

International Trade Committee Inquiry for the UK-Australia FTA

Written evidence from the UK Trade Policy Observatory (UKTPO)¹

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About UKTPO

- The UK Trade Policy Observatory (UKTPO), a partnership between the University of Sussex and Chatham House, is an independent expert group that initiates, comments on and analyses trade policy proposals for the UK; and trains British policymakers, negotiators and other interested parties through tailored training packages.
- The UKTPO is committed to engaging with a wide variety of stakeholders to ensure that the UK's international trading environment is constructed in a manner that benefits all in Britain and is fair to Britain, the EU and the world. The University of Sussex has the largest collection of academic expertise on the world trading system in the UK, with specialists on trade policy, trade law and trade politics and European law and economy. The team includes experts in economics, international relations and law.

Recommendations:

Monitoring and Evaluation

1. While the DIT quantitative modelling appears sensibly done, nevertheless, with regard to the scoping and impact assessment produced by DIT considerably more information could be provided (for example in an annex) to enable more comprehensive assessment and scrutiny of the model. In particular, it would be useful to have more detailed information regarding the reductions in market barriers at the level of aggregation at which the model is run, and then the results on output, trade, and prices to be given at the same level of disaggregation.
2. Similarly for services trade and investment, there is a lack of information about the non-conforming measures. For a wide range of stakeholders, especially business stakeholders, listed restrictive measures and possible impacts on business should be explained and summarised.
3. Scrutiny mechanisms for implementation of the Agreement, particularly those areas which are aspirational and made operational through cooperation, should be made public, monitored and evaluated.
4. We strongly recommend that the government publishes ex-post empirical assessment of agreements signed five years after the implementation of any given agreement. Part of the role of such monitoring and evaluation would be to consider the actual impacts in the light of what was agreed, and what was assumed in the impact assessments, and to identify any unexpected consequences / impacts.

Lessons for future UK FTAs

¹ Contact for any further queries regarding this submission.

5. Rules of origin: the lack of cumulation arrangements that go beyond bilateral cumulation (diagonal or extended cumulation) in the agreement is a missed opportunity. We strongly recommend that in future agreements improved cumulation arrangements are negotiated.
6. Digital trade: while the digital trade chapter is expected to create business opportunities and innovation, there are some issues that could impact on public trust, such as the UK's policy choice in terms of narrowing policy space for safeguarding public policy objectives and arrangements to ensure British citizens' data privacy in Australia. We recommend open policy discussions which include a wide range of stakeholders.
7. Environment, SPS measures and animal welfare: clarity on ambition for maintenance of standards in these areas would be useful going forward as well as how cooperation mechanisms will be implemented in the UK context.

Summary

The UK-Australia FTA is a steady step towards the Asia-Pacific region

8. The main value of the Australia-UK Free Trade Agreement (FTA) lies in policy development which may help the UK join the CPTPP, and as part of the Indo-Pacific tilt more broadly, rather than in its direct economic benefits per se.
9. The UK-Australia FTA is the UK's first FTA made 'from scratch'. It is a supposedly "deep" FTA, the scope of which is on the face of it comprehensive, and aspires to high standard of rules from the international trade policy spectrum. However, in several areas the agreement does not provide binding commitments but resorts to 'best endeavour' clauses which do not entail any obligations on either side to improve market access. While many of the chapters, the UK-Australia FTA appears to have used the CPTPP as a template, there are some provisions that go further than the CPTPP. In general, the Agreement signals that UK policy could be consistent with CPTPP rules. However, in-depth analysis is needed as potential conflicts can also be seen in some of the detail.

Limited economic impact

10. Economic impact of the Agreement is very limited. The range of estimates from the government modelling for the UK is an increase in GDP between 0.02% to 0.08%. UKTPO modelling suggests an increase in UK output between 0.05% to 0.07%.

Tariffs and Rules of Origin

11. The UK-Australia FTA provides substantial tariff liberalization for most of the UK exports to and imports from Australia. The share of UK exports and imports that would pay zero tariffs would be more than 99% when the agreement entered into force. However, the agreement only allows for the bilateral cumulation of the rules of origin. On the face of it the product specific rules of origin appear to be relatively generous, but considerably more detailed analysis is required to confirm this.

Services trade and digital trade

12. In terms of rules, the UK successfully concluded a high level of rules regarding services trade both at the horizontal and sectoral level. The rules are more comprehensive, and some provisions are more ambitious than those in the CPTPP. This would provide legal certainty to UK business and generally facilitate CPTPP's accession. However, the number of Australia's non-conforming measures under the UK-Australia FTA has increased from those under the CPTPP, which requires further analysis.

13. The digital trade chapter used the Australia-Singapore Digital Economy Agreement as a template. The chapter is business friendly and more ambitious than the CPTPP. On the other hand, narrower policy space to achieve public policy objectives and unclear technical and legal mechanisms to ensure compatibility of data privacy between the UK and Australia may endanger the EU's adequacy decision to the UK and public trust.

Food standards and environmental issues

14. Food standards and environmental issues have been critical areas of debate for the UK-Australia FTA. The UK Government's negotiating objectives were to uphold the UK's 'high standards of environmental protection, animal welfare and food safety standards.' The Environment Chapter is wide-ranging in its coverage, and while many commitments are aspirational, there are commitments to implement international environmental agreements and the inclusion of cooperation on the transition to a circular economy. The Environment Chapter is underpinned by a bespoke dispute mechanism. The SPS Chapter affirms the WTO SPS Agreement and includes provision for equivalence that ultimately rests with the importing Party. The Agreement contains an Animal Welfare Chapter resting on cooperation between the Parties in ensuring high levels of animal welfare.

Introduction

15. Through the UK-Australia FTA, the UK has made some progress in its geopolitical strategy of “pivoting towards the Asia Pacific” and towards joining the CPTPP. This is in line with its stated negotiating objectives: *“Strategically, the UK Government’s aim is to place the UK at the centre of a network of modern FTAs, turning our country into a global hub for businesses and investors who want to trade in dynamic areas of the world – especially in the Asia Pacific. Pivoting towards the Asia Pacific will help diversify our trade, make our supply chains more resilient and make the UK less vulnerable to political and economic shocks in certain parts of the world.”* (UK-Australia Free Trade Agreement -The UK’s Strategic Approach, p6 -hereafter, UK’s negotiating objectives). However, as will be explained later, the economic impacts of the UK-Australia FTA will be small overall.
16. Our written evidence mainly responds to the five questions that ITC set for this inquiry:
 - i. **How good a deal is the UK-Australia FTA for the UK?**
 - ii. **To what extent has the Government achieved its stated negotiating objectives?**
 - iii. **How are the terms of the FTA between the UK and Australia likely to affect you, your business or organisation, or those that you represent?**
 - iv. **What is likely to be the impact of the agreement on the UK’s economy as a whole (and particular sectors of the UK economy, the UK’s devolved nations and English regions, UK consumers)?**
 - v. **What lessons and inferences for other current and future negotiations can be drawn from how the Government approached, and what it secured in, the FTA with Australia?**
17. Given the limited time available for responding to the Committee, in this response we focus on the following areas of the agreement: (i) tariffs and rules of origin; (ii) food standards and environmental issues; (iii) services trade; and (iv) digital trade. The evaluation provided in this evidence should be seen as a preliminary assessment. Other chapters of the FTA, such as technical barriers to trade or with regard to SMEs, have not been assessed for this submission.

Economic impacts:

- i. **How good a deal is the UK-Australia FTA for the UK?**
 - ii. **What is likely to be the impact of the agreement on the UK economy, sectors etc.?**
18. There are several points to note in response to these questions which we take together:
 19. First, the overall economic impact of this agreement on the UK is expected to be extremely small. This derives primarily from the fact that the share of Australia in the UK’s exports and imports of both goods and services in 2020 was only 1.6% and 0.8% respectively.²
 20. The small economic impact of the agreement can be seen from the table below which gives the government’s own assessments of the impact, and which compares the simulated outcomes in the scoping assessment with the recently published impact assessment:

² Source, ONS Pink Book, 2021.

Macroeconomic Results	Scoping Assessment		Impact Assessment	
	("Scenario 2", 2018 values)		(2019 values)	
Change in GDP	0.02%	£0.5 billion	0.08%	£1.8 bn
Change in UK exports to AUS	7.30%	£0.9 billion	44.20%	£5.4 bn
Change in UK imports from AUS	83.20%	£4.2 billion	66.10%	£4.3 bn
Change in total UK exports	0.30%		0.43%	£3.0 bn
Change in total UK imports	0.10%		0.36%	£2.6 bn
Change in real wages	0.05%	£0.4 billion	0.10%	£0.9 bn

21. Note the 'headline' number for the change in UK GDP from the recent impact assessment was £2.3bn, as opposed to the £1.8bn in this table. This is because the core model used by the government generates the £1.8bn number. This is then adjusted on the basis of assumptions made about the changes in patterns of trade up to 2035. As these assumptions are much more speculative, we are using the unadjusted numbers here.
22. Note too, the difference in the numbers between the scoping assessment and the impact assessment. This does not reflect any 'massaging' of the numbers, but is driven by some changes in the underlying data, by some of the modelling assumptions, and also by adjusting the degree of market access liberalisation being modelled.³ Not only are the impact on GDP numbers different, but whereas the scoping assessment suggested that UK exports to Australia would increase by 7.3%, the impact assessment suggests that exports may increase by 44%. Similarly the scoping assessment suggested the impact on the overall level of economic activity in Northern Ireland could be negative, this is no longer the case with the impact assessment. This reveals that model results can be sensitive to the data used, the modelling assumptions, and the size of the policy changes which is being simulated. Overall, our assessment is that the modelling undertaken appears sensible and well done. However, considerably more information could be provided (for example in an annex) to enable more comprehensive assessment and scrutiny of the model, and to understand what is driving the difference in results between the scoping assessment and the impact assessment. In particular, we would have liked to have seen more information regarding the reductions in market barriers at the level of aggregation at which the model is run, and then the results on output, trade, and prices to be given at the same level of disaggregation.
23. Nevertheless, the range of estimates from the government modelling is an increase in GDP for the UK of between 0.02% to 0.08%. Using our own model, which is much more detailed / disaggregated sectorally than the government's model, but which does not include general equilibrium effects (e.g. impacts on wages and thus costs), we find an increase in output of between 0.05% to 0.07%. Overall, therefore, the modelling suggests that the effects are indeed negligible.
24. Second, if overall, the net impacts are very small, this raises the question of what would / could make this a 'good deal'. There are three approaches one could take to this question:
- i. Are there particular industries/sectors which benefit from the agreement and relatedly did the UK secure progress with regard to its' offensive interests? This could be with regard to specific sectoral interests, or policy areas: climate, digital, SPS; or 'groups' within society (gender, SMEs, regions). Hence, as opposed to focussing on the net (ie total impacts), one needs to look at the detailed impacts.

³ Details of the changes introduced by DIT can be found in Annex 1 of the impact assessment, p.59.

- ii. In relation to broader objectives such as the pivot to Asia-Pacific, is the UK-Aus agreement a stepping stone to the CPTPP? Or
 - iii. as a means for establishing general principles for UK approach to policy areas (digital, climate).
25. With regard to (i) it is worth looking at the simulated sectoral impacts, and also to consider whether any progress was made in broader policy areas (see discussion in section below on what was agreed in selected chapters of the agreement). The modelling results by sector are driven by the relative changes in market access barriers. The reductions in market access barriers in goods come from the reductions in tariffs and in non-tariff measures; and in services from any reductions in regulatory barriers.
26. On tariffs the agreement is very comprehensive with tariff elimination on almost all products – some have a longer phase in period such as metals for Australia (five years). Prior to the agreement 66% of UK exports to Australia face a tariff, while only 7% of Australian exports to the UK faced a tariff. A key reason for this asymmetry is that over 80% of UK imports from Australia are in the category ‘gold and pearls’, and where the UK tariff is either zero or extremely low.
27. If we take UK exports, out of 21 sectors there are 11 sectors where more than 80% of UK exports in that sector to Australia face tariffs with the highest shares being in textiles (99%, with an average tariff of 7.04%), leather (98%, with an average tariff of 1.39%), footwear (98%, with an average tariff of 7.8%), ceramics and glass (97%, with an average tariff of 2%) and wood products (91%, with an average tariff of 1%). Analogously looking at UK imports, there are 8 sectors where over 80% of Australian imports face a positive tariff, with the highest shares in arms and ammunition (100%, with an average tariff of 1.6%), animal and vegetable fats and oils (99%, with an average tariffs of 1.8%), foodstuffs beverages and tobacco (98%, with an average tariff of 2.5%), animals and animal products (96%, with an average tariff of less than 1%), and footwear (96%, with an average tariff of 2.9%). These are therefore the sectors most likely to be affected by tariff liberalisation.
28. Table 1 in the appendix below replicates the sectoral results from the scoping and the impact assessments. This table indicates that the UK sector that may gain the most from the agreement is motor vehicles and parts, followed by other machinery and equipment; and the sectors that see output decline by the most are semi-processed foods and agriculture. The modelling we have done is for 116 sectors covering agriculture, manufacturing and services, where we find that the sectors which appear to gain the most from the decrease in barriers to trade are iron and steel, and other electronic goods; while those with the biggest negative impact are wine and the processing of meat (note we do not model unprocessed meat separately). The results for the top 10 and bottom 10 industries with the largest positive and negative impacts can be seen in Table 2 in the appendix. What this illustrates is that while there are sectoral differences across the sectors, the effects are still nevertheless extremely small.
29. Leaving aside the sectoral impacts, the agreement does include progress in certain policy areas (see discussion in section), such as the flow of workers for business purposes or with regard to digital trade.
30. With regard to services (see fuller discussion below), the liberalisation commitments are more liberal than those under the WTO. However, there appears to be de facto little liberalisation as these lock in the existing applied levels of market access. The Agreement largely focusses on binding in each country’s existing applied levels of services barriers, thus precluding the

possibility of these being subsequently raised. So while this does not represent an actual liberalisation per se, by providing more certainty it is likely to facilitate more services trade to a some degree.

31. With regard to (ii) it is probably the case that signing the agreement may make accession to the CPTPP easier. However, as there is a lack of detail and precision as to the governments aims in its free trade agreements on key policy areas (other than to be world leading) it is not possible to assess (iii).

Rules of Origin:

32. To what extent has the Government achieved its stated negotiating objectives?

- i. *Negotiating objectives:*

Develop simple and modern Rules of Origin that reflect UK industry requirements and consider existing, as well as future, supply chains supported by predictable and low-cost administrative arrangements (DIT, UK-Australia Free Trade Agreement The UK's Strategic Approach, p9)⁴

33. In answer to this question, we focus on some of the key areas in the agreement, and assess what has been agreed and the potential implications for the UK.

34. The tariff liberalisation discussed earlier depends on firms being able to satisfy or meet the rules of origin. Hence in assessing the agreement it is also important to assess the rules of origin – should they be set at a more demanding level it is less likely that firms will be able to take advantage of the tariff preferences. By way of example, in the UK-EU TCA and up to October 2021, the preference utilisation rate was only around 70%, indicating that 30% of UK exports to the EU that were potentially eligible for preferential access paid tariffs.

35. Leaving aside agricultural products for which the rule is normally that they have to be wholly obtained, there are three broad rules of origin typically used in trade agreements. These are (i) whether or not the intermediate inputs used to produce the good fall into a different tariff classification (CTC rule) to the final good; the value added (VA) rule specifies that there must be minimum level of value added from the partner country; and the specific production processes rule (SP), specifies certain production processes that must be used for the good to qualify. Note that the CTC rule can be applied at a very fine level of disaggregation which makes it easier to be complied with; or it can be specified at a much broader level of disaggregation which makes it harder to be complied with.

36. These rules can be used in combination. Hence, in the EU-UK Trade and Cooperation Agreement (TCA) for nearly 23.6% of the products the rule specifies that more than one rule has to be satisfied eg. a CTC rule **and** a VA rule. Clearly having to satisfy two rules is more demanding than just one rule. Conversely, a choice between rules can be specified eg. a CTC rule **or** a VA rule. This gives firms more options and is generally seen as providing more generous rules of origin which are easier for firms to comply with. In the UK TCA this occurs in nearly 35.7% of cases.

37. Given the preceding there are several features of the UK-Australia FTA (UK-Aus) rules of origin worth highlighting:

⁴ [UK-Australia Free Trade Agreement: The UK's Strategic Approach](#)

- i. The CTC rule is applied with regard to 36.6% of the products, whereas in comparison in the TCA the figure is 13.4%. Note that in the UK-Aus deal the wholly obtained rule is never used, whereas it appears in 9.5% of cases in the TCA. In the UK-Aus deal, however, in 22.6% of cases it is specified at quite an aggregate (HS 2-digit) level which thus makes it harder for firms to comply with and becomes closer to the wholly obtained rules which is used in 9.5% of cases in the TCA. More detailed work would need to be undertaken to assess what share of trade is thus affected, and whether the greater user of the CTC rule reflects rules of origin which are easier for firms to comply with. However, this is particularly the case for Animal and animal products where 100% of the rules are the CTC rule specified at the aggregate level; vegetable products (91%), foodstuffs, beverages and tobacco where this is the case for 64% of products, and textiles and clothing where the share is 46%. These are probably the sectors where the rules of origin may be hardest to comply with.
- ii. The need to satisfy more than one rule is never applied – and this is positive. In contrast to the TCA, in the UK-Aus agreement giving firms the choice of rules occurs in 63% of cases, and in nearly half of these cases the choice is between the CTC rule and the VA rule.
- iii. The agreement only provides for the bilateral cumulation of rules of origin (ie that UK inputs can be used to produce a good in Australia and when the good is exported back to the UK, the UK input is classified as originating). However, there are no provisions for diagonal cumulation. There is just a clause encouraging this to be explored in the future (Article 4.29.2(e)). The lack of diagonal cumulation is a missed opportunity.

Trade in Services

38. The following evaluation mainly answer the three questions:

- i. **To what extent has the Government achieved its stated negotiating objectives?**
- ii. **How are the terms of the FTA between the UK and Australia likely to affect you, your business or organisation, or those that you represent?**
- iii. **What lessons and inferences for other current and future negotiations can be drawn from how the Government approached, and what it secured in, the FTA with Australia?**

General understanding

39. UK exports of services accounted for 54% of UK's total exports to Australia in 2020 (ONS Pink Book 2021). Therefore, a substantive deal in services trade would constitute an important element of any agreement with Australia. Nevertheless, as discussed earlier the overall economic impact is likely to be small as Australia accounts for 1.72% of total UK services exports, and 1.17% of UK services imports.⁵ However, services trade both in terms of imports and exports between Australia and the UK has increased over 30% in the last decade⁶ even without an FTA.
40. In the case of Australia, (as the DIT UK-Australia FTA -The UK's Strategic Approach), Australia provides higher levels of market access under its FTAs than it provides under its GATS commitments in the WTO commitments. Many governments also unilaterally provide higher levels of market liberalisation than those provided under its FTAs.⁷ This means that there is policy space between the level of autonomous liberalisation and the level of bound liberalisation. In theory, therefore, there are two benefits of the UK-Australia FTA for the UK. One would be to lock in the current applied levels of autonomous liberalisation. Another

⁵ ONS, Pink Book, 2021

⁶ DIT, [UK-Australia Free Trade Agreement: The UK's Strategic Approach](#) (2019), p44.

⁷ Morita-Jaeger, M. and Winters, L.A. (2018). The UK's future services trade deals with non-EU countries: A reality check: [BP24-print-interactive.pdf \(sussex.ac.uk\)](#)

would be to obtain preferential market access to Australia and bring gains to UK business which are currently doing business on the applied MFN basis.

41. To see the current level of access the OECD services trade restrictiveness index (STRI) provide useful benchmarks. Looking at the level of Australia's regulatory restrictions in services trade, the STRI shows that Australia's restrictiveness across 22 sectors is lower than the OECD average except for courier services, The OECD's Digital STRI shows a similar result. Australia's restrictiveness in digital services trade is much lower than the OECD average and even lower than the UK's restrictiveness. This indicates that Australia is de-facto liberal market, and the country provides a good business environment for services trade and digital trade. In contrast, Australia's investment restrictiveness is much higher than the OECD average.⁸
42. We analyse the services trade deal in the UK-Australia FTA by looking at: (i) levels of Australia's market access commitments and (ii) levels of bilateral regulatory cooperation both at the horizontal and the sectoral levels. We use the UK's negotiating objectives and the CPTPP as benchmarks.

Cross-border services

Negotiating Objectives:

- i. *Agree best-in-class rules for all services sectors, as well as sector-specific rules, to support our world-leading services industry, including key UK export sectors, such as financial services, professional and business services and transport services (DIT, UK-Australia Free Trade Agreement The UK's Strategic Approach, p10)*

Rules

43. The chapter on cross-border supply of services (Chapter 8) uses the CPTPP rules as a template. Some parts of the rules go beyond the CPTPP reflecting policy developments in other fora and evolving features of business. For example, domestic regulation (Article 8.8) is more detailed than the domestic regulation clause in the CPTPP by reflecting the WTO plurilateral reference paper on services domestic regulation, the negotiation of which was concluded December 2021.⁹ In addition to cross-cutting rules, sectoral rules in detail are provided in its annexes: Express delivery services (Annex 8A) and international maritime transport services (Annex 8B). It is observed that these provide high standard rules and would provide a better regulatory environment for UK business. For example, Express delivery services (Annex 8A) provides rules regarding a postal monopoly and universal service obligation. Since courier services is Australia's most restricted services according to the OECD services restrictiveness index, the clauses such as the ban on cross-subsidies by a postal monopoly and strict rules not to abuse a postal monopoly position (Ar. 3) are expected to facilitate UK services suppliers' business.
44. **Financial Services:** The Agreement has a standalone chapter on financial services. The rules of Financial Services (Chapter 9) can be seen as a comprehensive and high standard chapter. Whilst the Chapter is based on the CPTPP Chapter 11, it is observed that the text under the UK-Australia FTA was further developed from the CPTPP text to improve legal clarities and reflect business needs, financial regulatory authorities' policy needs and consumer benefits. For example, prudential exception (Art. 9.3), financial data and information (Art. 9.12), electronic payments (Art. 9.16) and sustainable finance (Art. 9.19) are new provisions that

⁸ By types of measure, measures relating screening and approval are major type of restrictions in Australia.

⁹ The text negotiations were concluded on 2nd December 2021. The text is available: [directdoc.aspx \(wto.org\)](https://directdoc.aspx(wto.org))

- are not in the CPTPP. Also, an Annex on Financial Services Regulatory Cooperation (Annex 9C) provides a framework for future regulatory cooperation between the UK and Australia.
45. **Telecommunications:** The standalone chapter of telecommunications (Chapter 12) mostly replicated the telecommunications chapter in the CPTPP. The UK-Australia modernised the CPTPP text by reflecting certain technological developments. For example, improved legal certainty in relation to the WTO's rules is expected to facilitate UK telecommunication providers doing business in Australia.
 46. **Transport services:** The UK's negotiating objectives include transport services as key sectors. One development can be seen in the inclusion of the specific annex on international maritime transport services (Annex 8B). For example, the non-discriminatory treatment principle provides more legal certainty to UK services providers, such as UK shipping companies and ships flying the UK flag, in accessing ports and related services.
 47. **Business mobility and temporary entry for business persons:** The negotiating objectives underlined to "*enhance opportunities for business travel and supporting the MRPQs*". It is observed that the UK government has achieved its negotiating objectives to a certain degree.
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48. The agreement includes a standalone chapter on professional services and recognition of professional qualifications (Chapter 10) for the first time in the UK's FTAs. Given that the UK's comparative advantage lies in professional services, developing the rules in the area could make a positive contribution to UK professional services.
 49. On the other hand, it should be noted that Australia is the least restrictive country regarding professional services at the outset. According to the OECD restrictiveness index (2020), legal services in Australia are even one of the least restrictive among the OECD countries. And other professional services, such as accounting services and engineering services are also among the least restrictive services sectors of Australia. In this regard, there may be lower gains from an FTA unless the UK and Australia successfully achieve mutual recognition for specific professional services.
 50. The standalone chapter on professional services and recognition of professional qualifications simply encourages relevant bodies to establish and maintain systems for recognition of professional qualifications (Art. 10.3) and no mutual recognition seems to be agreed at this stage. Chapter 10. 4.3 stipulates that "A Party may consider, if feasible, taking steps to encourage its relevant bodies to consider implementing procedures for the temporary, or project-specific licensing of professional service suppliers of the other Party. That regime should not operate to prevent a professional service supplier gaining a local licence once that supplier satisfies the applicable local licensing requirements". Also, recognition of professional qualifications of the other Party is a best endeavours clause as provided in Recognition of Professional Qualifications (Art. 10.5.1). Although the Professional Services Working Group is established (Art. 10.6), it is only the relevant bodies of specific professional services that are able to develop systems for the recognition of professional qualifications.
 51. Among professional services, it is in legal services in where concrete outcomes were achieved. As, for example, UK and Australian lawyers are guaranteed to be allowed to provide legal advisory services in home, foreign, and international law, using their existing qualifications (Art. 10.7). Also, legal services are the only professional services for which a regulatory dialogue is established (Art. 10.8).

Liberalisation commitments

52. Commitments for cross-border services trade and investment: The Agreement applies the negative list approach to liberalisation commitments. There are two types of non-conforming measures (Annex I: Schedules of Non-Conforming Measures for Services and Investment and Annex II: Schedules of Non-Conforming Measures for Services and Investment). The first type (Annex I) is existing measures that do not fulfil some or all of the six obligations: national treatment, MFN, market access, local presence (only for cross-border services trade), performance requirements (only for investment), and senior management and boards of directors (only for investment). The second type of non-conforming measures (Annex II) is that a Party “may maintain existing, or adopt new or more restrictive, measures that do not conform with these obligations” (Annex II Explanatory Notes).
53. We compared the first type of Australia’s non-conforming measures under the UK-Australia FTA with those under the CPTPP. Simply looking at the number of measures listed, the number of Australia’s non-conforming measures listed under the UK-Australia FTA is more than triple times of those under the CPTPP, accounting for 47 measures versus 14 measures. This indicates that the degree of Australia’s services and investment liberalisation under the UK-Australia appears significantly less than the degree of those under the CPTPP. Although there is an observation that many governments add non-conforming measures for transparency purposes,¹⁰ why Australia listed more non-conforming measures under the UK-Australia FTA in comparison with the CPTPP will need further scrutiny.
54. Second, Australia’s investment policy is more protective than its services trade policy under the UK-Australia FTA. In the UK-Australia FTA, non-conforming measures which cannot fulfil obligations for investment account for 37 cases while those for cross-border services accounts for 24 cases (note there are duplications since some measures applies to both investment and cross-border services). Under the CPTPP, the number of non-conforming measures for investment and for cross-border services is seven in each case. As noted before, Australia’s investment regime is relatively restrictive in comparison with other OECD countries, according to the OECD FDI regulatory restrictiveness index (UK government negotiating objectives, p46).
55. As for the level of government that implements non-conforming measures in Australia, most non-conforming measures are at the regional level under the UK-Australia FTA. Among 47 measures listed, 34 measures are at the regional level and 16 measures are at the central level (note that some measures are applied both at the central and regional levels). This indicates that UK business may continue to face trade or investment barriers at the regional government level, as is currently the case. In contrast, most of the non-conforming measures under the CPTPP are at the central level, accounting for 13 measures out of 14 measures (note that one non-conforming measure is applied both at the regional and central level).
56. Lastly, most of the non-conforming measures are sector specific. In the case of the UK-Australia FTA, 40 non-conforming measures out of 47 are sector specific. Similarly, 11 non-conforming measures out of 14 are sector specific under the CPTPP. Which sector specific measures would have negative impacts on UK business should be carefully examined.

¹⁰ Adlung R. and Mamdouh, H. (2014). How to Design Trade Agreements in Services: Top Down or Bottom-Up?, *Journal of World Trade*, Vol. 28 (2). Pp. 191-218.

57. It should be noted that the number of measures does not reflect the degree of restrictiveness. Further analysis would be needed for each sector to assess the measures which are applied, what type of obligations are not fulfilled and the substance of measures to understand potential impacts on UK business.
58. In short, our preliminary analysis indicates that the UK-Australia FTA has improved rules for services trade in comparison with those under the CPTPP in certain areas. This includes domestic regulatory disciplines regarding cross-border trade, financial services, maritime services and telecommunications. These improvements are expected to provide more legal certainty to business. The Agreement could also facilitate the UK's accession to the CPTPP as it proves that the UK can abide by CPTPP's services trade rules although some potential conflicts are identified in detail. The level of liberalisation commitments indicated that no gains are provided in terms of the six legal obligations relative to the CPTPP. Further analysis would be necessary to examine the impact of liberalisation commitments to business.

Digital trade

Negotiating objectives

- i. *Shaping the rules for digital trade in a rapidly changing world: Australia has a track record of innovation on digital trade, having recently agreed the Australia-Singapore Digital Economy Agreement (DEA).¹² An FTA with Australia provides the perfect opportunity to reduce barriers to e-commerce and stimulate investment in new technologies. (DIT, UK-Australia Free Trade Agreement The UK's Strategic Approach, p7)*
59. Australia has a bilateral digital economy agreement with Singapore (Australia-Singapore DEA, hereafter DEA) DEA that underlines innovation, technology and promote free data flow. The coverage of DEA is more comprehensive and its approach is business friendly. The DEA can be seen as a more ambitious agreement in comparison with the e-commerce chapter under the CPTPP. Like the CPTPP, DEA's approach is different from the EU approach to digital trade governance which takes into account public policy objectives to a greater extent. The UK-Australia FTA used the Australia-Singapore DEA as a template and reflected UK's interest based on it. Although the coverage of the UK-Australia digital chapter is narrower than DEA, it covers important policy areas to promote digital trade between the two parties. Furthermore, the Agreement developed some provisions in DEA.
60. The UK departed from the EU approach to digital trade governance in the UK-Japan CEPA. In the UK-Australia digital chapter, the UK made a further step by applying the Asia-Pacific style digital trade governance based on the DEA. What is good for business is that free cross-border data flow between the UK and Australia is ensured in accordance with the UK negotiating objectives. However, the technical and legal mechanisms to promote compatibility of different data privacy regimes are not clear. This may endanger UK citizens' trust and the EU's current adequacy decision to the UK.
61. **Scope:** While the Australia-Singapore DEA does not set audio-visual services aside as an exception, the UK-Australia FTA does exclude audio-visual services from its scope. This follows the precedents set in the EU-UK TCA and the CEPA agreement between the UK and Japan. The reason for excluding audio-visual services ought to be clarified. We note that the CPTPP, in contrast does include audio-visual services. Also, it should be noted that there are no general exception clauses such as in the Australia-Singapore agreement (Art. 3) which takes the WTO approach (GATT XX and GATS XIV). General exceptions provide the legal base for an FTA signatory to adopt measures necessary to pursue public objectives, such as measures to protect public morals /maintain public order and human, animal or plant life/health under the certain

conditions. The absence of general exception clauses suggests that the Agreement downgraded/downplayed the rights of governments to pursue public policy objectives.

62. **Core principles:** As in the UK negotiating objectives, the imposition of customs duties on electronic transmissions is prohibited. The clauses are based on the DEA. The UK-Australia FTA does not include the provision of non-discriminatory treatment of digital products while DEA does (DEA, Article 6), as does the CPTPP. The UK, on the other hand, has not included non-discriminatory principle in its digital trade chapter in its previous FTAs, so the absence presumably reflects UK objectives, which align thus with those of the EU in this regard. Since non-discriminatory treatment consists of the core principle of the digital trade chapter in the CPTPP, a rationale behind the UK government's position should be clarified in relation to the CPTPP's accession.
63. **Provisions that promote electronic authentication and electronic signatures:** The approach taken by UK-Australia is basically similar to the DEA with some developments. The Agreement aims at facilitating business through digital means by including the provisions regarding conclusion of contracts by electronic means (Art. 14.5), electronic authentication and electronic trust services (Art. 14.6), paperless trading (Art. 14.8), and electronic invoicing (14.9). In these areas the provisions appear to have achieved the negotiating objectives.
64. **Provisions regarding cross-border data in the digital networked environment:**
The provisions relating to cross-border data transfer, such as digital identities (Art. 14.7), cross-border transfer of information by electronic means (Art. 14.10), ban on data localisation (localisation of computing facilities) (Art. 14.11), and personal information protection (Art. 14.12), are based on the DEA with slight modifications in detail. It may be presumed that the UK government achieved its negotiating objectives by including these provisions that facilitate the free flow of data.
65. Since the DEA applies the digital trade governance model that prioritises a market-led digital environment, the UK government's policy shift from the EU style digital governance with its greater focus on public policy raises two issues. First, concerning the balance between economic objectives and public policy objectives. For example, the cross-border transfer of information by electronic means (Art. 14.10) and the ban on data localisation (Art. 14.11) are basically applying the DEA (WTO type) approach towards public policy objectives. This means that public policy space in the provisions relating to data flow provisions in the UK-Australia FTA are narrower than those in the UK-EU TCA and the UK-Japan CEPA. A wide policy discussion on whether this policy direction is good for the UK society as a whole is needed.
66. The second issue is that the legal and practical policy mechanisms to protect personal information in Personal information protection (Art. 14.12) is not clear. The provisions slightly modified the relevant DEA provision (Art. 17.2) but do not provide clear safeguard solutions to ensure the protection of UK citizens' data. For example, Art. 14.12. 2 only stipulates that "In the development of its legal framework for the protection of personal information, each Party shall take into account principles and guidelines of relevant international bodies, including collection limitation, data quality, purpose specification, use limitation, security safeguards, transparency, individual participation, and accountability". While the DEA provides references to the APEC Cross-Border Privacy Rules (CBPR) System and the OECD Guidelines Governing the Protection of Privacy and Trans-border Flows of Personal Data to develop such a legal framework, the UK-Australia FTA deleted these references. Relating to this, the note for this provision (footnote 4) stipulates that "For greater certainty, a Party may comply with the obligation in this paragraph by adopting or maintaining measures such as comprehensive privacy, personal information, or personal data protection laws, sector-specific laws covering data protection or privacy, or laws that provide for the enforcement of voluntary undertakings by enterprises relating to data

protection or privacy”. We note that this is just an endeavour clause rather than mandatory one. Furthermore, Art. 14.12.6, which is a copy of DEA, stipulates that “each party shall encourage the development of mechanisms to promote compatibility between the different regimes.” The way to promote compatibility is either the recognition of regulatory outcomes (accorded autonomously or by mutual arrangement) or broader international frameworks.

67. The above indicates that the UK does not intend to use the APEC CBPR System, but is not clear from the Agreement whether the UK has established specific technical and legal mechanisms to ensure compatibility. This raises the question whether the two parties agreed legal and technical arrangements outside the FTA like in the EU-Japan’s case.¹¹ Since Australia does not have an adequacy decision from the EU, this may impact on the EU’s adequacy decision given to the UK.

¹¹ At the time of the EU-Japan EPA, Japan made a supplementary domestic law for private data comes from the EU (see detail in [The UK-Japan Comprehensive Economic Partnership Agreement: Lessons for the UK’s future trade agreements](#) « UK Trade Policy Observatory (sussex.ac.uk)).

Environment, SPS and Animal welfare

68. How good a deal is the UK-Australia FTA for the UK? To what extent has the Government achieved its stated negotiating objectives?
69. To what extent has the Government achieved its stated negotiating objectives?

Negotiating objectives:

Sanitary and Phyto-Sanitary standards:

- i. Uphold the UK's high levels of public, animal, and plant health, including food safety.
- ii. Enhance access for UK agri-food goods to the Australian market by seeking commitments to improve the timeliness and transparency of approval processes for UK goods.¹²

Sustainability:

- i. Seek sustainability provisions, including on environment and climate change, that meet the ambition of both parties on these issues.
- ii. Ensure parties reaffirm their commitment to international standards on the environment, climate change and labour.
- iii. Ensure parties do not waive or fail to enforce their domestic environmental or labour protections in ways that create an artificial competitive advantage.
- iv. Include measures which allow the UK to maintain the integrity, and provide meaningful protection, of the UK's world-leading environmental and labour standards.
- v. Secure provisions that support and help further the Government's ambition on climate change and achieving Net Zero carbon emissions by 2050.¹³

70. In addition to its negotiating objectives, the UK has an overarching legislative commitment to 'maintaining statutory levels of protection in the areas of the protection of human, animal or plant life or health, animal welfare and environmental protection.¹⁴ In respect of food standards, the Agriculture Act 2020 requires the Secretary of State to lay a report before Parliament as to how far a trade agreement is 'consistent with the maintenance of UK levels of statutory protection in relation to human, animal or plant life or health, animal welfare and the environment.¹⁵ The Government is also required to request advice from the Trade and Agriculture Commission on whether a trade agreement could result in a change to the UK's statutory protections in relation to animal and plant health standards, animal welfare standards and environmental standards for agricultural products.¹⁶ Notably this requirement is for ex-post scrutiny and does not include food safety.

71. Both the UK's more detailed impact assessment of the Agreement¹⁷ and the independent Sustainability Impact Assessment conducted for the EU-Australia negotiations¹⁸, identify an intersection between trade liberalisation in the agriculture sector, specifically the beef and

¹² DIT, [UK-Australia Free Trade Agreement: The UK's Strategic Approach](#) (2019), p9.

¹³ Ibid, p12.

¹⁴ As well as employment and labour, data protection and the protection of children and vulnerable adults online. Trade Act 2021, s 2.

¹⁵ Agriculture Act 2020, s 42. This section does not apply to trade agreements with EU states, those negotiated before 'EU exit day' and where negotiations are concluded by 31 December 2022.

¹⁶ Agriculture Act 2020, s 42 (as amended by the Trade Act 2021, s 9).

¹⁷ DIT, [Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia](#) (Dec 2021), p47.

¹⁸ European Commission, [Trade Sustainability Impact Assessment in support of FTA negotiations between the European Union and Australia](#) (Mar 2020), p89.

sheep meat sectors, and environmental protection. As the risk assessment reports set out, increased trade in these sectors may:

- i. increase Australia's GHG and other emissions – these sectors already constitute a large share of Australia's emissions
- ii. increase land clearing – one of the most important biodiversity and climate change issues in Australia
- iii. increase transport sector emissions – due to the large distance between Australia and the UK
- iv. risk carbon leakage – Australia does not currently operate a carbon pricing mechanism.

72. The latter two points would also apply to other sectors.

Environment (Chapter 22)

73. Like many trade agreements today, the Environment Chapter is wide-ranging in its coverage and includes provisions on climate change, environmental goods and services, circular economy, ozone depleting substances, air quality, ship pollution, marine litter, marine wild capture fishing, sustainable forest management, biodiversity, alien invasive species, illegal wildlife trade, corporate social responsibility. Echoing the CPTPP (CPTPP, Art 20.3), the FTA includes obligations to uphold 'high' and improving levels of protection and prohibits Parties from failing to effectively enforce domestic environmental law in a manner affecting trade or investment between them (non-regression/non-derogation). Each Party affirms its commitment to implement the international environmental agreements to which they are party (Art 22.4.1) and 'emphasises the need to enhance the mutual supportiveness between trade and environmental law and policies' (Art 22.4.2).

74. With some differences in wording, most commitments are aspirational, the focus being on cooperation (See Table 1). Notably, there are stronger commitments to taking measures to control ozone depleting substances (Art 22.8), prevent ship pollution (Art 22.10) and establish a fisheries management system to regulate marine wild capture fishing (Art 22.12). Provision for 'cooperation frameworks' is foreseen in relation to certain areas only, including climate change, circular economy, ozone protection, air quality, ship pollution and biodiversity. For each area, a non-binding and non-exhaustive list of potential areas for cooperation is given. It is unclear how cooperation will take place: commitments are vague, no specific mechanisms are provided for, public participation is not mandatory, and implementation is subject to the availability of funds (Art 22.20). The effectiveness of these Cooperation Frameworks will therefore be borne out in their implementation.

75. An Environmental Working Group is foreseen to oversee implementation of this Chapter and to coordinate with other committees (Art 22.21). A bespoke dispute mechanism for this Chapter comprises Environment Consultations, Joint Committee Consultations and Ministerial Consultations (Arts 22.23-22.26). Should Parties fail to resolve a matter under these mechanisms, the requesting party may request consultations (Art 30.7) or a panel (Art 30.8) under the main dispute mechanism.

SPS measures (Chapter 5) and Animal welfare (Chapter 25)

76. Food standards are a significant political issue in the UK.¹⁹ The Agreement provides for tariff-free imports of Australian agricultural products to be phased in over a number of years; beef quotas, for example, are applied for the first 15 years and are much higher than current import levels.
77. Sanitary and phytosanitary (SPS) objectives here aim to protect human, animal and plant life and health in respective territories while facilitating trade, ensure SPS measures do not create unjustified barriers to trade, reinforce and build on the implementation of the SPS Agreement and promote greater transparency in this area (Art 6.2). The Parties affirm their rights and obligations under the SPS Agreement (Art 6.4). SPS measures are to be based on 'scientific principles' and 'risk assessment in accordance with Article 5 and other relevant provisions of the SPS Agreement, taking into account risk assessment techniques developed by the relevant international organisations' (Art 6.5). This contrasts to the CPTPP, which requires that measures are based on 'objective scientific evidence that is rationally related to the measures.'²⁰ Thus there is no explicit reference to the more restrictive precautionary approach to SPS measures currently applied by the UK, only to the more limited WTO version of the principle.
78. The EU-UK trade agreement did not provide for a mechanism assessing equivalence of agricultural product or process standards. Here there is provision for the recognition of equivalence of SPS measures (Art 6.7). Each Party, in determining equivalence 'shall consider the relevant international standards, guidelines and recommendations' and the exporting Party 'shall objectively demonstrate that its measures achieve the appropriate level of protection.' The final determination of equivalence rests with the importing Party and Parties may consider establishing a procedure for the recognition of equivalence. WTO rules allow for state discretion to meet human, animal and plant life and health objectives, such exceptions are not provided for in the Agreement text but are noted in the explanatory memorandum.
79. This Chapter establishes a Committee on SPS Measures, composed of government representatives, to monitor implementation, deal with SPS issues and recommend mutually agreed proposals for amendments to this Chapter to the Joint Committee; a Party may refer any SPS issue to the SPS Committee (Art 6.6). Dispute settlement does not apply to this Chapter (Art 6.18). This suggests a generally low level of priority given to the chapter. It contrasts with the application of CPTPP dispute settlement to its SPS chapter, although the provision for objective and rational scientific assessment is excluded (CPTPP, Art 7.18).
80. This is the first time an Australian trade agreement has a separate animal welfare chapter; a chapter on animal welfare is not included in CPTPP. It is recognised that 'animals are sentient beings' and there is a 'connection between improved welfare of farmed animals and sustainable food production systems' (Art 25.1). A non-regression clause on animal welfare standards is provided for via a recognition that Parties will endeavour to ensure high levels of animal welfare protection, and uphold existing domestic protections. The Parties' right to regulate is preserved.
81. A Joint Working Group on Animal Welfare is established (Art 25.2) and the Committee on Cooperation shall consider issues arising relating to the Animal Welfare Chapter (Art 27.4).

¹⁹ D Webb, [UK-Australia free trade agreement](#) (Commons Library Briefing Paper No 9204, Dec 2021).

²⁰ "Each Party shall ensure that its sanitary and phytosanitary measures either conform to the relevant international standards, guidelines or recommendations or, if its sanitary and phytosanitary measures do not conform to international standards, guidelines or recommendations, that they are based on documented and objective scientific evidence that is rationally related to the measures, while recognising the Parties' obligations regarding assessment of risk under Article 5 of the SPS Agreement." CPTPP, Art 7.9.2.

This Committee is composed of government representatives and will review and monitor the implementation of the areas of cooperation provided for in the Agreement, specifically in relation to the environment and antimicrobial resistance, inter alia (Art 27.2). The Committee shall facilitate information exchange and invite contributions from experts, stakeholders, non-governmental organisations or civil society 'as appropriate' (Art 27.2). The Committee may make recommendations or refer matters to the Joint Committee, but the dispute settlement provisions are not applicable to matters arising under this Chapter (Art 27.6). As such, the effectiveness of cooperation mechanisms will be borne out in practice.

i. **What lessons and inferences for other current and future negotiations can be drawn from how the Government approached, and what it secured in, the FTA with Australia?**

82. While the role of trade in enhancing international cooperation is well recognised, levels of environmental protection, animal welfare and food standards would arguably be better implemented via more binding, specific and enforceable provisions in trade agreements. For example, ambition to strengthen standards of environmental protection, animal welfare and food standards could be included as overarching principles in the preamble in future UK trade agreements. Clearer provision for how far standards should be maintained, harmonised or strengthened for specific areas would provide clarity on ambition. Commitments to implementation of domestic and international environmental targets and food standards could be strengthened by more binding language, tariff conditionality for certain products, procedural guarantees and adequate institutional support for cooperation. Mechanisms for dispute settlement and non-compliance should provide opportunity for public consultation and public complaints mechanisms.

Appendices

Table 1: Results from DIT's estimates:

Results by Sector, % change GVA	Scoping Assessment	Impact Assessment
Agriculture	Below -0.05% (-)	-0.70%
Bev and tobacco products	0.05 to <0.5% (+)	0.10%
Processed foods	0.05 to <0.5% (+)	0.14%
Semi-processed foods	Below -0.05% (-)	-2.65%
Chemical, rubber, plastic products	0.05 to <0.5% (+)	0.16%
Electronic equipment	0.05 to <0.5% (+)	0.04%
Energy	0.05 to <0.5% (+)	0.40%
Manufactures of materials	0.05 to <0.5% (+)	0.23%
Motor vehicles and parts	0.05 to <0.5% (+)	1.16%
Other machinery and equipment	0.05 to <0.5% (+)	0.59%
Other Manufacturing	0.05 to <0.5% (+)	-0.03%
Other transport equipment	0.05 to <0.5% (+)	0.20%
Paper and printing products	0.05 to <0.5% (+)	0.20%
Textiles, leather and wearing apparel	0.05 to <0.5% (+)	0.19%
Business services	0.05 to <0.5% (+)	0.07%
Communications	0.05 to <0.5% (+)	0.07%
Construction	0.05 to <0.5% (+)	0.12%
Financial services	0.05 to <0.5% (+)	0.06%
Insurance	0.05 to <0.5% (+)	0.07%
Other services (transport, water, dwellings)	0.05 to <0.5% (+)	0.08%
Personal services	0.05 to <0.5% (+)	0.09%
Public services	0.05 to <0.5% (+)	0.08%
Wholesale and retail trade	0.05 to <0.5% (+)	0.12%

Table 2: UKTPO simulated impacts:

UK Top and bottom 10 sectors by simulated output changes (%)

Top 10		
ISIC4 Code	ISIC4 Name	%
2431	Casting of iron and steel	0.85
2732-2733	Manuf. of other electronic	0.75
2740	Manuf. of electric lighting equipment	0.41
33	Air transport	0.40
2394	Manuf. of cement, lime and plaster	0.40
1101	Distilling, rectifying and blending of spirits	0.39
2399	Manuf. of other non-metallic mineral products n.e.c.	0.37
1394	Manuf. of cordage, rope, twine and netting	0.36
3212	Manuf. of imitation jewellery and related articles	0.36
2816-2817	Manuf. of lifting and handling equipment	0.33
Bottom 10		
ISIC4 Code	ISIC4 Name	%

Written evidence from UK Trade Policy Observatory (UKTPO) (AUS0028)

1102	Manuf. of wines	-0.66
1010	Processing and preserving of meat	-0.45
2012	Manuf. of fertilizers and nitrogen compounds	-0.05
3091	Manuf. of motorcycles	-0.04
31	Land transport and transport via pipelines	-0.02
3011-3030	Building of ships, locomotives and aircrafts	-0.02
2660-2670	Manufacture of electromedical eq. & optical instruments	-0.01
2811	Manuf. of engines and turbines	-0.01
2610-2620	Manuf. of electronic components	0.00
3250	Manuf. of medical and dental instruments and supplies	0.00
