



Department for
International Trade

Report pursuant to Section 42 of the Agriculture Act 2020: UK- Australia Free Trade Agreement

June 2022



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**Presented to parliament pursuant to Section 42 of the Agriculture
Act 2020**

June 2022



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Ministerial Foreword

Our UK-Australia free trade agreement is a landmark moment in the historic and vital relationship between our two Commonwealth nations. This agreement is tailored to the UK's strengths, and delivers for businesses, families, and consumers in every part of the UK – helping us to level up.

Just as we have established a new independent trade policy, we have also had to consider how we enhance transparency and enable scrutiny of new trade agreements.

We recognise that this scrutiny is particularly important on trade in agricultural products, because our country has world-class standards which we are committed to maintaining. Our trade agreements will deliver economic benefits to businesses and consumers across the country, but that will never come at the expense of the UK's high standards.

This report sets out in clear language what the agreement means for the maintenance of statutory protections in the areas of human health, animal and plant life or health, animal welfare and the environment. It confirms that this agreement is consistent with maintaining our domestic regulatory standards, supported by the advice of the independent Trade and Agriculture Commission, the Food Standards Agency and Food Standards Scotland.

The UK-Australia agreement demonstrates what we can achieve as an agile, independent sovereign trading nation. This is just the start as we get on the front foot and seize the significant opportunities that await us on the world stage.



**The Rt Hon Anne-Marie
Trevelyan MP**

**Secretary of State for
International Trade and
President of the Board of Trade**



The Rt Hon George Eustice MP

**Secretary of State for
Environment, Food and
Rural Affairs**

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Background

The UK-Australia Free Trade Agreement (FTA) was signed on 16 December 2021.

1. Prior to ratification, the FTA will be formally laid before Parliament for scrutiny under the Constitutional Reform and Governance Act 2010 (CRAg). Ahead of this, and in order to aid parliamentary scrutiny, two reports must be laid before Parliament relating to any full, new FTA. Under Section 42 (1) of the Agriculture Act 2020, a Government report (henceforth referred to as the S.42 Report) must be laid. This Report must consider whether, or to what extent, measures in that specific Free Trade Agreement applicable to trade in agricultural products¹ are consistent with the maintenance of UK levels of statutory protection in relation to the following areas:
 - (a) human, animal or plant life or health,
 - (b) animal welfare, and
 - (c) the environment.
2. Under Section 42 (4), the Secretary of State can seek advice from independent, expert sources of advice in preparing the S.42 Report. This must include the Trade and Agriculture Commission (TAC).
3. The TAC's remit is to produce advice on whether, or to what extent, the measures in the FTA which are applicable to trade in agricultural products are consistent with the maintenance of UK levels of statutory protection in relation to:
 - a) animal or plant life or health
 - b) animal welfare, and
 - c) the environment

As with the S.42 Report, the advice of the TAC must be laid before Parliament prior to the FTA being laid for the purposes of scrutiny under CRAg.

4. For this report, on the UK-Australia agreement, advice has also been sought from the Food Standards Agency (FSA) and Food Standards Scotland (FSS). The FSA and FSS are statutory bodies which collectively have responsibility for human health in relation to food safety across the UK. The FSA and FSS have produced joint advice, annexed to this report, on whether, or to what extent, the measures in the FTA are consistent with the maintenance of UK levels of statutory protection in relation to human health. The Department of Health and Social Care, as the department responsible for human health, has also been consulted on the main body of this report.

¹ "Agricultural products" means products of a kind which, at the time this section comes into force, is listed in—

- a) Annex 1 to the Treaty on the Functioning of the European Union;
- b) Annex 1 to [Regulation \(EU\) No 510/2014](#) of the European Parliament and of the Council of 16 April 2013 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products and repealing Council Regulations [\(EC\) No 1216/2009](#) and [\(EC\) No 614/2009](#);
- c) the first two columns of Annex 2 to that Regulation.

S.42 Report scope and conclusions

This report considers the impact of the UK-Australia FTA on relevant UK statutory protections. Legislation that relates to UK levels of statutory protection in human, animal or plant life or health, animal welfare, and the environment is wide ranging and has varying territorial extent and application, based on the legislation in question. The UK is obliged to continue to apply in Northern Ireland the body of EU law set out in Annex 2 of the Protocol on Ireland/Northern Ireland².

The scope of this report extends to all measures within the FTA that are applicable to trade in agricultural products. Accordingly, the following Chapters in part or in whole are in scope of this Report:

- Chapter 6: Sanitary and Phytosanitary Measures
- Chapter 7: Technical Barriers to Trade
- Chapter 22: Environment
- Chapter 25: Animal Welfare and Antimicrobial Resistance
- Chapter 30: Dispute Settlement
- Chapter 31: General Provisions and Exceptions

Additionally, this report considers the impact of tariff liberalisation on sensitive sectors and the consistency of these measures with the maintenance of UK levels of statutory protection.

For each of these Chapters, this report assesses whether the measures within it are consistent with the maintenance of relevant UK statutory protections, with reference to the advice of the independent TAC, FSS and FSA where appropriate. This report also summarises what each provision does to aid clarity and understanding of the effect of the FTA.

S.42 Report criteria

The following criteria have been used to determine whether, or to what extent, measures are consistent with the maintenance of UK levels of statutory protections:

- With reference to the implementation of the FTA, whether any changes to primary or secondary legislation are required for (a) human, animal or plant life or health, (b) animal welfare, and (c) the environment.
- Whether there are any measures in the FTA that affect the right to regulate of the UK Government and Devolved Administrations.

S.42 Report conclusions

The Chapters above identified as within scope of Section 42 (1), are 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; no new import conditions are required through implementation and there are no changes to statutory protections in these areas.

Further, no measures change or restrict the right to regulate of the UK Government and Devolved Administrations. The non-derogation measures in the Environment and Animal Welfare Chapters support the maintenance of statutory levels of protection in these areas.

² Further information can be found at: <https://www.legislation.gov.uk/eut/withdrawal-agreement>

TAC advice criteria and conclusions

The TAC's full advice was laid in parliament and published in full on Wednesday 13 April.

The TAC addressed three questions, in accordance with their terms of reference:

1. *Does the FTA require the UK to change its levels of statutory protection in relation to (a) animal or plant life or health, (b) animal welfare, and (c) environmental protection?*

The TAC concluded that the FTA does not require the UK to change its existing levels of statutory protection in relation to animal or plant life or health, animal welfare, and environmental protection.

2. *Does the FTA reinforce the UK's levels of statutory protection in these areas?*

The TAC concluded that The FTA reinforces the UK's statutory protections in the areas covered for two reasons. First, it contains environmental and animal welfare obligations that require the UK to maintain its statutory protections in the areas covered. Second, these obligations also ensure that Australia will not gain a trade advantage by lowering its standards of protection or not properly implementing its domestic laws in the areas covered.

3. *Does the FTA otherwise affect the ability of the UK to adopt statutory protections in these areas?*

The TAC concluded that the FTA does not otherwise affect the ability of the UK to adopt statutory protections in the areas covered. It does not restrict the UK's WTO rights to regulate in these areas and even enhances these rights in some respects. However, the UK is able to adopt decisions under the agreement, together with Australia, that may constrain its freedom to regulate in the future and it is important to ensure that the UK's import control systems are properly resourced to be able to manage increased imports under the FTA.

This report considers detailed conclusions from the TAC report in the relevant sections below.

FSA and FSS' advice criteria and conclusions

The FSA and FSS' advice is annexed to this report.

In summary, the advice states that:

- The UK-Australia FTA maintains existing food safety statutory protections in accordance with retained law.
- No changes to the UK food safety regulatory system are required to give effect to this FTA at the point of entry into force.
- The FTA text preserves the regulatory autonomy of the UK Government and devolved administrations with respect to matters of food safety and will not prejudice any future decisions in this regard, which will continue to be taken by health ministers across the UK informed by transparent advice on science and evidence from the FSA and FSS. This is key to upholding statutory protections in the future

The UK's Food Safety Authorities have concluded that measures in the UK-Australia FTA are consistent with the maintenance of UK levels of statutory protection in relation to human health.

Free Trade Agreement Measures

FTA Chapter 6: Sanitary and Phytosanitary Measures

Chapter summary & conclusion

This Chapter sets out the application of SPS (Sanitary and Phytosanitary) measures to trade between the UK and Australia. The Chapter focuses on the development and application of human, animal and plant life and health regulations.

The FTA does not create any new permissions or authorisations for imports from Australia. All products imported into the UK must, as they do now, comply with our import requirements. Nor does the Chapter require the UK to change its existing levels of statutory protection.

In relation to human health, the FSA and FSS concluded the following:

‘The SPS Chapter text agreed with Australia is of fundamental importance when it comes to reserving the UK’s right to maintain existing laws and regulations to protect human life and health, including food safety. It is also important that the agreed text has not impinged on the way food law regulation and enforcement is implemented in the UK.’

It is the view of the Government, supported by the advice of the FSA and FSS, that this Chapter is consistent with the maintenance of UK levels of statutory protection in relation to human, animal or plant life or health; furthermore, nothing in the Chapter changes or restricts the right to regulate of the UK and Devolved Administrations.

Scope

The majority of Chapter 6, except for the Articles listed below, is within the scope of this report, in that it applies to the maintenance of UK levels of statutory protection on human, animal or plant life or health.

Articles 6.13-6.14 and 6.16-6.17 are outside the scope of this report. These primarily relate to cooperation or governance measures of the FTA, with no impact on UK statutory protections.

Article 6.18 (Non-Application of Dispute Settlement) is covered under Chapter 30: Dispute Settlement in this report.

Articles

Article 6.1-Definitions: This Article sets out that the definitions of the WTO SPS Agreement (as set out in Annex A to that agreement) shall apply to the Chapter. In addition, the definitions of any organisation recognised by the WTO SPS Committee, and specifically the OIE, IPPC, and Codex, shall be considered by the Parties. These measures support an interpretation of the language used in this Chapter that is consistent with the definitions that are used in WTO SPS Agreement and these international organisations.

Article 6.2-Objectives: This Article establishes the objectives of the Chapter, and whilst they have no direct effect on the UK levels of statutory protection, they signal the intention of the Chapter and may affect its interpretation.

Article 6.3-Scope: This Article sets out the scope of the Chapter. It specifies that all SPS measures that may directly or indirectly affect trade between the Parties can be considered under the Chapter. This applies equally to both existing and future SPS measures. This measures in itself does not affect UK levels of statutory protection, as it simply applies the other provisions of the Chapter to SPS measures.

Article 6.4-Affirmation of the SPS Agreement: The Parties have existing rights and obligations towards each other under the WTO SPS Agreement.

This Article affirms that the Parties will continue to have these rights and obligations.³ The SPS Chapter cannot take away those WTO rights and obligations, which, where applicable, must be observed when the UK establishes or modifies its levels of statutory protection.

Article 6.5-Science and Risk Assessment: This Article sets out that the Parties recognise the importance of ensuring that their respective SPS measures are based on scientific principles.

The Parties shall ensure that their SPS measures are based on risk assessment in accordance with Article 5 and other relevant measures of the SPS Agreement and taking into account risk assessment techniques developed by the relevant international organisations.

The TAC's advice (p.18) noted their view that *"it is not entirely clear...whether the UK's right to adopt provisional measures along these lines has been maintained in the FTA"*.

The Government's position is that the FTA maintains the UK's right to take provisional or precautionary measures for human and animal health purposes and does not interfere with our existing WTO rights to take such an approach

The FTA states that SPS measures should be "based on risk assessment in accordance with Article 5 and other relevant provisions of the SPS Agreement". We are clear that this includes taking provisional measures where scientific evidence is insufficient, which is detailed in Article 5 of the SPS Agreement.

Article 6.6-Adaptation to Regional Conditions: This Article sets out the application of regionalisation. Regionalisation is where WTO members adapt their SPS measures to the characteristics of the area where the product originated and of where it is destined. It sets up a framework for assessing the safety of imports where the exporting country has a localised pest or disease outbreak. This recognises, for example, the concept of pest- or disease-free areas and helps to avoid unnecessary trade restrictions by facilitating the safe movement of products between those areas of the UK or Australia whilst an outbreak elsewhere is managed.

This Article underlines the importance of domestic legislation aimed at protecting human, animal and plant health, as the UK Government can make an evidence-based decision to block or allow specific product imports or imports from a specific region or location.

Article 6.7-Equivalence: This Article sets out that the UK shall recognise Australia's SPS measures as equivalent, even where they differ from ours, provided Australia can objectively demonstrate that these measures achieve the same levels of domestic protection as our measures. The Parties may consider establishing a procedure for recognition of equivalence based on relevant international standards, guidelines and recommendations, and guidance of the WTO SPS Committee. The Article is clear that the final determination of equivalence rests with the importing party.

Additionally, the TAC considers Article 6.7 in their advice, and conclude that:

'At a minimum, the FTA does not reduce the WTO rights of the UK to reject a request for equivalence; and, to the contrary, it may even enhance these rights.'

The TAC also set out in their advice that decisions on equivalence procedures could be taken without the type of parliamentary scrutiny required for a formal amendment to the agreement. The Government can confirm that, if the UK and Australia decided to amend the FTA to include a procedure for the recognition of equivalence, then this would be subject to Parliamentary Scrutiny under the Constitutional Reform and Governance Act 2010 (CRaG).

Like many modern FTAs, the agreement does allow for the parties to continue to discuss certain issues after it has been ratified. This could, for example, happen as part of the work of a Joint

³ Further information can be found at: https://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm

Committee. The SPS Committee can, to name a couple of its functions, monitor the implementation of the SPS Chapter and act as a forum for information exchange.

If such discussions result in the treaty being materially or significantly amended – or if they result in a new treaty - this would be subject to the full CRaG procedure.

In addition, no decisions can be made under this treaty, now or in future, to change UK statutory protections or import regulations without bringing forward relevant legislation to be scrutinised and passed in the usual way.

Article 6.8-Trade Conditions: This Article sets out the various requirements that each country's import regime need to comply with, with the intention of facilitating trade. These include requirements for import requirements to be made public; specific import requirements to be identified on request; undue delay with SPS control, inspection, assessment and approval procedures to be avoided; risk assessment outcomes to be communicated and establishments/facilities to be approved without prior inspection in certain cases.

Article 6.9-Audit and verification: This Article sets out the role of audit and verification. The UK has the right to carry out an audit or verification of the control system(s) of Australia in order to attain and maintain confidence in Australia's ability to provide the required assurances and to comply with the UK's SPS import requirements and related control measures. The Article set out measures on how such audits or verifications shall be conducted, and in how measures can be taken in consequence of audits or verifications.

Article 6.10-Certification: This Article sets out that import certification where required by the UK, shall only apply to the extent necessary to demonstrate that the imported products comply with the UK's SPS objectives and international standards on SPS. This is to ensure that certification does not present an unnecessary barrier to trade.

Article 6.11-Import Checks and Fees: This Article sets out that the UK has the right to carry out import checks to ensure products comply with domestic import requirements and statutory protections. The UK can take action on the grounds of non-compliance if products do not meet import requirements, but this must be based on an assessment of the risk involved and not be more trade-restrictive than required to achieve the Party's appropriate level of protection.

Article 6.12-Emergency SPS measures: The SPS Chapter does not place any restrictions on the UK's ability to enact emergency SPS measures where there is a particular risk to animal, plant or human life or health. The Article introduces a notification requirement and, given that emergency measures affect existing trade flows, sets out how technical consultations can be requested. It obliges the UK to consider information provided by Australia when deciding whether to apply the measure to goods in transit, to commence a science-based review of the measure, review the measure as required and, on request, to share the justification for the maintenance of the measure, if it remains in place. This is consistent with preserving the UK's freedom to set and maintain its levels of statutory protection in response to new emerging risks.

Article 6.15-Technical consultations: This Article sets out that if a Party has specific trade concerns regarding SPS measures proposed or implemented by the other Party, it may request technical consultations. The Parties shall endeavour to provide all relevant information necessary to avoid disruption to trade and to reach a mutually acceptable solution within a reasonable time period.

FTA Chapter 7: Technical Barriers to Trade

Chapter summary and conclusion

This Chapter sets out measures on Technical Barriers to Trade (TBT). TBT covers non-tariff measures relating to technical regulations, standards and conformity assessment (testing whether a product complies with the rules).

TBT covers trade in all products (both agricultural and industrial), except for measures that fall under Government Procurement or SPS. Examples of TBT regulations include standardised packaging of tobacco products and minimum cocoa requirements for chocolate.

This Chapter builds on commitments in the WTO TBT Agreement⁴. It recognises each country's right, under that Agreement to introduce new regulations to fulfil legitimate policy objectives, such as the protection of human, animal and plant life or health and the environment. At the same time, it commits to ensuring that any regulations either the UK or Australia introduces:

- are non-discriminatory
- do not create an unnecessary barrier to trade.

This Chapter does not require any changes to UK levels of statutory protections and thus is consistent with the maintenance of UK levels of statutory protection in relation to human, animal and plant life or health and the environment; further, nothing in the Chapter changes or restricts the right to regulate of the UK and Devolved Administrations.

Scope

The majority of Chapter 7, except for the Articles listed below, is within scope of this report, given the relation of TBT to the areas specified in Section 42.2(a) of the Agriculture Act.

Articles 7.10-7.13 are outside the scope of this Report. These relate to pure cooperation or governance measures of the FTA, with no impact on UK statutory protections.

Article 7.14 (Dispute Settlement) is covered under Chapter 30: Dispute Settlement in this report.

Articles

Article 7.3-Scope: 7.3 This Article sets out the application of the measures in this Chapter. It sets out that technical regulations, standards and conformity assessment procedures at central government level are within scope. The exceptions to this are Government Procurement or SPS measures.

7.3.5 sets out that nothing in this Chapter prevents the Parties from developing regulation in line with their international rights and obligations, thereby underlining the UK's right to regulate in TBT matters.

Article 7.4-Affirmation of the TBT Agreement: This Article sets out that the Parties affirm their rights and obligations under the TBT Agreement, which are covered in brief in the Chapter summary.

Article 7.5-Technical Regulations: The UK and Australia will consider, upon request, whether product regulations of the other country are equivalent to their own domestic regulations.

Where regulations differ, there is scope to agree equivalence but only if each country is satisfied that the other country's regulations meet the objectives of domestic regulations.

Article 7.6-International standards: In line with existing WTO commitments, the Parties will base technical regulations on relevant international standards where they exist. In determining whether a standard is international or not, the UK and Australia will apply the Decisions and Recommendations

⁴ Further information can be found at: https://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm

adopted by the WTO Committee on Technical Barriers to Trade since 1 January 1995 and will also consider relevant interpretations of WTO caselaw.

Article 7.7-Conformity assessment procedures: This Article sets out that various mechanisms exist to enable each country to recognise the results of conformity assessment procedures conducted in another country. There is no obligation on either the UK or Australia to use any of these mechanisms.

Both the UK and Australia will exchange information on conformity assessment procedures. When either country does not accept the results of a conformity assessment procedure conducted in the other country, it shall, upon request, explain the reason for its decision.

The UK and Australia have an existing Mutual Recognition Agreement – Article 7.7.4 sets out that the UK and Australia may, if they wish to, review and amend it, including by expanding it, as appropriate.

Article 7.8-Marking and Labelling: This Article sets out that, in line with WTO commitments, marking and labelling requirements in the UK and Australia must:

- be non-discriminatory
- be no more trade-restrictive than necessary to fulfil legitimate policy objectives.

The UK retains the right to introduce new marking and labelling schemes that meet these two criteria.

Additionally, the Parties will allow detachable or supplementary labels where this does not undermine the purpose of domestic regulation. Both countries also allow additional languages to be included on labels, provided the information in other languages is not confusing or misleading.

Article 7.9 Transparency: This Article sets out measures on ensuring the development of technical regulations, standards and conformity assessment procedures is transparent and accessible. Both the UK and Australia will allow stakeholders from the other country to participate in the development of technical regulations, standards and conformity assessment procedures, on the same terms as domestic stakeholders.

The Parties will encourage non-governmental bodies to also allow stakeholders from the other country to participate in public consultation procedures.

Annex 7A-Cosmetics: The testing of cosmetic products on animals remains banned in both the UK and Australia. Nothing in the FTA or the Annex changes this. Paragraph 22 of Annex 7A prevents either country from making rules that *require* animal testing for cosmetics. In the case of the UK and Australia, both countries have completely banned animal testing, going further than the text in this agreement. There is an exception to the restriction included in the text. However, this has no practical effect within the scope of the UK-Australia FTA.

FTA Chapter 22: Environment

Chapter summary & conclusion

This Chapter affirms the Parties commitments to the Paris Agreement and sets out measures to promote mutually supportive trade and environment policies, high levels of environmental protection and effective enforcement of environmental laws. It also promotes cooperation across a range of environmental issues including sustainable forest management, circular economy, and climate change.

There are no changes required to existing levels of statutory protection. Thus, this Chapter is consistent with the maintenance of UK levels of statutory protection in relation to the environment. Further, the Chapter recognises the right of the UK and Australia to establish their own statutory protections on the environment and climate change and to take action to meet related objectives.

This is supported by the following conclusion in the TAC's advice (p.32):

*'First, the UK not only has a right to maintain its statutory protections, but it has an obligation to do so, in certain cases. The UK has a soft obligation to provide for high levels of...
...environmental protection, an obligation to implement its domestic environmental laws if this has an effect (or, in one case, the purpose) of encouraging trade or investment between the parties... ...and finally to ensure certain minimum levels of environmental protection.*

Second, the UK is able to protect its levels of statutory protection indirectly by ensuring that Australia does not gain a trade advantage by lowering Australian standards of protection, in certain cases, or not properly implementing its domestic laws. In particular, the UK is able to commence dispute settlement proceedings if Australia fails to abide by its commitments in the environmental obligations Chapter.'

Importantly, under Article 22.3(6), neither the UK nor Australia shall waive or derogate from their environmental laws, in a way which weakens respective domestic statutory protections, to encourage trade and investment. UK and Australia also recognise that is inappropriate to encourage trade or investment by weakening or reducing domestic statutory protections.

Scope

The majority of Chapter 22, except for the Articles listed below, is within scope of this report, in that it applies to the maintenance of UK levels of statutory protection on the environment.

Articles 22.17 – 22.25 are outside the scope of this report. They relate to measures on corporate social responsibilities, or cooperation and public engagement, with no impact on the maintenance of UK statutory protections.

Article 22.26 (Settlement) is covered under Chapter 30: Dispute Settlement in this report.

Articles

Article 22.1 – Definitions: This Article sets out definitions of environmental law and regulations for the UK and Australia that are being used in the Chapter.

Article 22.2 – Objectives: This Article outlines the objectives of this Chapter, including promoting mutually supportive trade and environmental policies and promoting high levels of environmental protection, and recognising that it is inappropriate for the Parties to establish or use their environmental laws or other environmental measures in a manner which would constitute a disguised restriction on trade or investment.

Article 22.3-General Commitments: This Article sets out measures to promote mutually supportive trade and environmental policies and practices. It includes measures which recognise the right of the UK, as well as relevant Australian authorities, to establish their own domestic statutory protections relating to the environment and climate change (to note, this also applies to similar measures included in other Chapters, such as Articles 13.17 and 13.18 in Chapter 13: Investment⁵ which relate to the environment and climate change). It also includes a commitment that both the UK and Australia shall strive to ensure that their domestic environmental laws and policies are suitable to providing and furthering high levels of environmental protection.

It also includes the commitment under Article 22.3 (6) that neither the UK or Australia shall waive or derogate from its environmental laws, in a way which weakens respective domestic statutory protections, to encourage trade and investment.

Article 22.4-Multilateral Environmental Agreements: This Article affirms both UK and Australia's commitment to implement multilateral environmental agreements to which they are a party. This

⁵ Further information can be found at: <https://www.gov.uk/government/publications/uk-australia-fta-Chapter-13-investment>

reinforces the obligations both the UK and Australia have made elsewhere, such as under the Paris Agreement and the United Nations Framework Convention on Climate Change (UNFCCC).

Article 22.5-Climate Change: This Article affirms both UK and Australia's commitment to address climate change, including under the 2015 Paris Agreement, to which both the UK and Australia are signatories, in achieving its goals. This is the first time Australia has included a dedicated Article on Climate Change in an FTA.

Articles 22.6-22.16-Specific Articles on environmental issues: These Articles focus on commitments on bilateral cooperation in various areas, including controlling air pollution, sustainable forest management and encouraging trade in environmental and low emissions technologies. These Articles do not affect statutory protections and highlight the depth of UK and Australia commitments in the Chapter to addressing climate change.

FTA Chapter 25: Animal Welfare and Antimicrobial Resistance

Chapter summary & conclusion

This Chapter contains measures that recognise the importance of animal welfare and includes a commitment from both the UK and Australia to endeavour to maintain high levels of animal welfare protection. The Chapter also sets out that the Parties recognise that antimicrobial resistance (AMR) is a serious global threat to human and animal health. Articles pertaining to animal welfare and AMR do not require changes to statutory protections across the UK and do not negatively affect the right of the UK to regulate in either of these areas.

Thus, this Chapter is consistent with the maintenance of UK levels of statutory protection in relation to animal welfare and human life or health.

Scope

Articles 25.1.1-25.1.4 are within the scope of this report as they set out the importance of animal welfare and affirm the UK's right to regulate (Article 25.1.2) and establish a non-regression and non-derogation clause on animal welfare (Article 25.1.3). While animal welfare measures covering the remaining cooperation and collaboration Articles (25.1.5 - 25.1.10) do not fall directly within the scope of this Report, they are considered in brief, given their relation to the above Articles and focus on improving animal welfare standards.

Article 25.2 (AMR) contains measures pertaining only to cooperation. However, this Article is considered here, given the UK and Australia recognise the clear link between AMR & SPS.

Article 25.3 (Non-application of Dispute Settlement) is covered under Chapter 30: Dispute Settlement in this report.

Articles

Article 25.1.1: This Article sets out that the Parties recognise animals as sentient beings and recognises the connection between improved animal welfare and sustainable food production.

Article 25.1.2: This Article affirms the right of the UK and Australia to establish their own policies and priorities for the protection of animal welfare and to adopt or modify their laws, regulations, and policies in this area.

Article 25.1.3: This Article sets out that each Party recognises that it is inappropriate to encourage bilateral trade or investment by weakening or reducing its levels of protection for animal welfare. It also sets out that each Party shall endeavour to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its laws, regulations and policies in a manner that weakens or reduces its level of animal welfare protection as an encouragement for trade or

investment between the Parties. This is the first signed FTA in the world to contain a dedicated animal welfare Chapter which includes commitments on non-regression and non-derogation.

Article 25.1.4: This Article sets out that each Party shall endeavour to ensure that its laws, regulations and policies provide for and encourage high levels of animal welfare protection, including that the Parties endeavour to improve their respective levels of animal welfare protection through their laws, regulations and policies.

Articles 25.1.5 - 25.1.10: These Articles set out strong commitments on collaboration and cooperation. Although they have no direct effect on UK levels of statutory protection, they help facilitate both the UK and Australia in going further to develop and improve animal welfare standards. This includes through the exchange of information, expertise and experiences in areas of mutual interest relating to animal welfare, encouraging cooperation on animal welfare research and working together in relevant international fora to promote the development of animal welfare standards and practices.

Article 25.2-Antimicrobial Resistance: Both the UK and Australia recognise the severe global threat that AMR poses to human and animal health. This Article makes a number of commitments including exploring initiatives to promote the reduced need for and appropriate use of antimicrobial agents. It focuses on bilateral and multilateral cooperation, including surveillance and monitoring of antimicrobial use and the exchange of information and expertise useful to addressing AMR.

Other Chapters

Chapter 30 – Dispute Settlement

This Chapter contains measures that commit the Parties to effective and timely dispute settlement. This will provide a clear avenue to arbitration if required.

The Dispute Settlement Chapter applies to the Trade in Goods Chapter, the Environment Chapter, and the General Provisions and Exceptions Chapter.

The Dispute Settlement Chapter does not apply to the SPS Chapter (Article 6.18), the TBT Chapter (Article 7.14), the Animal Welfare and Antimicrobial Resistance Chapter (Article 25.3), or the Cooperation Chapter (Article 27.6).

Chapter 31 – General Provisions and Exceptions

Chapter 31 includes a series of exceptions which provide conditions under which a Party can take non-conforming measures should they be required. Those exceptions relevant to the scope of this report are included by way of the General Exceptions Article that incorporates Article XX of the General Agreement on Tariffs and Trade (GATT) 1994⁶ (which forms part of the WTO legal framework). The General Exceptions Article applies to multiple Chapters, as listed, including the SPS and TBT Chapters. Subject to the specific conditions stipulated within the chapeau of Article XX, such as avoiding arbitrary or unjustifiable discrimination, these general exceptions allow the UK to take measures to protect legitimate policy objectives.

Measures that are within scope of the General Exceptions include measures (including environmental measures) necessary to protect public morals, protect human, animal or plant life or health, and measure relating to the conservation of living and non-living exhaustible natural resources. The inclusion of this language helps to protect the UK's sovereign 'right to regulate' domestically on a number of issues, including the environment. This is important as the UK looks to meet its international commitments on the environment, nature and biodiversity.

⁶Further information can be found at:

https://www.wto.org/english/docs_e/legal_e/gatt47_02_e.htm#ArticleXX

Impact of tariffs

Tariff liberalisation in the UK-Australia FTA

The UK-Australia FTA will liberalise trade in goods between the two countries. This includes the removal of nearly all tariffs on UK and Australian imports - making it cheaper to trade originating products between the UK and Australia. In 2020, total trade in goods between the UK and Australia was £7.1bn, with £4.3bn being exports from the UK.

Australia agreed to eliminate tariffs on 100% of tariff lines, with 98.5% being tariff free on the day of entry into force of the agreement and the remaining liberalisation staged over 5 years. The UK agreed to eliminate tariffs on 99% of tariff lines, with 94% being removed on the day of entry into force. The remainder will be staged over a maximum of 10 years.

In addition to staging, for certain agricultural products, the volume of duty-free imports to the UK from Australia in a year will be limited by Tariff Rate Quotas (TRQ) and Product Specific Safeguards (PSS) for sensitive sectors⁷. Products subject to TRQs include beef, sheep meat and sugar, whilst products subject to a PSS are beef and sheep meat. For beef and sheep meat, these measures will apply for up to 15 years.

A general bilateral safeguard mechanism⁸ will provide a temporary safety net for industry if it faces serious injury, or threat thereof, from increased imports as a result of tariff elimination under the FTA. A bilateral safeguard measure can take the form of a reversal of tariff liberalisation or the suspension of further tariff liberalisation for up to 4 years and can be reapplied more than once on the same product, if necessary. Bilateral safeguard measures can be applied provisionally for up to 200 days and may be applied to any product. This protection will last for a product's tariff liberalisation period plus five years in order to allow domestic industries time for readjustment, providing a 15-year period of protection for beef and sheep meat from entry into force of the FTA.

The impact of tariff liberalisation on UK statutory protections

The liberalisation of tariffs does not entail changes to statutory protections on human, animal or plant life or health; animal welfare; or the environment. Tariff liberalisation does not restrict the ability of the UK Government and Devolved Administrations to set or revise statutory protections on any of the above in the future.

The UK already imports agricultural products from Australia, including beef, sheep meat and dairy, which have to meet our stringent import requirements. This includes where products from Australia are produced to requirements that are different from ours. The FTA will not result in new permissions or access for products which are otherwise not permitted or present in the UK market prior to the agreement coming into force.

Stakeholders across the UK have raised concerns about the different levels of statutory protections and whether that provides a price advantage for Australian imports. The TAC's advice includes an assessment of the potential for import volumes of food produced to certain production, environmental and animal welfare practices identified during their consultation to increase where there has been tariff liberalisation. It also includes an assessment of whether different statutory protections result in a cost saving for Australian producers. In most cases the TAC found that there was not necessarily a general correlation between differing levels of statutory protections and either a potential increase in the volume of imports entering the UK or cost savings for Australian producers. Nevertheless, to address stakeholder concerns, the UK and Australia have agreed to strong cooperation commitments to work together on areas such as animal welfare and the environment. The UK has also agreed a non-regression and non-derogation clause on animal welfare, helping demonstrate that the countries are committed to not lowering animal welfare standards to undercut the other. Furthermore, imports of pork,

⁷ Further information can be found at: <https://www.gov.uk/government/publications/uk-australia-fta-Chapter-2-trade-in-goods>

⁸ Further information can be found at: <https://www.gov.uk/government/publications/uk-australia-fta-Chapter-3-trade-remedies>

chicken and eggs were excluded from tariff liberalisation, reflecting concerns about animal welfare and the low volumes of trade in these products.

Tariff liberalisation could improve the price competitiveness of Australian products in the UK market. Australia is a large and globally competitive exporter of beef and sheep meat (accounting for around a tenth of global exports of beef and a third of sheep meat). The potential increase in imports of these products could bring benefits to consumers, with more choice and lower prices, but would also compete with domestic producers in these sectors. The aforementioned TRQs and PSSs have been introduced to afford additional protections to help protect sensitive sectors if needed, in addition to the bilateral safeguard mechanism which applies to all products.

As part of the FTA, the government has conducted an Impact Assessment⁹, which considers potential impacts on UK sectors and provides the government's best estimates of how UK imports from Australia might change.

Concerns addressed by the TAC

The TAC's advice engaged with perceived public concerns in relation to Sanitary and Phytosanitary Measures, Animal Welfare Concerns and Environmental concerns. We address some of the issues raised below.

Hormonal growth promotants (HGP)s

The TAC concludes (p. 45) the following on HGPs:

'It is currently illegal for beef from cattle treated with HGPs to be imported into the UK. The FTA does not change the WTO legal position on such a prohibition.'

The UK prohibits the use of artificial growth hormones in both domestic production and imported meat products. Nothing in this agreement changes that. All agri-food products imported into the UK under existing or future free trade agreements will, as now, have to comply with our import requirements.

The Australian beef industry has set up a cattle herd segregation and processing system for producing hormone-free beef for European markets. This system segregates hormone-treated and hormone-free herds to ensure that Australian beef exported to the UK is free from HGPs. The TAC found no reason to believe the scheme is not reliable and robust.

Pesticides

The TAC concludes (p. 48) the following in relation to pesticides:

'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. However, the FTA is likely to lead to increased imports of products that have been produced at lower cost by using pesticides in Australia that would not be permitted in the UK. That said, 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.'

⁹ The Impact Assessment can be found at: <https://www.gov.uk/government/publications/uk-australia-fta-impact-assessment>

This agreement does not create any new permissions or authorisations for imports from Australia. All agri-food products imported into the UK under this agreement will, as now, have to comply with our import requirements including Maximum Residue Levels (MRLs).

UK legislation has retained the statutory requirements of the EU regime relating to standards of protection for pesticides, including the MRL regime.

GMOs

The TAC concludes (p. 51) the following in relation to GMOs:

‘There is little GMO production in the UK, but it is currently legal to import and market GMO products, provided that it is labelled as such. It is possible that GM canola oil (from rape oilseed) from Australia will be imported in increased quantities under the FTA. The other two crops which are produced using GMOs in Australia, cotton and safflower, will not be imported in increased quantities under the FTA. The UK’s WTO rights to regulate the import of GM products remain the same under the FTA.’

Any GMO imported into the UK must undergo a rigorous safety assessment led by the Food Standards Agency and Food Standards Scotland. These agencies will provide independent advice to ministers on whether to approve any GMO for sale or not. If approved, the product must be appropriately labelled. Any GMO already being imported has already passed such an assessment.

Further information on the FSA/FSS transparent approach to approval of GMOs can be found here: <https://www.food.gov.uk/business-guidance/regulated-products/genetically-modified-organisms-guidance>

Animal Welfare concerns

The TAC addressed a number of issues relating to animal welfare, including mulesing, transport conditions and hot branding of cattle (p. 37-39).

For all of the concerns raised in relation to animal welfare, this agreement does not create any new permissions or authorisations for imports from Australia.

The Australian wool farming industry has previously committed to phasing out the practice of mulesing, and we want to see this happen.

Through the agreement, Australia have committed to working together on a full range of animal welfare matters. This includes commitments to cooperate with them to strengthen animal welfare standards.

Deforestation

The TAC concludes (p. 66) the following in relation to deforestation:

‘Deforestation may occur in some years and in some parts of Australia, even though overall, on a net basis, Australia has been reforesting rather than deforesting. It cannot be excluded that in some cases deforested land is used to produce agricultural products which will be imported in greater quantities into the UK, such as beef and cereals. Cotton, however, which is more likely to be grown on deforested land, will not be imported into the UK in greater quantities than present, because cotton is already imported duty free under the UK’s WTO obligations. In addition, we note that the Australian meat industry has committed to a net zero target by 2030.’

We have agreed a comprehensive environment Chapter in the UK-Australia FTA. This Chapter includes specific commitments to combat illegal logging and related trade - an issue of critical importance to the preservation of our natural environment and biodiversity.

In this FTA both the UK and Australia recognise the importance of sustainable forest management, and the importance of halting deforestation and forest degradation, including with respect to trade in commodities related to those activities.

The agreement also strengthens our bilateral cooperation and information sharing on the issue of deforestation and includes a commitment to cooperate both bilaterally and multilaterally on opportunities to halt deforestation and forest degradation.

Outside the FTA negotiations Australia signed up to the Glasgow Leaders' Declaration on Forests and Land Use at COP26, which includes a pledge to halt and reverse deforestation by 2030.

Climate change

The TAC concludes (p. 68) the following in relation to climate change:

'We have been provided with no evidence to support the notion that agricultural production in Australia of products likely to be imported at an increased rate into the UK under the FTA is more emission-intensive than comparable products in the UK, and in particular whether if this might occur, that Australian producers would be at a cost advantage compared to UK producers. We do on the other hand have evidence that increased emissions due to transport of these products to the UK is likely to be negligible.'

The UK has signed a comprehensive Environment Chapter with Australia under the FTA. It includes commitments to ensure that neither Australia nor the UK can derogate from, waive, or fail to enforce their domestic environmental laws in order to promote trade or investment. This FTA marks the first time a standalone Article on the environment and climate change is included in an FTA to which Australia is a signatory.

This Chapter also recognises our right to regulate to meet environment and climate change objectives, and affirms our shared commitment to tackle climate change, including under the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement.

The Environment Chapter goes beyond the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and all other previous Australian FTAs, recognising the importance of, and cooperating on, issues such as sustainable forest management, the circular economy, air quality and marine pollution and litter.

The UK has signed a comprehensive environment Chapter with Australia under the FTA. It includes commitments to ensure that neither Australia nor the UK can derogate from, waive, or fail to enforce their domestic environmental laws in order to promote trade or investment. this FTA marks the first time a standalone Article on the environment and climate change is included in an FTA to which Australia is a signatory.

Annex A - FSA and FSS Advice

FOOD STANDARDS AGENCY AND FOOD STANDARDS SCOTLAND JOINT SECTION 42 ADVICE – UK-AUSTRALIA FREE TRADE AGREEMENT

1.0 Introduction

1.1 As the UK's Food Safety Authorities with a statutory duty to protect food and feed safety¹⁰ and consumers' interests in relation to food, the Food Standards Agency (FSA) and Food Standards Scotland (FSS) were asked by the Department for International Trade (DIT) on the 8th March 2022 to provide joint advice on the UK-Australia Free Trade Agreement (FTA), as signed on the 16th December 2021. Specifically, FSA and FSS were asked, in accordance with section 42(4) of the Agriculture Act 2020, to provide advice on whether, or to what extent, the measures in the UK-Australia FTA are consistent with the maintenance of UK levels of statutory protection for human health for the areas within FSA/FSS statutory remit. This response represents our advice to DIT's request.

1.2 In summary, the FSA/FSS advice is that:

- The UK-Australia FTA maintains existing food safety statutory protections in accordance with retained law.
- No changes to the UK food safety regulatory system are required to give effect to this FTA at the point of entry into force.
- The FTA text preserves the regulatory autonomy of the UK Government and devolved administrations with respect to matters of food safety, and will not prejudice any future decisions in this regard, which will continue to be taken by health ministers across the UK informed by transparent advice on science and evidence from the FSA and FSS. This is key to upholding statutory protections in the future.

2.0 Scope of FSA and FSS advice

2.1 Whilst recognising that human health issues related to food go wider than food safety, on this occasion the FSA and FSS are providing advice on food safety statutory protections only. The advice therefore does not cover broader public health statutory protections, a separate assessment for which will be included in the UK Government's main report. Nor does the advice cover statutory protections for non-safety food standards which are out of scope of this advice. The FSA/FSS will consider our approach on broader human health issues related to food for future requests for advice under section 42(4) of the Agriculture Act 2020.

2.2 UK levels of statutory protection are defined in the Agriculture Act 2020 as being the levels of protection provided for under any legislation which has effect in, or in any part of, the United Kingdom. Food safety is a devolved competence, meaning that any extant food safety legislation that has legal effect in Wales, Scotland, England or Northern Ireland (NI) is relevant to this consideration. This includes national and retained EU law applicable within Great Britain, as well as national and EU law currently applicable within Northern Ireland by virtue of the Northern Ireland Protocol. All references to UK food safety requirements in this advice relate to this food safety legislation, which has been taken into account in the joint FSA/FSS advice below.

¹⁰ For the purposes of this advice, any reference to food safety includes feed safety where it relates to human health.

3.0 Consumer and stakeholder interest

- 3.1 In writing this advice, it is important to first set out the relevant wider context in relation to consumer views and stakeholder concerns. Further to the request received from DIT, the FSA and FSS therefore invited submissions on food safety statutory protections from interested parties, including those who represent the interests of consumers. With thanks to respondents, relevant views received as part of this consultation process have been cited in our advice.
- 3.2 Data from recent FSA and FSS consumer engagement surveys has consistently shown that consumers have significantly greater levels of concern about food produced outside the UK than within the UK. In the latest wave of the FSA's 'Food and You2'¹¹ survey, which collected views from consumers in England, Wales and Northern Ireland between April and June 2021, 75% of participants had concerns about food outside the UK being safe and hygienic compared to 54% for food within the UK; 71% were concerned about food produced outside the UK being what it says it is, compared to 51% for food coming from within the UK. The most recent wave of FSS' Food in Scotland survey, from December 2021¹², found that 70% of respondents indicated they were concerned about food standards and the quality of food we eat, and FSS consumer research conducted in September 2020 ahead of EU Exit¹³ found 77% of respondents were either 'quite or very concerned' about a drop in standards post 31st December 2021. A nationally representative FSA poll conducted in November 2020¹⁴ found that almost eight in ten people (78%) supported the UK keeping its current food standards, even if food was more expensive and less competitive in the global market.
- 3.3 In June 2021, Which?¹⁵ conducted research with a nationally representative group of 3,263 consumers to understand their views and attitudes towards international trade. Which? also reported high levels of support for maintaining UK food safety standards. Of the respondents surveyed they reported that 91% thought that the UK government should make sure that when agreeing trade deals the same standards relating to safety and health should apply to imports as to food produced in the UK. In their response to our engagement with interested parties, Which? cited that *"it is important that the FTA does not undermine the UK's ability to regulate in the way it needs to in the future – whether for food safety or in order to uphold other consumer interests in relation to food"*.
- 3.4 It is clear from this evidence that maintaining food safety standards in trade deals is important to consumers and stakeholders and existing statutory protections, such as the right to regulate for levels of protection appropriate to UK consumers based on science and evidence, and the right to take proportionate precautionary action on a provisional basis to protect consumers, will play a key role in how those standards are maintained in future. FSA and FSS will continue to provide science and evidence-based advice to ministers that takes into account consumers' wider interests in relation to food so that they can have confidence that food is safe and what it says it is as the UK Government takes forward its independent trade policy. Stakeholders have also been clear on the importance of having robust scrutiny arrangements in place for assessing the impacts on human health.

¹¹ [Food and You 2 - Wave 3 | Food Standards Agency](#)

¹² [Food in Scotland Consumer Tracker Survey Wave 13 | Food Standards Scotland](#)

¹³ [FSS Brexit survey](#)

¹⁴ [Food in a Pandemic | Food Standards Agency](#)

¹⁵ [Which? consumer priorities and trade deals Dec 21](#)

4.0 Overview

- 4.1 The preamble to the UK-Australia FTA legal text sets the tone for a trading agreement which is underpinned by some important themes in the context of maintaining statutory protections for food safety. Namely, the Parties recognise each other's respective autonomy and sovereign right to regulate within their territories in order to achieve legitimate public policy objectives, including the protection of public health.
- 4.2 The initial provisions in Chapter 1 support this theme by setting out that the Parties affirm existing rights and obligations under the World Trade Organization (WTO). In a food safety context, these basic international rights allow the UK Government and devolved administrations to continue to take proportionate unilateral measures necessary to protect the health of consumers across the UK.
- 4.3 Given that regulatory autonomy is underlined as important to both Parties in this FTA, it follows that no new permissions or authorisations were agreed 'up-front' for agri-food products that are not already authorised for import to the UK or Australia. In order to access each other's market for any new agri-food exports, each Party must submit an application via each other's respective market access processes. In the UK, for products of animal origin (POAO), such applications are received, coordinated and risk assessed by the Defra-led UK Office for Sanitary and Phytosanitary (SPS) Trade Assurance, with input from FSA/FSS, Defra agencies and other government departments as appropriate. Access for any new agri-food products would only be permitted following a robust assessment to confirm a trading partner is able to meet UK import requirements. Such assessments would also look at food production standards in the exporting country, which could differ without impacting on food safety. The FTA does not include provisions that affect the existing UK ban on certain growth promoters used in meat production such as hormone treated beef, which applies to both domestic and imported foods.
- 4.4 In the same way, should an Australian business wish to market a new product in Great Britain (GB) such as a novel food, food additive or genetically modified food, an application would need to be made through the regulated products application service and undergo risk analysis by FSA/FSS to determine the safety of the product before it could be authorised for use as an ingredient in foods imported into GB.¹⁶
- 4.5 Negotiation of this FTA will not require any new food safety legislation, nor any changes to domestic regulatory food safety policy to be brought forward by the FSA or FSS in order to meet the obligations at the point of entry into force.
- 4.6 Pesticide Action Network UK has concerns that "*the FTA might facilitate trade in foodstuffs containing pesticide residues that are not currently allowed to appear in UK food because they pose a risk to human health*" and this concern is shared by Sustain. Australia already exports a range of agri-food products to the UK. In 2019, for example, Australia exported 9,112 tonnes of meat and meat offal, 12,808 tonnes of vegetables and certain roots and tubers, 43,577 tonnes of animal / vegetable fats and oils, 7,345 tonnes of cereals and 236,638 tonnes of beverages, spirits and vinegar¹⁷. Crucially, food and feed imports from Australia continue to have to meet UK food safety requirements, including, for example, complying with any existing prohibitions and maximum limits for pesticide residues (MRLs) and veterinary medicines, in addition to any other maximum levels for contaminants etc. Both under WTO terms, and under the terms of this FTA, nothing would prevent the UK Government or devolved administrations from maintaining or introducing science and evidence-based measures, or from taking provisional action on the basis of pertinent

¹⁶ [GB Regulated Products Application Service](#)

¹⁷ UK Trade Info from HMRC (<https://www.uktradeinfo.com/>), as summarised in the FSA trade tool: <https://foodstandards.shinyapps.io/TradeDataVis/>

information, for imported food and feed which would deviate from international standards or guidelines in order to meet the level of food safety protection deemed appropriate for consumers across the UK.

- 4.7 Products of animal origin imported to the UK from Australia only do so on the basis that Australia is listed as an approved country by the UK and listed for that particular commodity. Such commodities must come from establishments that meet UK requirements. The listing process is now managed by the UK Office for SPS Trade Assurance and involves, amongst other things, audit and assessment of a country's system of official controls and the country's residue monitoring plan. Further assurances that consignments are meeting UK import requirements are provided by the official certification accompanying the consignment that attests that the POAO has been produced to UK standards. Consignments are subject to official controls at the UK border and a percentage are subject to physical checks which may include testing for contaminants such as heavy metals or veterinary residues. Nothing in the FTA removes any of these requirements and assurances with regards to ongoing trade.

5.0 Relevant chapter analysis

5.1 In assessing the maintenance of existing statutory protections for food safety, the following chapters are particularly relevant:

Chapter 5 – Customs Procedures and Trade Facilitation
Chapter 6 – Sanitary and Phytosanitary (SPS) Measures
Chapter 7 – Technical Barriers to Trade (TBT)
Chapter 25 – provisions on antimicrobial resistance (AMR)

5.2 Chapter 5 – Customs Procedures and Trade Facilitation

There are several articles in this chapter which contain provisions relating to the customs procedures for goods, in particular articles 5.7 on Expedited Shipments, article 5.8 on Release of Goods and article 5.20 on Perishable Goods. In all cases, exemptions have been included in the text which ensures that where SPS checks by Port Health (including food safety import checks) are required, these can still be conducted as they are now without any time constraints. This means that where documentary, identification or physical checks including sampling and testing, is required for the purposes of public health protection, the release times stipulated in these articles would not apply.

Article 5.9 on risk management is also pertinent to official controls carried out at Border Inspection Posts by Port Health Authorities. Nothing in the article prevents Port Health from continuing to conduct risk-based imported food and feed checks and surveillance as is the case now.

5.3 Chapter 6 – Sanitary and Phytosanitary (SPS) Measures

The SPS chapter text agreed with Australia is of fundamental importance when it comes to reserving the UK's right to maintain existing laws and regulations to protect human life and health, including food safety. It is also important that the agreed text has not impinged on the way food law regulation and enforcement is implemented in the UK – the following key articles outline how the text achieves this:

5.3.1 Article 6.4 Affirmation of the SPS Agreement

Affirmation of rights and obligations under the WTO SPS Agreement means that the Parties recognise that WTO terms have primacy when it comes to the application of measures that protect human health and life. Nothing in the SPS Chapter with Australia will affect that and this is significant as the WTO SPS Agreement provides both Parties with important rights that allow us to respectively set our

own level of public health protection appropriate to the population in line with the relevant science and evidence, socio-economics and technical feasibility (Art 5, WTO SPS Agreement¹⁸).

5.3.2 Article 6.5 Science and Risk Assessment

The article on science and risk assessment reaffirms the importance of ensuring that SPS measures are based on scientific principles (in line with Art 2(2) of the WTO SPS Agreement). It also directly references the article 5 WTO provisions on risk assessment which includes the ability to adopt provisional SPS measures on the basis of pertinent information where relevant scientific evidence is insufficient. These international rules underpin the UK's own framework for food safety regulation – for example, UK general food law includes a precautionary principle that can be adopted where the possibility of harmful effects on health is identified but scientific uncertainty persists. Nothing in this article restricts the way in which the FSA and FSS carry out risk analysis for food and feed safety issues.

5.3.3 Article 6.7 Equivalence

Article 4 of the WTO SPS Agreement on Equivalence¹⁹ obliges WTO Members to accept the SPS measures of other Members as equivalent even if these measures differ from their own if the exporting Member objectively demonstrates that its measures achieve the importing Member's appropriate level of protection. The WTO SPS Committee developed specific guidance to help Members implement this article²⁰. Such equivalence determinations are trade facilitative and can result in smoother trade in the products affected by the laws and regulations that have been deemed as equivalent.

No new equivalence determinations for agri-food products were agreed as part of this FTA. High level principles re-affirming WTO terms on the approach each Party will have to future equivalence determinations were agreed, along with text which leaves the door open for the Parties to establish a more detailed, mutually agreeable process by which equivalence determinations can be made in the future. How any future equivalence mechanism might work in practice will be key, and FSA and FSS would be involved in any future discussions on such a process. FSA and FSS would also play a key role alongside other government departments in risk assessing any future equivalence requests and recommending any special conditions of trade (which could include particular requirements for processing, packaging etc.) that may be required to meet the UK's level of protection with regard to food safety. This is important because, as Which? has highlighted in its response – *“how equivalence is applied will be significant because many of the standards that matter to consumers are about how the level of protection is achieved, i.e. the production process, not merely the end result”*. Such determinations would also not restrict the UK from making changes to our SPS regime in future in the interests of consumers across the UK, in which case any determination would be reviewed. Importantly, the final decision on equivalence always rests with the importing party.

5.3.4 Article 6.8 Trade Conditions

Nothing in this article affects the ability of FSA and FSS to carry out its role and develop risk management advice and implement food law as we do now.

¹⁸ [The WTO Agreement on the Application of Sanitary and Phytosanitary Measures](#)

¹⁹ Equivalence is defined by the WTO as “the state wherein sanitary or phytosanitary measures applied in an exporting country, though different from the measures applied in an importing country, achieve, as demonstrated by the exporting country and recognized by the importing country, the importing country's appropriate level of sanitary or phytosanitary protection”.

²⁰ [WTO SPS Committee's Decision on Equivalence](#)

5.3.5 Article 6.9 Audit and Verification

Whether in the context of UK audit in Australia or hosting an inward mission from Australia here in the UK, this article sets a helpful framework for conducting audits with a view to minimising burdens on the Parties and ensuring that the parameters of an audit are clearly communicated and agreed in advance. Nothing in the article prevents the UK from conducting an audit where justified for the purpose of seeking assurances on Australia's food safety control systems, nor does it prevent the UK from taking emergency food safety measures as appropriate (see para 5.3.8 below).

5.3.6 Article 6.10 Certification

This article preserves UK's right to require official certification of imported foods from Australia where deemed necessary in order to receive assurances on a consignment-by-consignment basis that UK import requirements have been met. This is, however, only to the extent necessary to meet the objective of laws and regulations applicable within the UK – this is in keeping with the proportionate and risk-based approach taken to food safety regulation in the UK.

5.3.7 Article 6.11 Import checks and fees

This article does not constrain the UK's right to carry out risk-based import checks and to take appropriate enforcement action where non-compliance is identified, in line with existing UK laws and regulations.

5.3.8 Article 6.12 Emergency SPS Measures

The emergency measures text respects both Parties' right to take rapid action to protect human life and health and lays down some parameters for how the Parties would engage in such instances and for conducting science-based reviews to justify either continuance or lifting of the measures.

5.3.9 Article 6.14 Transparency, Notification and Information Exchange

This article obliges Australia to promptly notify the UK of a significant food safety issue related to a good traded with the UK and to share information in a timely manner which may support our response. This complements the good relationships the FSA and FSS already have with the Emergency Contact Points in the Australian Food Safety Authority and as members of INFOSAN – International Food Safety Authorities Network. Similarly, information relating to any significant food safety issue affecting NI would additionally be communicated via the EU Rapid Alert System for Food and Feed, as NI is within the EU regulatory zone.

5.3.10 Article 6.16 Committee on SPS Measures

This article establishes a forum through which UK and Australia can consider any matter related to the SPS Chapter. This includes, for example, periodically reviewing the implementation of the chapter by the Parties, exchanging relevant information and identifying opportunities to work collaboratively. Notably, the Committee's activities may include discussion of proposed SPS measures being considered by either the UK or Australia, agreement of a procedure for equivalence assessments, as well as resolution of SPS issues that affect trade between the two countries. It is important to highlight that this forum, along with any technical working groups established by the SPS Committee, will be working to resolve trade issues within the confines of the existing regulatory frameworks. These committee structures are not intended to replace or usurp the separate decision making mechanisms and processes through which trading partners, including Australia, can, for example, apply to export a new product to the UK, or be formally consulted on proposed new regulations etc. The forum will help signpost to these dedicated channels and facilitate communications between us. This is crucial to the fundamental commitment made by both sides in this FTA to recognise each other's respective

autonomy and sovereign right to regulate within their territories and will be key to upholding statutory protections in the future.

5.3.11 Article 6.18 Non-Application of Dispute Settlement

Non-application of dispute settlement to the SPS chapter means that neither the UK nor Australia have recourse to dispute settlement under the FTA for SPS matters. Any dispute would instead need to be raised via WTO mechanisms as is the case now. However, Parties may make use of the FTA provisions on technical consultation to try to resolve issues bilaterally.

5.4 Chapter 7 – Technical Barriers to Trade (TBT)

The TBT chapter is relevant to the maintenance of statutory protections in relation to human health, including food safety, insofar as it preserves the UK's right to regulate in line with international WTO rights and obligations and with respect to specific marking and labelling provisions, as detailed below.

5.4.1 Article 7.4 Affirmation of the TBT Agreement

Affirmation of rights and obligations under the WTO TBT Agreement means that the Parties recognise the primacy of WTO terms in applying technical regulations, standards and conformity assessment procedures. The agreed text therefore re-affirms the right of the UK to implement technical measures to achieve legitimate policy objectives, including the protection of human health and food safety (Art 2, WTO TBT Agreement).

5.4.2 Article 7.5: Technical Regulations

Article 2.7 of the WTO SPS Agreement obliges WTO members to give positive consideration to accepting as equivalent, technical regulations of other members, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfil the objectives of their own regulations.

This article reaffirms this WTO commitment, and requires UK and Australia, on request, to explain the reason for not accepting a technical regulation of the other Party as equivalent to its own. As such, it does not change existing UK statutory protections insofar as it may relate to technical food and feed safety regulations.

5.4.3 Article 7.6: International Standards

This article reaffirms WTO commitments to base TBT measures on relevant international standards where they exist. This does not affect the UK's right to regulate or require changes to existing statutory food safety protections.

5.4.4 Article 7.8 Marking and Labelling

This article builds on the general rights and obligations contained within the WTO TBT Agreement with specific reference to marking and labelling, which includes marking or labelling measures required for food or feed safety purposes. In line with WTO commitments, the text of this article therefore safeguards the UK's right to regulate for the purpose of food and feed safety labelling and does not require changes to existing statutory protections in the UK. Both the UK and Australia must ensure such measures are non-discriminatory and are no more trade-restrictive than necessary to fulfil legitimate policy objectives (Article 2, WTO TBT Agreement). The article also provides some flexibility for both the UK and Australia to accept mandatory marking or labelling information being provided on detachable labels or accompanying documentation, where legitimate policy objectives are not compromised.

5.5 Chapter 25 – provisions on antimicrobial resistance (AMR)

5.5.1 Article 25.2 Antimicrobial Resistance

AMR is a national strategic priority for the UK Government and devolved administrations which has led to the development of a 20-year Vision for AMR and the current 5-year National Action Plan (NAP), which runs until 2024. Outputs from the FSA's and FSS' AMR research programme and cross-government partnership activity is contributing to the NAP as well as improving our ability to undertake AMR food safety risk assessments to ensure that future work meets important and emerging challenges. The Chapter 25 text on AMR promotes strengthened AMR surveillance and monitoring (25.2(5)) which is supportive of our own AMR research programmes and surveillance agenda. The recognition of the importance of a 'One Health' approach in line with the Global Action Plan (25.2(2)) is in line with the approach FSA and FSS are taking in relation to surveillance activities, acknowledging the critical implications for food safety, human health and food security. The 'Alliance to Save Our Antibiotics', whilst recognising that the FTA itself doesn't apply safeguards, has also welcomed the recognition between UK and Australia of the importance of a transnational, 'One Health' approach to AMR in the FTA.

6.0 Conclusions

6.1 We have set out the FSA and FSS's advice on the text of the UK-Australia FTA and its impact on statutory protections for food safety. In summary, our conclusions are:

- The UK-Australia FTA maintains existing food safety statutory protections in accordance with retained law.
- No changes to the UK food safety regulatory system are required to give effect to this FTA at the point of entry into force.
- The FTA text preserves the regulatory autonomy of the UK Government and devolved administrations with respect to matters of food safety and will not prejudice any future decisions in this regard, which will continue to be taken by health ministers across the UK informed by transparent advice on science and evidence from the FSA and FSS. This is key to upholding statutory protections in the future.

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