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21 March 2022

Dear Dianne,

Thank you for your letter dated 7 March 2022 about the UK-Australia Procurement Chapter. I am happy to provide the answers below.

The Government Procurement Chapter of the Australia FTA represents the first from scratch procurement chapter negotiated by the UK since exiting the EU. It includes significant precedent-setting text that goes beyond the commitments set out in the GPA, enhancing provisions on transparency and e-procurement. It is a modern and progressive government procurement chapter, building on the GPA in areas which reflect the UK's world-class domestic procurement practices, such as facilitating participation by SMEs, ensuring integrity in procurement practices and including environmental, social and labour considerations. The ambition of both parties in negotiating this chapter has resulted in a text which builds on international precedent to establish a new gold standard for future agreements.

## **Why the Government changed GPA commitments in the Australia FTA**

### **Bilateral context**

The WTO Agreement on Government Procurement (GPA) is a plurilateral agreement between 21 Parties. Accordingly, the non-discrimination obligations in the GPA include most-favoured-nation obligations that ensure the goods, services and suppliers of Parties are not treated less favourably than the goods, services, and suppliers of another Party. This MFN treatment is in addition to the obligation of national treatment.

In the context of a bilateral FTA, it is common to remove such MFN obligations to ensure the negotiated outcomes of that particular FTA are respected (Articles 16.4.1 and 16.4.2b in the UK-Australia FTA). This is the same as the EU TCA, which incorporates Article IV:1(a) of the GPA, but not Article IV:1(b) (see Annex PPROC-1, Section A). The removal of the words "offering the goods or services of any Party" does not undermine the obligation to not treat suppliers of the other Party less favourably than domestic suppliers.

## **UK's CPTPP ambition**

Against the backdrop of the UK-Australia FTA negotiations, the UK had begun the process of applying to join the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), one of the largest free trade areas in the world, worth £9 trillion in GDP in 2019, that includes some of the world's biggest current and future economies. This included a government procurement chapter that would further open the procurement markets of CPTPP countries to UK businesses and support them competing for public procurement opportunities by ensuring they receive fair and non-discriminatory treatment.

Acceding to CPTPP requires the unanimous consent of existing parties. This includes five countries that are also members of the GPA, of which Australia is one, the others being Canada, Japan, New Zealand, and Singapore. However, it also includes six additional countries that are not members of the GPA: Brunei, Chile, Malaysia, Mexico, and Vietnam.

The chapter is modelled on the GPA, replicating it in many areas, but also diverging from the GPA in others. In the Australia negotiations, this wider objective of CPTPP accession led to some CPTPP provisions being adopted in the chapter text.

A list of the differences between the text of the UK-Australia FTA and the GPA, as well as the reasons for these, is included as an annex to this letter.

Specifically on Article 16.19.7, this wording comes from the CPTPP equivalent. The GPA establishes an obligation on Parties to maintain procedures for corrective action or compensation but does not specifically set out when compensation will be provided. Providing compensation is not mandatory under the GPA. In practice, the specific inclusion that procedures take into account overriding public interest is unlikely to have material practical impacts, also noting both countries are party to and implement the GPA.

## **Primary legislation requirements for the UK-Australia FTA**

Legislation will be required to implement the Government Procurement chapter for all new FTAs the UK signs. A key purpose of government procurement chapters in FTAs is to provide market access to government procurements for suppliers from the other party on an equal basis as UK suppliers. To achieve this, the rights and remedies available to suppliers under domestic procurement law must be extended to suppliers of those countries for procurements which are covered under the relevant FTA. This is done by amending the relevant procurement legislation.

There are some additional legislative changes needed for implementation of the Australia FTA to adhere to the commitments made to how procurement processes are run. However, these changes are addressed by the UK Government's plan to overhaul its domestic procurement regime following the exit from the EU. The changes required are only needed for the UK's existing procurement regulations. An assessment of the impact of these rules changes will be included in the impact assessment for any primary legislation brought forward to make these changes.

Yours ever,

A handwritten signature in black ink, appearing to read 'Grimstone', written in a cursive style.

**Lord Grimstone of Boscobel, Kt**  
Minister for Investment  
Department for International Trade  
Department for Business, Energy and Industrial Strategy

## Annex A — differences between UK Australia FTA & the WTO GPA

Articles changed when compared to GPA	Reason for changes
All articles	Baseline language – minor drafting changes (eg. Changing “goods” to “a good”, “where” to “if” or adding “including its procuring entities”) have been made to align with the preferred style. These are not material changes and often stylistic.
Article 16.4 General Principles <sup>1</sup> Article 16.15 Transparency of Procurement Information <sup>2</sup> Article 16.20 Modifications and Rectifications to Annex <i>GPA Article V on developing countries removed as not applicable to UK &amp; Australia</i>	Not applicable in/modified for a bilateral context
Article 16.2 Scope Article 16.7 Conditions for participation Article 16.8 Qualification of Suppliers Article 16.9 Technical Specifications and Tender Documentation <sup>3</sup> Article 16.10 Time-Periods Article 16.12 Limited Tendering Article 16.19 Domestic Review Procedures	Alignment with CPTPP drafting
Article 16.3 General Exceptions <sup>4</sup> Article 16.4 General Principles <sup>5</sup> Article 16.6 Notices <sup>6</sup> Article 16.17 Environmental, Social and Labour Considerations (new article) Article 16.18 Ensuring Integrity in Procurement Practices (new article) Article 16.21 Facilitation of Participation by SMEs (new article)	Expanding on GPA baseline with new provisions

<sup>1</sup> We do not include the MFN obligations that derive from the GPA, which is a plurilateral agreement between multiple parties. These provisions, including sub-paragraph 1 (b) were not included in the UK-AU FTA because the scope of the chapter text concerns only the two Parties signatory to it the FTA is to apply in a bilateral context.

<sup>2</sup> The UK-Australia text did not replicate the section in the GPA text on Collection and Reporting of Statistics, as it would be disproportionately burdensome to duplicate Party's reporting obligations for information that was mostly available under the GPA.

<sup>3</sup> The UK-Australia text also adds a section on Preliminary Market Research and Engagement which builds on a CPTPP provision

<sup>4</sup> Note, the security exception was removed as this was covered by an FTA wide security exception

<sup>5</sup> On use of electronic means

<sup>6</sup> Note, the provisions on summary notices were removed as these are more applicable to non-English speaking countries