CPTPP	USMCA
24.1	Objectives	Mid	No Similarity	No Coverage
24.2	Trade and Gender Equality Cooperation Activities	Mid	No Similarity	No Coverage
24.3	Dialogue on Trade and Gender Equality	Mid	No Similarity	No Coverage
24.4	Non-application of Dispute Settlement	V. Short	No Similarity	No Coverage

Art	ANIMAL WELFARE AND ANTIMICROBIAL RESISTANCE (Chapter 25) – 3 pages	Length	CPTPP	USMCA
25.1	Animal Welfare	Long	No Similarity	No Similarity
25.2	Antimicrobial Resistance	Mid	No Coverage	No Coverage
25.3	Non-application of Dispute Settlement	V. Short	–	–

Art	GOOD REGULATORY PRACTICES (Chapter 26) – 7 pages	Length	CPTPP (Chap 20–24pgs)	USMCA (Chap 24–29pgs)
26.1	Definitions	Mid	Very Partial	Very Partial
26.2	General Provisions	Mid	Partial	Partial
26.3	Internal Coordination and Review Processes or Mechanisms	V. Short	Very Partial	Very Partial
26.4	Descriptions of Regulatory Processes and Mechanisms	V. Short	No Similarity	No Similarity
26.5	Impact Assessment	Mid	Close	Close
26.6	Public Consultation	Short	Very Partial	Very Partial
26.7	Use of Plain Language	V. Short	No Coverage	Verbatim
26.8	Regulatory Register	V. Short	No Similarity	Very Close
26.9	Retrospective Review	V. Short	Very Partial	Very Partial
26.10	Regulatory Cooperation	Mid	Partial	Partial
26.11	Contact Points	Short	Very Partial	Very Partial
26.12	Relation to Other Chapters	V. Short	Verbatim	No Similarity
26.13	Non-Application of Dispute Settlement	V. Short	Verbatim	No Similarity

Art	CO-OPERATION (Chapter 27) – 3 pages	Length	CPTPP (Chap 21–3pgs)	USMCA
27.1	General Provisions	Short	Very Partial	No Coverage
27.2	Areas of Cooperation	Short	Close	No Coverage
27.3	Contact Points	V. Short	Very Close	No Coverage
27.4	Committee on Cooperation	Mid	Partial	No Coverage
27.5	Resources	V. Short	Close	No Coverage
27.6	Non-Application of Dispute Settlement	V. Short	Close	No Coverage

Art	TRANSPARENCY AND ANTI-CORRUPTION (Chapter 28) – 12 pages	Length	CPTPP (Chap 26–10pgs)	USMCA (Chap 27–8pgs)
28.1	Definitions	Short	Very Close	Close
	TRANSPARENCY (Part A)	–	–	–
28.2	Publication	Short	Near Verbatim	No Coverage
28.3	Administrative Proceedings	V. Short	Verbatim	No Coverage
28.4	Review and Appeal	Mid	Verbatim	No Coverage
28.5	Provision of Information	V. Short	Verbatim	No Coverage
28.6	Accessible and Open Government	V. Short	Verbatim	No Coverage
	ANTI-CORRUPTION (Part B)	–	–	–
28.7	Scope	V. Short	Very Partial	Very Partial
28.8	General Provisions	V. Short	Close	Partial
28.9	Measures to Prevent and Combat Bribery and Corruption	V. Short	Verbatim	Verbatim
28.10	Persons that Report Bribery or Corruption Offences	V. Short	Partial	Partial
28.11	Promoting Integrity among Public Officials	V. Short	Very Close	Very Close
28.12	Participation of Private Sector and Civil Society	V. Short	Verbatim	Verbatim
28.13	Application and Enforcement of Measures	V. Short	Near Verbatim	Near Verbatim
28.14	Relation to Other Agreements	V. Short	Close	Very Close
28.15	Cooperation, Consultation, and Dispute Settlement	V. Short	Close	Close

Art	ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS (Chapter 29) – 3 pages	Length	CPTPP (Chap 27–5pgs)	USMCA (Chap 30–4pgs)
29.1	Establishment of the Joint Committee	V. Short	Very Close	Close
29.2	Functions of the Joint Committee	Mid	Verbatim	Verbatim
29.3	Decision-Making	V. Short	Partial	Partial
29.4	Rules of Procedure of the Joint Committee	Short	Near Verbatim	Near Verbatim
29.5	Contact Points	Short	Near Verbatim	Verbatim

Art	DISPUTE SETTLEMENT (Chapter 30) – 22 pages	Length	CPTPP (Chap 28–21pgs)	USMCA (Chap 31–14pgs)
30.1	Definitions	Short	Near Verbatim	No Coverage
30.2	Objective	V. Short	No Coverage	No Coverage
30.3	Cooperation	V. Short	Verbatim	Verbatim
30.4	Scope	Short	Partial	Partial
30.5	Choice of Forum	Short	Very Partial	Very Partial
30.6	Good Offices, Conciliation, and Mediation	Short	Near Verbatim	Near Verbatim
30.7	Consultations	Mid	Very Close	Very Close
30.8	Request for Establishment of a Panel	Short	Close	Close
30.9	Establishment and Reconvening of Panels	Long	Partial	Partial
30.10	Qualifications of Panellists	Mid	Close	Very Partial
30.11	Functions of a Panel	Long	Very Partial	Partial
30.12	Reports of a Panel	Short	Very Partial	Very Partial
30.13	Rules of Procedure and Code of Conduct	Mid	Close	Very Close
30.14	Compliance with the Final Report	Mid	No Similarity	No Similarity
30.15	Compliance Review	Mid	Very Partial	No Similarity
30.16	Temporary Remedies for Non-Compliance	Long	No Similarity	No Similarity
30.17	Compliance Review after the Adoption of Temporary Remedies	Mid	No Similarity	No Similarity
30.18	Suspension or Termination of Proceedings	Short	Close	Close
30.19	Time Periods and Cases of Urgency	Short	No Similarity	No Similarity
30.20	Mutually Agreed Solution	V. Short	No Similarity	No Similarity
30.21	Administration of the Dispute Settlement Procedure	V. Short	No Similarity	No Similarity
30.22	Contact Point	V. Short	No Similarity	No Coverage

Art	GENERAL PROVISIONS AND EXCEPTIONS (Chapter 31) – 7 pages	Length	CPTPP (Chap 29–10pgs)	USMCA (Chap 32–12pgs)
31.1	General Exceptions	Mid	Very Close	Very Close
31.2	Security Exceptions	Short	Verbatim	Verbatim
31.3	Temporary Safeguard Measures	Long	Very Close	Very Close
31.4	Taxation Measures	V. Long	Close	Close
31.5	Disclosure of Information	V. Short	Verbatim	Verbatim
31.6	Confidentiality of Information	V. Short	No Coverage	No Similarity
31.7	The National Health Service and Australia's Health System	Short	No Coverage	No Coverage

Art	FINAL PROVISIONS (Chapter 32) – 3 pages	Length	CPTPP (Chap 30–5pgs)	USMCA (Chap 34–3pgs)
32.1	Annexes, Appendices and Footnotes	V. Short	Verbatim	Verbatim
32.2	Amendments	V. Short	Verbatim	Verbatim
33.3	Amendment of International Agreements	V. Short	Near Verbatim	Near Verbatim
34.4	Territorial Extension	Short	Very Partial	No Coverage
35.5	Territorial Disapplication	Short	No Similarity	No Similarity
36.6	General Review	Short	No Coverage	No Similarity
37.7	Entry into Force	V. Short	No Similarity	No Similarity
32.8	Termination	Short	No Coverage	No Similarity

V. Short	Less than quarter page	No Coverage	CPTPP and USMCA do not cover this article content included in the UK-Australia FTA
Short	Quarter to half page	No Similarity	CPTPP and USMCA cover the article's content but in a dissimilar way
Mid	Around one page	Very Partial	19% or under similarity with article text from one of the other FTAs
Long	Around two pages	Partial	20-39% similarity with article text from one of the other FTAs
V. Long	More than two pages	Close	40–59% similarity with article text from one of the other FTAs
*	Plus annexes	Very Close	60–79% similarity with article text from one of the other FTAs
		Near Verbatim	80–89% similarity with article text from one of the other FTAs
		Verbatim	90–100% similarity with article text from one of the other FTAs

Note:
Estimated similarity is based on the extent to which an article in the UK-Australia Agreement draws upon the text of the corresponding article in the CPTPP or the USMCA. Thus, a 100% equivalence score for an article in the UK-Australia Agreement means that all of the text in that article is drawn from the corresponding article in the CPTPP or the USMCA; it does not necessarily mean that the article in the CPTPP or the USMCA is identical with the article in the UK-Australia Agreement, since the former may have additional text which is not present in the latter.

Appendix 2: Additional comparison with non-tariff barrier provisions of the Pacific agreement

1) This Appendix compares the UK-Australia Agreement with the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) in reference to the following key provisions on goods regulation and cross-cutting regulatory disciplines:

- Sanitary and Phytosanitary (SPS) measures—UK-Australia Agreement Chapter 6 / CPTPP Chapter 7;
- Technical Barriers to Trade (TBT)—UK-Australia Agreement Chapter 7 / CPTPP Chapter 8;
- Good regulatory practices (GRPs)—UK-Australia Agreement Chapter 26 / CPTPP Chapter 25 [Regulatory Coherence]; and
- Transparency provisions (in Transparency and Anti-Corruption chapters)—UK-Australia Agreement Chapter 28 / CPTPP Chapter 26.[679]

Sanitary and Phytosanitary measures

2) There is a key difference between the UK-Australia Agreement's provision on "science and risk assessment" (Article 6.5) and the equivalent article in CPTPP (Article 7.9). Where the UK-Australia Agreement's provision just reaffirms the World Trade Organisation (WTO) SPS Agreement, the CPTPP article omits the leeway that exists under the SPS agreement for some precautionary measures (WTO SPS Agreement, Article 5.7, giving scope to "provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information").

3) The CPTPP (Article 7.8) has a clearer process for determining equivalence of regulations on the request of one of the Parties, including requirements on providing information on how the decision will be made and justifying why a decision was not made. The UK-Australia Agreement just mentions establishing a procedure to facilitate equivalence decisions (Article 6.7).

4) The CPTPP (Article 7.11) has more extensive procedural requirements around justifying import checks and providing opportunities for the other party to comment than does the UK-Australia Agreement (Article 6.11). A similar conclusion can also be drawn regarding the provisions around certification (CPTPP Article 7.12 / UK-Australia Agreement Article 6.10).

5) Crucially, the CPTPP's SPS chapter is subject to (state-to-state) dispute settlement (with provisos), whereas none of the UK-Australia Agreement's SPS chapter is subject to dispute settlement.

679 We are grateful to Dr Gabriel Siles-Brügge for undertaking the analysis summarised in this Appendix.

Technical barriers to trade

6) On conformity assessment, the UK-Australia Agreement only has provisions on promoting acceptance of the other party's conformity assessment (Article 7.7). The CPTPP, by contrast, goes so far as to extend National Treatment (non-discrimination) requirements to conformity assessment bodies and to ban local presence requirements for such bodies (Article 8.6).

7) On transparency, the UK-Australia Agreement's provisions (Article 7.9) are much shorter and introduce fewer procedural requirements than the CPTPP's. In the CPTPP (Article 8.7), there are very specific requirements on publishing technical regulations and conformity assessment procedures and allowing comment by interested parties.

8) The CPTPP (Article 8.8) has a requirement setting a specified compliance period of six months following the publication of a technical regulation or conformity assessment procedure. This is not found in the UK-Australia Agreement.

9) The CPTPP (Article 8.9) has a requirement on Parties to justify why another Party's technical regulation is not accepted as equivalent. This is not found in the equivalent UK-Australia Agreement provision (Article 7.10).

10) The CPTPP Annexes cover more areas than the UK-Australia Agreement, and there is a provision not found in the UK-Australia Agreement about the TBT Committee under the agreement reviewing these Annexes at least every five years.

11) The Cosmetics Annexes in the two agreement are almost the same. The one difference is the addition of Paragraph 27 in the UK-Australia Agreement's Cosmetics Annex about providing information regarding any differential coverage of UK and Australian cosmetics legislation.

Good regulatory practices

12) On a coordination or review mechanism for regulatory measures, the CPTPP's provisions (Article 25.4) provide more specific requirements than those in the UK-Australia Agreement (Article 26.3), where there is just a single paragraph dedicated to the issue.

13) Regarding descriptions of regulatory practice, the UK-Australia Agreement has a requirement these be published online (Article 26.4), whereas CPTPP just requires that they be published (Article 25.4).

14) On regulatory impact assessments, both CPTPP (Article 25.5) and the UK-Australia Agreement (Article 26.5) have broadly comparable provisions, with the exception that the CPTPP additionally requires advance notice to be given of forthcoming regulations.

15) There is an article on requirements relating to public consultation in the UK-Australia Agreement (Article 26.6) which cannot be found in the CPTPP.[680] Similarly, the UK-Australia Agreement has a provision not found in the CPTPP on having an online regulatory register (Article 26.8).

680 In the CPTPP, an article on "interested persons" (Article 25.8) pertains to their engagement with the Regulatory Coherence Committee established under the chapter.

16) Provisions on regulatory cooperation, relating to substantive outcomes, are a little more detailed in the UK-Australia Agreement (Article 26.10) than in the CPTPP (Article 25.7).

17) The CPTPP establishes a Regulatory Coherence Committee (Article 25.6), while no treaty body is established under the UK-Australia Agreement GRP chapter. Under the CPTPP, the Committee is also tasked with reviewing the provisions within five years, with a view to improving them.

18) The CPTPP has provisions requiring the parties to notify how they are implementing the chapter (Article 25.9) to the Regulatory Coherence Committee under the agreement.

19) In the UK-Australia Agreement, Article 26.9 (Retrospective Review) applies only to "major regulatory measures", with each party given discretion to define these (footnote to Article 26.1, paragraph 1). The CPTPP does not make a distinction between major regulatory measures and existing "covered regulatory measures" subject to periodic review (Article 25.5.6): each party retains discretion to set the scope of "covered regulatory measures", but with the "aim to achieve significant coverage" (Article 25.3).

20) This chapter is not subject to dispute settlement in either the CPTPP or the UK-Australia Agreement.

Transparency

21) On the whole, the provisions in the two agreements on publishing information on regulations, administrative proceedings, review and appeal and the provision of information, are quite similar. They are also subject to dispute settlement in both the CPTPP and the UK-Australia Agreement. There are, however, some notable differences.

22) Requirements in relation to the publication of regulations are more onerous in CPTPP (Article 28.2), with the agreement setting timeframes for publishing proposed regulations for interested parties to comment.

23) The CPTPP has an Annex on Transparency and Procedural Fairness for Pharmaceutical Products and Medical Devices which is not present in the UK-Australia Agreement.

Formal minutes

Monday 4 July 2022

Members present

Mark Garnier

Sir Mark Hendrick

Tony Lloyd

Mick Whitley

Mike Wood

In the absence of the Chair, Mark Garnier was called to the chair.

Draft Report (*UK trade negotiations: Agreement with Australia*) proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 464 read and agreed to.

Annexes 1 and 2 and Summary agreed to.

A Paper was appended to the Report as Appendix 1.

A Paper was appended to the Report as Appendix 2.

Resolved, That the Report be the Second Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Adjournment

Adjourned till Wednesday 6 July 2022 at 9.30 a.m.

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the inquiry publications page of the Committee's website.

Wednesday 9 February 2022

Richard Rumbelow, Director, International Trade and Member Relations, Make UK; **Alessandro Marongiu**, Senior Trade Policy Manager, Society of Motor Manufacturers and Traders; **Sam Lowe**, Director, Trade, Flint Global; **Mr Shanker Singham**, Chief Executive Officer, Competere Ltd — Q1–28

Alan Vallance, Chief Executive Officer, Royal Institute of British Architects; **Mr John Cooke**, Chairman, Liberalisation of Trade in Services Committee, TheCityUK; **Prof Daniel Hodson**, Chairman, CityUnited Project; **Dr Minako Morita-Jaeger**, Policy Research Fellow, UK Trade Policy Observatory — Q29–55

Wednesday 2 March 2022

Sarah Williams, Head of Greener UK unit, Green Alliance; **Ruth Bergan**, Senior Adviser, Trade Justice Movement; **Sir Lockwood Smith**, Former New Zealand trade minister and Former High Commissioner to the UK — Q56–86

Rosa Crawford, Policy Officer, Trades Union Congress (TUC); **Dr Silke Trommer**, Senior Lecturer in Comparative Public Policy, The University of Manchester; **Professor Emily Reid**, Professor of International Economic Law and Sustainable Development, The University of Southampton; **Victoria Hewson**, Head of Regulatory Affairs and Research Associate, Institute of Economic Affairs — Q87–105

Wednesday 9 March 2022

Sabina Ciofu, Head of EU and Trade Policy, techUK; **Eunice Lim**, Senior Manager, Policy - APAC, Global Data Alliance; **Swee Leng Harris**, Director, Strategy & Litigation, Luminate — Q106–138

William Kovacic, Non-Executive Director, Competition and Markets Authority; **Eduardo Pérez Motta**, Partner, SAI Law & Economics, Former President, International Competition Network; **Professor Albert Sanchez-Graells**, Professor of Economic Law, University of Bristol Law School; **Anne L. Petterd**, Author of Australia Chapter in Government Procurement Review, Partner, Baker McKenzie — Q139–161

Wednesday 23 March 2022[681]

Richard Price, Chief Economist, Department for International Trade; **Stephen Gibson**, Chair, Regulatory Policy Committee; **Dr Jonathan Cave**, Member, Regulatory Policy Committee; **Tammy Holmes**, Deputy Director Trade Agreements Analysis, Department for International Trade — Q350–390

Professor Tony Venables, Senior Research Fellow, Oxford University; **Professor Joe Francois**, Professor of International Economics, University of Bern — Q391–403

681 The number for this session follows the sequencing for the Committee's UK trade negotiations inquiry rather than this inquiry.

Tuesday 26 April 2022

Professor Lorand Bartels MBE, Chair of Trade and Agriculture Commission (TAC) Q162–195

Nick von Westenholz, Director of Trade and Business Strategy, National Farmers' Union; **Robert Hodgkins**, Shepherd; **James Russell**, Senior Vice President, British Veterinary Association (BVA); **Miles Beale**, Chief Executive, The Wine and Spirit Trade Association; **Gerald Mason**, Senior Vice President, Tate & Lyle Sugars Q196–249

Wednesday 29 June 2022

Rt Hon. Anne-Marie Trevelyan MP, Secretary of State for International Trade; and **Crawford Falconer**, Second Permanent Secretary and Chief Trade Negotiator Adviser, Department for International Trade Q250

Published written evidence

The following written evidence was received and can be viewed on the inquiry publications page of the Committee's website.

AUS numbers are generated by the evidence processing system and so may not be complete.

1 Accolade Wines (AUS0016)

2 Agriculture and Horticulture Development Board (AHDB) (AUS0033)

3 Australian High Commission (AUS0041)

4 British Veterinary Association (AUS0026)

5 Chartered Institute of Patent Attorneys (AUS0005)

6 City of London Corporation (AUS0027)

7 Collins, Professor David (Professor of International Economic Law, City, University of London) (AUS0002)

8 Compassion in World Farming (AUS0024)

9 Department for Economy (Northern Ireland) (AUS0030)

10 Direct Wines Holdings Ltd (AUS0013)

11 Farmers' Union of Wales (AUS0017)

12 Federation of Small Businesses (FSB) (AUS0031)

13 Friends of the Earth (AUS0009)

14 Greener UK (AUS0021)

15 Harris, Swee Leng (AUS0038)

16 Hybu Cig Cymru - Meat Promotion Wales (HCC) (AUS0006)

17 Irish Whiskey Association (AUS0003)

18 Jones, Dr. Emily (Associate Professor of Public Policy, Blavatnik School of Government, University of Oxford) (AUS0035)

19 Lang, Professor Tim, Millstone, Professor Erik and Marsden, Professor Terry (AUS0022)

20 Lim, Eunice (Senior Manager, Policy – APAC, BSA | The Software Alliance) (AUS0039)

21 National Farmers' Union (NFU) (AUS0034)

22 Paine, Dr Joshua (Senior Lecturer in Law, University of Bristol) (AUS0014)

23 Pernod Ricard (AUS0018)

24 Professional and Business Services Council (AUS0007)

25 Royal Society for the Prevention of Cruelty to Animals (RSPCA) (AUS0004)

26 Sanchez-Graells, Professor Albert (Professor, University of Bristol Law School) (AUS0043)

27 Sanchez-Graells, Professor Albert (Professor, University of Bristol Law School) (AUS0036)

28 Sustain: the alliance for better food and farming (AUS0023)

29 Tate and Lyle Sugars (AUS0042)

30 The Law Society of England and Wales (AUS0011)

31 The Scottish Government (AUS0025)
32 The Wine and Spirit Trade Association (AUS0008)
33 Trade & Animal Welfare Coalition (AUS0015)
34 Trades Union Congress (TUC) (AUS0037)
35 Traidcraft Exchange (AUS0020)
36 Trommer, Dr Silke (Senior Lecturer, The University of Manchester) (AUS0040)
37 UK Centre for Animal Law (AUS0019)
38 UK Trade Policy Observatory (University of Sussex) (AUS0028)
39 WWF-UK (AUS0010)
40 Which? (AUS0012)
41 techUK (AUS0029)

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the publications page of the Committee's website.

Session 2022–23

Number	Title	Reference
1st Report	UK trade negotiations: Scrutiny of Agreement with Australia	HC 444

Session 2021–22

Number	Title	Reference
1st Report	Digital trade and data	HC 123
2nd Report	UK Export Finance	HC 126
3rd Report	Inward Foreign Direct Investment	HC 124
1st Special Report	UK trade remedies policy: Government Response to the Committee's Third Report of Session 2019–21	HC 269
2nd Special Report	UK Freeports: Government Response to the Committee's Fourth Report of Session 2019–21	HC 453
3rd Special Report	UK trade remedies policy: Trade Remedies Authority's Response to the Committee's Third Report of Session 2019–21	HC 707
4th Special Report	Digital trade and data: Government Response to the Committee's First Report	HC 831
5th Special Report	Inward Foreign Direct Investment: Government Response to the Committee's Third Report	HC 921
6th Special Report	UK Export Finance: Government Response to the Committee's Second Report	HC 965

Session 2019–21

Number	Title	Reference
1st Report	The COVID-19 pandemic and international trade	HC 286
2nd Report	UK-Japan Comprehensive Economic Partnership Agreement	HC 914
3rd Report	UK trade remedies policy	HC 701

4th Report	UK freeports	HC 258
1st Special Report	The COVID-19 pandemic and international trade: Government Response to the Committee's First Report of Session 2019–21	HC 815
2nd Special Report	UK-Japan Comprehensive Economic Partnership Agreement: Government Response to the Committee's Second Report of Session 2019–21	HC 1163