



Lord Grimstone of Boscobel Kt  
Minister for Investment  
Department for International Trade  
Old Admiralty Building  
Admiralty Place  
London SW1A 2DY

7 March 2022

Dear Gerry,

### Questions on UK-Australia Procurement Chapter

As part of our scrutiny of the UK-Australia Free Trade Agreement, we received a [detailed submission](#) from Professor Albert Sanchez-Graells, Professor of Economic Law at the University of Bristol Law School, about Chapter 16: Government Procurement. He raised several questions about the compatibility of provisions with the UK's existing commitments under the Government Procurement Agreement (GPA), which we set out below. We would be grateful for information on the points raised.

Professor Sanchez-Graells notes that, whereas within the Trade and Cooperation Agreement with the EU the text of the GPA is explicitly incorporated, the text within the Australia FTA replicates and, in some cases, changes those commitments. He sees the TCA approach as minimising the risk of contradiction, and the Australian as creating legal uncertainty. This could affect the benefits of this chapter for businesses.

Firstly, we would like to understand why the Government changed GPA commitments in the Australia FTA. The Committee has frequently been told by witnesses that the details of FTAs matter to companies. We are therefore interested in the specific commitments the Government has made.

Secondly, we would welcome a list of the differences between the text of the UK-Australia FTA and GPA, together with an explanation for these differences.

There are two areas in which Professor Sanchez-Graells suggests that the Australia text involves a lesser commitment than under GPA, creating legal issues.

The first is the way in which the wording of Articles 16.4.1 and 16.4.2b differs from the equivalent GPA text. The GPA, under its national treatment/non-discrimination clauses, protects from differential treatment the goods and services supplied by any Party to the GPA, including where the Parties offer goods and services from any other WTO Party. The wording of the Australia FTA, however, appears to leave open the possibility of differential treatment of UK or Australian suppliers offering the goods or services of a third party, including if they are a WTO GPA party.

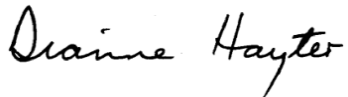
The second area relates to Article 16.19.7, remedies for breach of obligations. It appears that financial compensation may be totally excluded on grounds of an overriding public interest, which "would render the system toothless". It would be helpful to know whether the Government agrees with this analysis.

The explanatory memorandum indicates that primary legislation is required for the procurement obligations, including amending domestic procurement rules. Such legislation appears to go beyond

what would ordinarily be expected for a Free Trade Agreement. We would therefore welcome information on any consultation the Government conducted on this, alongside details of the rules which will need to change, and your timescale for this.

Given that the procurement chapter is far reaching, the Committee would invite answers within 10 working days, so we can incorporate your response into our report on the Agreement. Should some of the information be too sensitive for public disclosure, we trust that the Committee could nevertheless receive a full explanation.

Yours sincerely

A handwritten signature in black ink, reading "Dame Hayter". The signature is written in a cursive, flowing style.

**Baroness Hayter**  
Chair, International Agreements Committee