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Via email

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Dear Christopher, Jeremy, Anne, John,

Thank you for your continued engagement on the Trade (Australia and New Zealand) Bill. Following Committee Stage of the Bill on 23 January, I am writing in response to some specific points you made during the debate that I have sought more information on.

Scope of the power in Clause 2 of the Bill

You all sought assurances that the drafting of the Bill and the powers being sought by the Government within it, to implement and maintain our obligations under the UK-Australia and UK-New Zealand Free Trade Agreements (FTAs), were appropriate – most specifically Clause 2. I will begin with an explanation of Clause 1 to explain how the further provisions in Clause 2 are constrained. The explanatory notes to the Bill note that Clause 1 provides a power for appropriate authorities to make regulations for two purposes. Those are:

(i) implementing the government procurement chapter of the Australia and New Zealand FTAs; and
(ii) making other changes for matters arising out of, or related to, the government procurement Chapters in the FTAs.

As I outlined in Committee, the latter purpose is necessary to ensure changes can be made to procurement regulations with 'general application'. That is, to ensure procurement regulations remain uniform and consistent by not imposing different or conflicting procurement procedures on contracting authorities for procurement covered by the Australia and New Zealand FTAs.

Clause 2(1) of the Bill makes further provision clarifying the scope of the regulations that may be made under Clause 1. Each of those ‘‘further provisions’’ are standard provisions, appearing for example in section 4(1) of the Trade Act 2021. They are intended to facilitate the operation of the power conferred in Clause 1. However, I can assure you that none allow provision to be made which goes beyond the intention of that Clause and the purposes described above. The Department for International Trade reported the inclusion of these further provisions to the Delegated Powers and Regulatory Reform Committee in its Delegated Powers Memorandum. As I noted at Committee, the DPRRC raised no

objections to the use or scope of powers in this Bill[1]. The delegated powers in the Trade Act 2021 are similar in scope to those under this Bill, enabling implementation of the WTO Government Procurement Agreement and certain other international trade agreements. Those delegated powers similarly contain the further provisions contained in in this Bill, and the DPPRC likewise raised no objections to the use or scope of powers in that Act (21st report of session 2019-21[2]).

Lord Kerr, you raised the specific concern regarding the scope of Clause 2(1)(a) and (b). Paragraph (a) enables regulations under Clause 1 to "make provision for different purposes or areas". The intention of this provision is to make clear, if it were wanted, the government procurement chapters could be implemented differently for different types of procurement or in different sectors. For example, implemented one way for procurement by utilities, and another way for procurement by local government. I am particularly grateful for this further scrutiny as it has helped to identify a typographical error in that provision, namely the omission of an additional 'different'. The provision should read "to make different provision for different purposes or areas". That aligns with the way this provision is drafted in section 4(1)(a) of the Trade Act 2021. Discussions are taking place with the House Authorities as to the most appropriate way to correct this drafting. I trust this change and additional explanation will reassure any apprehensions regarding the provision.

Paragraph (b) enables provision to be made "generally or only in relation to specified cases". That makes clear that, if wanted, the government procurement chapters are implemented only for a particular class of procurements described in the regulations.

Reassurances were also sought that the Bill as a whole cannot be used for purposes other than to deal with cases arising as a result of the two free trade agreements. As set out above, I can reassure you that regulations under this Bill cannot go beyond implementing the government procurement chapters of the free trade agreements and dealing with matters arising out of those chapters.

Lord Purvis noted that this Bill is intended to be repealed by the Procurement Bill and therefore queried the need for these powers and provisions in the long term. As discussed at Committee, the Bill is deliberately constructed so that it remains functional throughout the lifetime of the Australia and New Zealand FTAs. That is necessary to demonstrate to our international partners that, at entry into force of the FTAs and beyond, our domestic legislation is and will remain compliant with our international commitments. If something was to delay or prevent the Procurement Bill from being enacted, the powers in this Bill provide a safety net to ensure that our domestic legislation remains compliant over the long term with the Australia and New Zealand Procurement Chapters. Nonetheless, once the trade powers at Clause 88 and 90 of the Procurement Bill supersede the powers in this Bill, I am happy to reassure you that Procurement Bill contains similar "further provision" regarding the exercise of those trade powers at Clause 118(3).

Impacts of the Bill on the NHS and Labour standards

On the NHS, Lord Lennie, you raised the question as to whether the NHS was 'off the table', with your amendment on an impact assessment being there to receive such assurances.

Protecting the NHS is a fundamental principle of our trade policy. The NHS, the price it pays for medicines and its services are not on the table.

[1] https://publications.parliament.uk/pa/ld5803/ldselect/lddelreg/126/12603.htm
[2] https://publications.parliament.uk/pa/ld5801/ldselect/lddelreg/117/11705.htm

In relation to the UK-Australia and UK-New Zealand FTAs, clinical health services are not included in either procurement chapter. Specifically, 'human health & administrative healthcare' services are expressly excluded from coverage under the procurement chapters. Some other non-clinical services are covered—these are things like building cleaning services or business support services, where additional competition is beneficial for value for money.

All goods that the NHS procures are covered. This provides increased competition which will help the NHS procure the highest quality goods and deliver value for money. This will ultimately result in better outcomes for patients.

I hope this provides reassurance to you on the steps that were taken during the negotiations to protect the NHS.

On labour standards, the Government is committed to protecting workers' rights in our FTAs. More trade does not have to come at the expense of workers' rights. Both these agreements commit parties to maintain international labour standards, and to not derogate from these to encourage trade and investment.

These agreements also take steps to confront the scourge of modern slavery. The agreements encourage companies to monitor their supply chains thoroughly to uncover and address any associations they might find with forced labour or other labour abuses.

Precedent of the protections for agriculture contained within the deals

Baroness McIntosh, you sought information on whether there have been time limits on the staging of Tariff Rate Quotas (TRQs) in other FTAs. The short answer is 'yes'. TRQs can be either permanent or temporary - and in both cases it is normal for the volume of the product under the TRQ to increase over time as well. The UK's existing FTAs include a combination of permanent and temporary TRQs: the UK's Trade Continuity Agreement with Canada, for example, includes temporary TRQs on products such as wheat and shrimp and permanent TRQs on products such as sweetcorn and pork. There are no TRQs in the UK-EU Trade and Cooperation Agreement, meaning there is no limit on the volume of exports the EU can send to the UK.

Food standards and operation of the UK's SPS regime

Baroness McIntosh, you also raised the Government's statutory duties to report on new obligations to maintain protections for human, animal and plant health and welfare and the environment. The statutory reporting obligation is set out in the Agriculture Act 2020. It requires the Government to publish a report setting out how a new FTA is consistent with maintenance of our statutory protections in the relevant areas, and to do so prior to commencing pre-ratification scrutiny of the agreement under the Constitutional Reform and Governance Act 2010. The Government has fulfilled this obligation. The report pertaining to Australia was published and laid in Parliament on 6 June 2022[3], and for New Zealand, published and laid in Parliament on 21 July 2022[4].

I said that I would research the suggestion by that there were a lack of checks at our frontiers to show to what extent the meat coming into the UK observes our import standards - including for example the ban on the import of hormone treated-beef. I am happy to confirm that the UK continues to apply safety controls at our borders to high-risk

[3] https://www.gov.uk/government/publications/uk-australia-fta-report-under-section-42-of-agriculture-act-2020
[4] https://www.gov.uk/government/publications/uk-new-zealand-fta-report-under-section-42-of-agriculture-act-2020

food and feed imported from non-EU countries, as we did when we were a member state of the EU. Various Sanitary and Phytosanitary (SPS) controls were introduced and continue to apply to goods imported from the EU and these are set out in the current Border Operating Model[5]. The Government took the decision in mid-2022 not to impose the remaining import controls that apply to non-EU goods on EU goods. These would have replicated the controls that the EU applies to their global trade, increasing the administrative burdens on traders and risking disruption at ports and to supply chains. Instead, a Target Operating Model will be published in early 2023, setting out a new border controls regime for both EU and Rest of the World produce. Since 1st January 2021, consignments of Products of Animal Origin transiting EU territory before being imported to Great Britain have been required to enter Great Britain via an appropriate Border Control Post approved for those commodities if they have not had full checks on entry into the EU. This will require goods to be accompanied by health certificates/relevant documentation for import into Great Britain as appropriate and pre-notification on IPAFFS (Import of products, animals, food and feed system). Goods that have undergone full veterinary public health and animal health checks on entry into the EU can enter Great Britain via any point of entry.

Pesticide usage

Lord Purvis, you asked how it is possible that the UK might import products produced using pesticides and fungicides not permitted in the UK. You referred to comments made by the Trade and Agriculture Commission (TAC) in their advice on the UK-Australia FTA regarding pesticide usage:

> *"we determined that it was likely that products affected by the practice at issue would be imported in increased quantities under the FTA. This was true, for instance, of plant products produced using pesticides and fungicides that are not permitted, or being phased out, in the UK."*

The Government is determined to ensure that all pesticides used in this country are safe for those who use them; for consumers of the treated produce; and for the environment. The UK is able to restrict or prohibit the import of goods that represent a risk to human, animal and plant life and health in the UK. Tolerances of the Maximum Residue Levels for pesticides in food are set for imports using the same safety criteria as for domestically produced food and take into account that pesticide use differs where different climatic, geographical or pest conditions exist.

The TAC reiterated this point in its advice, noting that:

> *'The FTA has no effect on the UK's existing WTO rights to regulate the import of products produced using pesticides that are harmful to UK animals, plants, or the environment'.*

It also went on to say that:

> *'Australia is under enforceable obligations to maintain and implement certain environmental laws (at Commonwealth level), and depending on the facts, these obligations may be relevant to pesticide use in Australia, even if this does not harm UK animals, plants or the environment.'*

Countries that have markedly different climates and environmental conditions to the UK will likely use different pesticides from those used in the UK. Our regime ensures this use of pesticides does not pose an additional risk to UK consumers but, in general, it would not

[5] https://www.gov.uk/government/publications/the-border-operating-model

be appropriate to restrict imports because of factors which do not affect the safety of the produce, such as environmental considerations in another country.

I hope that this letter has been useful and has provided reassurances about these issues. As I stated at Committee, I would be very happy to discuss these issues further and answer any additional questions you or any other interested Peers may have. As I also mentioned at Committee, I am happy to share draft copies of the regulations that will be made under the Act should other members of the House wish to see them. Should you or any other Peer wish to see them, please get in touch with my office (minister.investment@trade.gov.uk).

I am placing a copy of this letter in the Library of the House.

With very best wishes,

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