Department for International Trade

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The Rt Hon Lord Goldsmith QC
Chairman
International Agreements Committee
House of Lords
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29 September 2020

Dear Peter,

Thank you for your letter dated 31 July 2020 requesting additional information relating to the UK-US Free Trade Agreement Negotiations. In terms of your specific questions, I have set out responses below and, where relevant, I have grouped questions with similar responses. You ask a number of questions where it is very difficult to provide specific details at this stage because they are extremely sensitive, and negotiations are ongoing. However, I would be happy to attend a confidential briefing session during which it may be easier to get into some of these issues than in this written response. If this is something you would like to arrange then please get in touch with my office and, time permitting, we will seek to meet this request.

In terms of progress, negotiations with the US continue at pace and on 18th September we concluded the 4th Round of negotiations. We have had 132 sessions over the past four rounds and 30 intersessional discussions which have involved officials from 20 different government departments. Discussions are entering advanced stages across a range of chapters and we are in the process of consolidating text in the majority of chapters. We have also exchanged and discussed our first tariff offers as part of this round – a significant milestone to reach after just three months of negotiations. By way of comparison, during their recent negotiations with Korea, the US did not exchange their first tariff offers until six months in to the 14-month negotiation.

With the US Presidential Election approaching, and one more round to go before then, both sides are keen to make significant progress by the end of October. This would help to put us in a position where a UK-US FTA would be an attractive early win for any returning or incoming Administration.

I hope you find this update and the responses to your questions helpful, and I look forward to continuing to work with the Committee as negotiations progress.

Best wishes,

Lord Grimstone of Boscobel, Kt
Minister of State for Investment
Department for International Trade

[IAC Supplementary response Q&A]
Scrutiny Process

1Q. We continue to have concerns about how the ongoing negotiations with the EU on a future relationship may impact on negotiations with the US on a trade deal. We would welcome more detail on how you will manage this and would ask what detailed assessment you have made of major trade-offs that may need to be made between the UK-EU and UK-US talks.

1A.

- UK/US and UK/EU negotiating teams work collaboratively to ensure positive outcomes across all negotiations, with representatives from the chief negotiators' teams meeting regularly to discuss ongoing developments, and with each negotiating team working with the full range of experts across Government to ensure comprehensive and expert support is provided.
- We will be negotiating a relationship with the EU based on friendly cooperation between sovereign equals. At the same time, we will be negotiating an ambitious free trade agreement with the US, whilst also progressing negotiations with other interested partners around the world
- As is the case for most independent trading nations, we will have an independent regulatory system and we aim to seek mutual recognition of these systems with the EU, US and other trading partners.
- The Government is seeking strong outcomes in both the EU and US negotiations to secure the best opportunities for UK in each specific context.
- The Government is well prepared for negotiations with both the EU and wider international partners and we have the capacity and expertise to do so.

2Q. How much time will be given for post-agreement consultation with stakeholders on what is a potentially far-reaching agreement with legal implications? We know that the Government intends to produce an impact assessment on the final text, but is the Government planning to commission any independent studies on the likely effects of the agreed provisions, which might inform parliamentary and public scrutiny of the deal? How will the Government engage industry bodies to understand and prepare for the consequences of a deal?

2A.

Post agreement consultation:

- At the end of negotiations with the US (and other RoW partners), the Government will produce an impact assessment of the final treaty prior to it being laid before Parliament for scrutiny under CRaG. The Government has also said that it will seek to allow time between finalising a new FTA and laying it before Parliament, so the relevant scrutiny committees in Parliament may produce an independent report on the agreement. This will assist parliamentarians and the public in understanding the agreement and its potential implications.
- CRaG provides an effective and robust framework for scrutiny of treaties that require ratification, including free trade agreements. While formally legislated for in 2010 under the previous Labour government, its origins go back almost 100 years.
- Under CRaG, the Government must lay relevant treaties before Parliament for 21 sitting days before it can ratify them. The House of Commons can, if it chooses, prevent ratification by voting against the treaty.
- In line with this Government's commitment to transparency, we have gone well beyond the statutory requirements of CRaG and provided comprehensive information to Parliament to support its scrutiny of our trade policy approach. This includes publication of objectives and initial economic assessments prior to launching negotiations with the US, Japan, Australia and New Zealand, as well as regular updates on progress of negotiations, including open briefings to MPs and Peers. We have continued

to engage closely with the relevant scrutiny committees, the International Trade Committee in the House of Commons and the International Agreements Sub-Committee in the House of Lords, where in additional to public sessions, we have held private briefings with members to discuss sensitive aspects of our negotiations.

- In addition, no trade agreement can, of itself, alter our domestic legislation. Any changes to UK legislation that are required for our trade agreements will need to be scrutinised and passed by Parliament in the usual way.

Impact assessment/independent studies:

- Following the conclusion of negotiations and once the text of a UK-US agreement is known, a full impact assessment will be published prior to implementation.
- The final impact assessment will update and refine the preliminary estimates of the scale and distribution of impacts outlined in this Scoping Assessment.
- The Government's Impact Assessments are subject to extensive quality assurance and scrutiny across Whitehall.
- Once the deal is agreed as well as throughout any period of implementation of the agreement, the government will engage extensively with stakeholders, including businesses and other industry bodies, to help them understand the impact and opportunities and in order to help ensure the benefits of the agreement are realised.

3Q. The issue of how the Government engages with stakeholders is a vital one, and we urge you to find pragmatic solutions for allowing stakeholders and Parliament to understand and contribute to the Government's negotiation positions. We would be grateful to know which individuals and bodies participate in your strategic and expert trade advisory groups, and how many meetings each group has had since it was formed.

3A.

- We have provided extensive information to business, the public and Parliament, including publishing our objectives and economic scoping assessments prior to the start of talks.
- We will continue to keep Parliament, the public and businesses updated on negotiations as they progress.
- In terms of Parliament, the formal scrutiny process once an agreement is reached is set out in the answer to Q2. In terms of keeping Parliament informed during the negotiation process, the Government is committed to updating the relevant Committees regularly in person and several on the record and confidential briefings have already occurred, as well as via written submissions such as these.
- The Strategic Trade Advisory Group (STAG) is chaired by the Minister for International Trade with senior representation from organisations with cross cutting trade interests appointed through an open application process. Membership includes UK business and consumer representative organisations, academics with expertise in relevant fields, and trades unions. The STAG is a senior strategic forum considering a range of trade policy impacts and opportunities for all parts of the UK. Positions are voluntary and not remunerated.
- There are 11 sector specific Trade Advisory Groups (TAGs), each chaired by a Director in the Department for International Trade. Members are senior figures in their sector invited by ministers to contribute expert views on the strategic impact of potential free trade agreements and other trade interventions. Sectors covered by TAGs include Investment, Life Sciences, and Investment Services. (More detailed information on specific TAG engagement is in 5A). Positions are voluntary and not remunerated. TAG membership can be found on Gov.UK (https://www.gov.uk/government/publications/trade-advisory-groups-tags/trade-advisory-groups-membership), and all the inaugural meetings for each TAG will be held by October.

- Following the creation of 11 sectoral Trade Advisory Groups, on 26 August, 9 sectoral Expert Trade Advisory Groups (ETAGs), such as Agri Food and Life Sciences, were stood down to avoid duplication in our trade governance framework. We will continue to call on the technical expertise of our thematic advisory groups, such as Sustainability, SME's and Intellectual Property, to inform negotiations at relevant times.
- Our formal engagement mechanisms are just one part of the government's external engagement on international trade. In addition to the STAG, TAGs and Thematic Working Groups, the Department regularly engages with a wide range of stakeholders, including civil society, through Quarterly Stakeholder Briefings, bilateral engagement and roundtables.

4Q. We would be grateful to know how the Department for International Trade specifically cooperates with the relevant ministers in the devolved administrations during live negotiations. What mechanisms does DIT use to ensure that the relevant devolved ministers can understand and provide feedback on the progress of negotiations to help to ensure that the deals that are agreed act in the interest of all four nations, and how regularly do these contacts take place?

4A.

- We recognise the important role the DAs can and should play and we are committed to working closely with them to deliver our objectives of driving growth and opening opportunities for businesses and consumers in all parts of the UK.
- We have held a number of discussions with Devolved Administrations at both Ministerial and senior official level during negotiations. To support Ministerial engagement, we have established the Ministerial Forum for Trade chaired by the Minister of State for Trade Policy. The Forum provides an opportunity for strategic discussion and has met three times this year. In addition, bilateral calls take place on regular basis depending on the pace and development of negotiations.
- DA officials have direct ongoing engagement with negotiation and policy leads across chapters. This is supported by the sharing of draft text. Ahead of negotiation rounds, the UK Chief Negotiator holds updates with DA officials offering the chance to asks specific questions on the UK approach in areas of key interest. Following rounds, DAs receive bespoke updates.
- In addition to technical discussions, DIT and DA senior officials meet every six weeks to discuss cross-cutting and strategic trade policy issues, including FTAs.
- We are grateful to the DAs for the constructive and useful discussions to date and it will be critical for these to continue as negotiations progress.

5Q. During negotiations, how is the Government communicating with industry on the more detailed chapters where different views exist, such as intellectual property or voluntary standards? Will industry be provided with a detailed rationale of how and why certain provisions have been agreed, and will this same information be provided to Parliament? Will the Government publish such explanatory material?

5A.

- The Department for International Trade carried out one of the largest consultations in UK government history on future FTA negotiations, with over 158,720 respondents on a UK-US trade deal to form our priorities for an ambitious agreement.
- The Chief Negotiator or Deputy Chief Negotiator meets regularly with the Trade Advisory Groups that the Secretary of State for International Trade launched on 26 August to keep them updated on how negotiations are progressing from round to round. Chief Negotiator Oliver Griffiths and Deputy Chief Negotiator Sophie Brice have been briefing the newly established TAGs and have already covered Automotive/Agrifood/Consumer Goods, Investment, and Transport Services, Life Sciences and Chemicals. Upcoming TAG engagements are scheduled with, Creative Industries, Telecoms/Tech, Professional Advisory Services, and Financial Services. They also

provide updates to DIT's other governance groups, such as the Strategic Trade Advisory Group (STAG) as required.

- The Department for International Trade also engages with businesses, civil society, academics and consumer groups through the Strategic Advisory Group (STAG) and we are in the process of setting up specific groups to bring trades unions together. We have also run a series of outreach events and have regular conversations with businesses and other stakeholders on a range of issues.
- We have provided extensive information to business, the public and Parliament, including publishing our objectives and economic scoping assessments prior to the start of talks.
- We will continue to keep Parliament, the public and businesses updated on negotiations as they progress.
- At the end of negotiations, we will produce an impact assessment of the final treaty prior to it being laid before Parliament for scrutiny under CRaG.
- Parliament will have the opportunity to scrutinise any legislation required to implement our FTAs in the usual way.
- Due to the economic sensitivity of trade negotiations, there will be limitations on what information can be shared publicly while negotiations are underway. Members of TAGs have signed NDAs so that detail of the UK's position can be shared with them.

6Q. Could you confirm that you do not expect to conclude a deal with the US this year? How will the Government incorporate any deal done with the EU into its US negotiating strategy and objectives?
6A.

- As I said in the committee, we are not setting deadlines. We are negotiating across a range of important chapters as part of negotiations for a comprehensive trade agreement with our biggest single trading partner – ensuring that a deal delivers for the whole of the UK.
- The Government is clear there is no set deadline for this agreement. Any deal the Government strikes must be fair, reciprocal and ultimately in the best interests of the British people and the economy. As both the UK and US have repeatedly made clear, we are seeking a comprehensive Free Trade Agreement.
- As set out in the answer to question 1 the Government is coordinating closely on its US and EU negotiating strategies.

Agri-Food

7Q. How does the Government plan to deal with the issues the Trade and Agriculture Commission's handling after its six-month term has ended?
7A.

- The Trade and Agriculture Commission is an independent advisory board.
- It has a fixed term of 6 months, at the end of which it will produce a report. This report will be presented to Parliament by the Department for International Trade and it will be debated. The Commission's remit will end after it has submitted this report.
- We will take account of the Commission's findings in future Government policymaking but cannot predict or pre-empt them now.

8Q. Has the Government yet ruled out any specific provisions because they would not sufficiently protect UK producers? Could you explain in further detail your position of not lowering food standards to help us and those potentially affected understand what it might mean in terms of protecting UK producers? For example, can the use of tariffs adequately protect the UK's SPS standards in the longer term?

Do you think that a dual-tariff system is a plausible way to achieve that goal, and how would such a system work in practice?
8A.

- This government will always look to advance the interests of our farmers and aim to secure new opportunities for the industry.
- Our manifesto is clear that in all our trade negotiations, we will maintain our high environmental protection, animal welfare and food safety standards. We will stand firm in trade negotiations and the EU (Withdrawal) Act will ensure that the protections afforded by our existing standards will remain in place at the end of the transition period. The UK's food standards, for both domestic production and imports, are overseen by the Food Standards Agency and Food Standards Scotland. These agencies provide independent advice to the UK and Scottish governments. They will continue to do so in order to ensure that all food imports comply with the UK's high safety standards and that consumers are protected from unsafe food.
- We want to address any concerns that farmers might have and reassure British farmers we are on their side in negotiations with all trade partners. We will always make sure that farmers in the UK with high animal welfare standards will not be undercut unfairly by low welfare producers.
- However, we can't give details of our negotiating approaches publicly.

9Q. We would also be grateful to know what compensatory funding you propose to make available to help support any affected agriculture sectors to raise productivity and meet regulatory obligations if any US deal poses a major competitive risk to vital food production domestically.
9A.

- The Government provided detail of its plans in the 'Farming for the future' policy statement published by Defra in February 2020.
- The update includes grants to farmers, foresters and growers so that they can invest in equipment, technology, and infrastructure that will help their businesses to prosper while improving their productivity and enhancing the environment.

10Q. What assessment has the Government made of the value that the UK's current high food standards create? Has the Government undertaken any analysis of whether UK food produced to what consumers might perceive to be lower standards would be as competitive on the global market?
10A.

- High standards and high quality are what our domestic and global customers value and demand. They give the UK a marketing and brand presence internationally and it is partly on this reputation that we expect to grow our exports after the UK leaves the EU.
- All parts of the UK should be proud of our world-leading food, health, and animal welfare standards, and we will not lower our standards as we negotiate new trade deals.
- The Government remains firmly committed to upholding our high environmental, food safety and animal welfare standards.
- Our future trade deals will represent the interests of UK producers, opening valuable and growing new markets and supply chains for the UK's high-quality produce.
- We want a productive, profitable, resilient farming sector that is empowered to produce more of the high-quality food that is prized around the world and appreciated so much at home.

11Q. As with other issues relating to agri-food standards, there are opposing views about how to approach the regulation of pesticides. How is the Government weighing the evidence in this regard, and what conclusions have you drawn about what

provisions to rule out of any US deal on the grounds of public health or environmental concerns? What is your assessment of the Codex standards and whether they could or should replace existing UK rules?
11A.

- We will maintain our high human health and environmental standards when operating our own independent pesticides regulatory regime, after the Transition Period.
- We will ensure decisions on the use of pesticides are based on careful scientific assessment and will not authorise pesticides that may carry unacceptable risks.
- The statutory requirements of the EU regime on standards of protection will be carried across unchanged into domestic law.
- Decisions on standards are a matter for the UK and will be made separately from any Free Trade Agreement. This Government stood on a clear manifesto commitment that in all of our trade negotiations, we will not compromise on our high environmental protection, animal welfare and food safety standards.

12Q. Some of the differences between UK and US agriculture merit wider public debate, including the question of whether or how GMOs can contribute to the UK's agriculture and food sectors. What is your assessment of the arguments for changing how the UK approaches this issue? How does the Government propose to consult the public and stakeholders on any relevant provisions that might emerge from talks with the US? To what extent should such commitments be included in trade agreements, rather than being solely a matter for domestic policy making? What assessment has the Government made of any possible impact for UK-EU trade of a UK-US deal that might allow GMOs or gene-edited crops into the UK market?
12A.

- We have very high standards of food safety and there are strict controls on GM crops, seeds and food.
- Current regulations relating to GMOs will remain in force through the EU Withdrawal Act. After the transition period, decisions on marketing will be made within the UK rather than at EU level.
- The UK Government takes a science-based approach to genetically modified organism (GMO) policy and regulation. This evidence-led approach will continue now that we have left the EU.

13Q. In presenting any trade deal to Parliament and the country, the Government must be able to demonstrate through expert analysis that the deal will not negatively affect human health, either directly (for example, through the risk of salmonella) or indirectly (for example, through rolling back measures to prevent overuse of antibiotics). We would be interested to know what research the Government has undertaken or commissioned to examine the potential effects of agri-food or other provisions that form part of the US' objectives on public health in other countries with which it has a trade deal.
13A.

- This Government is committed to upholding our high food standards and rules on food safety will be retained in domestic UK law.
- The UK's Food Standards Agencies will continue to ensure that all food imports comply with the UK's high safety standards and that consumers are protected from unsafe food. Decisions on these standards are a matter for the UK and will be made separately from any trade agreements.

Healthcare and Drug Pricing

14Q. In which chapters of a deal will the Government be seeking specific exemptions for the NHS? And how will the Government ensure that any such exemptions to protect the NHS do not undermine some of the UK's own goals, for example in relation to regulatory cooperation or supporting the UK medical devices industry?
And
16Q. What options are the two countries actively considering in the area of regulatory cooperation, such as mutual recognition of approvals of medicines and medical devices? How might any agreement with the US affect – if at all – the UK's participation in a regional European exhaustion of rights regime for medicines?

14 & 16A

- The Department for International Trade is working with other government departments such as the Department for Health and Social Care, the Medicines and Healthcare Regulatory Agency and the Department of Business, Energy and Industrial Strategy to ensure that international trade policy is in line and coordinated with UK domestic policy.
- The UK's public services, including the NHS, are protected by a consistent set of exclusions, exceptions and reservations in the trade agreements to which the UK is a party, which means we have kept the protections that have ensured the protection of our public services for over 20 years, right back to the General Agreement on Trade in Services (GATS). These can be found in chapters including Cross-border Trade in Services, General Exceptions, and the schedules of reservations to our Services commitments. We have always protected our right to choose how we deliver public services in trade agreements and we will continue to do so in trade agreements. This should not prevent us from exploring regulatory cooperation. For example, the UK has successfully negotiated a continuity agreement with the US on mutual recognition of Good Manufacturing Practice inspections for Pharmaceuticals. This does not, however, amount to mutual recognition of approvals or regulation. Discussions taking place as part of the UK-US FTA aim to explore where the UK and US can build on regulator to regulator dialogue to further enhance regulatory cooperation.
- Free trade agreements typically provide flexibility for each party to implement whatever exhaustion regime they see fit, and we consider the issue to be primarily a domestic one. With respect to the regional European exhaustion of rights regime, please see the response to question 15.

15Q. What elements of the NHS' complex drug-pricing system has the Government ruled out making changes to as a result of a UK-US deal? What steps is the Government taking to ensure that parallel imports for medicines can continue, with a view to maintaining competition and affordable pricing for drugs?
15A.

- The price the NHS pays for drugs will not be on the table in trade negotiations. This includes domestic policy decisions around pricing to ensure affordability of medicines to the NHS. We could not agree to any changes to medicines pricing or access that would put NHS finances at risk or reduce clinician and patient choice.
- We assess the value of new medicines by the clinical benefit they provide to patients and their cost-effectiveness. Similarly, it is for trade partners to approve for use and acquire medicines at a price that is acceptable to them.
- With respect to parallel trade and the regional European exhaustion of rights regime, what happens after the transition period will be the subject of discussions between the UK and the EU, but ultimately, for the UK Government to decide based on analysis and consultation. We will keep stakeholders aware of any planned consultations on this matter.

17Q. Has the Government ruled out extending the patent period for pharmaceuticals or the exclusivity period for biologic medicines? Is this a high priority for the Government? What assessment has the Government made about the relationship between patent/exclusivity periods, innovative research, and ultimate health outcomes for patients? And, more broadly, to what extent is the Government willing to commit to specific UK legislation through a US trade deal?
17A.

- As previously stated, the price the NHS pays for medicines will not be on the table. The services the NHS provides will not be on the table.
- As outlined in our public negotiating objectives, we will not make changes to our intellectual property regime that would lead to increases in the costs of medicines for the NHS. We will not agree to measures which undermine the Government's ability to deliver our NHS manifesto commitments.
- The UK has a world leading intellectual property regime, which achieves an effective balance between rewarding research and innovation and reflecting wider public interests such as ensuring access to medicines.
- Regarding legislation, any concluded trade agreement will be laid before Parliament for 21 sitting days in accordance with the terms of the Constitutional Reform and Governance Act 2010. This affords Parliament an opportunity to scrutinise the concluded treaty prior to ratification.
- Likewise, any implementing legislation in support of the concluded trade agreement will be subject to standard Parliamentary procedures. Thus, any change which would currently require primary legislation will continue to do so. Further to this any changes to the UK domestic system through a trade deal would likely need domestic implementing legislation, not just in England, but in Scotland, Northern Ireland and Wales.

18Q. What consideration is the Government giving to how mutual recognition of medical devices might operate between the UK and the US, including conforming to the existing MDSAP provisions as part of a UK-US deal? What would the potential benefits and drawbacks of these steps be?
18A.

- MDSAP enables medical device manufacturers to undergo a single audit for compliance with the quality management system requirements among the five participating markets, including the United States. This may offer potential benefits to both regulatory authorities (or their representatives), as well as businesses. Certification under the programme is based on compliance with the international standard ISO 13485, which underpins existing UK legal requirements.
- The UK was an observer to the MDSAP programme as an EU member state. As the UK establishes an independent regulatory regime following the end of the transition period, the possibility of developing new bilateral arrangements and becoming a full member of organisations such as MDSAP will open up. Any decisions in this area will take into account the views of industry, will be made with full regard to patient safety and will need to assess existing approaches to conformity assessment in both countries.

19Q. How are UK-US talks on this issue interacting with the parallel UK-EU talks on the issue of medical devices approvals? And, more broadly, how might mutual recognition of the regulation of medicines and medical devices between the UK and the US influence regulation internationally? Does the UK aspire, for example, to the approach of a "single global technical dossier" recommended by some of our

witnesses, given that the UK has parallel FTA negotiations open with a range of countries?
19A.

- The UK is seeking best in class trading arrangements with all trading partners, including the EU and the US. Negotiating teams will work collaboratively to ensure positive outcomes across both the EU and US negotiations, working with the full range of experts across Government to ensure comprehensive and expert support is provided.
- The United States Food and Drug Administration and the MHRA in the UK represent two of the world's leading regulatory agencies. Together the UK and the US are already – and will continue to be – active participants in global institutions that aim to support patient safety while also enabling reform and best use of resources globally.
- But the UK and the US can also work more closely together through the bilateral relationship, both to better support initiatives between the two countries as well as a means to influence regulation internationally.

20Q. Does the Government remain committed to supporting lower-income countries to access generic medicines under the TRIPS Agreement? How has this issue informed the Government's development of its objectives for trade talks with the US, and with other trading partners?
20A.

- The UK remains committed to the Doha Declaration on Public Health and on the TRIPS Agreement and agreed flexibilities that support access to medicines, particularly during public health emergencies in developing countries and the least developed countries. We will ensure that our future trade deals respect and do not contravene the Doha Declaration. The published UK objectives for the UK-US trade agreement clearly states this priority.

21Q. We would be grateful for further information about how the Government proposes to tackle US non-tariff barriers that affect UK exports in pharmaceutical goods. Is it possible in these talks to achieve exemptions for our own regulatory system to protect the NHS without also exempting the US' regulatory system?
21A.

- Across the FTA, the Government will seek to address non-tariff barriers that impact on pharmaceuticals trade.
- The Department for International trade is actively engaging with stakeholders, as well as working with other Government departments throughout the whole process to understand how we can best address these barriers. The UK government has been clear that the NHS and medicines pricing is not on the table but that does not preclude a conversation regarding non-tariff barriers.

<u>Investor State Dispute Settlement</u>
22Q. It is not clear under what circumstances it might be "deemed … appropriate" to include an ISDS provision in the UK-US deal. How will you reach a conclusion, and what criteria will you be using to make this decision?
And
23Q. There are two key questions surrounding ISDS – the protections that are guaranteed for inwards investors, and how those rights are vindicated. Can you clarify what the Government's position is about how both of those distinct issues might be approached in the UK-US deal?
And

24Q. We do not at this stage take a view about whether an ISDS mechanism should be included in a UK-US FTA. However, we would be interested to know whether the Government intends to seek an ISDS provision with the US, and in coming to any decision on this issue, what consideration the Government has given to investor-state disputes raised by US companies against other national governments, and their effects?

22, 23, and 24A.

- Negotiations for a free trade agreement with the US are ongoing and the UK Government has published its negotiating objectives with them. We cannot comment in more detail at this time about the Government's position in relation to the inclusion of provisions for investment protections and the associated investor state dispute settlement mechanism in that specific agreement.
- The Government's approach in general is to include investment protection provisions where appropriate and the aim is to protect international investors from discriminatory or unfair treatment by a host state. These provisions can, for example, ensure fair market access and provide legal remedies to an investor if their assets are seized without due process or compensation. The Government is clear that our investment policy will continue to protect our right to regulate in the national interest and as the Government has previously made clear, will protect the NHS.

Digital Trade, Including Related Intellectual Property Provisions

25Q. What tangible benefits are you expecting a digital trade chapter to provide to UK businesses? How will the Government ensure that all sectors benefit from digital trade provisions?

25A.

- By including digital provisions in its free trade agreements, the UK ensures that it can take advantage of the opportunities presented by digital trade policy and has a trading framework in place with partners for the future. As digitalisation is largely invisible in official trade statistics, digital trade is challenging to estimate.
- However, the ONS has estimated in experimental statistics[1] that digitally delivered trade alone accounted for over £280 billion of UK trade in 2018[2], or approximately one fifth of total UK trade in goods and services.[3]
- For the US specifically, the ONS estimate that 72% of UK service exports to the USA were supplied remotely in 2018, while 64% of UK imports from the USA were provided remotely.[4] Digital provisions are cross cutting, thereby supporting all sectors and the whole of UK trade with the US, which was worth £198bn in 2018.[5]
- [1] Experimental statistics are series of statistics that are in the testing phase and not yet fully developed. This indicates that the statistics do not meet the rigorous quality standards of National Statistics yet. The methodology used to compile the data are subject to future improvements. [2] ONS Modes of supply, UK experimental estimates: 2018 [3] Total trade from ONS UK Economic Accounts: balance of payments – current account. These stats do not include mode 3 services trade (commercial presence). [4] ONS (2019) 'Modes of supply: UK experimental statistics 2018'. These stats do not include mode 3 services trade (commercial presence). [5] ONS (2019), '09 Geographical breakdown of the current account, The Pink Book'. These stats do not include mode 3 services trade (commercial presence).

26Q. What discussions have the US and the UK had so far about any 'safe harbour' provision, similar to that in the USMCA? If one were to be included, what further provisions does the Government intend to seek to help copyright holders enforce

their rights? And what additional provisions, if any, does the Government think will be needed to enable it to tackle online harms according to its current plans?
26A.

- The Government is committed to the transparent and effective administration and enforcement of IP rights and the online infringement of IP rights (including copyright and related rights) is a significant challenge.
- The UK-US FTA provides an opportunity to ensure provisions on IP are able to take account of emerging opportunities and challenges in the digital age and it is our aim to ensure any language agreed on this issue is future-proof to take into account the ever-changing technology landscape.
- We see clear benefits from collaborating as exemplars in the enforcement of intellectual property rights and see the IP Chapter as an opportunity to promote best practice and cooperation, especially in respect of online enforcement procedures.
- Regarding more granular questioning, we cannot provide confidential detail of our negotiating positions in a public forum.
- This Government is committed to making the UK the safest place in the world to be online and the best place to start and grow a digital business. We will carefully consider any interaction between trade policy and online harms policy in future trade agreements. I can confirm that we stand by our online harms commitment and nothing agreed as part of a US trade deal will affect that.

27Q. Is the Government pressing the US to introduce an Artist's Resale Right provision? Has the Government ruled out extending its existing copyright terms in line with the US' provisions? And does the Government intend to establish a UK-US intellectual property working group?
27A.

- The UK has a sophisticated and effective IP regime, which is reflected and supported by our IP trade policy. We are committed to securing copyright provisions that support UK creative industries through an effective and balanced global framework. As negotiations are confidential, we cannot release details about UK negotiating strategy that would put UK interests and objectives at risk. Discussions on the governance and implementation of the IP Chapter have not been concluded. However, the Government has emphasised the value of ongoing cooperation in intellectual property matters between the Parties.

28Q. How is the Government seeking to ensure that the digital trade provisions in this FTA go beyond e-commerce and tackle some of the major issues regarding the digital elements of trade that touch every sector? For example, will this FTA show leadership in defining digital protectionism? What offensive interests is the UK pursuing in this area to help break down any digital protectionism in the US?
28A.

- The UK seeks to be a thought leader in digital trade policy and aims to deliver this through our FTAs.
- The UK is seeking cutting-edge provisions which maximise opportunities for digital trade across all sectors of the economy. We support the reduction or abolition of business and consumer restrictions relating to access to the US digital market.
- The UK also aims to facilitate the free flow of data and eliminate unjustified data localisation requirements whilst ensuring robust protections for personal data.

29Q. We agree that trust is a key issue for digital trade, and that privacy underpins that public confidence. What measures does the Government think they could take

via a UK-US free trade agreement to reassure the public that privacy will be protected in cross-border data transfers?
And
31Q. More broadly, what provisions is the UK proposing to help tackle the combination and recombination of public and personal data that underlies many new technologies? How far are other new digital trade agreements, including the recent US-Japan 'mini-deal' and DEPA, informing the Government's approach to these issues?
29A and 31A.

- The UK position is to seek provisions in free trade agreements (FTAs) that remove barriers to the free flow of data, while maintaining the high standards of protection afforded to the personal data of UK individuals.
- The UK is proposing robust and ambitious data protection provisions in our FTA negotiations that address digital challenges through international cooperation on data protection, and the development of mechanisms that promote best practice. The UK position is that we do not intend FTAs to provide a legal basis for the cross-border transfer of personal data - this will be controlled by our domestic data protection legislation.
- In a globalised digital economy, flows of personal and non-personal data envelop all trade in goods and services as well as other business and personal relations. They are critical for both sides in a modern trading relationship. They are also vital to wider cooperation, notably for law enforcement.
- The US-Japan Digital Trade Agreement and the Digital Economic Partnership Agreement between New Zealand, Chile and Singapore are examples of modern digital trade provisions which the UK has been monitoring with interest.
- The UK will use this opportunity to show global leadership and demonstrate that removing unjustified barriers to cross border data flows and upholding data protection standards are mutually reinforcing and beneficial for trade and trust.

30Q. What assessment has the Government made of the prospective value to US companies of UK health data? How accessible is such data already to such private firms that might be seeking to build diagnostic or other medical tools, and how accessible do the UK and US hope to make it in the future via an FTA?
30A.

- The Government has not evaluated the value of NHS data to US companies.
- We are acutely aware of public concern around the exploitation of health and care data, and the Government is clear that health and care data should only ever be used and/or shared where used lawfully, treated with respect, held securely and with right safeguards in place.
- We are also aware of data's great value to the NHS and the citizens it serves. It is right for the NHS to make best use of data, ensuring fair returns for any existing or future partnerships involving controlled access to health and care data - as well as providing national oversight, accountability and transparency.
- Recent FTAs, including USMCA, recognise the importance of data protection and encourage the maintenance of legal data protection frameworks. Trade agreements themselves, however, are not the tool that allows personal data to be legally transferred. The UK position is that we do not intend FTAs to provide a legal basis for the cross-border transfer of personal data - this will be controlled by our domestic data protection legislation.

32Q. What assessment has the UK Government made of how Canada and Japan manage data so as to satisfy both the EU and the US? Will these examples form a model for the UK post-transition period?
32A.

- The UK has recognised the adequacy of all existing countries that the EU has assessed as 'adequate', which includes Japan and Canada. This means that personal data can flow freely from the UK to Japan and Canada after the transition period, without additional measures needing to be implemented. The same is true of the EU which has designated Japan and Canada as adequate.
- The UK's adequacy recognition of Japan and Canada sits outside of trade agreements. Adequacy is separate from provisions in Free Trade Agreements. However, adequacy decisions that facilitate the free flow of personal data can help unlock the benefits and potential market liberalising provisions in trade agreements.

33Q. What consequences might the Schrems II judgment have for a UK-US deal? How is it being addressed in bilateral talks, if at all, at this stage?
33A.
- Adequacy is separate from provisions in Free Trade Agreements. However, adequacy decisions that facilitate the free flow of personal data can help unlock the benefits and potential market liberalising provisions in trade agreements.
- The UK government is working with the Information Commissioner's Office and international counterparts to address the impacts of the judgment in the case known as "Schrems II" and is working to ensure that updated guidance on international transfers will be available as soon as possible for UK organisations.
- The UK government is committed to ensuring high data protection standards. During the transition period, judgements of the European Court of Justice apply to the UK as they did when the UK was a Member State. The Schrems II judgment is therefore binding in the UK. After the transition period, the UK will have an independent data transfer regime, including the ability to conduct its own adequacy assessments.

34Q. What risks does the Government see, if any, of protections for source code, including algorithms? Who benefits from these protections, on both the UK and the US sides?
34A.
- The UK will seek commitments from international partners to ensure that they do not require access to source code as a condition of trade. This serves to protect companies' confidential information and thereby retain any competitive advantage that their source code provides.
- These commitments would allow for exceptions whereby parties can scrutinize software for legitimate purposes – for example to ensure compliance with relevant regulations.
- This would mean that software developers in both the UK and US can be confident that they will not be compelled to disclose their confidential information for unjustified reasons, as a condition of market entry.

35Q. Does the Government consider preserving its DST to be a key defensive interest? What priority might it have over other defensive interests? And, more broadly, what steps is it taking to ensure that the US returns to the table and continues OECD talks to find a multilateral solution for taxing digital services?

35A.

- The Government have been clear that the Digital Services Tax – and the ongoing OECD process to secure an international standard – sits outside of a trade agreement and therefore will not feature in ongoing FTA negotiations with the US.
- The UK's strong preference remains for a global solution, and we will remove the DST once this is in place. The UK has been at the forefront of developing a global solution within the OECD and continues to work closely with the US on proposals. The UK continues to support agreement to a global solution, but there remain important obstacles to overcome.

36Q. How will the UK-US FTA address issues such as customs and import/export processes to take best advantage of new technology and digital trade provisions?
36A.

- The UK aims to negotiate efficient and transparent customs procedures with the US, building on both sides' commitments under the WTO Trade Facilitation Agreement, to minimise costs and administrative burdens for businesses. We aim to ensure that our provisions facilitate the efficient exchange of information between customs authorities in order to support effective customs processes, and that those processes are predictable at, and away from, the border.
- The UK is separately developing a 'Single Window' scheme to enable traders to submit all information required for the exportation, importation and transit of goods, through a single electronic portal.

<u>Other Issues</u>

37Q. What steps will the Government be taking to ensure that a US deal is explicit in protecting the UK's right to regulate in key areas?
37A.

- The Government is clear that when negotiating FTAs, we will continue to protect our right to regulate in the public interest, including in such as areas as the environment and labour standards. This right to regulate is recognised in international law.

38Q. How advanced are your discussions with the US about regulations and standards? If the UK is not to commit to any changes to its standards, will this limit the scope of the deal? Does the Government intend to use a UK-US deal to promote international standards to help resolve some of the issues relating to conflicting approaches to standards setting?
38A.

- There have been four negotiation rounds with the US covering Technical Barriers to Trade, including regulations and standards.
- The Government is committed to world-class regulatory standards and has been very clear that any future trade deal must not lead to any lowering of our standards. We do not believe this will limit the scope of the high-quality deal we are seeking to achieve with the US.
- As set out in our negotiating objectives, the UK is committed to promoting the use of international standards to facilitate trade between the UK and the US. The UK is a strong supporter of the international standards system, and the benefits that it brings for reducing technical barriers to trade globally.

39Q. What discussions are you having with the US about regulatory cooperation beyond the technical barriers to trade chapter? Are there any particular areas in which the UK thinks regulatory cooperation with the US would be especially crucial?

39A.

- In the chapter dealing with the administrative practices around regulation, the Good Regulatory Practices (GRP) chapter, the Government is exploring options for voluntary regulatory cooperation with the US in areas of regulation impacting trade. DIT is working closely with other government department to determine priorities for regulatory cooperation.

40Q. Is the Government negotiating non-conforming measures that would accommodate the UK's national public-sector broadcasters, as recommended by our witnesses? How will the Government ensure that a UK-US deal continues to allow the audio-visual sector to thrive, including smaller regional companies? What steps might the Government be able to take to ensure that British audio-visual producers can benefit both from UK and US sources of funding?
And
41Q. Is the US looking for similar concessions from the UK that might increase the amount of US TV programming shown in the UK by undermining our current rules requiring public-sector broadcasters to show high levels of UK content?

40A and 41A.

- The Government is proud of the UK's strong audio-visual (AV) sector. The UK has a unique and delicately balanced AV ecosystem, which has a proven track record of being successful, dynamic, and open for business. Our trade policy with the US will complement the UK's AV public policy framework.
- The UK is seeking to negotiate with our partners in the best interests of this sector, promoting trade and the exchange of culturally diverse works to the benefit of our citizens, communities, and respective audio-visual sectors. The Government will continue to support this vitally important cultural and commercial sector in the UK's independent trade policy and in negotiations with our priority trading partners, including with the US.
- We cannot comment in more detail at this time as we cannot provide confidential detail of our positions during a live negotiation.

42Q. We share our witnesses' broad concern that the UK is missing an opportunity to use its trade policy to demonstrate its global leadership in this area, particularly given the UK's responsibility for hosting the COP26 meeting, now scheduled for 2021. We expect a full environmental impact assessment to be completed on any final trade deal and will be looking closely at this area in our continuing scrutiny.
And
43Q. How is the Government ensuring that its trade policy supports its ambitious net-zero goals? How is the UK Government getting the message across to negotiating partners that it takes its own, and its partners', multilateral and domestic commitments in this area seriously? What steps is the UK taking to ensure that a UK-US deal has a net-positive environmental impact?

42A and 43A

- The common objectives across all current negotiations are to support Net Zero by promoting trade in low carbon goods, services, and investment, and to protect the UK's right to regulate on Net Zero. Our UK/US FTA negotiations also include the following objectives:
    - Ensure parties reaffirm their commitment to international standards on the environment.

    - Include measures which allow the UK to maintain the integrity, and provide meaningful protection, of the UK's world-leading environmental and climate standards.
    - Secure provisions that support and help further the Government's ambition on climate change and achieving Net Zero carbon emissions by 2050, including promoting trade in low carbon goods and services, supporting research and development collaboration and maintaining both parties' right to regulate in pursuit of decarbonisation
- In addition, at the end of negotiations, we will publish a full impact assessment. As set out in the published Scoping Assessments this impact assessment will cover environmental impacts.
- In line with our international obligations, the Government will continue to ensure a high level of protection of the environment in new trade agreements. The UK has long supported the promotion of our values globally, and we are committed to upholding the UK's high environmental standards.
- We are also using trade policy to promote HMG's clean growth and climate change objectives, helping to deliver the full economic benefit of the UK's shift to a low-carbon economy. In our outline approaches to free trade agreements (FTAs), including with the US, we have committed to securing provisions that will help trade in low carbon goods and services, supporting R&D and innovation in sectors such as offshore wind, smart energy systems, low-carbon advisory services, and energy from waste.

44Q. Can you clarify for us what areas relevant to financial services are being included in the FTA talks, and which are being pursued in parallel through other channels? What consideration is the Government giving to broadening the FRWG to allow services providers to use it as a forum to identify technical areas where further work may be needed? Does the Government seek to establish a more formal framework for regulatory cooperation on financial services through the FTA with the US?

44A.

- We expect to negotiate a comprehensive FTA chapter on financial services covering many key areas of the sector. This may include disciplines relevant to the entirety of the sector – such as free transfer of financial data – as well more specific market access commitments tailored to individual areas of financial services.
- We are also considering how FTA negotiations on financial services can complement and strengthen our cooperation with relevant US authorities on financial regulatory issues, including ongoing collaboration through the Financial Regulatory Working Group and Financial Innovation Partnership.

45Q. Can you confirm whether the Government is pushing for a positive or negative listing approach on services?

45A.

- The UK's approach to listing is focused on outcome over form, with precedent of using both positive and negative lists. We are taking the listing approach for each FTA on a case by case basis to understand what the desired outcomes are and how we can best achieve these. The UK objectives for listing approach in the US negotiations are focused on achieving maximum transparency and clarity on legal certainty for UK service suppliers with both federal and state measures. The US have only used a negative list in their precedent, and we are exploring how UK objectives, in this context, can be achieved through this approach.

46Q. We share your desire to see a UK-US deal open up public procurement opportunities for UK businesses operating in the US, but this is just one area in which sub-federal regulation in the US means that it will be difficult for a UK-US FTA to deliver meaningful opportunities for UK businesses. We would be grateful for more information about the steps the UK will be taking to ensure that a government procurement chapter works for UK businesses, and to encourage individual states to opt into that chapter.

46A.

- A UK-US procurement chapter presents an opportunity to improve our existing reciprocal access to US government procurement through enforceable commitments on fair and open tendering that does not discriminate on grounds of nationality rules, standards, and market access. Sub-federal level procurement makes up a significant part of the UK and US' procurement markets, and improved access will bring benefits to both Parties.
- DIT has been engaging with UK businesses throughout its trade policy development and continues to seek input during the negotiations. As a result, our negotiation positions reflect the aims and priorities of UK industry.
- The UK is keen to work with the US on state level engagement with outreach and to present the merits of participating in a UK-US FTA. We are working to existing precedent; the US has offered additional sub-federal access to government procurement in other FTAs such as with Australia.

47Q. In particular, small and medium-sized enterprises could benefit from the opening up of US public procurement to UK business, but it is not clear to us whether an SME chapter in a UK-US deal will be able to secure those opportunities. What practical assistance will a deal give to UK SMEs? For example, will the UK be seeking an exemption for UK SMEs from the 'Buy American' provisions in the US? Are there any other steps that could be taken in a UK-US deal to help ensure that UK SMEs are treated in a non-discriminatory fashion?

47A.

- Facilitating SMEs access to government procurement is a shared priority for both the UK and the US. The Buy American Act is waived for federal procurement of goods covered by FTAs; any extension of coverage at this level of government will provide UK SMEs an exemption from these provisions. In addition, the UK will request that further domestic purchasing legislation requirements are waived, including at sub-federal level, to ensure greater access for UK SMEs.
- In particular, the UK would like to see the support offered to US SMEs extended to UK SMEs. These efforts will reinforce the SME chapter, which already promotes co-operation between both parties on SME issues, and facilitates information sharing on procurement opportunities for SMEs.

48Q. How far are mobility issues – including the issues that our witnesses have raised with us – being addressed in negotiations? Will there be a chapter on labour mobility that addresses what UK industries, in particular services providers, have highlighted as impediments to the free flow of talent? What are the UK's specific offensive objectives here, if any, and what assessment have you made of how important this might be to the US as a defensive interest?

48A.

- Increasing temporary business mobility between the UK and the US is a priority for the Government, directly responding to stakeholders' needs. We have raised issues currently faced by the business community with the US during our negotiations. We recognise that due to amendments to the Trade Promotion Authority (2015) the

United States Government is restricted in its ability to bind in commitments within a Free Trade Agreement. However, we have been clear to the US Administration that securing commitments on business mobility will be an important component of the wider trade package.

- The UK is in discussion with relevant US Departments to look at reducing barriers to business mobility in order to strengthen and facilitate the exchange of talent between the UK and US.

49Q. As part of our scrutiny, we will be paying close attention to how a deal might affect all four nations of the UK, the regions within those nations, and the Crown Dependencies and Overseas Territories. We would welcome further information about how DIT is assessing the potential regional impacts of provisions as negotiations progress, as well as confirmation of whether the Government has set any red lines in negotiations on the basis of potential negative effects on one nation or region?

49A.

- The Government's analysis in the Scoping Assessment suggests that an FTA with the US could increase GVA in all nations and regions of the UK. Scotland, Wales, the North East, the East Midlands and the West Midlands expand the most, while London, the South West and the East of England expand the least.
- A range of data and analytical tools are used to support negotiations as they progress and to consider the distribution of impacts. The final impact assessment will update and refine the preliminary estimates of the scale and distribution of impacts outlined in this Scoping Assessment, to provide an assessment of the negotiated agreement.
- DIT has led a comprehensive programme of engagement on the UK's trade policy including FTAs with the DAs, CDs and OTs. DIT is committed to delivering FTAs that will benefit all parts of the UK.

50Q. As the UK pursues new FTAs, how does it intend to ensure that Least Developed Countries do not lose out by diverting trade? What further steps might the UK Government take to mitigate any negative impacts for developing countries that might arise from a final UK-US deal?

50A.

- In the 2019 Manifesto the Government committed to ensuing our new trade agreements, including the UK-US FTA, not only enable free trade but also have regard for developing countries.
- We will seek to proactively discuss how the UK-US FTA agreement can be used to support broader trade and development objectives including through monitoring the effects of the agreement on developing countries.
- Our approach to FTAs continues to inform, and be informed by, the UK's broader trade for development policy, this includes replicating the current market access provided by the EU Generalised Scheme of Preferences (GSP) to developing countries at the end of the Transition Period and, in the future, making it even more generous and easier to access.

51Q. We'd be grateful to know how you will ensure that the UK will not be required, as part of these talks, to accept provisions that might have the effect of undermining the UK's ability to negotiate and conclude deals with other countries?

51A.

- We will not sign up to any trade agreement which limits our ability to negotiate or conclude Free Trade Agreements with other countries.