

Environment, Food and Rural Affairs Committee

Oral evidence: Australia FTA: Food and Agriculture, HC 23

[Wednesday 11 May 2022](#)

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Watch the meeting

Members present: Geraint Davies (Chair); Kirsty Blackman; Barry Gardiner; Dr Neil Hudson; Robbie Moore.

Questions 321 - 389

Witness

[I](#): Professor Lorand Bartels, Chair, Trade and Agriculture Commission.

Examination of witness

Witness: Professor Lorand Bartels.

Q321 **Chair:** Good morning and welcome, professor. Perhaps you could introduce yourself, then go straight in and give a brief summary of the issues that you addressed in your report, and your top-line conclusions on the Australia trade deal.

Professor Bartels: Certainly, and thanks very much for inviting me to speak to you about our advice. My name is Lorand Bartels. I am professor of international law at the University of Cambridge. Relevantly for today, I am also the Chair of the Trade and Agriculture Commission, which, as you know, was established in order to advise the Secretary of State for International Trade, in the first instance, and Parliament on the compatibility of new free trade agreements concluded by the UK with other countries, with certain domestic statutory protections.

Those statutory protections are in the areas of SPS, which stands for sanitary and phytosanitary measures in the area of plant and animal health and safety; environmental protection; and, thirdly, animal welfare protection. As you know, we were first asked to advise the Secretary of State on the UK-Australia FTA, which was signed in December of last year, and we delivered our advice on 31 March this year. We are currently engaged in a similar exercise with the UK-New Zealand FTA.

Chair: Thank you. Robbie, I think you are coming in next.

Q322 **Robbie Moore:** Good morning. You concluded in the report that the equivalence procedure under the free trade agreement could narrow the situations in which the UK can reject a request for Australian law to be treated as equivalent to UK law. Could you explain how that might happen?

Professor Bartels: Sure. First, the agreement itself, as it currently stands, does not require the UK to make an equivalence determination that an Australian regulation is equivalent to a UK regulation. In fact, the equivalence provision in the FTA makes it pretty clear that the final decision on equivalence rests with the importing country—in this case, the UK.

What we said in the advice is that, as there is a mechanism for equivalence, it would be possible for the UK, under the agreement, to decide on modalities for reaching equivalence decisions. This is voluntary on the part of the UK and Australia, and it is a further joint decision that would need to be taken. Even then, the decision on equivalence would still be a decision that would need to be taken by the UK.

All that is in the future, and the reason why we mentioned it in this advice is that we thought that this is one of the decisions that can be taken under the FTA in the future. The FTA, like most international treaties, is a living



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instrument. What we wanted to highlight was that just looking at the FTA as it stands is not enough; it is a bit like looking at a constitution without appreciating that decisions can be made under that constitution.

What we wanted to say is that decisions can be made under this FTA. That is not to say they will be, but they can be. When they are made, it is important that Parliament in particular, but also the public at large, is aware that these decisions can be taken and that they should be subjected to proper scrutiny.

Q323 Robbie Moore: I am keen to explore a little bit about how that mechanism may have an impact on UK standards.

Professor Bartels: It doesn't need to have any impact on UK standards, and it is probably important to say that the UK can change its standards. This is up to the UK, essentially, but this is one mechanism that does not involve changing, for instance, a standard in terms of outcome.

Usually, what equivalence mechanisms are designed to do is to talk about production methods. You might say, "We have a way of making a particular cheese and, for reasons of tradition and various other factors, this is how we have decided that this is safe to make the cheese. You make cheese in a different way. We've had a look at what you do. The reason we have our rules is to protect against certain types of diseases. We've had a look at the way you do it, and we've decided that that's another way of protecting against certain types of diseases. That's good enough, even though that would be an inappropriate production method in the UK." That is the general idea with equivalence.

Q324 Robbie Moore: What safeguards or controls are built into the FTA to reduce the risk factor associated with the equivalence procedure on UK standards?

Professor Bartels: The most important safeguard is that nothing needs to be done at all. This is entirely voluntary, so it would be a policy decision for the UK to do this. But in the same way, the UK can decide to get rid of all its protections if it wants. We will probably talk about the animal welfare chapter and the environment chapter. There are certain things that the FTA does that reduce the UK's scope of movement but, in principle, the UK has a scope of movement. The premise is that the UK can drop its protections if it wants to drop its protections, usually speaking. In this FTA, the most important protection is that the UK is not required to grant equivalence.

In terms of other protections, I don't even think you would get to them. But if you needed to, there are exceptions, which I am happy to talk about at length. It was one of the core parts of this advice, and the exceptions to the agreement include an exception for animal and plant health and safety. They also include an exception for human health and safety, but that is not within the TAC remit. We did not look at human health and safety—that was excluded from our remit—but we were focusing on animal and plant health and safety. There are exceptions that entitle the UK to adopt measures. These are the same exceptions that already exist in WTO

law, so nothing changes there. That will probably be your second line of defence. But again, countries can say, "We think that our standards are too high." Generally speaking, they can lower them. This is just another way of doing this, if the UK decided to do it.

It could be that the UK is over-regulating. It is possible. It could be that it has decided that some retained EU law is overly protective—that it is there for reasons that don't make scientific sense. This is a possibility, and it could well be that the UK decides to reduce those standards to a different level.

An equivalence mechanism is simply a way of looking again at domestic regulations, comparing those to regulations in an exporting country and saying, "Well, you know what, we think that your regulations are as good as our regulations." That's all. Essentially, that is the basis of the EU. The EU is founded on equivalence. The whole point of the EU, when it comes to the single market, is equivalence. There is nothing necessarily bad about that. The essence of the single market is in fact equivalence.

Q325 Chair: On that point, is there a danger within those mechanisms and flexibilities that we could, as you have just said, ratchet down our standards so that they were no longer equivalent with EU standards and that might have a knock-on impact on trade with the EU?

Professor Bartels: That is an excellent question. It is possible, but, as I was saying, it can happen anyway. Having an equivalence mechanism in this agreement is irrelevant, causally speaking, because the UK could do that anyway, if it wanted to do that.

The second part of that question is about if the UK dropped its standards, for instance by saying that an Australian product is equivalent to a UK product. Yes—what that would mean is that an Australian product could come into the UK, that product would then no longer travel into the EU, but you know where that product is and what that product is, and that product is going to be traceable anyway. Just having a product in the UK doesn't mean that everything in the UK can necessarily go to the EU—it is still subject to checks. If you are exporting, you are still made to fill in forms these days. Among other reasons, that happens for tax reasons.

Q326 Chair: And that is another good reason for the Northern Ireland protocol then, is it?

Professor Bartels: Well, that is precisely there in order to deal with this situation. That is exactly right.

Q327 Kirsty Blackman: You mentioned UK policy and UK decisions. You may not be the right person to ask, but what do you mean by UK policy? Who is taking these decisions? Is it Parliament? Is it the Government? Is it the Secretary of State? Is it some other body that would be taking decisions around equivalence? Not on the signed FTA itself but on the levels below, who takes those decisions?

Professor Bartels: I don't know exactly what level of regulation this happens under. If there is a need for an Act of Parliament to be amended,



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then of course Parliament ultimately would be making those decisions. If this happens at the regulatory level, then it would presumably be the Government not needing to refer the matter back to Parliament.

Chair: Neil, you had some points to raise, so go straight into your questioning.

Q328 **Dr Hudson:** Okay. Thank you, Professor Bartels, for being before us today. I have a quick question about the constitution and the functioning of the new TAC that you chair. Obviously, you have bursts of activity when you are scrutinising individual deals. Can you tell us how that process works? Are you comfortable that you have got the resources and the time allocation that you need? How does that all work?

Professor Bartels: The way it works is that we get three months from the date of signature of the agreement until we need to deliver our report, which looks like this—this one was 70-something pages long. We did have to work fairly intensively on this agreement, particularly because we were doing a lot of things for the first time.

There are 11 of us. We have a small secretariat that supports us, of four or five people. They also do other things, but when they are working for us, it is firewalled from any other work that they might be doing. They help us line up meetings. We also spent a fair bit of time interviewing people from Australia, predominantly, in order to work out what goes on in Australia, because a large part of what we were looking at was agricultural practices in Australia.

We had some advice from other trade negotiators. We spoke to the chapter leads of the FTA, on the relevant chapters of the FTA, and the lawyers supporting them, to get a sense of what the UK Government's own view was of what it had negotiated. All of that took a fair amount of time. Three months was okay—it was reasonably hard work, but it was okay for this agreement. For the New Zealand agreement, I think it is also going to be okay.

I am a little bit concerned about CPTPP coming down the track. We only had to worry about one country for Australia, and another country for New Zealand, and they were countries where we understand the language and for that matter the legal system—we even have nationals on the committee. When we deal with CPTPP, we have 11 countries with a variety of languages we do not speak and practices we are not familiar with, so that will be very difficult.

Q329 **Dr Hudson:** Can you give our Committee some comfort, then? You are an academic lawyer and a practising lawyer too. Can you devote sufficient time to it? Can you give us that sort of confidence? These are big pieces of work in intensive periods.

Professor Bartels: Doing a single agreement at a time is okay if it is a single agreement with another country. I think that is all right; we have done that. A large part of the work that we were doing with the Australia agreement can be replicated because a large part of it was trying to



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assess the landscape in the UK, and of course that doesn't change—or at least doesn't change very much.

Proportionately, our work will be much more on the other side, and that is why I am a bit worried about CPTPP. I have spoken to the secretariat about obtaining additional resources, and they are aware that we might need to find a new way of working for that.

Q330 Kirsty Blackman: You mentioned the funding and the three-month period. Is it possible for you to say, "It's going to take much longer for us to do CPTPP, so we're going to start in advance. We're going to start looking at how agriculture works in those countries early"? Would you get funding to do that? Would that just be given to you, or would you have to go through a new process to get it?

Professor Bartels: Aside from the secretariat, we have zero funding. I hired a research assistant from Cambridge with university money to help us out for the Australia agreement. I think that could be improved. I should say that we have secretarial support, but they are not trained researchers in this field.

Since the beginning, I have made the point to the secretariat that it would be a good idea to have some independent funding, and my understanding is that they are looking at that. We can survive without that for the New Zealand agreement, but if it comes to CPTPP, I find it hard to see how we could do a similar job because that is a major research project. It could just be that we approach it differently, limit ourselves to interpreting the agreement and don't get stuck into practices in these different countries.

We thought that was an important thing to do with the New Zealand agreement, and particularly with the Australia agreement because so many people were saying so many things about what went on in Australia, which I am sure we will come to.

With CPTPP, I don't know if people have quite the same feelings. On the other hand, it may well be that there are practices in those countries that are in fact of more concern than is the case with Australia. As so often in these matters, I suspect that people who are a bit nervous—sometimes justifiably worried—have just misdirected their concern.

Q331 Chair: On that, you have been very clear in your evidence that there is a larger range of countries with various practices. You haven't had that much resource to do the Australia deal, and you have been able to cope with your own resources. In order to do a proper job to evaluate all the standards across the CPTPP, how much extra resource would you need, or is that rather difficult to say?

Professor Bartels: If we were going to do a similar job, we would probably need to engage local consultants—probably from universities, I imagine—to give us a summary of not only the legislative system, which is of course important, but, to the extent that this is possible, the practices, voluntary standards and so on that exist.



I should say that it might be a smaller job than one might imagine. As we found with the Australia agreement, and as we are also seeing with the New Zealand agreement, not every product is likely to be coming into the UK at an increased rate under the agreement. That could be because it is not liberalised—we don't know how much is going to be liberalised with CPTPP.

If a product is not liberalised, we effectively don't need to look at it because the agreement doesn't make any difference. The alternative is that there is already a duty-free treatment, in which case again the agreement doesn't make any difference. For instance, wool from Australia is already duty free so the FTA makes no difference to it.

To get to the question, "Can we start doing this now?", it is a bit difficult in some senses because, until we know what is liberalised, we will not know what products to look at and the production processes in relation to those products, unless we can get started on the work, anyway. There are some things that might be a bit more generic, such as pesticide use. I would imagine that it will involve hiring at least one consultant in each of the countries—maybe one more legal and one more agricultural—to work out what is going on and get a report, but that sort of work does not come for free.

Q332 Chair: So if we wanted to have at least the same standards in the CPTTP as in the Australian trade deal as a benchmark, perhaps you can drop us a line about that. It is difficult to say what resources will consist of, but we are interested in how much resource, the breadth of resources, and the time it would take to do the evaluation. Even if we have not defined what exactly the mandate is, the preparatory work could go forward. Is there a risk that we could rush to agree a CPTTP and suddenly receive products that are of much lower standards, and then we could not do anything about it?

Professor Bartels: This I think gets to the nub of the question and what we have found with the Australia agreement. I use this as an example, but CPTPP is in many ways the model for the Australia agreement, and the New Zealand one. There are variations, but it is no secret that both of these agreements are negotiated with a view to CPTPP, because both Australia and New Zealand are CPTPP members already. These two agreements are negotiated in advance of an application to, or at least accession talks with, CPTPP, so they are staging posts in that direction.

I think I skipped over this, which I probably should not have, but the most important finding of our report is that if you focus on the policy flexibilities that are built into the agreement, which is to say the exceptions to protect domestic standards in the areas that we are covering, such as plant and animal life and health, UK environmental protection, and also UK animal welfare protections, because the agreement replicates WTO exceptions as a causal matter—it is a matter of logic—the agreement does not constrain UK policy space at all. In other words, whatever the UK can do today relying on these exceptions, which is essentially how regulatory activity



takes place, it can do this tomorrow after the agreement. That doesn't change.

In fact, going beyond that, the addition of a chapter on animal welfare and a chapter on environmental standards in certain ways actually makes it easier for the UK to regulate than it can do under WTO law. Those exceptions are the same as in CPTPP. The WTO exceptions are pretty much a template, which FTAs just carry on. For that reason, if we limited ourselves to the question that you just asked, Chair, which is, "What is the risk to the UK of acceding in terms of needing to lower domestic standards?", I can tell you right now that the answer is almost certainly—with my lawyer hat on, I have to introduce some qualification—that nothing will change, because there is the same policy space in that FTA as in this FTA, as in WTO law.

Q333 Chair: I will come to Neil, but finally on this, I know that in terms of the CPTPP, New Zealand has basically opted out of investor-state dispute mechanisms so that we can't have a situation where we ban a product—we find it is dangerous or harmful or whatever to the animal or the consumer—and suddenly the nation producing it comes along and says, "We are going to sue you for the amount lost in sales." The New Zealanders have opted out of that in the CPTPP. Is there an option for the UK to do that? Is that something that you would recommend, in light of what you have been saying?

Professor Bartels: I don't know. There is clearly an option. I don't know what the UK's position on that is. There is clearly an option to opt out of investor-state disputes within CPTPP. It is not just New Zealand; others have also opted out of this in that agreement.

Q334 Chair: Just for the record, who else has opted out?

Professor Bartels: I can't remember. It's been a long time since—I don't know. But I know that it is a standing New Zealand negotiation objective also with the UK not to include ISDS. In that sense, the precedent has been set. It is not a novelty for the UK to say it does not want ISDS in that agreement. I don't know, though, what the UK's position on that is.

Q335 Dr Hudson: I will come to the animal welfare shortly. Thank you for flagging the resource implication moving forward; that is something that the Committee can take forward and make recommendations about. It is concerning that you are having to hire your own research assistant out of the university side of things. For you personally, this is a hugely important and intensive piece of work; how will you balance that with your day job? Do you have any concerns about that?

Professor Bartels: Well, a little bit, I do—to be honest. I have been on sabbatical the last year, which has been a good thing because it has given me the time to do this.

Q336 Dr Hudson: When does that finish?

Professor Bartels: It has just finished. Things kick off again in October, really. From a university point of view this is not a bad thing; I get a bit of



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leeway because universities like for their academics to be engaged in the communities. If I do the TAC report instead of writing yet another article, then that is ok—it counts. Yes, of course there is time pressure, but I think it is doable.

Q337 Dr Hudson: Doable, but you have some concerns moving forward.

Professor Bartels: I am concerned not so much about the time but about not being able to do certain things without help. If it turns out that it is important to work out what is going on in Indonesia, for example, I just cannot do it—it is impossible.

Q338 Dr Hudson: Let's move on. I declare an interest as a veterinary surgeon, and animal health and welfare is something that I am professionally and personally very passionate about. The previous incarnation of the TAC advocated the introduction of core standards on the environment and animal welfare. That, sadly, was not brought to fruition in the negotiations coming into the deal. Would your assessment of the Australian FTA have been substantially different if the UK had adopted a core standards approach?

Professor Bartels: No, I do not think so. We were asked specifically, "Does this FTA have any bearing on, or does it require any changes to, existing UK protections, and what does it mean for future protections?" The answer was no, it does not make any difference to the legality of those existing protections. As I understand it, the idea with core standards was that they were essentially a codification and, to some extent, a policy statement on what was important. I'm not sure how much would have changed with a core standards approach.

Q339 Dr Hudson: Do you not think that if core standards had been there, and clearly demarcated our values and the standards that we believe people should be working to, it would have helped the process and made that clearer to people?

Professor Bartels: That sort of thing is transparent. We asked DEFRA to give us a list of standards in this area. That was quite a lot of work; they did it, but it is very complicated, particularly in some areas such as the environment, because you have to narrow it down a bit as there is a huge amount. One of the things that we found is that even doing the work of identifying core standards is difficult. To some degree we got a good sense of what the standards were in this country. Essentially, in order to answer the question, it did not make any difference in the end because once we decided that the agreement did not narrow policy space for the UK then a large part of our job was done, even without looking at domestic standards, because it became of no causal effect.

Q340 Dr Hudson: I think we agree that it is a lot of work, but I still think it is worthwhile doing the work of documenting and defining core standards. If the Government did decide to change tack and chose to adopt a core standards approach for future FTAs, with your legal hat on, would that cause any possible legal challenges moving forward?

Professor Bartels: That is an interesting question. I do not think so.



Q341 **Dr Hudson:** They shouldn't be scared of it then?

Professor Bartels: I don't think so, no. Speaking very hypothetically, it might be that the UK comes up with a core standard and it was something that was unknown to the other side. Let's say that it violates the agreement, but nobody knew about it. Conceivably you have then just disclosed that you are doing something that has turned out to be illegal, but that is a very hypothetical and unlikely scenario.

Among other reasons, the exporters have a good sense of what is fair and what is not. If they are properly advised, they will already know the relevant regulations in their field for what we might consider useful to have in a list of core standards. If they do not like them, they probably have already complained about them.

Just to be completely accurate and to flesh it out slightly, there is a quirk in the SPS agreement—at least in the jurisprudence from the SPS agreement. There is an obligation, and the WTO Dispute Settlement Body—the Appellate Body, which is defunct at the moment—said in one of its cases that each WTO member should specify and publish its appropriate level of protection when it comes to human, animal and plant life and health. That then becomes the benchmark according to which the legality of its measures under the SPS agreement are assessed.

The only country that has ever done that is Australia, and it was only because it lost a few cases in the WTO. Nobody else does that. Just to flesh that out, that would discharge the UK's obligation to do that according to this case. I actually do not think it is a very good case by the way. I do not think it makes much sense, but there is that additional point to make.

Q342 **Dr Hudson:** Your report found that the Australian FTA reinforces the UK's existing statutory protections for animal welfare. We have taken a lot of evidence through the course of this inquiry. Concerns are being raised about differing practices in Australia. We have heard about mulesing, long transport times for animals, hot branding and other differences in animal husbandry and welfare standards between our two countries. Your report found that the FTA reinforces our protections. How do you square that when we have evidence of the differences between the two countries? Are you confident that it does do that?

Professor Bartels: We also received the evidence you are referring to—we had asked for it. We had a public consultation where we wanted those who were worried about practices in Australia to write to us and tell us what they were worried about. There was a lot of overlap with the sort of evidence that this Committee would have received.

We also looked a bit further at evidence to this Committee and other relevant Committees. We wanted to ensure we had a clear picture and to address all those concerns, which is why we have annexes that do that. Our conclusion on balance was that a lot of those concerns were wrong, and they were wrong in a very specific sense. We asked four questions of

these concerns. In fact, we called them “concerns”. All the ones you mentioned: hot branding, mulesing, hormone-treated beef and so on.

Those concerns were wrong in a specific sense. We asked four questions of those concerns, such as whether the practice existed in Australia in a way that was materially different from the UK. A lot of those concerns were wrong on that point. They exaggerated the differences between Australia and the UK. A good example of that is feedlots. They are just not called feedlots in the UK; they are called something else, but they exist as well. There is hot branding of horses in the UK. The idea that everything that happens in Australia with all these concerns is radically different from what happens in the UK was a bit overblown.

There were many cases where there were some differences—maybe slight differences—but they were not so different. The reason that that was overblown is that apples and pears were being compared. What was often looked at with those concerns were legal requirements in Australia versus legal requirements in the UK. It just so happens that Australia does not regulate in the same way as the UK. We did not want to just compare the law in Australia, which is more flexible in many cases than in the UK. We wanted to look at what actually happens in Australia, which is done mainly according to guidelines.

We wanted to look at what the farming practices in Australia are, not what they are required to be. In the UK, practices are largely regulated by law, but not entirely. In fact, there are voluntary schemes that go further and interestingly, those are often not referred to in the evidence because that would then be an apple-to-apple comparison. Those looking at Red Tractor and comparing it with the voluntary trade standards would find what we found, which is that it is actually a much closer match. It is always retained EU law versus missing Australian law, but that is not the real world. That is not how stuff is made in Australia.

We also looked at whether those practices affected products likely to be traded under the agreement. Mulesing is a great example of that. It does not happen in the UK, for sure. It is a barbaric practice, and it is not popular in Australia either; it’s being phased out. We look to see how much mulesing goes on—and one needs to distinguish between mulesing with and without pain relief. You’ve probably had evidence from the British Veterinary Association, whose figures suggest that something like 50%, or a bit less—something like 40%; I can’t remember—of mulesing occurs with pain relief. We also looked at that. Those are auction figures, which are not necessarily the best. We found an academic article from March—it was actually just before we finished the report—that went through all the evidence and decided, in the end, that about 13% of sheep production in Australia undergoes mulesing without pain relief. Whatever it is, that 13% is still bad news for those sheep. We can haggle over the figures, but I don’t think it really matters.

The point is, even if you don’t like mulesing—and of course, who would? It’s not a particularly nice practice, either with or without pain relief, which is an important distinction—it doesn’t affect trade under the agreement.



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You can talk about the mulesing going on in Australia as much as you like. Yes, from an animal welfare point of view, you might not like that it goes on there. There's a lot of whataboutery that one could raise. However, it has very little to do with this FTA—almost nothing. Why? Because the products that come from mulesed animals don't get traded at an increased rate under this FTA.

There are two products that could conceivably come from a mulesed Merino sheep. The first is wool, which is duty free already, so the FTA, by definition, makes zero difference to imports of wool from Australia, mulesed or otherwise. For all we know, there could be mulesed wool in this country right now. There probably is. The FTA makes zero difference to that. Not to mention all the fine wool that goes into the Italian suits that find their way on to Savile Row. Is that from mulesed sheep? Who knows. It most likely is. Does anyone care about that? Who knows. The FTA is getting a lot of heat for that reason, but it shouldn't.

The second product is mutton. The mutton in the UK and the mutton that comes from a mulesed sheep are very different things. A mulesed Merino dies at about six and a half years. Nobody would eat it voluntarily. It might end up in pet food, but it won't be anyone's lamb chop. Mutton in the UK is not from particularly old sheep; you might even call it a lamb. It's around two or three years old—just slightly older lamb. We are talking about different animals entirely. Nobody would go to the shop and buy a six-year-old lamb chop from a Merino. It is just not an issue. It's not going to come into the UK, other than in negligible quantities—maybe in some mixed form, or something like that. It is so negligible that it makes one wonder why there is this concern that the FTA will somehow lead to more mulesing, or that we are going to be importing low-standard mulesed meat or wool from Australia.

When we looked at it, we were honestly a little bit flabbergasted at the discrepancy between, on the one hand, the concern that Australia has these barbaric practices, and that all of a sudden the sheep industry in Wales is going to be destroyed by products from mulesed sheep, and the reality, on the other, which is that it will make no difference.

Q343 Dr Hudson: Thank you. I guess a lot of the concerns in this country are saying that the UK can be a beacon on some of these standards and try to drive up standards in other countries. I take your point about the hormone-treated beef, but that's outwith the scope of this agreement because it is banned and illegal, so it wouldn't be able to come in anyway. Is the TAC confident, then, that products from different practices could be coming into our market anyway, so there will, perhaps, be no difference with this trade deal, but we just don't know?

Professor Bartels: I would break it down into two important categories. I can say with confidence that nothing changes in one category, which is the statutory protections directed at UK concerns, such as the UK environment, UK animals, UK plants and UK people for that matter—not that we were allowed to look at UK people. None of that changes. Countries are allowed to protect themselves from stuff that comes in. You



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don't let in toys with lead in them; you don't let in food that's going to harm your population. You've got to meet your WTO requirements, and so on, but that doesn't change at all. Australia is also very fussy about this as well. It has a strict SPS regime. It's lost all these cases because it's too strict, under WTO law. They feel exactly the same way about this. So I can say with absolute confidence that the FTA has no effect on the UK's ability to protect its environment, its people, its animals and so on.

A very different question concerns the UK's interest in what goes on in Australia, not because what comes from Australia then harms the UK—its people, its animals or whatever—but because it harms Australia, and that's a completely different thing, and often this is mixed up. For instance, let's take mulesing. Who is harmed by mulesing? The sheep in Australia—they are harmed. Now, those are Australian sheep. They have very little to do with the UK, except in one respect, which is public morals—UK public morals. Those legitimately extend, under WTO law even, to practices and the protection of animals, and for that matter the protection of people, in other countries. That doesn't change; the UK's ability to regulate to protect those concerns is even endorsed by this agreement.

But there is also another category. Let's take pesticides. What goes on with the Australian environment is not a public morals issue. If the Australians want to destroy one of their rivers, they can—you might not like it, but they can. It is of no concern to the UK whether Australia kills off one of its rivers; that's an entirely sovereign question of Australia. But why would they want to do that? Well, maybe in order to help their producers—pesticide run-off, or whatever. Then those products come in more cheaply. It is very important to isolate that example, because that is one of the areas where we found there was a legitimate concern under this FTA—with pesticides. So, pesticide product, when it comes to—

Q344 Dr Hudson: We will get on to pesticides. Can I just quickly finish this question and then we will get on to pesticides?

You're right that the UK population, morally, wants to know the provenance of the food and products they are getting—they want to be clear. Part of that is clear labelling and then the potential for the UK to say, "No, we don't want those products coming into our country." Under the FTA, what scope does the UK have to introduce more regulation, such as bans or better labelling, to address—I guess—animal welfare, environmental practices and so on, that the UK population has concerns about?

Professor Bartels: Well, for a start, mostly—with the exception of pesticides and GMO products—

Dr Hudson: Which we'll cover later.

Professor Bartels: With the exception of those things, we didn't think that there were going to be any increased imports of products to which these concerns attached. So, for that reason, there doesn't need to be anything. But if one wanted to be extra certain, well, yes, there could be



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labelling, but we didn't think there were any products that would have these labels stuck on them.

Dr Hudson: Okay. Thank you. I will hand back, Chair, because I know we are running short of time.

Chair: Kirsty Blackman.

Q345 **Kirsty Blackman:** Thanks very much, Chair. I have a sideways question before I go on to pesticides. In terms of the TAC itself, how does the decision making work for the report that is published at the end? Does every one of the people sitting on the TAC have the same amount of say? Is it by majority, or is it by consensus, in terms of the report that is being produced?

Professor Bartels: No, this one was by consensus. We all agreed; we all wrote it together, on a shared document.

Q346 **Kirsty Blackman:** So, if there was one person on the TAC who totally disagreed, what would happen? Would it just be by majority, or how would it work?

Professor Bartels: We haven't adopted any rule on that. I did raise it at first, when I was thinking about the possibility that we might be in that situation, but I didn't think there was a need to pursue it and so far we haven't needed to pursue it. I mean, everybody agreed with this.

That's not to say there wasn't a bit of arguing about certain points, but those were points of fact. For instance, what is the percentage of mulesed animals? We had different evidence: some looked at one thing, others looked at another and in the end we basically agreed on what the right footnote was for that. But that was the sort of argument that we had.

I think that is an important point, because the people on the TAC include lots of working farmers and people from a wide spectrum of interests and backgrounds. Everybody—no matter where they came from, or what their views might be on farming or free trade or whatever—agreed with everything in the report. So I think that also says something.

Q347 **Kirsty Blackman:** That is helpful for me to understand.

I was going to ask about pesticides and GMOs. You said that the TAC has found that the lower standards in Australia could confer a competitive advantage. How did you find that out? And how can that be quantified? How much of a competitive advantage are we talking about here?

Professor Bartels: On the resource question, we weren't able to quantify; I am not even sure how easy it would be to do that. A lot of this would make research projects of their own.

Partly, we were working on a basis of assumptions. We thought that pesticides can save money. If you can use a pesticide that is more effective and another country can't, that is more effective and will save



you some money. GMOs can also save you money because they stop you having to use pesticides in all cases.

Because some pesticides are authorised for use in Australia, that is not the same as saying they are all used. We were a bit more, let's say, concerned and cautious than we might have needed to be. We weren't sure some of those pesticides were being used in Australia, even though they were technically authorised for use. Why? Because those products would not be allowed to be exported from Australia. So it is not even to say that everything that is authorised in Australia is used in Australia. But, hypothetically, these pesticides and GMOs can be used, and we thought, hypothetically, it was reasonable to assume that there was a cost saving.

With both pesticides and GMOs, and the UK's ability to regulate, we have to make two distinctions. One is that, in terms of regulating to protect UK health or the UK environment, that can still be done. In terms of pesticides that are banned for use in the UK and allowed for use in Australia, if the reason they are banned in the UK is the health of those who consume the resulting products—people, plants, animals, whatever—that can still happen. There is no risk that a dangerous pesticide can be used in Australia, the residue stays on the product, that product comes into the UK, you go to buy that in a shop, eat it, fall sick and die. That is not a risk. The UK's border controls operate as normal when it comes to that.

What we were talking about is where the risk of the use of pesticide is to the Australian environment—Australian animals, plants and so on. The same with the GMOs. Maybe, if you think GMOs are harmful, to the extent that they are harmful, they are harmful in Australia. Again, that is Australia's choice. If it wants to damage its environment in pursuit of cheaper agriculture, so long as the damage stays in Australia, that is Australia's choice.

Where that has a bearing on a country like the UK that imports those products, it is economic, because the products are being made more cheaply. Right? But it is not a question of damage to UK standards; it is a question of economic damage in the UK. That is where I think that the TAC is a second line of defence for UK agricultural producers. A lot of what they are worried about—every agricultural producer would be worried about an FTA, that is the way of the world—is cheaper, competitive products coming in from countries where they are made more cheaply. Australia has a lot of sunshine and a lot of land, and some of its agricultural product is simply cheaper for those reasons.

The way to protect against that is not to liberalise in the first place. This agreement liberalised. That's the first line of defence, and it is not there. The second line is then to say, "Ah. We think that the products coming in are not just competitive; they are unfairly competitive, because they are made according to lower standards." That is where we come in and our finding was, "Well, actually, not so much."

Q348 Kirsty Blackman: But the TAC is coming in after the trade deal has been signed. It is a second line of defence but it does not really mean much,



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does it?

Professor Bartels: If you really wanted to protect the UK agricultural industry, you wouldn't liberalise trade in agriculture in the first place. TAC has got nothing much to do with that. Where we come in—yes, it is after the agreement is signed. What can we do? That is really up to Parliament, right? It is Parliament that can decide; it is a lengthy—eternal—process. You have got to keep saying it, but it is Parliament that can give a steer that an agreement should not be ratified. That's not our job; we do not have a constitutional role like that.

Of course, imagine that we had said to the Secretary of State, "You know what? This agreement is an absolute disaster because it will wreck the UK's agricultural protections." In that hypothetical scenario, you might even find that the Secretary of State, before the agreement is ratified, decides to pull it. It depends a bit on what we say. We ended up saying that basically the agreement is fine, according to the questions that we were asked to answer. But, yes, it is not really our job to nix the agreement.

Q349 Kirsty Blackman: I have some questions on some of the things that you said. The level of research and work that you did around mulesing was to work out the actual amount of mulesing that was taking place. You looked at what was actually happening in Australia. There is guidance, and there are regulations, laws and all of that, but you looked at what was actually happening. But with GMOs and pesticides, you did not have the resources to look at what was actually happening; you were just able to look at the regulations and the guidance. Is that correct?

Professor Bartels: Yes, that is correct.

Q350 Kirsty Blackman: Okay, so a different level of scrutiny was given.

Professor Bartels: Yes. I would not say—I doubt that my TAC member colleagues would mind me saying this—that this is the most comprehensive piece of work ever. I have to say I think it is better than a lot of the submissions we received in the evidence, to which you referred earlier. I am not going to win friends with this, but for a lot of it, we had to ask people again for footnotes: "Why are you saying this?" "Oh, RSPCA Australia has once said this." "Where?" No answer. It is just not referenced. I am an academic, so I like footnotes, but we all need to deal with facts. What we have here is better than a lot of that, although some of it was useful—I don't want to trash it all. Some of it was not useful, and some of it was very useful and helped us a lot. What we have here is better than what is out there. It incorporates a lot of the good work that has been done and adds a bit of its own, but we are talking about big research projects, and this is only a starting point. If you really wanted to know about pesticide use in Australia, you would need another research project to do that.

Q351 Kirsty Blackman: I want to ask about this a little bit more. You were talking about GMO and pesticide use and the fact that the border controls will continue to operate in the way that border controls operate, but the



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border controls don't operate very well. We do not check, and we do not have people in Australia to check, whether these pesticides are being used. Is there actually any protection that is effective at all?

Professor Bartels: I think there are checks, aren't there? Look, this is not my area—I am not an expert in border controls for pesticides—but I thought that there are checks.

Q352 Kirsty Blackman: There aren't very many checks in place that work in terms of the UK side of things. The changes post EU exit have not been introduced in order to give us the level of extra checks that we need to have, and we just do not have the resources on the ground in countries like Australia to do the checking needed to ensure that they do not come in. Yes, the level of protection should be there, but it isn't.

Professor Bartels: We did address that, and we raised a flag to say that, to the extent that there is likely to be an increased quantity of imports from Australia of products that are made with pesticides— particularly those that might not be authorised for use in the UK—there needs to be sufficient resource to perform the checks. We didn't think it was our job to get too much into the nitty-gritty of how border controls actually work in the UK. The most we could say is, "Make sure there is enough funding for the checks to take place." That was a future risk that we highlighted, but it is a policy question that it was a bit beyond our remit to get too stuck into. We thought it was enough, as you were saying, to make sure that the checks happen. I was not aware that the checks are not happening at the moment.

Chair: We will come on to border checks in a moment. Are you done, Kirsty?

Kirsty Blackman: I am. Thank you.

Q353 Chair: I just want to check one thing. I know you said it was not part of your remit, but you have told us in your report that there would be a competitive advantage with GMOs and pesticides. Your remit was not to quantify that risk and, as far as you are aware, it has not been quantified before the signing of this agreement.

Professor Bartels: That's right.

Q354 Chair: In addition, the Australians are free to increase the amount of pesticide use and GMO production. That has nothing to with us, yet it might have a very significant impact on producers in Britain. That is correct, isn't it?

Professor Bartels: We didn't think that GMO use would have much of an impact on producers in Britain, because there are only three products in Australia that are made with GMOs, and only one of those is also made in the UK—canola oil, or rapeseed oil. That is likely to be imported at an increased rate, but the UK does not produce enough for its own needs anyway, so we did not think that that was a major competitive risk. But that was the one product where GMO use could have an effect on trade.



Q355 Chair: I'm just saying it is the case that we don't know the impact of pesticide use on imports. Whatever that is, it could increase under the terms of this trade agreement, so there is an open door for access to Australian products that use a lot of pesticides and GMOs. That is correct, isn't it?

Professor Bartels: That is correct. In fact, we found further that, if we are talking about pesticide use in Australia, we are worried not about the residues on the final product but just about the pesticide use that leaches into the Australian environment. That makes life easier, but we can't easily control that.

Q356 Chair: Just so we are clear, it is nothing to do with us if the Australians destroy some of their environment through excessive use of pesticides. Is that right?

Professor Bartels: Not entirely. In principle, yes, except for the environment chapter in the FTA itself. The environment chapter actually makes that a concern of the UK. The starting point, under WTO law, is that it is of no concern to the UK. The FTA makes that to some degree the concern of the UK. You could argue that it is not as fleshed out as it might be, but it says that when you have Commonwealth law—so Australian federal law—on an environmental issue, which is defined in a relatively limited way in the agreement, and Australia fails to implement that law in order to obtain a trade advantage, the UK is allowed to take legal action. So there is a narrow area of control where the UK can prevent the practices you mentioned—rampant use of pesticides in violation of Australian law, or not implementing Australian law.

Q357 Barry Gardiner: Would you agree that if you think it is okay to slice the skin off one living being, the danger is that you may begin to think it is acceptable to do the same thing to others? Just ask the Saudi royal family, for example.

Professor Bartels: I haven't done it myself. I don't know.

Q358 Barry Gardiner: I was referring to your suggestion that this is a matter of public morals.

Professor Bartels: Yes.

Q359 Barry Gardiner: I want to talk about SPS checks and environmental standards. The first thing I want ask you about is the application of the precautionary principle. You pointed out that the articles that deal with risk are unclear at best about whether the precautionary principle in the WTO applies. We could have a situation where—let's not take an existing example—some new tenderiser drug for kangaroo meat goes on the market, there is a flurry to export kangaroo meat into the UK, and we say, "Well, hang on. We're not quite sure about whether this drug is safe or not." Under the precautionary principle, we would be able to stop that meat coming into the UK. I think your report said that, under the agreement, we are unclear whether we would be able to.



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Professor Bartels: Yes, that's right. We didn't think the provision on the role of science in the SPS chapter was extremely well drafted. We thought it was ambiguous, in fact, about whether it included the WTO version of the precautionary principle, which is article 5.7 of the SPS agreement. You are entirely right. There is one qualification, though, which is that the SPS chapter in the agreement is not subject to dispute settlement, so if the UK decided to do that, there is nothing the Australians could do about it.

Q360 **Barry Gardiner:** I was coming on to that. You have made the point very nicely.

I am sort of riding two horses here—the SPS checks and the environmental standards. Let's talk about those environmental standards. The competitive advantage that might be gained is not the thing I want to focus on. It is not, "Is there cost competitive advantage here from polluting the Australian environment?" although I fundamentally disagree with your assertion that if they want to pollute their rivers, that is a matter for them. No, it's not, actually. We are one biome on this planet, and pollution in one place ultimately affects pollution everywhere. I want to follow that thought directly. You said that that doesn't affect us in the UK directly. However, deforestation, and the carbon emissions that come from deforestation, do. Therefore, it should be possible for us to apply the precautionary principle to any agriculture that is based upon the expansion of land through deforestation—in particular the beef industry in Australia.

Professor Bartels: Okay. First, when I said that it is Australia's business whether it wants to pollute its rivers, I was speaking legally. It is legally Australia's business whether it wants to pollute its rivers; whether one likes it or not is a different question.

Q361 **Barry Gardiner:** I was simply making the point that I believe it does affect us all.

Professor Bartels: As you were putting it, that is very much connected with the second question, which is, what happens when there is such activity in Australia? It could be deforestation, potentially, although we didn't find evidence that that was actually happening at the moment. Conceivably, it could, but there are other activities in Australia that could also have an effect on climate change.

Q362 **Barry Gardiner:** And the argument, if it succeeds, would apply equally to Brazil, where I think you might find a very substantial amount of evidence.

Professor Bartels: That is right.

Q363 **Barry Gardiner:** So it is for consideration in other trade deals as well?

Professor Bartels: Completely—in Indonesia, for that matter. I think Australia is not the right target for concerns about deforestation. That was our preliminary finding. We couldn't exhaustively figure this out, but there was no real evidence that there was a genuine problem there. That is not to say that it cannot be in other countries.

Q364 **Barry Gardiner:** The issue would be whether any particular cattle ranch



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had been based upon an encroachment into the forest.

Professor Bartels: That is right. It is very minor.

Q365 **Barry Gardiner:** But we are talking very much in a theoretical context here, because we are trying to establish the value and parameters of the trade deal and what we can do.

Professor Bartels: There are really two ways that that sort of issue is handled under the agreement. One is under the exceptions. There the question is of the environmental exceptions. Article XX(g) of GATT is incorporated into the agreement, which says that, relevantly, the UK is entitled to adopt measures to conserve exhaustible natural resources. There is a question of whether—

Q366 **Barry Gardiner:** Can I be clear here? I read that and thought to myself, “Is that the exhaustion of natural resources in Australia, or is it the exhaustion of natural resources in the UK?”

Professor Bartels: That exact question is unsettled. My own view is that it is probably not Australia, but when it comes to climate change, that is the UK’s environment, so it doesn’t really arise. That is why the agreement would not allow the UK to protect the Australian rivers, unless there is a biodiversity issue that connects with the UK.

Q367 **Barry Gardiner:** There is a direct impact on emissions and the climate change that occurs globally and, hence, it is in the UK.

Professor Bartels: That includes the UK. Exactly. That is the first line of defence. The second is that the environment chapter also talks about certain environmental measures. It wasn’t very specific on climate change.

Q368 **Barry Gardiner:** Thank you for that. I wanted to get it on record from someone of your legal standing.

At the moment, the Government, through the Environment Act, have said that they would regard any imported beef from Brazil that had been produced illegally in that country or anywhere else as something that would not be allowed to come into the UK. I think what we have just discussed would give the UK a basis for rejecting products that were based on deforestation, through the precautionary principle and the WTO.

Professor Bartels: You don’t even need a precautionary principle for that. XX(g) doesn’t really have a precautionary principle in it; all you need to do is show that your measure is directed towards improving the climate change situation. That would be right.

Q369 **Barry Gardiner:** Sorry, that’s GATT, though, isn’t it?

Professor Bartels: That’s right. Which is incorporated into this agreement.

Q370 **Barry Gardiner:** Thank you for that. That is really helpful. I wanted to talk about SPS checks—the Chair pre-empted me—and the implication of an article 16 challenge on the Northern Ireland protocol. I suppose what I



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am asking you is: under this agreement, what would happen in relation to Australian produce that is imported into the UK but taken to Northern Ireland without any checks because article 16 had been invoked, or because we had left the protocol? What would be the situation then with the European Union vis-à-vis our trade with them and the import of this produce into Northern Ireland?

Professor Bartels: It wouldn't be that pretty. The EU has its border when it comes to SPS-type issues, and it is pretty strict. This would be a gap—a breach—in their border. At the moment, as you well know, under annex 2 of the relevant bit of the protocol, the checks are done in the sea for that sort of thing. If that disappeared, that would cause a major problem for the EU.

Q371 **Barry Gardiner:** I don't want to embroil you in politics. I want to keep you in your special field, which is the law. What would be the legal position of the UK in that situation? Of course, article 16 exists. On what grounds could it be invoked, and what would be the legal position between the EU and the UK?

Professor Bartels: I am afraid I am going to have to give a standard lawyer's answer, which is that I would need more facts. It depends. Article 16 exists and allows for safeguard measures to be adopted in certain limited situations—three of them. It depends on what the rationale is.

Q372 **Barry Gardiner:** Do any of those three include the cessation of functioning of the Northern Ireland Assembly because of the withdrawal of one party?

Professor Bartels: I think indirectly possibly, because there is a reference to social disruption. You would probably need a bit more social disruption than a non-functioning Parliament, if I can say that in this context. The response under the protocol is that the EU effectively gets to adopt countermeasures or counter-safeguards to those safeguards. It is very hard to predict what that might look like.

Barry Gardiner: I sense the Chair's unease.

Q373 **Chair:** Can I just say that the focus here is obviously on the Australian deal? The question would be, I guess: is there anything particularly in the Australian trade deal that would have anything to do with this? The issue of the protocol is about having a penetrable border. Presumably, if that were removed, it would be penetrable by all sorts of trade. It is not a particular issue around the Australia trade deal that would amplify or change that problem of taking away the border control from the protocol.

Professor Bartels: That is exactly right.

Chair: Barry, back to you. Sorry, I just wanted to check.

Barry Gardiner: Totally correct. I just wanted to use the opportunity of having an expert legal mind in front of us to explore a matter of current interest, even if it had to be from the angle of Australian produce coming into the UK.



Q374 Chair: It is a key question, but I think that we should perhaps move on. Can I move us on to the advice and the importance of exceptions in the FTA that protect the UK's right to regulate environmental issues? There are also requirements to enforce existing environmental laws. How do those provisions work? Just remind us.

Professor Bartels: First of all, with the exceptions, it is essentially defensive—the UK being able to protect itself from harm that could come through free trade under the agreement. It is the same in the WTO. You always get to protect yourself, but there are conditions. You have to make sure that your protections are rational—not over the top, not protectionism in disguise, and not unnecessarily discriminatory and so on. That is why the UK can protect itself—yesterday, today, tomorrow. These are standard provisions in every trade agreement.

On the second type of provision, new obligations exist in the environment chapter, which say that the UK is under an obligation—Australia is under the same obligation—to strive to ensure that it maintains high environmental standards in respect of its environmental laws, and also not to fail to implement existing laws in order to gain a trade advantage, essentially. That is enforceable because these obligations are enforceable by the disputes settlement.

Q375 Chair: Therefore, in signing this agreement, is the UK in a position to implement a carbon border tax so that we cannot be undercut by products that are using more and more carbon?

Professor Bartels: I think what I can say about that—again, I am a bit reluctant to give a legal opinion on something like that, which is a bit complicated. It depends on how it is designed and so on. I can say that the FTA would not make it more difficult than it already is under WTO law to do that. It is not an entirely straightforward thing to have a carbon tax, so it does depend a lot on the actual design. In principle, I think you can do it, but, as the EU was discovering with CBAM, it requires a bit of tweaking.

When it comes to the environment chapter, you might be able to get a bit extra out of it to the extent that it says that you should strive to ensure high environmental standards, but whether that extends to a carbon tax that is directed at practices in Australia, I am not 100% sure, so I cannot give you a very clear answer.

Q376 Chair: Obviously this is a hot issue in other areas. By way of an example, where I am from in south Wales the steel production uses half the carbon that Chinese steel uses, so if we had a carbon border tax, we would no longer be undercut so aggressively by Chinese imports. The issue is whether in this Australian deal there is any precedent being set to actually stop us introducing a carbon border tax that gives us a more general protection in other trade deals, and also can be used throughout the world to reduce climate change.

Professor Bartels: I could say that it does not make it any more difficult. There is nothing in this agreement that makes a carbon border tax more



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difficult than under WTO law. Whether it makes it easier—I am not sure that I would go so far as to say it makes it easier, either. I would probably say it's neutral.

Q377 Chair: Going back to investor-state dispute mechanisms, in the event that we introduce a carbon border tax and we find there is more carbon produced in Australian cattle, for example, and therefore we impose a tax, would the Australians be able to invoke some sort of retaliatory or compensatory mechanism, or would they just have to pay it?

Professor Bartels: First of all, we did not think that cattle production in Australia was more carbon-intensive, but let's take it as a hypothetical.

Chair: This is transport, as well.

Professor Bartels: That is an additional 3% or something—it is not significant.

Chair: A useful tax, but yes.

Professor Bartels: In the scheme of things, we didn't think—

Q378 Chair: Would they be able to take retaliatory action? That is what I am asking.

Professor Bartels: I think no. I am just trying to think through how that might—I can't immediately see it; no, I don't think so.

Chair: Obviously, it is a difficult question. If you wanted to drop us a note with your thoughts on that, that would be very welcome.

Professor Bartels: What I can say is that if Australia were able to do this, it could do it under WTO law. It is not easier for them to retaliate under this agreement than under WTO law. Having said that, I am not sure they can retaliate under WTO law in any case, so it is a bit remote, but the FTA doesn't change the legal position on that.

Q379 Chair: All right. Okay. Can I ask one other question? You have been saying throughout that if there is pesticide use in Australia, that is nothing to do with us. This point is slightly outside this agreement, but there has been some suggestion that we don't, for example, procure in the NHS from places that use slave labour. The focus is on Uyghur Muslims in China. Again, that would be an example where we are bringing in rules that say something about something that is happening in another country—akin to your pesticide example, but in this case genocide. Is your point that we are not allowed to do that legally, or that it is a legal choice, or that it is not something in this particular deal?

Professor Bartels: There is a big difference between what countries can usually do in their own territories, pretty much as a sovereign decision, which does include wrecking their environment a bit—that is the same in the UK; a lot of this is just a domestic concern—and certain types of activity that are of concern to other countries. Slavery is one of those;

genocide is one of those; human rights abuses, more generally, are in the same category.

In terms of this agreement and other trade agreements, the UK has an interest in those sorts of practices in Australia because of the public morals exception. What that enables the UK to do is to regulate to the extent that it is necessary to protect UK public morals. It might well be that the UK says, "We do not want to allow imports from country X because those imports are made using child labour or using slave labour." That is basically okay. It has got to be non-discriminatory and so on—there are certain conditions—but in principle, if it is UK public morals not to have those sorts of products on its domestic market, then that is fine. But you can't say the same thing very easily about Australian rivers. I don't think that it is about UK public morals, or that UK public morals are offended, if Australia pollutes its rivers—maybe some people, but not in general; we are just not at that level of environmental consciousness at the moment. It might change—these things can change, as they did with human rights.

Barry Gardiner: Speak for yourself!

Q380 **Chair:** Okay. So in practice, in the Australia deal, there is no particular provision about human rights and labour law and that sort of thing, is there?

Professor Bartels: There doesn't need to be, because it comes under the public morals heading. So I think it is included.

Q381 **Chair:** Okay. We are moving to the final questions. The remit of the TAC was narrowed when you took over. Can you just remind us how it was narrowed? In the light of what we have been talking about, do you think there is a case to widen it in future? If so, in what areas? Finally, how fit for purpose is it for CPTPP in those terms? You have touched on this before.

Professor Bartels: What you might be referring to is the two different TACs. There is TAC 1, which was essentially a recommendatory body that issued a report about what UK trade policy should look like. TAC 2, which is us—frankly, it is understandable that people get confused by two bodies with the same name—is a quite different body set up with a different purpose that barely even overlaps with the first. We do not make recommendations; all we do is issue advices like this one, which—as best as we can—set out the likely effect of a signed agreement on certain domestic statutory protections. It is much more factual than the remit of TAC 1, which was policy recommendatory and so on.

Government has its way of working out what policies it should adopt. I do not think it would be right for our remit to be expanded to make recommendations; I think we've got enough to do. Our job is enough already, as we were saying before, and I think it is useful—I hope it is useful, anyway. That is not to say that there cannot be another advisory body, and then the Government has various external stakeholder engagement bodies that advise it on trade policy and so on, so I do not



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think the Government is bereft of outside advice, but I do not think it needs to be us. We have a reasonable job doing what we do.

Chair: So you have a reasonable job, and you need more resources—as you said—within that job when we go to CPTPP.

Q382 Kirsty Blackman: In terms of parliamentarians looking at this trade deal in the minor ways that we get to look at and scrutinise it, you are obviously pleased with the report that you have written. You feel it is better than some of the other things that have been written in relation to this trade deal. If you had unlimited resource, unlimited time and a more flexible remit, what additional things do you think could be included in order to help parliamentarians make the best possible decisions on trade deals?

Professor Bartels: I hope that what we've got here is enough. I think we addressed the core issues, which were, "Does this FTA pose a risk to UK policy space, speaking broadly?"—speaking broadly, the answer was no—and in addition, "Are there any practices in Australia that differ from the UK and might be seen as having an unfair competitive advantage for Australian producers?" We narrowed it down, basically, to GMO on canola oil and maybe pesticide use.

If we were pursuing that line, I guess we could say we would have a fuller report on pesticide use in Australia and its economic implications. Because we found that the other practices were not a risk to the UK, either in terms of the Government's regulatory powers or any economic risk, for a variety of reasons, I do not think there is more that needs to be looked at there in connection with this agreement.

Q383 Kirsty Blackman: The economic risk that you looked at was only in terms of competitive advantage. It was not, for example, "If we liberalise trade, how much of an effect does that have on UK farmers and agriculture?" That was not included at all in the work you did.

Professor Bartels: That is right; in fact, that was expressly excluded from our remit. That is an economic question about the effect of the agreement on the agricultural sector, but you could say the same thing about other sectors in the UK. Where that job was done was in the impact assessment that the Government conducted, and I think that process has been investigated by Parliament—I am not sure it was this Committee; I think it might have been your sister Committee on International Trade that looked at impact assessments.

Yes, those sorts of economic questions are outside our remit but they are, of course, important. Of course, it is difficult to assess the impact as well.

Q384 Kirsty Blackman: There is no comparable independent work on this. There is only the Government's impact assessment; there is not a commission that has been set up in order to do this, and it was expressly excluded from your remit.

Professor Bartels: I think that is correct, and I think the practice in this country is different from certain other countries or entities. The EU's



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practice is slightly different when it comes to obtaining impact assessments of trade agreements, which I have been involved in. For instance, they have human rights impact assessments, which do not exist in this country yet, but they might—it is an evolving practice. Different countries do it in different ways.

Q385 Barry Gardiner: The FTA contained provisions against the derogation or deregulation of environmental standards. However, there was a problem around that. In the UK we have a devolved structure in which Scotland has its own environmental health standards because environment, food and rural affairs are devolved to the Scottish Parliament—

Chair: And the Welsh.

Barry Gardiner: And, indeed, the Welsh Government. In Australia, the federal structure means that the FTA, as it stands, cannot reach down into state jurisdiction over environmental standards. It is possible for parts of Australia to deregulate their environmental standards if those environmental standards are not ones that are enforced at a federal level. What recommendations do you think the Committee should make to Government to ensure that when we sign FTAs with countries, as we did with Australia, there isn't a loophole, such as that one, that can produce a material disadvantage? We are able to take action and enforce against the Australian federal Government's deregulation, but not against the states.

Professor Bartels: You are absolutely right in that description; it is asymmetric in that respect. That is not because of anything in the Australian constitution that would prevent Australia from making commitments about state laws. The federal Government have an external affairs power; they can enter into commitments that would then bind the states. It was purely a negotiation outcome that Australia excluded its states. The United States is the same. It comes from CTPPP. It is a US practice of not covering the states in material respects. It is up to how far the UK might like to press a negotiation partner that is federal. That is the same with the EU; the EU also binds its member states, and could happily say, "We will only undertake obligations in respect of EU law but not in respect of member state law." However, it doesn't, and Australia doesn't need to either. It was purely a negotiated position.

Q386 Barry Gardiner: If it was a failure, it was a failure on the part of our negotiators?

Professor Bartels: I cannot speculate on that.

Q387 Barry Gardiner: I think the logic of the position is that that is the case.

Professor Bartels: Let's just say that there is no structural reason why Australian state laws could not be included, as they are at the WTO level. Australian states' SPS regimes are litigated at the WTO.

Q388 Barry Gardiner: So the Australian Government said, "No, this is only going to apply to federal environmental legislation," and we did not press the case?



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Professor Bartels: I do not know about the pressing of the case, but I imagine that is what Australia would have said—yes.

Q389 **Chair:** It has been enlightening to hear you. We have a hearing this afternoon. May I finally ask about the way the Australian deal has been done and so on? From the point of view of parliamentarians scrutinising the mandate, the negotiation and the end result, is there anything that springs to mind that Parliament should do differently in future trade deals? I appreciate that your remit is quite closely defined, but what is your view, given that you are a professor of law in this field at Cambridge?

Professor Bartels: Yes. Parliaments in different countries have different roles when it comes to free trade agreement negotiations. This practice has been developing, as FTAs—and even the WTO—over the past 20 years have started to cover domestic regulation much more than they used to. It is not just about tariffs; it is about a lot that goes on behind the border.

Some Parliaments are more involved than others. The EU Parliament gets advance sighting on a “Put your phones away, go and look at the agreement, and read it in a small room”-sort of basis. I don’t know whether that happens here; I don’t think it does. In the US, they basically control the show completely. In other countries, Parliament has much less of a say.

You could, as a Parliament, say that there needs to be more control. I think that is what the Trade Bill discussion was about. I remember being involved in that at the time. There are different ways of slicing it, and I couldn’t make any clear recommendations. Just to say, there is no one template for how Parliaments control an FTA negotiation process.

Chair: We will leave it there. Thank you so much for your time. It has been enlightening and is greatly appreciated. It will be very helpful for this afternoon’s hearing.

Professor Bartels: It has been a pleasure. Thank you all very much.