

International Trade Committee

Oral evidence: [UK trade negotiations: Agreement with New Zealand](#), HC 78

Wednesday 6 July 2022

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Members present: Angus Brendan MacNeil (Chair); Mark Garnier; Paul Girvan; Sir Mark Hendrick; Tony Lloyd; Lloyd Russell-Moyle; Mick Whitley; Mike Wood.

Questions 107 - 138

Witnesses

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



Examination of Witness

Witness: Professor Lorand Bartels.

Q107 **Chair:** Welcome to this morning's International Trade Committee evidence session for our inquiry into UK trade negotiations and the agreement with New Zealand. We have two panels this morning. We have the Secretary of State in about 45 minutes, but some may argue that we have a more august panel first: we are starting with Professor Lorand Bartels, who is the chair of the TAC. Professor Bartels, do you want to add anything to name, rank and serial number as an introduction?

Professor Bartels: No thank you, Chair. That covers it accurately.

Q108 **Chair:** It is good to see you again. This is the second time we have had you in front of us in your capacity as chair. The last time you spoke to us was on the Australian trade agreement. Can you tell us about the Trade and Agriculture Commission's remit and how you conducted the inquiry upon which your advice on the UK-New Zealand FTA is based?

Professor Bartels: Yes. We are established to review new free trade agreements that the UK signs. We get them when they are signed and we have three months to submit advice to the Secretary of State for International Trade. That advice is also published and laid before Parliament shortly after we write it. We have a very narrow remit. It is treaty scrutiny, but it is narrow.

What we look at is agricultural production and how that is affected under FTAs. We look at how agricultural production standards in the UK might be affected by the FTA. In particular, we focus on whether or not the FTA in any way constrains the UK's ability to protect the standards that govern agricultural production. In the course of doing that, we also look at agricultural production practices and standards in the other country.

I am here today to talk about our advice on the New Zealand-UK free trade agreement and the extent to which that FTA, which is now awaiting ratification, might affect the UK's ability to protect its standards that are relevant to agricultural production.

Q109 **Chair:** I am going to ask you about the similarities and differences that the commission found between the UK's agreements with New Zealand and Australia, particularly with a general view that the Australia-UK free trade agreement was one of the most liberalising in agriculture that there has probably been anywhere. This is a general view. What are the similarities and differences between UK-Australia and UK-New Zealand? Was it as liberalising on agriculture as the Australia one?

Professor Bartels: We are not focused on liberalisation per se. That is an economic issue that is not within our remit. We are purely interested in the regulatory effects of whatever liberalisation has been undertaken in the FTA. That said, we did look at the products that are liberalised in the FTA, because if we are trying to work out what the effect of the FTA is on



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agricultural production that is relevant to those products, obviously we need to know whether the FTA has any effect on trade in those products. I can say, a little bit outside of my remit, that it seems to be as liberalising as the Australian agreement in the end.

The differences are essentially to do with timescales for liberalisation, which are hotly negotiated in every FTA. The Australia one for beef went with 10 years to open it up, plus there is a safeguards mechanism for another five years, which is a tariff quota by another name. For the New Zealand one, I cannot get into the details of all the liberalisation, but let us say that at the end, which is over that sort of period, it is liberalising as well.

Q110 **Chair:** You would say that they are fairly similar in that respect. Are there any main differences that were spotted between the two?

Professor Bartels: I would not want to talk about liberalisation differences as such. There are differences in terms of what the agreements say about the right to regulate, for instance. There is also some slight difference in coverage between the New Zealand agreement and the Australia agreement when it comes to SPS measures, but that is because there is another agreement that exists between the UK and New Zealand, which is known as the sanitary agreement—it is a mutual recognition agreement, essentially—inherited from the EU-New Zealand agreement. It is essentially a replica of the EU-New Zealand sanitary agreement and a post-Brexit version of this.

The New Zealand-UK FTA specifically carves out anything that is covered under that sanitary agreement from the scope of the agreement. The Australian agreement does not have an equivalent agreement. That is just a technical detail, but it did affect what we looked at because we were not able to look at the sanitary agreement and mutual recognition there.

There are differences, as I said, in terms of the right to regulate. I could summarise this by saying that, when it comes to the SPS chapters of the agreements, we did not see any differences. They are basically the same, apart from the scope carve-out that I just mentioned. When it comes to animal welfare, the right to regulate is not as pronounced in the New Zealand agreement as it is in the Australia agreement. There is a provision on the right to regulate for animal welfare standards, but the provision has a qualifier in it that is subject to this agreement, which is what treaty negotiators introduce in their clauses when they want them not to mean anything.

There are some other provisions on animal welfare. There are some obligations on animal welfare, which are basically the same as in Australia. It is not to say that animal welfare is not covered at all. There are obligations not to derogate from or waive animal welfare standards if this will give either side a competitive advantage by allowing them to lower costs for their producers. That is the same as in the Australia



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agreement. We are really talking about relatively trivial technical differences there that I suspect will not make much difference in practice, particularly because in neither the Australia agreement nor the New Zealand agreement are the animal welfare provisions enforceable in dispute settlements.

At the end of the day, this is all just a hook for discussions within the respective animal welfare working groups, which is not to say that that is useless. A lot of good work gets done that way, and there is a lot more work that gets done that way in reality than through a dispute settlement. I do not think there is anything lost there, and I would not want to understate the importance of the animal welfare chapters, both of which are unique in trade agreements.

When it comes to the environment aspects of the agreement, in the New Zealand agreement, in contrast to what it says about animal welfare—with a slight technical weakening, I guess—there is a strengthening of the ability of both sides to take measures for climate change reasons. That is actually quite striking. There is an exception that does not exist anywhere else apart from in the UK-EFTA agreement. As far as I could work out, no one had really noticed this. Hopefully, the New Zealand agreement will make this somewhat more prominent, but it is quite an important exception that goes beyond WTO law in terms of the right to adopt measures to combat climate change.

Q111 **Chair:** Could that be down to the posture of the previous Australian Government and the current New Zealand Government?

Professor Bartels: I do not know, obviously. I would probably put it a little differently. What the Australia agreement said about the environment and climate change was very standard for FTAs. It was pretty boilerplate. It did not go beyond WTO law. I would not say that it was regressive in any way; I would just say it was normal, whereas the New Zealand agreement, because New Zealand in particular has a strong green climate focus, is quite impressive when it comes to that. That is probably the most important difference between the agreements.

Q112 **Chair:** In comments to Politico's Morning Trade journalist last week, you said that British consumers might find that the "environmentally sound thing to do might be to buy from New Zealand". Can you explain the comments, and where they the TAC view or your personal view?

Professor Bartels: That is based on evidence that we received. I am very glad that you asked me this question. I am glad to be able to say something pro-trade and pro-environment at the same time. There is an idea that often goes by the name of food miles, which is that, if you buy something from around the world, necessarily that is going to be bad for the environment because transport costs are going to spew out carbon dioxide into the atmosphere.



There is also a somewhat parochial and sometimes even xenophobic assumption that what other countries do is not as good as what this country does when it comes to climate. New Zealand is a great example to the contrary, because it is hard to think of a country that is further away from the UK than New Zealand. There is concrete data, both from New Zealand sources and from UK sources, which demonstrates that New Zealand production is significantly less carbon-intensive than UK production in the areas of beef, sheep meat and dairy production.

We also know from the Government's impact assessment—this has not been contradicted by any information that we were able to find—that transport carbon emissions are negligible. If you put those facts and this data together, as I said to Politico, if you were environmentally conscious and you wanted to do your bit to save the environment and think about where you were going to buy meat and dairy, you should probably think about buying it from New Zealand. I am very glad to make this point.

This is not always the case. You need to look at each product and each type of production system. Sometimes transport costs may make a difference, but in this particular case we were absolutely concrete in determining that the environmentally responsible thing to do, if that is of interest, is to buy those products from New Zealand.

Q113 Chair: Is that because the TAC found the inputs such as fertiliser were greater in the UK rather than New Zealand?

Professor Bartels: It was carbon intensity as a whole. We looked at the entire lifecycle of the product, or at least at data from reports that looked at these issues.

Q114 Mark Garnier: Before I get into the main body of what I want to ask, can I come back on some answers you gave to the Chair? You frequently compared the two agreements during your answer. Do you get any sense that the Government have a negotiating strategy or a negotiating mandate? One of the interesting things from our point of view is that we are obviously going to spend a lot of time trying to analyse these trade deals. It is difficult to know what the overall negotiating objective is of the Government, and they have not, as yet, supplied us with any negotiating objective. Now that you have two trade deals, are you picking up a pattern or does it look like they are just negotiating each one on a case-by-case basis? What is the strategy? Is there a strategy?

Professor Bartels: Let me divide that into two parts. One part is on the guts of the trade agreement, which is to do with trade liberalisation. All I will say there is that these are both extremely liberalising agreements in general, but particularly when it comes to agriculture. It is highly unusual. In fact, I cannot think of another example of a country that has significant agricultural production—so not the Hong Kongs and Singapores of this world—liberalising fully in agriculture, even over what is almost a generation: 15 years in the case of the Australia agreement. That is unusual.



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What are the reasons for that? It is evident that, if you are dealing with agricultural exporting countries such as Australia and New Zealand, that is going to make it easier to reach an agreement. That in turn makes it easier to join up to CPTPP. Everybody knows that the Government's stated view is that these two agreements are stepping stones to CPTPP, and both countries have agreed that they will not make any additional asks in negotiations for CPTPP. That is on the trade liberalisation front. There was a clear desire to negotiate.

It may also be that the Government have a vision for what the agricultural sector looks like and should look like in the UK, but I am not an expert on the agricultural sector at large. I cannot talk to you about subsidies—for instance, green subsidies and the vision there. I do not know. There are maybe two explanations for why liberalisation looks the way it does. One is that the other side will like it, and the other is that it may align with what the Government are doing domestically, but I cannot comment on that.

In terms of the regulatory side, you can say that the Government have a strategy. We have looked at the Government's stated negotiation objectives, and, in fairness to the Government, they are not bad. They are reasonably detailed. Now, that is not to say that they are fully detailed, but then no country really gives fully detailed negotiation objectives, or at least when they do they are pretty certain that these objectives are not going to be whittled away. That is just normal, because they do not want to be held to a standard, because they will then be seen to have failed.

Of course, as in any negotiation, the Government are going to have objectives that we will find out about at a relatively general level. They will then have red lines, and somewhere in between that is probably where they are going to end up. We do not know that. The TAC is not given the red lines. No one is given the red lines, and that is perfectly proper. It is not just the Government turning up and signing whatever is put before them at all. There is a coherence to what the Government are doing that we can see in these two agreements. The real test would be in negotiations with other countries that are significantly different from Australia and New Zealand.

It is not really a perfect test case. Australia and New Zealand are agricultural producers in a way that the UK is not. They are much bigger when it comes to exports and so on; this is a much bigger part of their economies. There are significant differences. They are both wealthy countries and both have similar views on animal welfare in most cases, though not in all cases, particularly as we learned in the Australian context. On the whole, they are able to afford similar levels of protection. When it comes to the environment, there is not a huge amount of difference in many cases. If we deal with other countries in completely different situations, such as India, Mercosur countries and so on, we will be in a better position to assess the Government's position.



Q115 **Mark Garnier:** That is really helpful. I just wanted to turn to some specifics. Your commission concluded that the FTA reinforces the UK's ability to maintain its levels of statutory, environmental and animal welfare protection. That is a statutory regulation. In your view, what will this do for food producers' willingness or ability to maintain voluntary standards? Do you think producers will default back to the statutory requirements, or do you think we will still have people wanting to have higher standards?

Professor Bartels: It depends a little bit on the price. We actually think that it is really only a few select products where the domestic producers of those products might be under some competitive pressure as a result of production practices in New Zealand. In most cases, we did not think that there was going to be any difference, either because the practices in New Zealand are pretty much the same or products are not going to be exported under the FTA in increased quantities. For instance, the quota is so massive for sheepmeat that it has not been filled for years. It is unlikely that the FTA is going to make any difference, so it really does not matter what the New Zealanders do with their sheep. By the way, we did not see anything wrong with what they do, but just causally there is no link.

It is really only in a few horticultural and vegetable products where we thought that there might be some effect. That is to do with pesticides. New Zealand authorises certain pesticides for use on products like onions, apples and kiwi fruit, which are not grown here, and potatoes. We are talking about statutory standards in the UK when it comes to those sorts of products anyway, so that would not be relevant to your answer. No, I cannot see that this agreement would put any competitive pressure on domestic producers to reduce their status from voluntary standards to statutory standards. I can give you a concrete example, for instance: eggs.

Q116 **Mark Garnier:** By the way, I was going to come to the apple and onion producers. If you want to make a comment on how they are affected, feel free.

Professor Bartels: Sometimes, when people are concerned about the idea that there are lower standards in an exporting country than in the UK—by no means do I want to give the impression that those concerns are ill-founded in all cases—the information is out of date. Egg production is a very good example of that. There are some who are concerned about the use of battery cages in New Zealand for egg-laying hens, and this is a practice that is now illegal in the UK. What are used are enhanced colonies. They are not called cages anymore, although they are cages; they are just bigger cages. They are much better for the hens. In New Zealand, it is true that battery cages are permitted at the moment.

It is very easy to get one of those charts. The RSPCA had a chart for Australia—"Legal, illegal, legal, illegal". Actually, we found that chart was not actually accurate. I do not think there is one of those for New



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Zealand, but it would be wrong, or at least misleading, to say that battery hens are legal in New Zealand and are prohibited in the UK, for the simple reason that New Zealand is adopting identical rules to the UK's rules as of the end of 2022, which is when this agreement may well come into force—but who knows? That is a little bit to you. It is important to be up to date with the information.

I could also talk about other practices such as livestock transport conditions. There is a similar sense that what goes on in New Zealand is very different and wrong, and what goes on in the UK is different because of the private standards and so on. We found that if you dig into it and look at what goes on, it is simply a different way of regulating. They care about their animals just as much as the UK does.

Q117 **Mark Garnier:** What about apples and onions and the pesticide regime? How is that going to affect things?

Professor Bartels: That is where we found a little bit of a difference. It is important to be precise about what the effects of the use of these pesticides in New Zealand actually are. We list them all in the advice. I have a list here. I am not a chemist, so I cannot tell you too much about them in detail, but there is a long list of pesticides—10 or 12, by the look of it—that are authorised for use on products in New Zealand, and those products can be mostly exported to the UK.

Q118 **Mark Garnier:** They are not all authorised in the UK though.

Professor Bartels: They are not permitted in the UK. The main reason that most of these pesticides are not permitted for use in the UK is the threat to human health. To the extent that those pesticides are authorised for use in New Zealand, those products will be blocked from entry into the UK anyway, assuming that border controls work in the UK. In any event, that does not change before the FTA or after the FTA. There is absolutely no difference, because the rules do not change. The rules have not changed regarding the stuff that comes in and is a threat to UK consumers. It is entirely up to the UK to stop those products, which it is just as entitled to do after the FTA comes into force as before the FTA comes into force. That is not an extra threat to UK consumers.

Where things might put UK producers under some additional competitive pressure is the use of pesticides in New Zealand when there will be more products coming in. The reason for that is not that the pesticides are going to stay on the products and cause damage to consumers that eat them. The reason that these products are banned in the UK and are still permitted in New Zealand is to do with the effect of the use of the pesticides on the environment in the country in which the pesticides are used.

To be concrete, what we are talking about is that there are certain pesticides that are able to be used in New Zealand that cause damage to the New Zealand environment, which New Zealanders have decided is



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acceptable to them. In the UK, for whatever reason, the UK has decided that those sorts of threats to the environment as a result of the use of those pesticides is not acceptable to the UK. The pesticides obviously make production cheaper.

The reason that these products can come into the UK at increased rates is because the UK cannot stop them coming in. That is because the UK does not get to tell the New Zealanders how to protect their environment, because it is the New Zealand environment, except in extreme cases—this is because the FTA builds in rules to this extent—when New Zealand is completely failing to look after its own environment in a way that is calculated to give New Zealand a competitive advantage.

We obviously cannot assess this as you would in a tribunal, but we did not think on a prima facie basis that what New Zealand was doing met that very strict standard that would actually trigger the possibility of a complaint by the UK under the FTA. New Zealand has a very significant margin to look after its environment in the way that it sees fit. Frankly, that is the same for the UK. The UK also has those rights. That is sovereignty.

Q119 **Mark Garnier:** Finally, on that particular point, you are talking about the environmental issues on these pesticides, but if there was an SPS issue on these pesticides, it would come under the SPS—

Professor Bartels: Yes, exactly. There would be no change at all.

Q120 **Chair:** Just to be clear, the pesticide issue is only an issue because it is affecting the New Zealand environment, not New Zealand food.

Professor Bartels: That is right.

Q121 **Chair:** What about residue levels?

Professor Bartels: No. First, that is outside our beat, because we are not allowed to look at food safety. In reality, we look at it anyway, because residue levels for humans also relate to residue levels for the supply chain and production chain within the UK. In some cases we look at that anyway. I can answer the question: minimum residue level controls of the UK do not change at all under this agreement.

Q122 **Chair:** Is that even if they are 100 times greater in New Zealand or Australian food than in UK food?

Professor Bartels: The ability of New Zealand to export foods that are dangerous to consumers or animals in the UK does not change, so we should not expect any more dangerous food under the New Zealand agreement.

Q123 **Tony Lloyd:** This question is a continuation, in the sense that you have already been talking about SPS standards. You made the point that you look at whether the FTA will constrain the UK's ability to be sovereign in its own house. One of the points you made about both the Australia and



the New Zealand free trade agreement was that “it is not entirely clear” whether the right to adopt the precautionary principle is enshrined. Now, this continues the conversation you just had. You are a trade lawyer. What is the impact of that? What is the significance of those two things in terms of the ability to stop, for example, Angus’s concern about overuse of pesticide residues and, more generally, SPS standards?

Professor Bartels: As opposed to the environmental side, which is to do with New Zealand, SPS controls are all about harms in the UK as far as we are concerned. New Zealand has the same concerns at its end. As far as the UK is concerned, the international trade law governs SPS rules essentially at two levels. The primary level is that the UK has to base its measures on a scientific risk assessment when there is sufficient science to be able to carry out that risk assessment. This is set up in the WTO SPS agreement.

The second level is when there is no scientific evidence, which can happen but not always—you actually have to look for it. Sometimes there is scientific evidence and you just do not like it, but that does not mean you can ignore it. In a case where there genuinely is no scientific evidence, article 5.7 of the WTO SPS agreement enables you to adopt provisional measures, provided that you keep your eye on whether or not scientific evidence emerges.

What I said about the Australia agreement—I can say exactly the same thing about the New Zealand agreement, with one qualification—is that the SPS chapter in both the Australia agreement and the New Zealand agreement were a bit ambiguous on the status of the equivalent to article 5.7 of the SPS agreement. They are very strong on science first, and that is essentially the same thing as in WTO law, but what we were a little bit critical about, because we thought it was ambiguous, was what both agreements said about the ability of the UK to adopt provisional measures when sufficient science was not available.

We looked at the wording; I have it here. The New Zealand agreement, in article 5.8 on risk analysis—which already says something—says, “The Parties shall ensure that their sanitary and phytosanitary measures are based on the relevant international standards”, or if not, that “they are based on a risk analysis carried out in accordance with relevant provisions, including Article 5 of the SPS Agreement.”

We thought, “We are talking about the risk analysis carried out in accordance with relevant provisions, including article 5 of the SPS agreement. It sounds like science”. It did not say anything in either this or the identical clause in the Australia agreement about, “What if it is not possible to carry out a risk assessment because you do not have the science?”

Q124 **Tony Lloyd:** This is hypothetical, but in the early days of BSE, the science was not quite clear. The precautionary principle was certainly used at that time to block UK exports elsewhere. Would that be



impossible under this agreement?

Professor Bartels: I do not know enough about the facts of BSE.

Tony Lloyd: I do not want to overdo it.

Professor Bartels: That would be more of an emergency situation. I was probably pretty clear. I remember the crisis as a humble beef consumer. I am not sure it was much in doubt about what was actually going on. That was more to do with emergency measures. We have been talking more about genetically modified organisms, where you can say, "Maybe they do not affect the person, but maybe they affect the children. Maybe they will affect them in 20 years and they will grow six fingers", or something like that. It is more the long-term lack of science where this comes in.

What I would say about these provisions is that the reason we said that was not that we wanted to say that the precautionary principle is necessarily excluded; we just did not think it had been very well drafted to make sure it was included. What I can say now is that since the Australian agreement—and I think because of the point that we made—the UK Government have now said clearly in their section 42 report on the Australia agreement that their interpretation of this provision is that the precautionary principle is still included.

We have heard from New Zealand that they take the same view, so we do not imagine that being an issue under these agreements, but it is still valuable to criticise the drafting of these agreements, because it is a multi-stage game. There will be further negotiations and we hope that next time the Government come to a risk analysis provision in an FTA, they make it a bit clearer that the precautionary principle is included there—if, of course, that is what the Government still want to do.

Q125 **Tony Lloyd:** If these two agreements are stepping stones to CPTPP, can we maintain that distinction between the science-based normal means assessment and the precautionary principle where appropriate?

Professor Bartels: I have not yet formally got to looking at CPTPP, but I do not think that the precautionary principle is under threat in CPTPP. I do not see a risk there.

Q126 **Mick Whitley:** Given the parties' WTO commitments, are the provisions in the animal welfare chapter enforceable?

Professor Bartels: No, they are not enforceable. There are a couple of obligations in the animal welfare chapter which, for ease of reference, we could call non-regression obligations. They are soft non-regression obligations, so the parties are only obliged to endeavour, rather than to ensure. That is a key difference in treaty language. They are to endeavour to ensure that they do not derogate from, waive or fail to enforce their animal welfare standards in a manner that would result in an advantage to trade or investment for either side.



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The obligations are there, but they are not enforceable in dispute settlement under the FTA, and of course they are also not enforceable in dispute settlement under WTO law because they are not WTO obligations; they are only FTA obligations. In that sense, in reality the proper result, if the UK thought that New Zealand was violating those obligations, would be to raise the matter for discussion in the animal welfare working group, but that is where it would stop. That is the same as in the Australia agreement.

Q127 Lloyd Russell-Moyle: Before I come to my question, I just wanted to roll back to the earlier question about New Zealand lamb being more sustainable. When you looked into that, were you looking at averages? Were you looking at the average New Zealand lamb, bearing in mind that New Zealand lamb is almost only high-end lamb, compared to the average British lamb, or were you comparing a high-end organic piece of lamb on a shelf that someone might buy from New Zealand compared with a high-end organic piece of lamb that you are buying in Britain?

Were you also comparing seasonality? Were you saying if they were both bought in spring it was more sustainable, or are you talking about New Zealand lamb becoming more sustainable off-season but on-season, it is different? I am just trying to work it out, because it is important for the public to know that there might be variations or where those calculations are from.

Professor Bartels: No, we were looking at everything. We were not cherry-picking.

Lloyd Russell-Moyle: On all of those different metrics that I have just gone through, New Zealand lamb is always better.

Chair: For the environment.

Q128 Lloyd Russell-Moyle: For the environment. Which bits did you look at?

Professor Bartels: I can give you figures. There is a range. This is kilogram CO₂ equivalent: for dairy, New Zealand is 0.77, according to New Zealand company AgResearch. The UK is 1 to 1.3.

Q129 Lloyd Russell-Moyle: Yes, so what is that dairy base?

Professor Bartels: Everything. The UK looked at a range: indoor, outdoor, non-organic, organic. New Zealand looked at everything.

Lloyd Russell-Moyle: It is an average.

Professor Bartels: Yes, but it is an average of total production.

Q130 Lloyd Russell-Moyle: Yes, it is an average. Did you look at what the different sections of that average would be?

Professor Bartels: No, we did not. I am sure that, in some cases, you may find that a particular New Zealand lamb was produced in a more



carbon-intensive way than a particular lamb in the UK, but I am not sure what that shows.

Lloyd Russell-Moyle: It is important from the consumer perspective. If they are in a supermarket, the kind of lamb that is on the supermarket shelf is not the same kind of lamb that is in lamb pies, for example. We know that. The higher-end lamb is lamb that might be more organic or environmental or whatever. At different times of the year, because we do not have an all-year processing system, British lamb might have different levels of carbon intensity.

Yes, on average you are right. Milk, beef, or lamb from New Zealand might be better, but the difficulty of giving that message to the British consumer is that it does not give them any agency to know that at certain times of the year certain products might be different, so they should use their individual discretion to be able to make that determination. That is just what I was trying to get at, because otherwise the headline is misleading.

Professor Bartels: That is fine, but I can read you some more figures. It would take quite a lot to get to that. Let us look at beef. New Zealand is 8.97; the UK is 31.

Q131 **Chair:** With 8.97 being what—kilograms?

Professor Bartels: Kilogram CO₂ equivalent. Sheepmeat is 6.01 for New Zealand and 14.92 for UK. We are talking about significant differences, and that is why I was so confident in saying that New Zealand product is highly likely to be more environmentally friendly.

Q132 **Lloyd Russell-Moyle:** You are talking about significant differences in the average, but British products are used in a very different way than New Zealand products.

Professor Bartels: This range for the UK includes the most organic, low-carbon-intensive production.

Q133 **Lloyd Russell-Moyle:** Yes, I understand how averages work. I do not see what that has to do with the price of eggs. That is not what I am discussing.

Professor Bartels: I was not clear. That is not the average. That is the lowest figure for the UK.

Q134 **Lloyd Russell-Moyle:** That is the lowest figure for the UK, the most environmental figure on season, the very best that you could ever get in the UK versus the very best you can get in New Zealand.

Professor Bartels: We have a New Zealand and a UK figure. The New Zealand figure does average versus average—apples and apples, in other words, or sheep and sheep. Yes, we are comparing the lowest UK figure with the average in New Zealand. For beef, 8.97 is the AgResearch average in New Zealand. In the UK—from CIEL—16 was the lowest, up to



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20.2. New Zealand figures give 31. There is variation in figures, but even the lowest figure by the UK analyst was significantly higher than the New Zealand averages.

Q135 **Chair:** Is there overlap in the figures at some point—the highest New Zealand and the lowest UK?

Professor Bartels: No, there is no overlap.

Q136 **Lloyd Russell-Moyle:** That is very interesting. Thank you very much. I will delve into those figures. The commission found that the FTA enhances the UK's right to adopt climate change measures, vis-à-vis WTO law. You mentioned this earlier. Can you explain what these areas are? You almost went down that road and then got diverted off. Can you explain what the areas are and how significant those clauses are in terms of hard or soft trade deal application?

Professor Bartels: Thank you for the question. I am very glad to answer this question, because it is significant in a world where climate change and trade are obviously ever more prominent. There are two areas in which these rights have been expanded from WTO law. There are some WTO lawyers who think these rights are already there in WTO. I am more conservative; I do not think they are.

It is to do with the right to adopt measures to conserve exhaustible natural resources, which is an environment exception in article XX(g) of GATT, which is incorporated in the FTA in article 32.1. What it says here in article 32.1, paragraph 3, is that the parties understand this right to include "measures relating to the conservation of...non-living exhaustible natural resources." Then there is a footnote that says, "non-living exhaustible natural resources' includes clean air"—this is the significant bit—"and a global atmosphere with safe levels of greenhouse gases."

This is significant because it talks about the global atmosphere. That is not just the atmosphere that sits on top of the UK, which is arguably the sort of thing that the UK gets to protect, but the global atmosphere around the world.

There is a second exception—in reality and in litigation, it is probably less important, but it bolsters this—which is a right to adopt measures necessary "to protect human, animal or plant life or health" and that is said to include "measures necessary to mitigate climate change". In other words, if you have a measure under the Paris agreement that is necessary to mitigate climate change, that is deemed to be a measure necessary to protect human, animal, plant life or health, and is therefore able to be adopted under the agreement. These are two small technical legal points, but they are pretty significant compared to what you get in WTO law.

In the environment chapter there is another provision that is worth noting—article 22.6—where there is an express right to adopt measures under UNFCCC and the Paris agreement: "The Parties recognise that



nothing in this Agreement prevents a Party from taking measures to fulfil its commitments under the UNFCCC and the Paris Agreement”, subject to certain standard conditions about arbitrary discrimination.

In these three cases, you have provisions that I have not seen before other than in the UK-EFTA agreement. They are significant because what they break, which I was referring to earlier in the context of pesticides, is a standard limit in trade agreements. Normally, parties to trade agreements are not allowed to protect the environment of another country; it is for them to protect. This is saying, “Do you know what? It is the global atmosphere. It is the climate”. We have agreed that each of us is entitled to adopt measures to protect that without worrying about the effects of that on the UK or on New Zealand. It is pretty significant.

Q137 Lloyd Russell-Moyle: There is general talk at the moment about trade measures that would take into account climate change in other areas. Would these clauses provide a way for that to be compliant?

Professor Bartels: It certainly helps. The EU has CBAM. The UK is thinking about something like CBAM. The US is doing its own thing now. I cannot give a clear answer on whether the particular measure that is adopted would necessarily satisfy these conditions, but it makes it a lot easier.

Q138 Lloyd Russell-Moyle: You just mentioned the right to protect the environment. Could the UK’s latest agreement to give breaks for oil production and investment see New Zealand taking action against us under these clauses? We are taking additional investment breaks for companies that are going to do oil extraction and damage the climate.

Professor Bartels: There is a provision in this agreement, article 22.8, which talks about an obligation to take steps to reduce harmful fossil fuel subsidies, for instance. There is, however, also a carve-out in the agreement for all measures concerning taxation. We refer to this in the advice. That is a standard carve-out for US-inspired FTAs. EU-inspired FTAs do not have that carve-out.

Our conclusion is that the obligation to take steps to reduce harmful fossil fuel subsidies does not include subsidies in the form of tax breaks. I do not know exactly what form those measures that you are referring to are in, but I can say that if they are in the form of tax breaks, even if they would qualify as subsidies under WTO law, they would not be affected by this agreement.

Chair: Thank you very much, Professor Bartels. I am sorry we have to end it here. Time is our enemy, as ever, but thank you for your insights and your presentation of the TAC report to the New Zealand trade inquiry.