



HOUSE OF LORDS

European Union Committee –
International Agreements Sub-Committee

House of Lords
London
SW1A 0PW

Tel: 020 7219 4840
Fax: 020 7219 6715
hlintagreements@parliament.uk
www.parliament.uk/lords

Rt Hon. Elizabeth Truss MP
Secretary of State for International Trade and President of the Board of Trade
Department for International Trade
King Charles Street
London SW1A 2AH

26 November 2020

Trade negotiations between the UK and Australia

Dear Secretary of State,

As you know, our inquiries into FTA negotiations will run until the end of the CRAG scrutiny period for any agreed deal. We are grateful to have received a written submission by your Department regarding this inquiry, which was launched on 16 July. We have questions for you regarding the talks with Australia in the light of the evidence that we have received to date. We will be publishing this letter on our website today and look forward to a response to this letter by 1 January.

Agriculture and food

We have received the most evidence from stakeholders in relation to agriculture and food and there are three key areas where stakeholders have raised questions and concerns – market access, food safety, and animal welfare.

Market access and tariffs

We know that market access in agriculture is a priority area for Australia, particularly given the high degree of agricultural trade between the two countries before the UK joined the EU. The Australian Department for Foreign Affairs and Trade (DFAT) welcomed the simplification and liberalisation of some tariffs under the UK Global Tariff but stated in its written evidence to us that an FTA “will be an important vehicle for Australia to pursue additional market access into the UK on those remaining products including agricultural products, some of which continue to be subject to high tariffs.” It made clear that it would consider whether to eliminate Australia’s tariffs on a range of industrial goods as part of a deal in which the UK would eliminate all goods tariffs.¹

Witnesses from the UK agri-food sector have written to us about the UK’s defensive interests in this area. The National Farmers’ Union (NFU) noted that Australia already enjoys

¹ Written evidence from The Department for Foreign Affairs and Trade of Australia (AUT0026)

preferential access to the UK market through a series of Tariff Rate Quotas (TRQs) held at WTO level. Australia consistently fills the sheep meat, beef and sugar TRQs and these products would be highly competitive on the UK market due to lower cost of production.² Dairy UK recommended that dairy products should be treated as sensitive products in any FTAs with Australia and New Zealand and any reduction in import tariffs should be phased over a suitable time period to allow the UK dairy industry time to adapt to the increased competitive challenge from these countries.

The DIT's preliminary impact assessment of a UK-Japan trade agreement indicated that in the case of increased tariff liberalisation for Australian products, there may be negative impacts for Northern Ireland and on the UK's agriculture and semi-processed food sector. In its written response, DIT acknowledged these potential negative impacts but reiterated that the Government will ensure that any future trade deal would support farmers and consumers across the UK.

Regarding UK offensive interests in terms of market access to Australia, there seems to be limited opportunities for UK agri-food producers to export to Australia, with the exception of high value-added products, such as organic products. Dairy UK pointed out that tariff levels are already low in Australia and high transport costs would continue to make UK generic products generally uncompetitive in these markets.³ The NFU stated that 76.8% of Australian tariff lines for agricultural products are already set at zero but the Government should look to secure the reduction of remaining tariffs where they exist.⁴

How will the Government ensure that the interests of UK farmers will be protected? If tariffs for Australian agri-food imports are reduced, would they be phased out over a suitable period of time?

Food safety

The Government stated in its negotiating objectives that it would “uphold the UK's high levels of public, animal, and plant health, including food safety”.⁵ We have received evidence expressing concerns about Australia's sanitary and phytosanitary standards, in particular, regarding pesticide and antibiotic usage in Australian agriculture. The Pesticide Action Network UK raised concerns about the higher levels of pesticide residues used in Australia, including pesticides that are not currently allowed to appear in food in the UK.⁶ Sustain shared these views and were worried that an FTA with Australia may support the overuse of antibiotics.⁷ The Alliance to Save Our Antibiotics told us that Australia has weaker regulations on farm

² Written evidence from National Farmers' Union (NFU) (AUT0007)

³ Written evidence from Dairy UK (AUT0021)

⁴ Written evidence from National Farmers' Union (NFU) (AUT0007)

⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901886/uk-strategy-australia-free-trade-agreement.pdf p.9

⁶ Written evidence from Pesticide Action Network UK (PANUK) (AUT0003)

⁷ Written evidence from Sustain (AUT0017)

antibiotics use than in the UK and EU and continues to use several antibiotics in livestock that have been banned or are no longer licensed for use in UK and EU farm animals.⁸

More generally, the National Office of Animal Health (NOAH) recommended the UK adhere to and encourage the uptake and use of international harmonisation of regulatory requirements, through bodies such as VICH and Codex Alimentarius. It states that the Sanitary and Phytosanitary (SPS) chapter should include cooperation on Maximum Residue Level (MRL) setting and regionalisation, as well as mutual recognition or equivalence agreements on GMP, pharmacovigilance and regulatory assessments and submissions.⁹

DIT highlighted in its written evidence the establishment of the Trade and Agriculture Commission (TAC) and its role in making sure the Government maintains its commitments to high standards, but it is not yet clear how DIT would reflect TAC's recommendations in practice in a trade deal.

Animal welfare

We have received evidence from witnesses indicating that Australia's animal welfare standards are lower than those of the UK and highlighting the limitations of federal legislation in Australia.¹⁰ Witnesses have argued that the UK must safeguard its reputation for animal health and welfare. The British Veterinary Association noted that the lack of a national strategy for animal welfare in Australia acts as a barrier for full implementation of the World Organisation for Animal Health's standards, which the UK adheres to. It stated that Australia is currently working towards converting its Model Codes of Practice into Australian Animal Welfare Standards and Guidelines, but progress has been slow.¹¹ The RSPCA stated that Australia's model codes of practice have yet to be converted into legally enforceable standards.¹²

In response to our questions regarding sanitary and phytosanitary standards as well as animal welfare protection, the Australian High Commissioner George Brandis stated that Australian exporters will always meet UK regulatory standards.¹³ The Australian Department of Foreign Affairs and Trade (DFAT) responded through written evidence that Australia is currently preparing new legislation that will ensure that Australia will verify the safety, hygienic preparation and integrity of prescribed agricultural products for export. DFAT stated that this new legislative framework will commence on 28 March 2021, and will consolidate and streamline existing export-related requirements (the Export Control Act 2020 and the Export Control Rules 2020).¹⁴

⁸ Written evidence from the Alliance to Save Our Antibiotics (AUT0018)

⁹ Written evidence from the National Office of Animal Health (NOAH) (AUT0002)

¹⁰ Written evidence from Compassion in World Farming (AUT0012)

¹¹ Written evidence from The British Veterinary Association (AUT0014)

¹² Written evidence from RSPCA (AUT0004)

¹³ [Q7](#) The Hon George Brandis QC, High Commissioner for Australia to the United Kingdom

¹⁴ Written evidence from The Department for Foreign Affairs and Trade of Australia (AUT0026)

How will the Government ensure that the UK's food safety and animal welfare standards will be upheld? Specifically, does it intend to address the concerns of witnesses regarding Australia's use of pesticides and antibiotics in its agri-food products? Has the Government ruled out importing any specific products because they would not sufficiently adhere to UK standards and regulations? How does it view the new legislative framework in Australia, which is intended to consolidate and streamline export-related requirements?

How will the Government take the Trade and Agriculture Commission's (TAC) recommendations into account in its trade agreements, in practice? In establishing a statutory footing for TAC, we would be grateful if the Government could explain how it intends to involve the TAC in its decision making. Would the Government be prepared to renegotiate some provisions or areas in a trade agreement with Australia in order to reflect recommendations by TAC?

Healthcare and pharmaceutical trade

The Association of the British Pharmaceutical Industry (ABPI) stated that an FTA with Australia should prevent the introduction of mandatory or any disclosure requirements in patent applications in national legislation of either country. It recommended the UK to seek a mechanism to allow innovators to resolve patent disputes before the launch of a generic or biosimilar medicine. It also argued that Australia should raise its orphan medicine protection to match the level of protection afforded in the UK.¹⁵

What provisions is the Government seeking in healthcare and pharmaceutical trade with Australia? Is the Government discussing the issues mentioned above in negotiations with Australia?

Climate and sustainability

Witnesses raised concerns about Australia's record on climate change and the risks of a trade agreement undermining the UK's goals and standards.¹⁶ Sustain cautioned that an FTA with Australia could undermine the UK's objective of achieving net zero greenhouse gas emissions by 2050.¹⁷ Cornwall Council noted that the Government's objectives included seeking sustainability provisions on environment and climate "that meet the ambition of both parties on these issues".¹⁸ It pointed out that Australia's goals are lower in ambition than the UK's and that an FTA should match the targets of the UK rather than of Australia.

¹⁵ Written evidence from the Association of the British Pharmaceutical Industry (ABPI) (AUT0016)

¹⁶ Written evidence from Cornwall Council (AUT0005) and the Trade Justice Movement (AUT0009)

¹⁷ Written evidence from Sustain (AUT0017)

¹⁸

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901886/uk-strategy-australia-free-trade-agreement.pdf p.12

How will the Government ensure that the UK's climate and sustainability goals are not undermined by a trade agreement with Australia? Will the agreement contain a chapter on trade and sustainable development and will it include any binding commitments?

Financial services and investment

Financial services and investment are key areas for the UK in all of its trade negotiations. The Government has stated in its negotiating objectives that it would seek to “expand opportunities for UK financial services to ease frictions to cross-border trade and investment, complementing with co-operation on financial regulatory issues” and it would seek to “establish comprehensive rules which guarantee UK investors investing in Australia the same types of rights and protections they receive in the UK”.¹⁹

Witnesses have noted the opportunities for trade in financial services and specific issues on which dialogue could be facilitated through an FTA. The City of London Corporation and TheCityUK stated that the FTA negotiations could help facilitate regulatory dialogue and that regulatory cooperation should be pursued regarding licensing regimes as well as in the areas of asset management, banking, payments, and fintech. In particular, they argued that the UK should seek an exemption to the new licensing regime in Australia, which will impose new compliance burdens and will significantly increase the cost of providing financial services.²⁰ Octopus Group recommended the parties to agree a protocol for information sharing and mutual recognition between the UK Financial Conduct Authority (FCA) and the Australian Securities and Investments Commission (ASIC).²¹

Regarding investment, Octopus Group recommended the UK and Australia create a joint investment fund to support high growth businesses that want to expand from the UK to Australia and vice versa. It also argued that the UK should be exempt from the Foreign Investment Review Board rules.²²

What provisions related to financial services and investment are being prioritised in the FTA negotiations, and what areas are being pursued in parallel through other channels? Are the issues mentioned above being discussed? Is an exemption for UK financial services suppliers from Australia's new licensing regime being pursued in the negotiations?

¹⁹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901886/uk-strategy-australia-free-trade-agreement.pdf p.10

²⁰ Written evidence from The City of London Corporation and TheCityUK (AUT0019)

²¹ Written evidence from Octopus Group (AUT0006)

²² Written evidence from Octopus Group (AUT0006)

Mobility of businesspeople

Visas and immigration

The DIT stated in its written evidence that a key objective is securing provisions to reduce barriers to temporary entry access in Australia for UK services suppliers and investors.²³ Witnesses have said that mobility provisions could be improved to facilitate intra-company transfers and short-term business visitors. The Royal Institute of British Architects (RIBA) also noted that the visa application process in Australia is arduous and welcomed the UK's objectives to make business travel easier.²⁴

The Law Society of Scotland stated while the immigration requirements and visa process in Australia is generally seen as being positive, the current provisions in Australia for Mode 4 access (fly-in-fly-out) are limited to 90 days in a 12-month period, which is likely to be insufficient for lawyers dealing with complex litigation cases.²⁵ The London Market Group noted that Australia's revised 457 visa program and shorter temporary equivalents are seen as obstructive to greater UK investment in Australia.²⁶

Octopus Group recommended the UK and Australia to agree streamlined reciprocal access to the UK and Australia in terms of medium-term (1 to 2 year) visas, in order to make it easier for UK investors to temporarily set up shop in Australia and vice versa.²⁷

What provisions are the UK seeking in an agreement with Australia, in order to improve immigration requirements and visa application processes for UK businesspeople seeking to work in Australia, both in the short-term and medium-term? Are any of the specific issues mentioned above being discussed?

Mutual recognition of professional qualifications

The Government has expressed interest in increasing opportunities for the UK professional services industry by supporting the mutual recognition of professional qualifications.²⁸ The Royal Institute of British Architects (RIBA) noted that the lack of mutual recognition of professional qualifications is the biggest non-trade barrier affecting its industry and advocated for its inclusion in an FTA with Australia. Specifically, RIBA called for the UK's Architects' Registration Board to be given statutory powers to negotiate and implement new mutual recognition agreements with Australia and other priority markets.

The Law Society of England and Wales (LSEW) recommended that legal and other professional services be at the forefront of trade discussions with Australia and outlined specific changes

²³ Written evidence from the Department for International Trade (AUT0020)

²⁴ Written evidence from the Royal Institute of British Architects (RIBA) (AUT0011)

²⁵ Written evidence from the Law Society of Scotland (AUT0023)

²⁶ Written evidence from the London Market Group (AUT0015)

²⁷ Written evidence from Octopus Group (AUT0006)

²⁸ Written evidence from the Department for International Trade (AUT0020)

that could be beneficial to the sector. These included Australian recognition of UK legal professional qualifications to allow UK legal professionals to advise clients on UK laws, to represent clients in arbitration, conciliation and mediation in international proceedings, and to partner with, employ and be employed by local lawyers.²⁹

Is the Government discussing mutual recognition of professional qualifications in negotiations with Australia? If so, which professional qualifications are being prioritised and how will they benefit UK workers and businesses? Are the issues mentioned above being discussed in negotiations?

Digital trade

The Government has stated that it would seek provisions that facilitate the free flow of data, those that prevent data localisation requirements and prevent customs duties on electronic transmissions.³⁰ Witnesses have largely supported these provisions, pointing to potential benefits for the financial, legal and related professional sectors.³¹ TheCityUK and The City of London Corporation recommended the UK and Australia to use the Australia-Singapore Digital Economy Agreement (DEA) as a blueprint for digital provisions.³²

At the same time, witnesses stressed the importance of data protection. While the Law Society of Scotland supports the facilitation of data flows, it emphasises that safeguards to ensure that data stored, processed or used in countries that the UK has agreements with must be effectively protected.³³ Keep Our NHS Public stressed that access to British patients' NHS data must be excluded, there must be legal safeguards over the flow of confidential data, and argued against data localisation requirements and protection of source codes.³⁴

While allowing the free flow of data between the UK and Australia can be beneficial for businesses, how will the Government ensure that sensitive data, such as healthcare patients' NHS data, will be protected?

What economic and tangible benefits do you expect the digital trade provisions advocated by the Government to provide to UK businesses?

²⁹ Written evidence from the Law Society of England and Wales (LSEW) (AUT0001)

³⁰

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901886/uk-strategy-australia-free-trade-agreement.pdf p.10

³¹ Written evidence from The City of London Corporation and TheCityUK (AUT0019), The Law Society of Scotland (AUT0023)

³² Written evidence from The City of London Corporation and TheCityUK (AUT0019)

³³ Written evidence from The Law Society of Scotland (AUT0023)

³⁴ Written evidence from Keep Our NHS Public (AUT0008)

Intellectual property

DIT's negotiating objectives state that the Government will seek to secure copyright provisions that support UK creative industries as well as protect the UK's existing IP standards.³⁵

Witnesses welcome these general goals and have told us what specific changes to Australian domestic law and regulations they would like the Government to pursue in negotiations. These are outlined below.

The Alliance for Intellectual Property (AIP) stated that the UK should pursue reciprocal recognition of a discrete regime for protection of unregistered designs.³⁶ The British Phonographic Institute (BPI) argued for the removal of Australian caps on the amount of broadcast royalties payable for the use of recordings, as well as the reform of Australian copyright law in order to offer protection of music performed in public places. BPI also argued that any FTA should exclude detailed rules limiting liability that would prevent the UK's ability to reduce online harms.³⁷ Both BPI and AIP recommended the UK to reject any shift to a US style, open-ended, 'fair use' type regime, and the Department for Foreign Affairs and Trade confirmed in their written evidence that Australia will not be implementing a 'fair use' type approach to copyright exceptions.

Regarding Geographical Indications (GIs), the Law Society of Scotland noted that the protection offered by Australia's certification trade mark system is not as robust as that afforded by the EU's GI regime and the UK's domestic regime.³⁸

Pact raised the concern that if the Audio Visual (AV) sector were included in a UK-Australia agreement, current legislation and regulations, such as the BBC licence fee and the creative sector tax reliefs, could be weakened or undermined.³⁹

What specific provisions in relation to intellectual property is the Government prioritising in its negotiations with Australia? Will the Government seek the reciprocal recognition of protection of unregistered designs, the removal of caps on broadcast royalties and protection of music performed in public places? How will the Government ensure that existing UK IP legislation and public service broadcasting are protected? Does the Government consider the Australian certification trade mark regime to be robust enough to protect UK GIs, and if not, how can it be strengthened?

³⁵

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901886/uk-strategy-australia-free-trade-agreement.pdf p.11

³⁶ Written evidence from the Alliance for Intellectual Property (AIP) (AUT0022)

³⁷ Written evidence from the British Phonographic Institute (AUT0025)

³⁸ Written evidence from the Law Society of Scotland (AUT0023)

³⁹ Written evidence from Pact (AUT0024)

Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

The Government has indicated that a bilateral trade agreement with Australia would be a stepping-stone for UK accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Some witnesses have welcomed this and recommended that certain provisions in a UK-Australia agreement be based on or similar to those in the CPTPP in order to enhance the UK's ability to accede to the CPTPP. TheCityUK and The City of London Corporation noted the elimination of certain tariffs and reduction in non-tariff barriers and provisions on the movement of professionals could be based on those in the CPTPP.⁴⁰

Other witnesses, particularly in agri-food sectors, have highlighted the UK's defensive interests and cautioned that the UK will likely be asked to increase its market access to CPTPP member countries. The NFU warned of the risks to UK sensitive agricultural products, given that many CPTPP member countries already enjoy preferential access to the UK market in the form of Tariff Rate Quotas (TRQs) and will ask for further access. Regarding audio-visual services, Pact expressed concern that joining the CPTPP may make it challenging to exclude AV provisions in other bilateral trade agreements with individual members.

DFAT expressed its support of the UK's interest in acceding to the CPTPP and stated that a bilateral trade agreement could be a pathway to CPTPP accession and a way to demonstrate compliance with CPTPP rules.⁴¹

Are there any areas or provisions in a UK-Australia trade agreement that the Government is considering basing on provisions in the CPTPP? Are there any areas in an agreement with Australia that you would anticipate may be reviewed or renegotiated through the CPTPP, similar to the case of tariff rate quotas in the UK's agreement with Japan?

Yours sincerely,



Rt Hon. the Lord Goldsmith QC
Chair of the House of Lords International Agreements Sub-Committee

⁴⁰ Written evidence from TheCityUK and The City of London Corporation (AUT0019)

⁴¹ Written evidence from the Australian Department of Foreign Affairs and Trade (AUT0026)

Annex A: Declarations of Members' Interests for the Australia trade negotiations inquiry

Lord Foster of Bath

- *No relevant interests*

Lord Fraser of Corriearth (until 4 September 2020)

- *No relevant interests*

Lord Gold

- *David Gold & Associates LLP*

Lord Goldsmith

- *Partner, Debevoise & Plimpton LLP (in this capacity the member advises clients on investor-state disputes from time to time)*

Lord Kerr of Kinlochard

- *Chairman, Centre for European Reform*
- *Deputy Chairman, Scottish Power plc*
- *Member, Scottish Government's Standing Council on Europe*

Lord Lansley

- *No relevant interests*

Baroness Liddell of Coatdyke

- *Honorary Vice President, Britain Australia Society*
- *Trustee, Northcote Trust o Association Member, Bupa*
- *Non-Executive Director, Australian Chamber Orchestra (UK)*

Lord Morris of Aberavon

- *No relevant interests*

Lord Oates

- *Chair, Advisory Committee, Weber Shandwick UK*
- *Director, H&O Communications*
- *Non-Executive Director, Centre for Countering Digital Hate*

Lord Risby

- *No relevant interests*

Lord Robathan

- *No relevant interests*

The Earl of Sandwich

- *No relevant interests*

Lord Watts

- *No relevant interests*

A full list of Members' interests can be found in the Register of Lords Interests:

<https://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

Annex B: List of written evidence submissions to the Australia inquiry, up to 19 November

- AUT0001 – The Law Society of England and Wales
- AUT0002 – National Office of Animal Health
- AUT0003 – Pesticide Action Network UK
- AUT0004 – RSPCA
- AUT0005 – Cornwall Council
- AUT0006 – Octopus Group
- AUT0007 – National Farmers' Union
- AUT0008 – Keep Our NHS Public
- AUT0009 – Trade Justice Movement
- AUT0010 – GSK (withdrawn)
- AUT0011 – Royal Institute of British Architects
- AUT0012 – Compassion in World Farming
- AUT0014 – British Veterinary Association
- AUT0015 – London Market Group
- AUT0016 – Association of the British Pharmaceutical Industry
- AUT0017 – Sustain
- AUT0018 – Alliance to Save Our Antibiotics
- AUT0019 – City of London Corporation and TheCityUK
- AUT0020 – Department for International Trade
- AUT0021 – Dairy UK
- AUT0022 – Alliance for Intellectual Property
- AUT0023 – Law Society of Scotland
- AUT0024 – PACT
- AUT0025 – British Phonographic Institute
- AUT0026 – The Australian Department of Foreign Affairs and Trade