# International Agreements Committee

## Corrected oral evidence: UK-Australia trade negotiations

Thursday 27 January 2022

11.05 am

Watch the meeting

Members present: Baroness Hayter of Kentish Town (The Chair); Lord Gold; Lord Kerr of Kinlochard; Lord Lansley; Baroness Liddell of Coatdyke; Lord Morris of Aberavon; Lord Oates; Lord Razzall; The Earl of Sandwich; Lord Udny-Lister; Lord Watts.

Evidence Session No. 4 Heard in Public Questions 66 - 82

## Witnesses

I: Nick von Westenholz, Director of Trade and Business Strategy, National Farmers' Union (NFU); Beatrice Morrice, Political Affairs Manager, National Farmers' Union of Scotland; Alessandro Marongiu, Senior Trade Policy Manager, Society of Motor Manufacturers and Traders (SMMT); Penelope Nevill, Barrister, Twenty Essex Chambers, and Bar Council.

## Examination of witnesses

Nick von Westenholz, Beatrice Morrice, Alessandro Marongiu and Penelope Nevill.

Q66 **The Chair:** Good morning, everybody. This is the International Agreements Committee. Today, we are hearing evidence on the Australia free trade deal, concentrating on agri-food, manufacturing and services. We have four witnesses: Nick von Westenholz from the National Farmers' Union, Beatrice Morrice from NFU Scotland, Alessandro Marongiu from the Society of Motor Manufacturers and Traders, and Penelope Nevill from the Bar Council.

This session is being broadcast and there will be a transcript of it later, so you will be able to check whether we caught all your words accurately. I am sure that my colleagues know to declare any interests before they ask questions. In that respect, because we are looking at services, I should say that I am on the board of the ABI.

I would like to start with a general question. What is your overall assessment of the final agreement that we now have with Australia? How useful was the agreement in principle last year in understanding what was developing and what would be in the final agreement?

***Penelope Nevill:*** Good morning, everyone, and thank you for the invitation to speak today. I can speak only to legal services in the agreement. Overall, it is a very positive story from the Bar Council's perspective, and we can come back to that with some of the more detailed questions that may follow.

As to the usefulness of the agreement in principle in understanding what would be in the final agreement, it can be helpful insofar as it indicates a direction of travel, but its usefulness is limited beyond that. What is crucial is seeing a draft text, in particular the annexes and schedules of commitments, which are where all the important details are found.

Having said that, and going back to the agreement today for the purposes of this session, I note that it included a commitment to guarantee the provision of legal services, in particular in arbitration, and movements on mutual recognition of qualifications. Now that we can compare that to the final text, which is very positive in both regards, we can better gauge the usefulness of further agreements in principle in other FTAs.

**The Chair:** Thank you. That is a helpful start.

***Nick von Westenholz:*** Good morning. Looking at it strictly from the perspective of agriculture, it is not a particularly good deal from our point of view, insomuch as it does not create many, if any, new opportunities for UK farmers, primarily because Australia is largely, although not entirely, liberalised already. There are aspects of liberalisation into Australia as a result of this deal, but it does not really create many opportunities that we can identify. It does, over a period of years, completely liberalise access for agricultural goods from Australia into the UK, which poses a risk for UK farmers. There is limited upside and potential significant downside. Of course, none of us knows precisely what will happen as a result of the deal.

Turning to your question on the agreement in principle, it was useful to understand what the landing space was on some of the key issues as they related to agriculture. The agreement in principle contained that detail. That did not really change in the intervening months—for example, the way the tariff rate quotas were organised or how liberalisation would work over a period of years.

It did not particularly assist us in liaising with our Government or our negotiators in the intervening months. In fact, it could be argued that it bound them on certain issues that were then, essentially, done and dusted, and that the intervening months really were just dealing with some of the details. It is perhaps frustrating from the point of view of an organisation like ours, but there are other considerations and reasons when coming up with an agreement in principle—political ones, primarily.

***Beatrice Morrice:*** Thank you very much for inviting me today. I echo exactly what Nick was saying. We have concerns about the agreement and the impact that it is possibly going to have on our sector in Scotland. The agreement in principle, as Nick said, set out that there were going to be TRQs included, but the detail of that was published in December. It is disappointing that there was no discussion with us with regard to the numbers involved in that or the detail. When it was published in December, it was disappointing to see. There are safeguards included in the deal, but one of our key issues with the safeguards is that they are very short term, not longer term.

Q67 **Baroness Liddell of Coatdyke:** I would like Nick and Beatrice to expand on what they have just been saying. The agreement contains general bilateral safeguard measures in the trade remedies chapter. The bit that I am most interested in is that it also provides product-specific safeguards for beef and sheepmeat until year 15 after entry into force. Is that of any use at all? How would that function?

***Nick von Westenholz:*** It is clearly better to have safeguards and measures in the deal that phase in liberalisation over time. The alternative, total liberalisation on day one, could have been incredibly damaging to some sectors. It is important that the negotiators secured phase-in periods, particularly for beef and sheepmeat, which are the most sensitive sectors.

Maybe the best way to describe it is that there are three elements to this. First, we have the tariff rate quotas on certain products—sheep, beef, sugar, cereals and dairy. There are different volumes, which are phased out over different periods of time. They are quite large. The beef tariff rate quota in year 1 is already 35,000 tonnes, which is almost 10% of our import requirements, so it is a big quota already and it gets bigger and bigger. That phase-in is important, but it is still, in our view, pretty generous.

The second aspect is, as you said, the product-specific safeguards on beef and sheepmeat, which kick in from year 11 to 15. They function in a similar way, whereby if a ceiling is reached and volumes come in over that ceiling, tariffs can be reimposed. Those are big ceilings—on sheepmeat, for example, 75,000 tonnes in year 11, which is a big amount. It goes up to 125,000 tonnes, which is 150% of our import requirement, so you can get a feeling for how effective that may be.

The final aspect is the bilateral safeguards that can apply to anything and be used if serious damage is being shown on a domestic sector as a result of the liberalisation in these deals. That is quite a high bar—in fact, a very high bar—and you have to show that there is serious damage or the risk of serious damage from this deal. Precedent would suggest that it is not straightforward to use. Those bilateral safeguards also fall away five years after liberalisation on each product, which means that, after 15 years, which applies to the longest products, as it were—beef and sheepmeat— there are no safeguards available whatsoever.

Just to be clear, after 15 years of this deal, none of those three things that
I talked about would apply. Essentially, you are then into full liberalisation.

**Baroness Liddell of Coatdyke:** Beatrice, I noticed that the Farmers' Union of Wales has expressed disappointment with the agreement. Is it the same kind of feeling in Scotland?

***Beatrice Morrice:*** Yes, absolutely. We are very disappointed that the safeguards are only short term. One of the other things to think about is the product weight that is being allowed to come through. The imports could favour high-value cuts, which, again, would have a significant impact on Scottish farmers, because that is the cut that farmers derive quite high value from. That is a problem.

The issue with the safeguards is that, as Nick said, after 15 years, there is no recourse at all, which could impact significantly on the farming sector in Scotland.

Q68 **The Earl of Sandwich:** I am speaking mainly to Nick. Welcome back. I am an NFU member, as you know. We have had plenty of evidence on welfare standards in Australia. They are not good enough or high enough. We have to remember the cost to UK farmers of keeping these high standards. It is an unequal playing field. In return for tariff reductions, should negotiators have insisted on minimum animal welfare standards or any other conditions? What are the precedents for improving animal welfare through an FTA? We had an interesting example from the RSPCA, which I am sure you know about, about improvements in abattoirs in Chile. Perhaps you have different examples.

***Nick von Westenholz:*** To your first question on what you might call conditionality of tariff preferences for high-welfare imports, it is something that we supported and proposed. The UK has a hugely valued agricultural market and it is no surprise that the Australians are incredibly pleased with this deal, which gives them access to that hugely valuable market. Therefore, we were in a position to apply some conditionality to that. We accept the Government's desire to do trade deals and to liberalise trade, and our view was that they should liberalise trade, provide market access and potentially increase imports of food produced to high standards, or certainly to standards that we produce to.

I was also a member of the Trade and Agriculture Commission, which produced a report suggesting a mechanism by which that might be achievable within FTAs. None of that is in this deal. In a way, it is a very straightforward, rather old-fashioned deal that just reduces tariffs. It does not have a great deal to say on standards.

Having said that, there is an animal welfare chapter in there, and it would be wrong to dismiss it totally as having no effect or being meaningless; it has some important commitments on antimicrobial resistance, for example, and commitments not to derogate or regress on standards. But it is not subject to the dispute resolution mechanism and therefore not

really enforceable. That is a problem, so we should treat the big claims being made in the animal welfare chapter in this deal with a bit of caution. We should not dismiss it entirely, but it is not enforceable.

The example you gave is a good one, but enforceable and meaningful animal welfare provisions in trade deals are few and far between, to be honest. We had rather hoped that the UK, off the back of its desires for global Britain and being a pioneer in a new, independent trade policy, might take the opportunity to do something a little more innovative rather than a rather traditional, old-fashioned trade deal primarily revolving around tariff reductions.

**The Earl of Sandwich:** I am very glad to hear you say that. As a committee, we will focus on that, I am sure.

***Beatrice Morrice:*** I agree with Nick that the chapter is there and that it is encouraging in that it talks about standards. A joint working group will be set up to take that forward. It also covers the environment and talks about what the policy areas are for both countries, but, as Nick said, it is not enforceable. It is just an encouragement. It is not ambitious for the first trade deal not to have included something like that. When you take a step back away from welfare, one of our main concerns is the cumulative impacts of trade deal after trade deal. There was an opportunity there to set something out, but it was not taken.

Q69 **Lord Lansley:** Thank you for being with us this morning. I have some quick follow-up questions on the things that you were just saying. We are a relatively large importer of agricultural products in any case. To what extent might some of these agricultural products—indeed, even beef or sheepmeat—displace alternative imports rather than necessarily displace domestic production? I take Beatrice's point about some of the particular cuts of beef and the impact on Scottish farmers. Save that point, is there, in fact, perhaps more a question of displacement of existing imports from other countries?

As for the mechanism for the safeguards, is it your anticipation that they

would be managed by the Trade Remedies Authority or in a government department such as Defra? Have you had any discussion on how they would be managed?

At an earlier stage, there was a question that I remember raising about whether particularly the sheepmeat tariff rate quota might be seasonal. Will that happen at all or not? Can it be managed in-year in any way?

***Nick von Westenholz:*** On the question about displacement, you are right. We would probably expect a little bit of both. You are getting a comparatively new entrant into the market, so existing players in that market, both domestic and foreign, will have to compete against that. If you look at beef, there is a lot of Irish beef in the market, and I suspect that they will be a little nervous at the prospects of Australian imports, but they will compete hard as well. What that really means is downward pressure, which UK producers will have to compete with. You are absolutely right that it is not just about Australians displacing domestic

producers, but about other importers, although I suspect that it will be spread between the two.

In terms of the management of safeguards, I do not know the precise answer. Whether the TRA will be responsible for it is a very important question, and I would be happy to look into what we know about that and write to the committee.

The sheepmeat TRQs are not, as I understand it, seasonal in any way. We are waiting for more details on exactly how these TRQs will be managed. Indeed, when we get the New Zealand deal, which we are expecting very soon, this issue will be particularly relevant to that as well. You get into issues, for example, not just of whether the TRQ itself is seasonal and so applies only at certain times of the year, but of whether it is managed on an annual or a quarterly basis, such that you do not suddenly get a massive surge of imports at the beginning of the year and you can manage that throughout the year. Again, these are crucial questions, but, on the Australia deal, the approach to the administration of the TRQs looks fairly simple, which therefore carries with it the potential of risks of surges and the like for UK farmers.

Q70 **Lord Oates:** I declare my interest as the chair of the advisory board of Weber Shandwick UK. What assessment have you made of the comparative carbon footprints of UK and Australian agriculture? Is there a danger that this and subsequent deals with countries with less ambitious net-zero commitments than ours will end up deterring UK farmers from investing in reducing their carbon emissions?

***Nick von Westenholz:*** There are numbers out there on the comparative difference in carbon emissions. UK beef production has lower carbon equivalent emissions than Australia does at the moment. To be fair, I know, because I have talked to Australian farmers, that they are making efforts, as we are, to reduce their emissions. It would be unfair not to point that out. When we put our written evidence into the committee, we will include as much as we can on those comparative numbers.

Your question also touches on a broader point. Domestic policy now in the UK is very focused on issues such as climate friendly farming, high animal welfare farming and environmentally friendly farming, all of which require investment and potentially impose indirect costs on UK farmers. At the same time, they are being asked to go toe to toe and compete with some of the most competitive, efficient and impressive exporters in the world. There does not seem to be any coherence between those two policies and ways of looking at how you can really help farmers in the UK to be more sustainable and to compete with this. The risk is that, with very liberalising deals such as this, farmers find that they cannot compete and, therefore, cannot deliver all those things that are being asked of them.

***Beatrice Morrice:*** In Scotland, we are in the middle of relooking at the future funding for the sector. It is at three levels—producing high-quality products, tackling climate change and enhancing biodiversity. We are absolutely committed to doing that but, like Nick said, if that makes us

uncompetitive, there will be issues. We are very concerned about that, but we are absolutely committed to being more sustainable.

Q71 **Lord Watts:** I wonder whether I could ask Nick a question following on from his previous contribution. There seems to be a wide difference in view about the deal between the Government and the National Farmers' Union. Has the National Farmers' Union met with Ministers? Have they discussed it? What was the outcome of any meeting that they had? Was there any understanding within government that this could have severe implications for the industry?

***Nick von Westenholz:*** We regularly talk to Ministers and officials from a number of government departments, so I would be confident in saying that we were very clear on our concerns with this. The impact assessment that came alongside the publication of the deal just before Christmas demonstrated a potential negative impact on agriculture. In particular, it looked at beef and sheep, and showed a reduction in output in those sectors as a result of this deal alone over the next 15 years, so the Government's own analysis is showing that.

One of the things we found very frustrating is that it would have been perhaps more helpful, particularly on the points I just raised about needing domestic policies that contribute to helping us to manage these sorts of deals, to have a more honest conversation and to be straight that there will be negative impacts as a result of this deal. That might be justified for political or other economic reasons, but the fact that that is often not being faced up to and that we are being told, "This is brilliant for farmers. There's nothing for you to worry about in these deals", has made those conversations tougher. It is there in black and white in the impact assessment.

Q72 **Lord Kerr of Kinlochard:** Nick, if you read the Australian press, a great triumph was secured, but you also read that the TRQs are unlikely to be fulfilled in full if relations with China normalise. China is clearly the principal market for Australian agricultural exports and it is likely to continue that way. Is that your view? You were critical of the impact assessment a
moment ago. The impact assessment assumes that the TRQs are all filled. If you read the Australian press, you get the impression that that might not be the case.

***Nick von Westenholz:*** That is certainly a possible scenario. It is not that we say that it is not going to happen. It could well be that Australia continues to serve markets like China in the Far East, where at the moment it does good trade and receives a good price for its products. Of course, that could change. Beef exports from Australia to China dropped off quite significantly last year, and there are geopolitical reasons why that may increase.

The point I would like to make is that we do not know. Nobody knows what the impact of this deal will be. It could be that exports from Australia to the UK are minimal or modest, which could still have an impact on the domestic sector. They could be much larger and it might start to look like they are filling these TRQs over that phase-in period.

The concern we have is that, if the latter scenario comes to pass, there are not the necessary safeguards or mechanisms in this deal to allay or prevent any potential damage. The safeguards—with a small S—for the worst-case scenario are not there. A better scenario from the perspective of UK farmers may come to pass, but we will just have to see.

**Lord Kerr of Kinlochard:** Thank you. That seems very fair. I agree.

Q73 **Lord Morris of Aberavon:** Is there anything in this agreement for British agriculture? There is a great deal for industry, but it seems to me a winwin for industry and a lose-lose for agriculture.

***Nick von Westenholz:*** The upsides of this deal for British agriculture are very limited. If you are looking to find them, there are some. For example, there may be opportunities for higher-value products in the dairy sector. That is probably one of the few areas where there are currently Australian tariffs, which will be reduced, as with us, over a period of years. There could be prospects there, but we do not really expect those to be large volumes or hugely economically valuable, except for some businesses.

On the flipside, there are some aspects that do not help that. For example, we have not managed to secure recognition of our geographical indicators, which are the sorts of things that apply to those high-value products, particularly cheeses and the like, so we will not be able to benefit from those. That is a great shame because, having secured that, you might have been able to see some upsides.

There is the possibility of some additional trade in processed foods but, by and large, Australia is a massive net exporter in agricultural products and in food. Therefore, just by necessity, the opportunities for us to start significantly increasing our exports to a market on the other side of the world are relatively limited.

Q74 **The Chair:** I wonder if we could now move to the automotive industry. Alessandro Marongiu, if I could ask you the question that I posed earlier by way of opening, what is your overall assessment of the final agreement,
and how useful was the agreement in principle in understanding what was then going to be coming?

***Alessandro Marongiu:*** Good morning, and thank you very much for inviting me and the SMMT again to provide evidence to this committee on the UK-Australia FTA.

With regard to your questions, for UK automotive the assessment of the new agreement with Australia is generally positive, in particular with regard to provisions that should allow most British automotive exporters to avoid 5% tariffs on imports of finished vehicles and parts into Australia, including electrified vehicles and related technologies. That is why the SMMT has publicly welcomed the signing of the agreement.

However, there are some shortcomings, in particular in the area of nontariff barriers, given that the deal does not include a dedicated automotive chapter or annexe addressing automotive regulatory barriers.

It is not a major shortcoming for this deal, because businesses face only a few regulatory barriers in trade with Australia, but it is a missed opportunity, in particular if this agreement sets the standard for future negotiations.

On the agreement in principle, it was useful on the one hand, because it contains some clear references to provisions of interest for the sector, particularly on rules of origin for passenger cars. It also gave us some indications on potential weaknesses. However, only the full disclosure of the text allowed us to make a proper assessment, which happened later.

Q75 **Baroness Liddell of Coatdyke:** Let me say in starting that I very much agree with Lord Kerr about the coverage there has been of the trade deal in Australia, where there is a feeling that it has been a huge success over the UK. There are tripwires that we need to look at, and it is one of these tripwires that I want to look at now.

Alessandro, the Government have estimated that UK automakers will be one of the biggest winners of the trade deal. I would like your analysis of that. One of the areas that I have noticed is that luxury cars are made in the UK and exported into Australia, and there is a 33% tax on them. Why was that not removed? Do you have any idea why that was left hanging? Australia does not really have a car manufacturing industry any more, so what is the point of this rather swingeing increased cost on luxury cars?

***Alessandro Marongiu:*** In terms of potential gains for automotive, first of all, the agreement could help to increase exports to Australia, in particular for businesses that are already exporting their products there. Just to provide context, we do not import any cars from Australia, so UK automotive would be net winners from any deal with Australia. It is the quality of the deal that matters and how much we can gain from it.

It is also a relatively small market for us, although it ranks consistently among the top 10 export destinations for UK-assembled vehicles. We come from very challenging years in general, so we might see automotive exports to Australia increase significantly, for example, compared to last year, also because the starting base for 2021 is suboptimal. Just to give you an idea, car exports to Australia last year fell by more than 31% to a little more than 10,800 units. We released this data yesterday. That is just 1.5% of all our car exports to the rest of the world, down from 2.1% in 2020.

Most of the decline was in exports from volume manufacturers, while luxury and premium vehicles performed quite well in 2021. Despite the general decrease and the many challenges, the volume of exports of luxury and premium vehicles to Australia increased.

Any uptick in exports might result from several factors, easements on ship shortages for volume manufacturers being probably the most impactful one. The 5% tariff cuts from the date of entry of the FTA could help, if the deal is ratified swiftly. However, as you just mentioned, we should manage expectations, as it is mostly premium and luxury vehicles that are performing well at present and, as they are not so price

sensitive, benefits could be more in terms of additional marginal gains rather than a significant increase in volume of exports to Australia.

Further growth in this segment is definitely constrained by the impacts of the Australian luxury car tax, which remains the biggest barrier by far in the country for the whole sector. This was not addressed in the FTA. To be fair, it was a long shot, because taxation is usually left outside of FTA negotiations. I hope there will be continued engagement with our Australian counterparts to at least seek a reform of the tax in order to make it less impactful, but it definitely remains a major issue for us.

Q76 **Lord Razzall:** Alessandro, I suppose it is stating the obvious to say that, on rules of origin, a reduction to 25% will be beneficial to UK manufacturers. I assume you would agree that that is a big advantage for electric cars, bearing in mind the large cost of batteries as a proportion of the whole, and there would be a problem if it was higher than the 25%.

I know that Baroness Liddell touched on the tax on luxury cars issue, but in this case, looking at cars generally, was an opportunity missed to extend cumulation to the European Union on the issue of origin, bearing in mind the integrated nature of our manufacturers with component suppliers in the EU?

***Alessandro Marongiu:*** In principle, the origin requirements agreed under this new FTA should be beneficial. Origin requirements for vehicles and parts are generally less demanding than those agreed in, for example, continuity deals. These rules allow for a substantial proportion of the value of the materials used in UK manufacturing operations to be imported from third parties.

In the absence of EU cumulation, these rules are certainly better reflective of the sector's supplier base after the UK's withdrawal from the European Union. More ambitious rules would have created quite significant challenges for businesses to benefit from the deal.

Specifically for cumulation, businesses that can meet these origin requirements only through cumulating EU content will have a problem.

Generally speaking, businesses that can meet these origin requirements without EU cumulation are glad to see a leaner origin protocol compared to continuity deals. This is because cumulation of content from third countries has a number of implications in terms of the administrative burden and compliance or formalities.

The absence of such alternatives makes it impossible for some businesses that rely on imports of EU products quite substantially to benefit from tariff cuts. In an ideal world, nothing prevents the parties agreeing, for example, two different sets of rules—one with and one without EU cumulation—but, to be clear, this is quite unprecedented; it would have been a very ambitious arrangement.

Although it is hard to imagine a revision of origin rules in the immediate future to include this additional alternative, there is an enabling clause, and open clause, in the deal, which mandates the parties to discuss

cumulation with third countries if they wish, when these countries have FTAs in place with both the UK and Australia. With EU-Australia negotiations under way, the door for this conversation remains open.

**Lord Razzall:** In potential deals with other countries, presumably your organisation will be looking for 25% in the rules of origin now.

***Alessandro Marongiu:*** The agreement sets a precedent and we have to test whether the deal works. Hopefully, soon after ratification and when businesses start to make use of it, we will get detailed data for example on preference utilisation rates after the deal takes effect, in order to understand whether businesses are making use of tariff preferences and whether they can comply with origin requirements.

It is also true that not all UK manufacturers export to Australia. For example, for those that choose not to, we do not know whether the rules— the 25%—will work. If they rely a lot on EU content imports, cumulation of EU content will still be a valuable alternative. If we see businesses starting to export to Australia—we do not know whether that will happen—that would be a very good indication that the origin rules are workable for a broader number of manufacturers.

Q77 **Lord Lansley:** I wonder if I might follow up on that with a question to Alessandro about regulatory barriers. There was a rollover mutual recognition agreement, but could you talk us through how that will work and whether there were other opportunities that we might have looked for?

***Alessandro Marongiu:*** As mentioned, we see non-tariff barriers as a missed opportunity in these negotiations, because the FTA does not include a dedicated automotive annexe. Most recent FTAs include a sectoral annexe addressing specific regulatory barriers. This was a key automotive ask during the negotiations.

In terms of impacts, Australia already widely accepts international UN regulations and certificates, but there are a few areas where manufacturers perceive that UN regulations are not fully accepted. Slight regulatory differences exist between the UK and Australia, in particular with regard to the manufacturing of coaches and commercial vehicles, and bodybuilders. The old mutual recognition agreement was negotiated in the early 1990s and slightly revised at the beginning of the 2000s. It does not address these kinds of issues.

It does not address, for example, future co-operation under the aegis of a more modern UN treaty called UNECE 1998, which both the UK and Australia are parties to. It is charged to develop future global technical regulations. The existing MRA does not look at the future. It does not deal, for example, with new technologies coming to the market, how the parties should treat them and whether they can ban these technologies if they have not been regulated yet. Could we do more on recognising virtual test reports for automated vehicles? That is an area of great interest.

Although there is an innovation chapter in the deal, an automotive-specific annexe could have addressed these issues more properly and provided more binding commitments.

**Lord Lansley:** I see all of that, and it is clearly an area where there is quite a lot of innovation in automotive technologies in prospect. Presumably, you told the Government that an automotive annexe for these purposes would have been useful. Given that there were virtually no defensive interests in Australia, do you have any understanding of why this was not achieved?

***Alessandro Marongiu:*** I believe that the existence of an MRA was deemed sufficient to address the key regulatory barriers. As said, we do not face many regulatory barriers at the moment in trade with Australia, so I would not overexaggerate on the impacts. The problem is more about setting a good precedent. Given that this is the first FTA that the UK has negotiated with a new trading partner since the withdrawal from the European Union, it would have been good to see an automotive annexe included in it in order to expand on the MRA that was already there and to set a precedent for future negotiations.

Just to be clear, it is fairly challenging to negotiate automotive annexes, because you have to compare regulatory outcomes from different jurisdictions and to ensure that they are compatible. If they are not, you risk, essentially, admitting products into your market that are under par compared to your own safety standards, for example. You need a certain level of sophistication in evaluating the regulatory framework. It can be done. It should be done in future negotiations as well. It was not done in this case, but again, in the general non-tariff barriers chapter, there is a clause demanding that the parties consider requests to have future sectoral negotiations, so there is still an opportunity there.

**Lord Lansley:** So if part of the reason that it was not done in this agreement was that it might have added delay, there is scope to follow up and to try to get it in place in the future.

***Alessandro Marongiu:*** I believe there is scope to do so, absolutely.

**The Chair:** Thank you. We now turn to the legal services part of this.

Q78 **Lord Gold:** My question is addressed to Penelope Nevill. Before asking it, let me just declare an interest. I have an involvement with Balance Legal Capital, which funds litigation in Australia.

The Government have called the provisions on legal services groundbreaking. Do you agree? How will this benefit the UK legal services sector? We always seem to have lots of Australian lawyers here, which is wonderful, but will it be easier for our people to go out and practise in Australia without serving in a farm first, or something similar?

***Penelope Nevill:*** There are a couple of important points about this agreement. Where it is an advance is that Australia makes firm commitments for fly-in, fly-out services for lawyers from the United Kingdom, in particular to go in and represent clients in arbitrations,

conciliations and mediations in Australia. That is an important binding commitment that goes beyond what Australia has committed to before.

The cross-border provision of services from one state into another, say digitally, has not been such an issue. It is the in-person services, and to fly in and fly out for the purpose of advice in home state law and public international law. That is very important.

As you will be aware, what can also be important is the ability to appear in local courts in legal proceedings that are ancillary to arbitration, where local courts have a role in enforcing certain provisions under local arbitration legislation. That is where we still have a difficulty. We would like to see temporary call rights and advances in that for lawyers from the United Kingdom to appear before courts in Australia. There are other areas of law where there might be an advantage to be had in being able to appear in local courts.

What we have in this agreement is a significant advance in terms of creating an institutional structure, where we can advance that goal and objective. There is already legislation in some states in Australia that makes provision for conditional practising certificates and similar things for temporary call, but we are a long way from having that yet.

What is important about an institutional structure is that we start having the dialogue, but we have to appreciate how complex it is to get agreement across all the legal professional bodies and all the states in Australia as to temporary call rights for barristers and solicitors based in the United Kingdom.

In that sense, this agreement is an advance compared to legal services provisions that I have seen in other FTAs. To have a specific text on legal services is a relatively new phenomenon, but this is not the first agreement to have it. In terms of the legal bindingness of the language used, this text is an advance. It says, "The parties shall create a dialogue" and is not just encouraging us to create a dialogue, which is important. There is also the legal bindingness of other aspects of the commitments.

Also important is that they build in some timeframes for the dialogue. The various professional bodies are encouraged to meet annually for the first three years and to report back within 20 months of the agreement entering into force. These procedural aspects of the agreement will create an important platform for moving forward in some of these areas where we have not had many advances yet.

Q79 **Lord Watts:** Penelope, you have dealt with most of the issues in your answers to the last question, but can you say a bit more about the dialogue? How will this operate in practice and what are the outcomes that you would like to see achieved? You have already talked about timeframes. Do you have any indication from the Government about what sort of timeframes they are working to?

***Penelope Nevill:*** As of yet, we have had no indication of how the dialogue will take place or the timeframes for setting it up. We expect that the Bar Councill will be involved, and that is as far as it can go.

In addition to temporary call rights, the other area that we are very interested to progress is mutual recognition of qualifications. Speaking as a New Zealander, it is probably easier for me to come across to practise in
England and Wales than it may be for lawyers to transfer the other way. That is something that we will want to address in the dialogue. Beyond what I said, I am afraid that I cannot add any more detail.

**Lord Watts:** Would it have been more helpful to try to get this as part of the agreement in the first place, rather than to come back to it in principle later on? I understand the need to do things quickly, but you do not want to disadvantage yourself by doing so.

***Penelope Nevill:*** That is a very interesting question. That would be our lodestar. We would have very much appreciated and welcomed that, but we have to recognise that that level of detail and commitment in FTAs on legal and other professional services has not been seen in previous FTAs, and it is quite difficult to achieve. In that sense, we do have an agreement that is an advance on what we have had previously, but, in light of what you say, we could perhaps have greater ambition to build in more concrete commitments in future agreements. It is a difficult area for negotiations and is still quite nascent in FTA texts.

Q80 **Lord Morris of Aberavon:** It is very interesting to hear about informal proceedings like arbitrations, and access to lawyers from the United Kingdom. What about the ordinary courts? I declare a former interest as a leader of the Bar in my capacity as Attorney-General. When I was a young man, I had to pay £20 a day to go from Swansea to Newport. Fortunately, the Bar has done away with all those regulations. If I wanted to appear in Melbourne to do a bail application tomorrow, would I be able to do so?

***Penelope Nevill:*** The short answer is no. As I understand it—and I confess I am not on top of the details completely—under Australian law there is provision for a conditional practising certificate to be granted in order to make an appearance before the local courts, but that involves timeframe issues and complexities. Generally speaking, it is easier for senior practitioners to jump through the hoops than it is for more junior practitioners. That is something that the Bar Council would like to address in the context of this dialogue.

**Lord Morris of Aberavon:** What is the position regarding Australians coming here? Do they have the same restrictions as I understand I would have?

***Penelope Nevill:*** They do have to have a temporary call to the Bar. Again, I am not on top of the detail of that, and we can provide it in writing. My understanding is that getting temporary call for such purposes is generally quite straightforward, and there is a straightforward process to apply through the authorities here. There is provision for it, but, again, you cannot just turn up in court on the day.

**Lord Morris of Aberavon:** So the bottom line is that we have not made any advance.

***Penelope Nevill:*** I suppose you could say that that is the bottom line, but, as I said previously, that is quite typical of FTAs. You would not normally see that level of detail and commitment for the provision of legal services. It can be difficult to achieve, because you are negotiating with a number of local professional bodies in order to agree on the rules and the acceptance of legal practitioners from other jurisdictions into their local courts. We are making progress. This agreement is making progress in creating the structures where we can see that agreement being reached in the future.

**The Chair:** Presumably, your understanding is that the legal services regulatory dialogue will include all bits of legal services, not just the Bar, and your Scottish equivalents.

***Penelope Nevill:*** Yes, I understand that to be the case.

Q81 **Lord Udny-Lister:** Could I declare an interest? I am an adviser to HSBC, so I have that involvement. You touched just now on the mutual recognition of professional services, but are there any other areas where you feel this agreement could have gone further, both in the legal profession and in other areas?

***Penelope Nevill:*** I can really speak only to the legal profession. It could have gone further, the main area being how far we can go in getting concrete commitments on the mutual recognition of qualifications, as we have just said.

The other area that is quite difficult and a bit more specific is for junior members of the legal profession, in particular self-employed members at the Bar, to make use of the fly-in, fly-out provisions of the agreement. To get in, you have to have six years of professional qualifications. That is quite a typical limit on a commitment among states in free trade agreements, so it is not unique to this one or to Australia, but one of the reasons they have it is because that is the UK position.

We would like to see a bit more dialogue between departments in the UK Government about areas where the UK position means that we cannot expect reciprocity from other states in our negotiations, making it a bit easier for junior members to go and practise and to take advantage of

these provisions. More generally, can we make some movement on having visa-free routes for paid work in and out of other countries? That is an area where reciprocity comes into play, so we need to look again at our own domestic policies, rules and regulations on that in order to advance our international negotiations.

**Lord Udny-Lister:** Thank you. That is very helpful. I am interested in the fly-in, fly-out point in particular. Are those the Bar Council's rules or are they rules within the British judicial system? Where is this barrier? I am not a lawyer, so I do not know.

***Penelope Nevill:*** The barrier is the Home Office Immigration Rules, which are reflected in the schedules in the free trade commitments on the movement of natural persons. They originate in our Immigration Rules and policies for people coming in and out of the UK in order to work or to provide services.

Q82 **The Chair:** That is interesting. We are coming to the end of this session and I would like to ask each of you a closing question. We have heard a bit of it already, so do not feel that you need to repeat, but I am interested in how you rate the Government's engagement during the negotiations. Particularly on agriculture, there was a feeling that numbers and things like that were not discussed. Could each of you say a little bit about how you have been listened to by the Government during the negotiations and whether your views were taken into account? In these closing statements, if you could leave us with any thoughts that we have not covered in our questions, that would be very helpful.

***Penelope Nevill:*** The Bar Council's experience of engagement with the DIT and the MoJ in FTA negotiations since the negotiation of the EU-UK agreement has been extremely positive. It is an open channel of communications. We receive regular information and we feel that we can put our asks and convey our concerns to those departments, which are very receptive. We are able to explain to them properly how our sectors work and what our concerns are, and we are seeing that reflected in consideration of the details of the drafting, so that has been very positive.

As I have just mentioned, we would welcome some wider engagement from other parts of government on issues where movement from the UK side on certain of its rules would allow us to push for reciprocity from other states in negotiating these aspects, particularly fly-in, fly-out for FTAs.

***Alessandro Marongiu:*** As the first FTA with a new trading partner, negotiations with Australia represented a first major test also for the Government's engagement mechanisms. Relevant departments, including the Department for International Trade and BEIS, have engaged with the SMMT and key existing exporters in particular, through both formal and informal channels. Overall, there was quite a lot of engagement between us and government.

I have a point on the agreement in principle. We had a vague idea of the key aspects of the deal before the agreement in principle was announced,

but we lacked the necessary level of detail to be confident that the deal would deliver on key sectoral asks. Generally, it is far more important for businesses to get a clear idea of what the agreement entails before an announcement is made than getting an idea of the final text from the announcement of an agreement in principle. In this sense, after this first experience, the engagement mechanisms are getting better and providing more details throughout the negotiations.

**The Chair:** Thank you. That will be helpful when we come to writing our report about asks.

***Beatrice Morrice:*** We were not happy with the consultation with us. Once the agreement in principle was published, we had several meetings with a Minister. However, it felt more like a tick-box exercise rather genuinely listening to our concerns. We were disappointed that there was a delay in setting up the Trade and Agriculture Commission. It has now been set up and it is key that it is now listened to and effective going forward. That is a priority for us just now.

***Nick von Westenholz:*** The engagement improved from maybe where it was a few years ago, but still, like Beatrice, we generally found it to be not particularly useful or helpful. Primarily, it felt that the engagement that we had, particularly with formal mechanisms—the trade advisory groups that DIT set up, covering a range of sectors—was really more about updates. We were generally presented with faits accomplis.

TRQs would be an interesting one. We have still not seen the justification, the modelling or the figures behind why the TRQ volumes are where they are. That would be precisely the sort of thing you would think would be discussed under the terms of an NDA, which we have all signed, during the negotiations, to help the negotiators land on something that might be acceptable to domestic audiences and still help them to negotiate a final deal.

Those forums are in need of significant improvement. At the moment, it feels like there is not an awful lot of point, having signed an NDA, in being part of those forums and discussions, when, as I say, the information we are provided with is mostly after-the-fact information that we have little input into.

**The Chair:** There is some good and some less good in that, which is useful for us to consider. I wonder if, on behalf of the committee, I could thank you enormously. A number of you have mentioned that this is the first of this sort, and we are similarly, therefore, learning a lot from the feedback that you are giving about how this has worked. It has been really helpful to all of us today. Could I thank the four of you very much, and indeed the organisations behind you, for releasing you this morning to be with us? We appreciate this enormously. If any of you, from the questions, want to send in something supplementary afterwards, that is always very welcome as we get to drafting our report. For the moment, thank you all.