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17 September 2021

Agreement in Principle with Australia and CPTPP accession negotiations

Dear Gerry,

Thank you for providing evidence to the Committee on 19 July and for your follow-up letter of 8 September providing some additional information on the Agreement in Principle with Australia and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

There are some points in your letter we would welcome clarification on.

Australia

Thank you for providing the figures for the tariff rate quotas (TRQs) and product-specific safeguards—they are very helpful. You also pointed the Committee to the Agreement in Principle (AIP) for further information on the bilateral safeguards. However, the AIP does not provide much in the way of additional specific information. I'd therefore be grateful if you could set out under what particular circumstances the general bilateral safeguard will likely be engaged, and what level of protection you expect the safeguard to provide.

CPTPP

We asked you whether you were confident of securing a carve-out from intellectual property provisions in the CPTPP which conflict with the UK's membership of the European Patent Convention (EPC). You said in your letter, "The provision of concern regarding EPC membership (18.46 'Patent Term Adjustment for Unreasonable Granting Authority Delays,') has been suspended, meaning it has no legal application nor any effect on CPTPP members and the UK will not be signing up to it."

We understand that Article 18.46 has been suspended but note that it is not the only provision which conflicts with EPC membership. As we have raised previously[1], Article 18.38 has not been suspended and is also contentious. It states:

> "Each Party shall disregard at least information contained in public disclosures used to determine if an invention is novel or has an inventive step, if the public disclosure:
> (a) was made by the patent applicant or by a person that obtained the information directly or indirectly from the patent applicant; and
> (b) occurred within 12 months prior to the date of the filing of the application in the territory of the Party."[2]

This disregard of previous public disclosure is in direct contravention of Article 54 of the European Patent Convention, which states that an invention cannot be new if it has been made available to the public:

> "(1) An invention shall be considered to be new if it does not form part of the state of the art.
> (2) The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the European patent application.
> (3) Additionally, the content of European patent applications as filed, the dates of filing of which are prior to the date referred to in paragraph 2 and which were published on or after that date, shall be considered as comprised in the state of the art."[3]

In your response to the Committee's letter of 16 June you said that "we will ensure that we adopt positions consistent with both national interest and the Government's policies and priorities".[4] Could you confirm that the UK Government will therefore be seeking a carve-out for Article 18.38, and how confident are you that it can be secured? If not, what other options are you considering to either address the issue, or mitigate its impacts?

We would also like to raise concerns expressed by stakeholders regarding another intellectual property provision, Article 18.53 "Measures relating to the marketing of certain pharmaceutical products". The Committee has received evidence from the British Generic Manufacturers Association (BGMA), which indicates that implementing Article 18.53 in the UK could lead to an increase in medicines prices and costs for the NHS. BGMA stated that the provision introduces a mandatory notification procedure which requires a generic or biosimilar medicines company to notify the patent holder when it submits a marketing authorisation application. According to BGMA, this could give patent holders more time to take legal action to prevent

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[1] Letter from Lord Goldsmith to Lord Grimstone of Boscobel, 'CPTPP negotiations on patents', 16 June 2021
[2] CPTPP Chapter 18 Intellectual Property https://www.mfat.govt.nz/assets/Trade-agreements/TPP/Text-ENGLISH/18.-Intellectual-Property-Chapter.pdf
[3] European Patent Convention, Article 54 Novelty https://www.epo.org/law-practice/legal-texts/html/epc/2020/e/ar54.html
[4] Letter from Lord Grimstone of Boscobel to Lord Goldsmith, 14 July 2021

or delay competition. This may lead to a significant delay of generic and biosimilar medicines coming to market, which could then result in increased medicines prices.

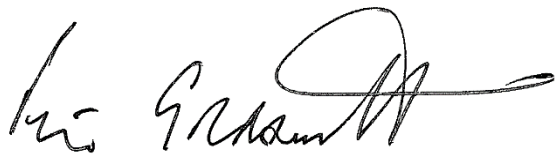
In our meeting on 19 July, you told the Committee that "we will not accept any outcome that delays generics entering the market and, therefore, increases the cost of medicines for the NHS."[5] Could you tell us what is your assessment of Article 18.53 and do you share the concerns raised by the BGMA? If so, what plans does the Government have to mitigate the risk of additional costs to the NHS, including through the negotiation of a carve-out?

We also look forward to receiving your data and analysis regarding UK agricultural export opportunities by country within CPTPP in due course.

We would be grateful for a response to this letter within the usual 10 working days.

I am copying this letter to Angus Brendan MacNeil MP, Chair of the Commons International Trade Committee; the Minister for Trade Policy, the Rt Hon Greg Hands MP; and the Minister for International Trade, Ranil Jayawardena MP.

Yours sincerely,



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

[5] Oral evidence from Lord Grimstone, 19 July: https://committees.parliament.uk/oralevidence/2588/pdf/