

## International Trade Committee Written Evidence

# New Zealand Agreement in Principle

### Summary

1. Which? welcomes the opportunity to submit evidence on the implications of the UK's Agreement in Principle (AIP) with New Zealand. The focus of our evidence is on the extent to which the AIP indicates that the trade deal will deliver for consumers.
2. We have carried out in-depth consumer research into people's expectations of trade deals and how they want them to deliver meaningful benefits. Which?'s programme of research has found that, while opening up markets to ensure more choice for consumers is seen as an important opportunity, whether for consumer goods or digital trade, for example, people's overwhelming priorities for trade negotiations when the full range of issues that could be part of negotiations are set out are upholding food and consumer product safety standards, maintaining data protection and digital rights, supporting environmental protection, and ensuring regional equity, so that all parts of the country can benefit.
3. The AIP with New Zealand shows that there is potential from the trade deal to be one of the most ambitious and precedent setting for the UK. We particularly welcome the inclusion of a Consumer Protection chapter for the first time in a trade deal and hope that this can be expanded on in the final text and applied to other deals. The environmental protection chapter also sets out some ambitious intentions which we hope are followed through into the final deal and help to provide a framework for how trade deals can support policies to tackle the climate change emergency.
4. Of the priority issues that matter most to consumers, the areas where it is difficult to assess the implications of the AIP relate to food and wider consumer product standards. We welcome the government's commitments to uphold standards in line with public expectations. But the interplay between the Sanitary and Phytosanitary (SPS) measures chapter and the chapter on Technical Barriers to Trade (TBT) with provisions opening up market access to goods will be critical. These two chapters also set out the intentions to recognise equivalence of standards, allow for regional conditions in terms of certain SPS measures and recognise each other's conformity assessments in certain cases. How these are followed through in the final text, as well as any subsequent mechanisms that are established for regulatory cooperation, will be critical.
5. Similarly, while we recognise the opening up of digital trade and emphasis on cross-border consumer rights within the consumer protection chapter, it is essential that the government ensures that the provisions on digital trade uphold the current high standards consumers expect for data protection and enable the UK to effectively tackle online harms.

## Introduction

6. Which? welcomes the opportunity to submit evidence on the implications of the UK's Agreement in Principle (AIP) with New Zealand. Our evidence draws on the priorities people across the UK have expressed to us when we have conducted in-depth deliberative consumer research into the potential risks and opportunities of the government's trade negotiations. The success of the UK's new trade deals will ultimately be judged by what they mean for people in their everyday lives. It is therefore essential that consumer interests are a key focus of the government's approach.

## Consumer priorities

7. Last year, Which? conducted the 'National Trade Conversation' to understand in greater depth what mattered most to people about trade deals when they had a detailed understanding of the issues that could be part of the negotiations – including greater access to a range of goods and services. The Conversation took place in Northern England, the East Coast of Scotland, Northern Ireland, South Wales and Southern England. Over five virtual workshops people learned about what we trade, how trade deals are negotiated and what the key issues are for the government's priority trade deals.
8. After much debate and questioning, four issues emerged as the overall priorities for most of the people who took part. These four issues were identified as priorities by the majority of participants across all of the locations and are very relevant to the chapters set out in the New Zealand AIP:
  - a. Maintain health and safety standards for food and products
  - b. Maintain data security regulations that protect consumers' digital rights
  - c. Protect the environment
  - d. Help address regional inequalities by protecting and promoting jobs, skills and industries across the UK.
9. In June 2021, Which? also conducted a survey that was representative of the UK population to find out people's views on how trade negotiations were progressing and what they considered to be most important<sup>1</sup>. This found that many people are unaware of the current status of future UK trade deals and over two-thirds (67%) of consumers felt that the public receive too little information from the government regarding trade deals. At the time of our survey, 54% of respondents said they didn't know what stage of negotiations the UK was at with New Zealand - with only 16% aware we were in negotiations at the time. Public engagement around the deal as the government works towards finalising the text with New Zealand is therefore crucial.

## A cross-cutting consumer chapter

10. As well as these specific priority issues, it is important that the government ensures that the trade deals it negotiates explicitly recognise the importance of enhancing and protecting consumers' interests. The UK has for example secured specific chapters to support the interests of small and medium-sized enterprises (SMEs) within its new trade

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<sup>1</sup> Yonder, on behalf of Which?, surveyed 3,263 UK adults online between 23<sup>rd</sup> and 24<sup>th</sup> June 2021. Data was weighted to be representative of the UK population by age, gender, region, social grade, tenure and work status. We boosted the number of respondents from the devolved nations to ensure we had a large (500+) sample for each.

deals. Which? has advocated for the inclusion of a specific consumer chapter that reinforces consumer interests that run throughout specific chapters within a trade deal<sup>2</sup>. We therefore very much welcome the inclusion of a specific consumer protection chapter within the New Zealand trade deal. This sets an important precedent that can be built upon.

11. As described within the AIP, the consumer protection chapter will focus on important cross-border cooperation on consumer rights and enforcement. These provisions to date, eg. in the UK-Japan Comprehensive Economic Partnership Agreement (CEPA), have been covered in a more limited way within a Competition chapter. It is therefore a very important step to have this stand alone chapter.
12. We hope that as the deal is finalised - and as the UK hopefully builds on this precedent and negotiates for a consumer chapter to be included in other trade deals that it has prioritised - the chapter can be broadened to reinforce the importance of wider consumer interests and priorities, in line with our consumer research findings. This includes the importance of establishing a high level of protection in relation to SPS and TBT measures and for data protection and digital rights.

### **Maintain health and safety standards for food and products**

13. Reflecting our wider consumer research, people taking part in the National Trade Conversation expected the UK to maintain food and product safety standards and most would be concerned if the UK allowed imports produced to lower standards. Having discussed the potential benefits that a loosened standards regime may bring, such as increased choice, consumers were firm in their view that the risks outweighed these possible benefits. Our survey also found that 91% of people thought that the same UK food standards relating to safety and health should be applied to imports – and 87% and 84% respectively in relation to standards for animal welfare and environmental protection.
14. Specifically on food standards, our research has shown that people feel strongly that the UK's food standards should be applied to all imports and are sceptical of approaches that would in effect create a 'two tier' system for domestically produced products and imports. Which? asked people through our survey and online forum about the proposal made by the Trade and Agriculture Commission<sup>3</sup> that there could be a 'dual tariff' approach to incentivise import compliance with UK standards. 87% of survey respondents said that all food imports should have to meet UK standards. Only 4% agreed that food produced to lower standards should be allowed to be imported, but subject to a higher tariff or import tax – and just 3% thought that food produced to lower standards should be freely available.
15. The government must ensure that current standards are applied to imports and develop a set of core food standards to ensure that this applies to animal welfare and environmental protection standards, as well as food safety and quality. It must ensure that it follows through on this within the final text of the agreement with New Zealand.
16. At the moment, it is difficult to assess the full implications of what the SPS and TBT chapters would mean in practice for the standards that would be applied to imports of

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<sup>2</sup> The new way we trade - empowering and protecting global consumers, Which?, November 2020.

<sup>3</sup> Trade and Agriculture Commission, Final Report, March 2021

food and other consumer products. While we welcome the government's commitment to maintain standards, the "devil will be in the detail". The government must therefore ensure that the full implications of any legal text that is agreed does not lead to a gradual undermining of the protections consumers expect - whether for food and consumer product safety or environmental or welfare standards.

17. The AIP, for example, recognises the principle of equivalence of SPS measures where the exporting country objectively demonstrates that its measures achieve the importing country's appropriate level of protection. There is also a focus on taking into account regional conditions, including for what is permitted for pest control. Going further, there is also a commitment to remove approval processes for establishments and facilities within the scope of the chapter (which would include meat and dairy plants for example) and food that is defined as 'low risk' would not require health certification under each other's respective laws and regulations.
18. Positively, there is also a commitment to enhance cooperation on antimicrobial resistance and the use of antibiotics in animal rearing both bilaterally and in relevant international fora. There is also a specific chapter on cooperation on animal welfare and within this "recognition that New Zealand and the UK's farming practices are substantively different but each country accords a high priority to animal welfare in those practices, and that in multiple areas their respective animal welfare standards and associated official control systems provide comparable outcomes". It is, however, crucial that these 'outcomes' do not lead to any weakening of the standards that consumers expect at all stages of production.
19. On wider standards and technical regulations relating to consumer products, there are also commitments to cooperate, including a focus on conformity assessment and accreditation, as well as on market surveillance. Specific provisions relating to certain products including cosmetics and medicines will be set out. How equivalence of standards will be assessed in practice, taking into account on the ground realities, will again be essential.

### **Digital trade and data protection**

20. The AIP outlines that New Zealand and the UK have agreed in principle on commitments that will promote inclusive digital trade and build on consumer confidence by ensuring privacy and other legitimate public policy objectives are protected. Which? welcomes the recognition of consumer concerns as a vital component of digital trade commitments between the UK and New Zealand. Addressing consumer concerns is particularly important when it comes to digital trade as this is facilitated by cross-border transfers of consumers' personal data. This means that the success of the UK's digital trade policy is heavily dependent on the impact it has on consumers, and particularly on how it deals with the consumer priority areas of privacy and personal data protection.
21. Participants in Which?'s National Trade Conversation felt strongly that data protection and digital rights needed to be upheld through trade negotiations. They were open to the opportunities that digital trade could provide, but did not think that this should be at the expense of UK standards. Our more recent survey also reinforced this, with 88% of people saying that it was important that future trade deals do not reduce the level of data and digital protection – and over half (63%) suggesting it is very important.

22. The UK regime for data protection and privacy currently provides an internationally recognised high standard of protection which must not be put at risk. This is an increasingly important issue for consumers as more purchases of goods and services move online, and data gathering digital technology becomes embedded in all kinds of everyday goods – from fridges to vacuum cleaners. Without strong data protection measures, consumers’ data could potentially be collected, shared and used in ways that they did not consent to or expect.
23. New Zealand is one of the jurisdictions that the UK currently deems as providing essentially equivalent data protections as UK GDPR and has a data adequacy decision. This means that personal data can flow from the UK to New Zealand without certain additional safeguards outlined in UK GDPR being necessary. However, adequacy has a temporal dimension, meaning that adequacy of a third country’s data protection framework is not guaranteed indefinitely. Provisions in free trade agreements should be robust regardless. There are many dynamic elements to a third country’s political system, economic development and regulatory framework that can significantly shift in a short period of time or that can undergo incremental changes over a longer period of time that ultimately constitutes a significant enough change to how consumers’ personal data is protected. As such, consumer protections should be in-built to the Agreement’s text.
24. The language used in the AIP is encouraging. Rather than blanket bans on data localisation and all measures which could be interpreted as a barrier to cross-border data flows, the AIP mentions the avoidance of *unjustified* data localisation and highlights the importance of governments being able to enact measures in respect to data protection, privacy and legitimate policy objectives. Which? nevertheless urges the government to prohibit specific restrictions to cross-border data flows, rather than including broad commitments with public policy exceptions in this area, in order to guarantee that any future privacy measures enacted to protect consumers are shielded from legal challenge should New Zealand’s adequacy status change.
25. The relationship between broad commitments designed to facilitate free trade and public policy exceptions is particularly important when it comes to digital trade. For example, measures designed to prevent the disclosure of source code and give stronger intellectual property protections to businesses can reduce the transparency and accountability of technical systems that are increasingly being used in many decision systems that affect the lives of consumers. Companies can use algorithms to make unfair, deceptive or discriminatory decisions relating to pricing, marketing and a host of other uses of profiling data services. Access to source code only under narrow public policy exceptions may not be enough to protect consumers in commercial settings. In this regard it is encouraging to see specificity regarding the prevention of forced tech transfers of encryption keys in the AIP, with reference made to legitimate scrutiny and regulatory interventions by appropriate authorities alongside other protections to address emerging issues in these areas.
26. It is important to ensure strong data protection both domestically, through the review of the UK General Data Protection Regulation (UK GDPR) that the government is currently

undertaking, and also through the UK's international trade commitments, for when UK consumers' data flows abroad. Direct unrestricted data flows or onwards data transfers to countries that have weaker provisions on data protection would expose UK consumers to a market on personal data that gives businesses disproportionate powers over consumers through information asymmetries and lack of accountability.

27. Trade rules on cross border data transfers should facilitate the free flow of data whilst ensuring the highest level of data protection and privacy for consumers by retaining full autonomy and the exclusive right to regulate in the field of personal data protection with safeguards from interference. References to data protection without specific detail made in trade agreements could be detrimental to UK consumers if the language introduces flexibility into the well regulated UK system by promoting interoperability or compatibility of the Data Protection Act 2018 with weaker international rules or guidelines for data transfers. Trade deals should also not limit the UK's ability to regulate to protect consumers from online harms in the future, such as unsafe products, scams and fake reviews.
28. Even in trade agreements with partner countries with data adequacy decisions, the language used is of critical importance, as it also sets precedent for provisions in future trade deals with other countries. The government has made its intentions clear that it seeks to embark on an ambitious digital trade agenda. Although there are encouraging consumer elements regarding digital trade in the UK - New Zealand AIP, Which? is conscious of the fact that it does not create any legally binding obligations, and as such would like to reiterate the importance that a consumer-centric lens is translated into the ongoing work to finalise the legal text of the FTA. Consumers must have confidence in the ongoing protection of their personal data and the government's digital trade approach.

## **Protect the environment**

29. Environmental protection was a strong theme across all of the public dialogues as part of the National Trade Conversation. Our survey also found that eight in ten (81%) people agreed that the UK Government should promote trading in ways that reduce global carbon emissions which contribute to climate change and a similar percentage of respondents (80%) thought that the government's trade policy should promote high environmental standards and that it should not sign deals that would remove existing protections. More than half of consumers (59%) however lack confidence that the government will prioritise environmental protections.
30. The government must therefore ensure that it is able to deliver on this and on its commitment in the Net Zero Strategy<sup>4</sup> to "*seek to reaffirm our commitment to the Paris Agreement in all UK trade agreements and will ensure that they preserve our regulatory autonomy to pursue our climate targets including our Carbon Budgets, enhanced 2030 Nationally Determined Contribution (NDC) and 2050 net zero commitment.*" The Net Zero Strategy also recognises that "*Decisions on the liberalisation of partners' goods must account for their environmental and climate impact. Where there is evidence that*

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<sup>4</sup> Net Zero Strategy: Build Back Greener, HM Government, October 2021  
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*liberalisation could lead to significant carbon leakage the case for maintaining tariffs or pursuing conditional market access, through clauses on standards or eco/carbon intensity, should be carefully considered”.*

31. The AIP with New Zealand commits the two countries to an ambitious chapter that will support both of their trade and environment agendas and responses to the urgent threat of climate change. It states that the chapter will for example, preserve New Zealand and the UK's right to regulate to meet their respective climate action targets and wider environmental objectives, and recognise that nothing in the agreement will prevent either from fulfilling their commitments under the Paris Agreement. The two countries also affirm their commitments to tackling climate change and strengthening the global response. They commit to promoting trade and investment in environmental goods and services which support the transition to a low carbon economy and cooperation on carbon markets and pricing, including “the most comprehensive list of environmental goods agreed to date” with tariff elimination when the agreement comes into effect for these environmentally beneficial products.
32. The AIP trails 'precedent-setting' commitments on environmentally harmful subsidies, clean energy and sustainable trade to “*transition away from fossil fuels, including ending unabated coal-fired electricity generation, and taking steps to eliminate fossil fuel subsidies where they exist with limited exceptions in support of legitimate public policy objectives*” and address inadequate fisheries management.
33. These commitments are welcome but must be translated into tangible actions. The government must also conduct a full impact assessment before the deal is signed to ensure that other chapters and provisions within the deal will not undermine its commitment to achieving net zero and will support consumers in making lower carbon choices. For example, the government needs to consider what implications the market access provisions will have on the ability of particular UK sectors to make the changes that are needed to achieve net zero. Agri-food is one example, where the UK needs to ensure that the standards it applies to imports will not undermine the efforts of UK producers to shift to more sustainable methods of production.

### **Help address regional inequalities by protecting and promoting jobs, skills and industries across the UK**

34. The final overarching priority from the National Trade Conversation was a call for trade deals to deliver for consumers in all parts of the UK. Consumers wanted reassurance that the government would adequately consider differential impacts of trade deals across the UK - a perspective that was particularly important for participants from the devolved nations. However, the AIP does not currently provide enough detail to determine how the nations and regions will be affected by the final deal.
35. When setting its objectives for the negotiations with New Zealand, the government noted that “*Based on the distribution of sectoral value added, the FTA has the potential to increase long run output across most nations and regions of the UK, although in Northern Ireland the higher concentration of the agriculture and semi-processed foods sectors may mean lower output compared to the baseline. This is not to say that Gross Value Added in Northern Ireland would be lower than now, as the economy overall is expected to grow over this period*”<sup>5</sup>. A full impact assessment is therefore needed to

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<sup>5</sup> [UK-New Zealand Free Trade Agreement: The UK's Strategic Approach](#)  
November 2021

ensure that all regions will benefit and that certain parts of the UK are not disadvantaged.

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November 2021**

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