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The Baroness Hayter of Kentish Town
Chair, International Agreements Committee
House of Lords
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4 July 2022

Dear Lady Hayter,

UK Trade Agreement negotiations with India

Thank you for seeking the views of the devolved administrations as part of your committee's inquiry into the UK Government's negotiating objectives for the free trade agreement (FTA) with India. I am pleased to provide the Scottish Government's views on this trade agreement and our involvement in this process, as detailed below and in the enclosed document.

We provided detailed comments on the UK Government's strategic approach and negotiating objectives prior to the launch of negotiations. In this we made clear to the UK Government that we are keen that any deal with India provides meaningful opportunities for Scottish exporters, while protecting Scottish producers from unfair competition. Clearly, the 150% tariffs on Scotch whisky are a particular issue, and we know the industry is keen to see action on this, as well as on other non-tariff barriers. We also support efforts to expand opportunities for financial services and ease frictions for cross border trade and investment.

Scotland had an estimated £365 million of exports to India in 2019, and our export growth plan, [A Trading Nation](#), recognises the potential for this to increase further. India is number 20 on our list of export priority markets and, through Scottish Development International (SDI), we have a presence in India to promote Scottish trade and investment.

We have however been clear with the UK Government that a trade agreement with India will in no way compensate for the loss of trade with the EU as a result of the UK Government's approach to Brexit.

In terms of the detail of the UK Government's scoping assessment, we have particular concerns about some of the results, which suggest that the agriculture, processed food and textiles sectors stand to lose out from an agreement. These are important sectors to

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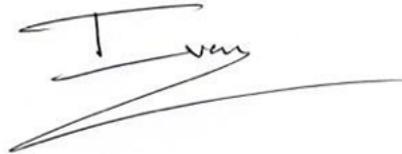
Scotland, predominantly located in rural areas and islands and crucial to the wellbeing of the communities they serve. While we support growing our exports to India, this must not be achieved at the expense of Scottish producers, consumers or communities.

In [Scotland's Vision for Trade](#), we set out Scotland's ambition to be a good global citizen and we have therefore been clear that with the UK Government that the FTA must also promote human rights, labour rights and gender equality.

More generally, we have emphasised that the proposed deadline for completion of the agreement and rapid pace of negotiations must not inhibit meaningful engagement with us in any way.

We do however welcome the UK Government's commitment to upholding environmental, labour, food safety and animal welfare standards, and protecting the NHS and other public services in this agreement. It would be unacceptable if the UK Government were to break these commitments.

I trust that this and the enclosed information is helpful to you and your committee as part of your inquiry. I would be happy to provide further information should the committee require it.



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House of Lords International Agreements Committee: Inquiry into negotiating objectives for an FTA with India

The Scottish Government is pleased to provide its views on the UK Government's negotiating objectives for an FTA with India, as set out in the UK Government publication [UK-India Free Trade Agreement: The UK's Strategic Approach \(the Strategic Approach\)](#). This note summarises the response we provided to the UK Government.

Engagement

The Scottish Government has consistently made the case for a full role in all stages of future trade agreements, a position not accepted by the UK Government. While the Scottish Government is engaging with the UK Department for International Trade (DIT) to ensure that Scotland's interests are promoted and protected in this FTA, DIT only consulted us on matters it considered relevant to devolved competence. The broad and increasing scope of modern trade agreements means that they deal with and merge a range of reserved and devolved policy areas and touch on many areas of life. The decisions the UK Government makes on tariffs and tariff rate quotas could have significant impacts on our economy, yet devolved administrations do not see the full UK negotiating mandates or have any role in the decision-making process.

We have emphasised to the UK Government that the aim to complete the FTA by a particular deadline, and the rapid pace of negotiations, must not negatively impact on the level of engagement with devolved administrations.

Scotland's interests in an FTA with India

It is important that the UK Government take a balanced approach to negotiations, which provides appropriate protections for sensitive sectors. For example, it is clear that there are potential gains in tariff reductions, especially for whisky, but these need to be considered against the impact of liberalising tariffs for sensitive products. It is vital that the Scottish Government is fully involved in, and not just informed of, these decisions to ensure our economic and other interests are represented.

Economic impact

The UK Government's scoping assessment estimates the impact on UK GDP of a trade deal to be fairly small. It suggests that an FTA with India could enhance UK GDP by around 0.12% (£3.3 billion) to 0.22% (£6.2 billion) by 2035. The increase for Scotland is expected to be smaller, with an estimated increase in GVA of 0.05% to 0.15% in 2035, however the scoping assessment suggests that the UK's agriculture, processed food and textiles sectors will be negatively affected. This needs to be set against the impact on Scotland's GDP of leaving the EU, which Scottish Government modelling shows could see Scottish GDP 6.1% lower by 2030 than it would have been with continued EU membership. Therefore an FTA with India will in no way compensate for the loss of trade resulting from leaving the EU single market and customs union. In addition, as with other FTAs, the focus of the scoping assessment is on long run economic impacts and we have called on DIT to provide analysis of the short to medium term impacts of an FTA.

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Goods

The *Strategic Approach* highlighted that respondents to the public consultation identified the high level of tariffs applied by India as a significant barrier to trade. This is in line with our own analysis and stakeholder feedback.

The average tariff facing Scotland's principal exports is 14.1%, but, in specific cases, tariffs can be prohibitively high. A clear example is beverages, where the average tariff is 123.5%, and most alcoholic beverages (except beer) face tariffs of 150%. This is of particular concern to the whisky and spirits industry in Scotland and is a significant barrier to market entry, particularly for SMEs. As well as applying to bottled Scotch whisky, it also affects bulk Scotch whisky imported for local bottling and used as an ingredient in Indian whisky. This means that the Indian spirits industry is affected, as well as Scotch whisky producers.

We are also aware that changes to how duties are structured mean that this 150% tariff is spread across customs duty and domestic taxes, which may affect the extent to which an FTA can have an impact. The scoping assessment also suggests that in scenario 2, based on the average reduction in tariff schedules modelled, there would only be a reduction in tariff to around 137%. We have asked that the UK Government ensures that, in addition to seeking tariff liberalisation, any behind the border taxes or levies that are more trade restrictive than necessary should be addressed in the negotiations.

While we support greater market access for Scottish goods exports and note that the UK Government will consider "UK product sensitivities", it is important that the Scottish Government is actively involved in considering areas of interest to Scotland. It is key that the UK Government takes a reasoned and nuanced approach to liberalisation, given that this can be damaging to sectors, regions and livelihoods. We are aware that the scoping assessment suggests declines in output for the agriculture, processed food and textile and apparel sectors, so are particularly concerned about the impact of any agreement on these sectors and the communities they support.

Tariff liberalisation should only be granted on the basis that it delivers positive outcomes for the UK's domestic and international policy approach, and secures complementary access for UK's industrial and agricultural goods. The Scottish Government must be engaged on the impacts on Scotland of any concessions to negotiating partners, to ensure that any impacts have been fully assessed and mitigated.

The impact on developing countries, as a result of liberalising tariffs, must also be assessed, and the degradation of developing country preferences and margins avoided. It is therefore important that a UK-India deal respects the existing General Scheme of Preference arrangements, either in their current form, or through the new UK preferences scheme (the Developing Countries Trading Scheme).

Services

The Scottish Government acknowledges that there is significant potential for increasing trade in services, making it easier for Scottish companies to trade with, and establish a presence in India. We are keen to explore those opportunities and ensure that the FTA delivers meaningful benefits, including on people mobility. The ending of free movement with the EU

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has impacted our ability to attract and retain workers to address Scotland's demographic challenges. We have therefore made it clear we would like to see deeper and more generous mobility provisions in this FTA, not just for business people but also for lower paid workers.

Trade in services is crucially important to Scotland. However, currently services represent 26% of Scotland's exports to India, while the corresponding figure for the UK is 46%. Scotland's services exports are concentrated in professional, scientific and technical activities, and education. While we broadly support the aim of seeking greater access to the Indian market, liberalisation of services trade with India will not compensate for the loss of export market access incurred by the UK's exit from the EU.

The Indian services market is significantly more restricted than the UK's, with particularly notable barriers in accounting, architecture and legal services, all areas of interest to Scotland. Additionally, across the board, India has a high level of restrictiveness on foreign entry and movement of people, such as foreign equity restrictions (mode 3) and labour market tests (mode 4).

Furthermore, India's GATS schedules are also highly restrictive and include specific rules on investment. Any free trade arrangement should address these barriers and secure liberalising commitments where there are joint venture requirements in key sectors. Regulations that require commercial presence should be addressed in key sectors where high quality services can be delivered effectively on a cross border basis (mode 1) from the UK to India. This would be particularly helpful for SMEs who might otherwise not be in a position to begin to export to India.

It is also important that the UK Government considers how market access commitments are implemented across state and union levels, to enable meaningful liberalisation of the Indian market for Scottish and UK businesses. It is essential to consider how information will be made available to UK businesses on market opportunities in India, and how the regulatory and investment environments are to be explained in an accessible way.

Business Mobility

Scotland's Vision for Trade supports ambitious provisions for the Mutual Recognition of Professional Qualifications and business mobility. However, we have highlighted some specific concerns in the negotiation of Mode 4 provisions for such agreements, that there should be continued application of UK standards on working conditions and pay to service providers temporarily residing in the UK.

We have also called on the UK Government to make it easier to attract and retain foreign workers through a revised visa regime, and have made the case for Scotland to control its own immigration policy tailored to our specific needs, as is the case for sub-national legislatures in other jurisdictions, including Australia and Canada.

Financial Services

We welcome any efforts to expand opportunities for financial services and ease frictions to cross border trade and investment, noting the potential opportunities for Scottish and UK businesses to trade with a growing Indian middle class. However, we have also highlighted

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to the UK Government the need to address India's GATS schedules, which include specific limits on market entry for foreign investment.

Digital Trade

As outlined in *Scotland's Vision for Trade*, the Scottish Government takes a digital rights-based approach to digital trade rooted in our priority of establishing an ethical digital nation. This means we would expect any developments on digital trade to balance the demand to sustain the economy, whilst safeguarding social and environmental wellbeing. We would strongly object to any trade policy flexibility related to data and digital trade for short term market access gains.

Data flows

We have also voiced our concerns about the potential social implications in the UK of provisions related to data, particularly the balance between economic and wider public policy objectives. The Scottish Government would be concerned at the possibility of inclusion of provisions that apply trade tests to any future data regulatory change. These may make it harder for the UK to stop data flows with India in the future, or to otherwise change its domestic policies on data.

This could also make it more difficult for the UK to maintain a positive EU adequacy decision. Loss of data adequacy with the EU in the future would create a significant barrier to trade for businesses. We have stressed that it is therefore important that the consequences of agreeing to these provisions have been fully assessed by the UK Government and that, if agreed, necessary policy flexibility is available in the way that the provisions are implemented, to prevent restrictions in future regulation on data protection and privacy.

Small and Medium Sized Enterprises (SMEs)

The Scottish Government supports the ambition to include a dedicated SME chapter within an FTA with India. As outlined in *Scotland's Vision for Trade*, we recognise that SMEs are under-represented in international trade and are keen to take steps to facilitate their participation.

We would hope to see extensive export information / support being made available to help SMEs take advantage of the terms of the agreement and become exporters, or to expand their range of export destinations. It is also important to recognise the value of SMEs and micro businesses in supporting economic development in the Global South – we expect any agreement with India to support and create opportunities for such businesses.

Government Procurement

We note that India is not party to the WTO Agreement on Government Procurement (GPA), and that there are a number of barriers to accessing the public procurement market. We broadly support seeking greater opportunities for UK companies in government procurement, but it is vital that there are appropriate protections (as in the GPA) for sensitive public services, including procurement of health and care services by NHS, research and development services and procurement for broadcasting content and time. The content and

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effect of this agreement must be consistent with the UK domestic procurement regime, and also the principles governing Scottish domestic legislation.

It is also essential for any future trade agreements that extend the scope of access for third countries to bid for public procurement opportunities in Scotland to be based on consent, ensuring the retention of Scottish Ministers' right to determine how services are delivered.

Sanitary and Phytosanitary (SPS)

These issues are of crucial importance to Scotland, and ones where we have devolved responsibilities. We have set out to the UK Government our specific ambitions for animal welfare, protecting Sanitary and Phytosanitary standards and tackling anti-microbial resistance that we would like to see included in this agreement. We support the objective to "uphold the UK's high level of food safety, animal welfare and plant health, and the UK's right to regulate in these areas in the public interest". We want to see ambitious provisions within the SPS Chapter on 'cooperation on animal welfare' and 'cooperation on antimicrobial resistance', in line with the ambition demonstrated in UK-EU TCA and UK-EEA/EFTA negotiations.

As SPS is a devolved competence, we expect the UK Government to ensure that the interests of the Scottish Government, and other devolved administrations, are represented in the negotiations and that they engage fully with us throughout all stages of the process.

It is vital that Scotland retains the right to apply provisional risk management measures, in line with the precautionary principle, to imports from India where possible risks to public health and/or plant life or health are identified but scientific uncertainty persists, in line with article 5 of the WTO SPS Agreement. It is also a red line for the Scottish Government that any equivalence arrangement or equivalence mechanism agreed within the SPS chapter recognises the principle that the final determination of equivalence rests with the importing party.

In order to achieve a level playing field for domestic producers, all imports of agri-food, where there is a competitive or welfare interest, must be produced to equivalent standards to those that domestic producers are obliged to meet.

Cooperation on Antimicrobial Resistance

We support the aim to collaborate on tackling anti-microbial resistance (AMR). This is something we have called for in all trade agreements and we look forward to seeing further detail on the UK Government's specific intentions, which should be ambitious. An article on cooperation on antimicrobial resistance must not restrict the UK's right to regulate.

Investment

The Scottish Government broadly shares the objectives outlined to create new market opportunities for UK investors in India, while providing sufficient protections and ensuring they receive fair and non-discriminatory treatment. We also welcome the commitment to maintaining the right to regulate in the national interest. Such investment provisions would be in line with the Scottish Government capital and inward investment plans.

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The UK Government's objectives make no mention of Investor-State Dispute Settlement (ISDS), although do include the objective of ensuring investors have "access to adequate remedies". We have asked the UK Government for more information about its intended approach in this area.

The Scottish Government's position is that no future Investor-State Dispute Settlement (ISDS) system should prevent the UK and Scotland from making laws on health, social, environmental and economic matters. Any future investor protection system should be transparent, based on judicial procedures, and permit meaningful representations by all parties with a potential stake in the matter.

Intellectual Property (IP)

The Scottish Government supports the commitment to maintain the UK's current Intellectual Property standards and provisions in a trade agreement with India. These are in line with our principles, set out in *Scotland's Vision for Trade*, to consider social and economic impacts, and maintain balance between protection of IP and consumer rights, transparency of decision making and prevention of discrimination. We support including provisions to strengthen the availability of effective enforcement mechanisms, and strengthening protections against counterfeit products.

We support the statement that the UK will uphold its commitment to the Doha Declaration on the TRIPS Agreement and Public Health, and agreed flexibilities that support access to medicines, particularly during public health emergencies.

We also support the objective to seek "effective protection of UK geographical indications (GIs) in India". The Scottish Government has consistently called for all of our GIs to be included in any future trade negotiations. GIs are important in protecting the provenance and reputation of important Scottish exports.

Good Regulatory Practice (GRP)

As with all FTAs, we have made clear that the Scottish Government's right to regulate and provide public services must be protected. It is vital that we are fully involved in these areas and that standards and protections are not weakened in the interests of achieving a deal.

We welcome the commitment to encouraging a transparent, predictable and stable regulatory framework for businesses and investors. As set out in *Scotland's Vision for Trade*, we are supportive of providing a proportionate regulatory environment for business, in accordance with the precautionary principle, prioritising public interests and reducing harm.

We welcome the objective to seek commitments on the application of core Good Regulatory Practices (GRPs). Such commitments could support the systemic implementation of GRPs in India, helping to reduce trade costs for business. This is in line with stakeholder views on working towards regulatory policy reform in India.

We would have liked to see provisions in the strategic objectives related to voluntary regulatory cooperation under this chapter. We have set out in *Scotland's Vision for Trade* that we are seeking opportunities for regulatory cooperation where it is in our interest, and such provisions, including the establishment of a committee for regulatory cooperation, can

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help to facilitate this. The Scottish Government agrees with the focus on not undermining our regulatory systems, and maintaining the right to regulate to achieve public policy goals.

Technical Barriers to Trade (TBT)

Our analysis shows that only 27.3% of Indian standards are harmonised with international standards. We support the objectives for TBT, but it is important that any provisions which directly affect the Scottish Government are discussed with us prior to any agreement.

The Scottish Government also recognises the role that international standards play in enabling trade, reducing costs for business and encouraging cooperation. We are supportive of this objective and are keen that the TBT chapter delivers on this, given the lack of alignment in India between state, national level and international level regulations and standards.

Environment

This trade agreement must support the nations of the UK and India in meeting their climate goals, ensuring that increased trade with India does not result in environmental harm. The scoping assessment points to increases in greenhouse gas emissions associated with UK production of around 0.08% to 0.15%, and transport-related emissions linked to trade between the UK and India increasing by even more, around 21% to 36%. This is clearly concerning in terms of our net-zero goal.

We welcome the inclusion of environmental provisions and support the inclusion of protections for the right to regulate. We have sought assurance that the principles of sustainable development will be embedded within the environment chapter. We acknowledge that, within the context of an FTA with India, these provisions may have challenging practical implications in line with India's development requirements. Our view is that developed countries should be responsible for designing environmental obligations that are fair and proportional to the needs of developing countries, reflecting the commitments laid out in the Paris Agreement. The environmental provisions outlined here should therefore be tailored to support India to build a clean climate-resilient future. In *Scotland's Vision for Trade* we call for the environment text to be subject to formal dispute resolution.

Environmental Goods and Services (EGS)

The Scottish Government has called on the UK Government to put forward a similar approach to environment goods and services (EGS) as in the UK FTA with New Zealand, with further provision in place to account for India's development levels. As such, a list of agreed EGS should be negotiated as part of the agreement. Provision to remove non-tariff barriers to trade and promote regulatory cooperation should also be included.

Human rights

India ranks 86th in the world in Transparency International's Corruption Perceptions Index, and NGO Human Rights Watch has recently reported sharp rises in already high rates of domestic violence against women and sexual assault over the course of the COVID-19 pandemic. We strongly recommend that human rights issues be promoted in this trade agreement.

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Trade and Labour

The Scottish Government believes that short term market access gains need to be balanced against protecting domestic producers from competitors who are not subject to the same labour standards. Lower pay and conditions in place in India could result in increased outsourcing of jobs. While we welcome the reaffirmation of the commitment to international labour standards, we have expressed concern that India does not meet the same standards as the UK. In addition we have asked how labour provisions will be monitored and enforced and what will trigger enforcement through any proposed dispute mechanisms. We would also expect the UK Government to publish an assessment of the impact of the UK-India FTA on labour at home and abroad, alongside commitments to mitigate any impacts. We have called on the UK Government to use trade remedies to uphold labour rights, by applying remedies to any imports using forced labour.

Gender

We welcome measures to promote women's access as workers, business owners, entrepreneurs and consumers, and to address barriers which exist disproportionately for women in trade. However, we also support the identification of mechanisms to address any potential negative impacts of trade, in addition to addressing barriers and enhancing opportunities for women to access the benefits of trade. As with other areas we would encourage the UK Government to conduct, and consult on, full sustainability impact assessments of potential policy and agreements.

We have called on the UK Government to back up gender equality provisions in FTAs with strong monitoring, review and accountability mechanisms. We also support structured consultation mechanisms that ensure women and representative groups are active participants and able to provide feedback on an ongoing basis. We have also asked for a reference to cooperation to take forward gender equality initiatives within the WTO as part of mainstreaming gender considerations within trade. We note that India is not currently a member of the Informal Working Group on trade and gender, and would support opportunities to encourage India's participation in these joint efforts to increase women's participation in global trade.

Trade and Development

The Scottish Government welcomes the inclusion of specific provisions on trade and development. However, we have outstanding concerns regarding the effectiveness of these provisions to deliver and uphold the UN's sustainable development goals.

Additionally, as we outline in *Scotland's Vision for Trade*, all FTA agreements with developing countries should be impact assessed to ensure that preferential tariff margins are maintained. We have therefore requested further detail from the UK Government on the monitoring and impact assessment provisions that will be put in place and asked that the results of any such assessment be published.

We highlighted the broader potential implications of this trade deal on the preferences of Least Developed Countries (LDC) as part of the Generalised Scheme of Preferences (GSP). Tariff removal within the context of this FTA may erode the preference margin of certain

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LDCs if they find themselves competing with India in UK markets in areas where they are currently benefiting from quota free access under the GSP. We have recommended that these interactions be thoroughly assessed and sought clarification that the monitoring provisions outlined will account for these interactions and put in place robust provisions for remedying any negative impacts.

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