Department for International Trade

Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement

April 2022

Trade and Agriculture Commission: Advice to the Secretary of State for International Trade on the UK-Australia Free Trade Agreement

Presented to Parliament
by the Secretary of State for International Trade
by Command of Her Majesty

April 2022

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Contents

Trade and Agriculture Commission

Advice on Australia-UK FTA

31 March 2022

I. Our mandate

A. Terms of reference and request for advice

Our terms of reference, which we adopted on 6 December 2021, state as follows:

> *The TAC's purpose is to provide advice under section 42 of the Agriculture Act 2020. In particular, the TAC will provide advice on whether, or to what extent, the measures provided for by new free trade agreements (FTAs) that 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) environmental protections*

On 17 December 2021, the Rt Hon Anne-Marie Trevelyan MP, the Secretary of State for International Trade requested us to advise her on the UK-Australia FTA as follows:

> *In line with the TAC Terms of Reference, which can be found on gov.uk, I am writing to request your advice on whether, or to what extent, the measures in the UK-Australia FTA – as signed on 16 December 2021 – that 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) environmental protections.*
>
> *I would like to request that this advice be produced on a chapter-by-chapter basis, though the TAC is welcome to include additional sections it sees fit.*
>
> *In producing its report I would envisage that the TAC would:*
>
> - *Conduct an initial assessment of which chapters it considers to be in / out of scope (that is which contain measures relating to trade in agricultural products)*
> - *Consider all relevant measures within in-scope chapters*
> - *With regard to relevant measures within in-scope chapters, provide responses to the following questions:*
>   - *Does the UK-Australia FTA require a change to UK domestic statutory protections in relation to animal or plant life or health; animal welfare; and, the environment?*
>   - *Does the UK-Australia FTA affect the UK Government's ability to set statutory protections in these specified areas?*
>   - *Does the UK-Australia FTA underline any existing UK domestic statutory protections – or in some instances go beyond them – in relation to: animal or plant life or health; animal welfare; and the environment?*
>
> *The TAC should also:*
>
> - *consider the landscape of statutory protections across the UK, reflecting on all parts of the UK*

- *consult those it considers may assist in the preparation of this advice and note in the advice – where relevant – those whom the TAC consulted*
- *given the government's trade agenda is of interest to many, consider how to make its advice accessible and readable to a non-technical audience*

B. Our approach

Reading our terms of reference and the request from the Secretary of State together, we consider that our mandate requires us to address three questions.[1] First, we consider **(1) whether the FTA requires 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.[2] Second, we consider **(2) whether the FTA reinforces the UK's levels of statutory protection** in these areas. In this context, we consider obligations in the FTA which require the UK and Australia to adopt high standards of protection in the relevant areas. Third, we consider **(3) whether the FTA otherwise affects the ability of the UK to adopt statutory protections** in these areas. In this context, we consider several issues: how decisions are made under the FTA and how that might affect the UK's statutory protections, the potential resource implications of increased imports on border controls, and the extent to which the FTA affects the ability of the UK to respond to concerns, raised during our consultations, about the potential effects of the FTA on animal or plant life or health, animal welfare and environmental protections.

C. Our approach in detail

We consider how the UK-Australia FTA, insofar as it relates to trade in agricultural products, relates to relevant UK statutory protections in relation to animal or plant life or health, animal welfare and environmental protection. We must therefore identify both the relevant provisions of the FTA, and relevant statutory protections in these areas.

1. The WTO as a baseline

The FTA does not exist in isolation. It assumes, incorporates and, in some cases, goes beyond WTO rights and obligations which already apply to trade between the UK and Australia in their capacity as WTO Members. In answering the questions posed, our approach is to consider the difference (if any) that the FTA makes to the WTO legal framework. That is to say, where the FTA simply replicates the UK's legal position under WTO law, we do not consider that the FTA has any added effect on the UK's maintenance of statutory protections. We explain where this is the case below.

2. The FTA

We identify four main categories of FTA provisions that are relevant to trade in agricultural products between the UK and Australia: (a) trade liberalisation obligations,

[1] For analytical clarity, we answer these questions in a different order than posed.

[2] Our mandate does not include consideration of the effects, if any, of the FTA on the maintenance of UK statutory protections in relation to human health. That is being considered separately by the Food Standards Agency.

(b) rights to restrict trade, (c) obligations to maintain standards, and (d) institutional provisions.

a) Trade liberalisation obligations

The FTA contains provisions that create enhanced market access opportunities to the UK for Australian agricultural products. This is done in three main ways.

The first way that this is done is via the UK's **obligation to reduce customs duties** beyond WTO commitments on certain products.[3] In line with our mandate, we do not seek to quantify the extent to which these tariff reductions are likely to result in increased imports of these products. However, we do consider these provisions in order to identify the products that are likely to be traded at an increased rate between the UK and Australia as a result of the FTA, so that we can consider the likely effect of the FTA on statutory protections relevant to these particular products and any related (ie downstream or upstream) products or services.

This is not the only way that the FTA that can result in increased imports of Australian products. A second way that this can be done, under the FTA (but also under WTO law), is via rules on non-tariff barriers, good regulatory practice, customs and trade facilitation. A particularly relevant means of reducing trade barriers is by means of **equivalence determinations** by which the UK can permit Australian products to enter the UK market when they are produced according to standards that are deemed equivalent to UK standards even if these two sets of standards differ. Where this involves a cost saving for Australian production, this could have a bearing on the competitive position of Australian imports. We consider this issue below.

A third way in which the FTA can increase trade in a given product is by **reducing the burden of UK import controls**, instead delegating part of this process to Australia prior to export. This can be done by various means, from pre-listing to so-called 'mutual recognition agreements' on conformity assessment procedures (eg accepting the results of testing and certification performed in the other contracting state).[4] The FTA does not require any such reductions in the UK import control regime, but we consider below the options under the FTA for such arrangements in the future. It bears noting that it is possible for the UK to do this under WTO law; the FTA merely sets out a more detailed mechanism for how this can be done in practice.

b) Rights to restrict trade in products that do not meet domestic standards

Obligations that enhance market access for products from the FTA parties – which include rules on tariff reductions, non-tariff barriers, good regulatory practice,

[3] This is done in several ways. For many products, duties are eliminated on the FTA's entry into force. For others, duty reductions take place over time. For beef and sheepmeat, for example, duty reductions take place via an increase in the quantities permitted under duty free tariff rate quotas (TRQs), or subject to product specific safeguard restrictions, with full duty free treatment after 15 years. Some products are not liberalised at all (eg pork, chicken and eggs), while others are liberalised by increasing a duty free TRQ.

[4] A point on terminology: in this context, 'mutual recognition agreements' refer to agreements on conformity assessment procedures rather than agreements on the 'mutual recognition' of the parties' underlying standards. The term used for the latter is 'equivalence'. But there are exceptions. For example, the Trans-Tasman Mutual Recognition Agreement is an agreement on the mutual recognition of the underlying standards.

equivalence and customs and trade facilitation – are the core of every FTA. However, these obligations are always subject to exceptions and other rules which ***permit*** **the FTA parties to protect non-trade interests**, including plant or animal life or health, animal welfare and environmental protection. Accordingly, our advice considers those provisions in the FTA which permit the UK to restrict imports of Australian agricultural products that do not meet UK standards on animal or plant life or health, animal welfare and environmental protection. The key chapters in this regard are Ch 6 (Sanitary and Phytosanitary Standards (SPS)), Ch 7 (Technical Barriers to Trade), Ch 22 (Environment), Ch 25 (Animal Welfare and Antimicrobial Resistance) and Ch 31 (General Exceptions).

c) Obligations to maintain statutory protections

The FTA also establishes certain obligations that ***require*** **the parties to maintain (or even improve) statutory protections** in certain areas, most notably in Ch 22 (Environment) and Ch 25 (Animal Welfare and Antimicrobial Resistance). These chapters have two important functions in respect of trade in agricultural products under the FTA. First, they reinforce the UK's ability to maintain its statutory protections, both directly (by requiring the UK to continue certain protections) and indirectly (by serving as interpretive context to other provisions that give the UK a right to maintain statutory protections). Second, these obligations require Australia to enforce certain Australian statutory protections, thereby preventing Australia from obtaining cost and trade advantages by not applying certain of its own laws. We consider how these chapters relate to relevant UK statutory protections (identified below).

d) Institutional provisions

A separate set of provisions relates to the way that the FTA is administered. This involves the mechanisms in which the UK and Australia are able to discuss concerns arising under the agreement but also the mechanisms by which the parties are able to agree on enhanced market access. Most importantly, this concerns future decisions on equivalence of UK and Australian standards. In some cases, it also includes a mechanism for settling disputes. We consider how these institutional provisions relate to the UK's ability to maintain, adopt and enforce relevant UK statutory protections, and its ability to ensure that Australia does the same.

3. 'UK levels of statutory protection'

Our mandate requires us to consider the likely effect of the FTA on the maintenance of 'UK levels of statutory protection'. We therefore need to distinguish between rules, standards and practices that fall within the definition of 'statutory protection' and those that do not.

In this respect, we consider that this definition covers *mandatory* rules, standards and practices, whatever their legal form. However, it does not cover *voluntary* standards and practices, which may be followed by producers and retailers, and which are usually advertised to consumers by labels, for example the Red Tractor, Leaf Marque and RSPCA Assured labels, and which typically involve higher standards.[5] Such

[5] Voluntary standards go beyond UK legislation in several areas, for example, mutilations (castration, dehorning, disbudding and tail docking), herd health planning and antibiotic use. In addition, producers

voluntary standards have value, first of all to consumers, who are interested in whether products are made according to these conditions, and, secondly, to producers (and others in the value chain), who have a commercial incentive to produce according to these standards. We note that UK agricultural products are in many cases almost entirely produced in accordance with such voluntary standards,[6] and these enjoy widespread public recognition. In addition, producers complying with these voluntary standards are routinely subjected to independent inspection at higher rates than would be required by law.

We also consider UK levels of statutory protections to include mandatory rules, standards and practices adopted at all levels of government, including, importantly, the devolved jurisdictions. And we consider, where relevant, statutory protections that are not yet in force, but are going through the parliamentary process.

4. UK statutory protections at issue

We consider that we should not consider the FTA in the abstract, but rather as it is likely to have an impact on trade in agricultural products in reality. This means that we focus on UK statutory protections relevant to agricultural products likely to be affected by increased trade under the FTA.

a) Products likely to be traded under the FTA

Accordingly, and taking into account the Government's impact assessment, tariff and quota reductions and previous traded quantities, we focus on statutory protections relevant to products we believe will be traded in greater quantities than presently, and products that could be traded in greater quantities, but which will be in competition with other UK suppliers or where tariffs are already low. A large number of agricultural products will not see increased trade either because there is no UK market for them, Australia does not produce them in commercial quantities, or both Australia and the UK are either net importers or net exporters of these commodities, vastly reducing the potential of increased trade unless there is a seasonal advantage.

complying with these voluntary standards are routinely subjected to independent inspection by ISO accredited bodies at higher rates than would be required by law. See United Kingdom Accreditation Service, *Food Sector Accreditation*, https://www.ukas.com/accreditation/sectors/food/.

[6] UK voluntary standards compliance rates are as follows: dairy (99%), beef (90%), lamb (40%) and cereals (90%). See Agriculture and Horticulture Development Board, *UK Dairy Trade Balance* (March 2022) at https://ahdb.org.uk/dairy/uk-dairy-trade-balance; British Meat Processors Association, *Beef & Veel* [accessed 31/03/2022] at https://britishmeatindustry.org/industry/imports-exports/beef-veal/; Agriculture and Horticulture Development Board, *Supply and Demand March Update,* (March 2022), at https://projectblue.blob.core. windows.net/media/Default/Market%20Intelligence/cereals-oilseeds/supply-demand/uk-supply-demand/2021-22%20-%20Mar%20update.pdf.

Increased imports	
Product code	**Product name**
0201-02	Beef, fresh, chilled or frozen
0204	Sheepmeat and goatmeat, fresh, chilled or frozen
0302-03	Fish, fresh, chilled or frozen (tuna, swordfish, sea bass, sea bream)
0306	Crustaceans, live, fresh, chilled, frozen, dried, salted or smoked
0307	Molluscs in shell or not, live, fresh, chilled, frozen, dried, salted, etc
0409	Natural honey
0706	Carrots, turnips, salad beetroots, celeriac, radishes, and similar edible roots
1001	Wheat and meslin
1103	Cereal groats, meal and pellets
1108	Starches: inulin
1109	Wheat gluten, whether or not dried
2204	Wine of fresh grapes including fortified wines
2207-08	Ethyl alcohol, spirits distilled from wine, and rum
2302-03	Prepared animal fodder, wheat resides and starch from maize
2309	Preparations used in animal feed

Small increase in imports	
Product code	**Product name**
0402	Milk and cream, concentrated or sweetened
0406	Fresh cheese, mainly unripened and uncured cheese
0802	Nuts, fresh or dried, in shell or peeled
0805	Citrus fruit, fresh or dried
0806	Grapes, fresh or dried
1003	Barley
1006	Rice
1008	Millet
1209	Seed, fruit and spores for sowing
1210	Hop cones, fresh dried ground powered or in pellets
1518	Animal and vegetable fats and oils
1602	Prepared or preserved meat, offal or blood of duck, turkey, bovine or sheep products (chicken and pork have been excluded)
1701	Cane sugar
2103	Sauces and preparations
3502	Albumins, whey proteins
3504	Peptones

We have also determined that the following agricultural products are unlikely to be imported at an increased rate under the FTA, either because the UK is a larger net exporter than Australia, or because there is no relevant export industry in Australia or no relevant demand in the UK for the product, or for economic or logistical reasons.

FTA unlikely to result in increased imports for economic or logistical reasons	
Product code	**Product name**
0101-06	Live animals
0401	Milk and cream, unconcentrated nor sweetened
0403-04	Fermented milk products or whey
0405	Butter and dairy spreads
0406	Cheese, other than fresh cheese
0601-03	Bulbs, tubbers, roots, rhizomes and cut flowers
0701-14	Potatoes, tomatoes, onions, cabbages, lettuce, cucumbers, and other vegetables
0803-13	Bananas, tropical fruit, apples, pears, apricots, berries, and dried fruit
0901-10	Coffee, tea, mate, vanilla, cinnamon, cloves, nutmeg, cardamon, anis and ginger
1004	Oats
1101-07	Wheat and cereal flours, rolled grains, meal, and malt
1211-14	Plants, locust beans, seaweeds, swedes, mangolds, alfalfa and fodder roots
1501-22	Animal fat, fish oils, soy oil, seed oil, olive oil, palm oil, including fixed or hydrogenated
1601-05	Sausages, extracts of meats, fish or crustaceans, prepared or preserved fish or crustaceans
1702-04	Other sugars and confectionary
1803-06	Cocoa paste, butter, power and chocolate
1902-05	Pasta, cereal foods, bread, biscuits, pastry and cakes
2001-09	Preserved fruits, nuts or vegetables
2101-05	Extracts and concentrates, soups and broths and ice cream
2201-09	Waters, ciders and vinegars
2905	Acyclic alcohols and derivatives
3505	Dextrins, modified starches and glues

There are also many agricultural products where there is no increased market access under the FTA and where tariffs remain high.

FTA likely to have no effect due to absence of tariff liberalisation	
Product code	**Product name**
0203	Meat of domesticated swine, fresh, chilled or frozen
0207	Meat and edible offal of fowls
0209	Pig fat, poultry fat, fresh, chilled, frozen, salted, in brine, dried or smoked
0210	Meat and edible offal, salted, in brine, dried or smoked
0408	Birds' eggs, eggs not in shell, and egg yolks, whether fresh, dried, cooked, frozen or preserved
1006	Rice, wholly milled and semi milled long grain
1601	Sausages and similar products, of meat, offal or blood; food preparations
1602	Prepared or preserved meat, offal or blood (excl sausages etc, and meat extracts and juices)
3502	Egg albumin, fit for human consumption

II. Does the FTA require the UK to change its levels of statutory protection?

A. Introduction

All trade agreements, including the WTO Agreement, and free trade agreements, contain a mix of trade liberalisation obligations and exceptions to those obligations. These exceptions give the parties to these agreements (in this case, the UK, which includes its devolved jurisdictions) a right to regulate, subject to certain conditions, so as to protect important policy interests, including animal or plant life or health, animal welfare, and the environment.

As noted, we consider that the FTA may have an effect on UK levels of statutory protection when it changes the legal position of the UK *vis-a-vis* Australia when compared to WTO law. In comparing the FTA to WTO law, this will occur when, in respect of any given UK statutory protection, each of two conditions is fulfilled: first, the UK has assumed more extensive trade liberalisation obligations under the FTA than under WTO law; and, second, the exceptions that apply to these obligations under the FTA are more restrictive than they would be under WTO law.

If, for example, the FTA *does not* reduce tariffs on a given product or facilitate trade in that product by other means, then the FTA cannot have any causal impact on trade in that product, and hence not on any statutory protections that might be affected by trade in that product. If, alternatively, the FTA *does* reduce tariffs on a given product, or facilitates its trade by some other means, but this obligation is subject to an exception that is no more restrictive than under WTO law, then the FTA cannot have any causal impact on the UK's statutory protections.

B. Obligations to liberalise trade in goods

1. Border restrictions

In Chapter 2 ('Trade in Goods') and its associated Annex 2A, the FTA sets out the UK's key trade liberalisation obligation in relation to trade in goods,[7] which is an obligation not to impose **customs duties** on imports of products from Australia (subject to certain time-limited quotas and safeguard measures).[8] For some products the FTA does not provide for any reductions in the WTO duty, and in these cases the FTA does not change the overall framework for imports in this respect. This applies, for example, to pork, chicken, eggs and wool. But there are duty reductions on almost all other imports, in many cases after an implementation period in the form of tariff reductions and quota increases over time.[9]

In addition, in Chapter 2 the FTA prohibits all other border restrictions on imports and exports, in the same terms as WTO law.[10] This does not, however, apply to border

[7] In this advice, the term 'trade liberalisation obligation' is taken to refer only to trade in goods. The FTA also has obligations to liberalise trade in services.

[8] Article 2.5 ('Treatment of Customs Duties'), referring to the liberalisation schedule in Annex 2A ('Tariff Commitments'). Article 2.12 ('Export Duties, Taxes or Other Charges') adds a prohibition on export duties, which does not exist in WTO law. Other provisions repeat WTO obligations, sometimes with detail on implementation. There are also some provisions that are not relevant to this advice.

[9] Annex 2B (Tariff Schedule of the United Kingdom); Annex 2B Part 2B-4 (Schedule of Tariff Commitment of the United Kingdom).

[10] Article 2.9 ('Import and Export Restrictions').

restrictions which are enforcing domestic law, and they do so in a non-discriminatory manner, such as ban on sales of unsafe products. Again, this is the same as in WTO law.[11]

2. Internal laws

Chapter 2 further provides that, once a product has been imported into the UK, it cannot be subject to any discrimination vis-à-vis 'like' domestic products.[12] So, for example, the UK cannot impose a higher sales tax on imported beef than on domestic beef, or require food manufacturers only to use raw materials originating in the UK. This 'national treatment' obligation is identical to an obligation in WTO law, so including it in the FTA does not change anything for imported Australian products.

There are two chapters that contain rules targeted at a subset of internal measures. Chapter 6 ('Sanitary and Phytosanitary Measures') applies to 'SPS measures', which are directed at risks caused by pests and diseases, as well as from additives, contaminants, toxins or disease-causing organisms in foods and feedstuffs, as well as other damage caused by pests.[13] Chapter 7 ('Technical Barriers to Trade') applies to technical regulations, technical standards and conformity assessment procedures.[14] These chapters are largely based on their WTO equivalents, the WTO SPS and TBT Agreements[15] respectively, and their obligations either repeat or elaborate on existing WTO rules. For example, the TBT chapter states that domestic standards based on product characteristics (which means their physical characteristics and includes labelling)[16] must be based on international harmonised standards where they exist, unless these standards are ineffective or inappropriate for the UK to achieve a

[11] Article 1.4 ('General Definitions') states that 'references in this Agreement to articles in the GATT 1994 include the interpretative notes'. The reference in Article 2.3 ('National Treatment') to Article III of GATT 1994 therefore includes the Note to Article III in GATT 1994, which states this rule.

[12] Article 2.3 ('National Treatment'). In the WTO, the 'most favoured nation' obligation in Article I:1 of GATT 1994 prohibits discrimination between imports from different countries. This rule is subject to an exception, in Article XXIV:5 of GATT 1994, for free trade agreements.

[13] Article 1.4 ('General Definitions'), referring to the definitions of a sanitary or phytosanitary measure in paragraph 1 of Annex A of the WTO SPS Agreement.

[14] Technical regulations are mandatory rules based on product characteristics or their related process and production methods. Technical standards are voluntary rules based on product characteristics or their related process and production methods. Conformity assessment procedures involve testing and certification to demonstrate that products meet the conditions set out in technical regulations and technical standards.

[15] Article 7.3 ('Scope') states that 'that '[n]othing in this Chapter shall prevent a Party from adopting or maintaining technical regulations, standards, or conformity assessment procedures in accordance with its rights and obligations under this Agreement, the TBT Agreement, and any other relevant international agreement'. In Article 7.4 ('Affirmation of the TBT Agreement') the parties 'affirm their rights and obligations under the TBT Agreement'.

[16] Para 22 of Annex 7A ('Cosmetics'), an annex to Chapter 7 ('Technical Barriers to Trade'), contains two rules on animal testing (the parties may restrict imports of cosmetic products not tested on animals when there is no validated alternative method available to assess safety, and the parties may allow the results of animal testing to be used in product safety determinations). Cosmetic products are not agricultural products, and hence we do not consider this rule in this advice. It is questionable whether these rules would qualify as 'technical regulations' under Article 7.1 of the TBT Chapter ('Definitions'), as they do not relate to product characteristics: WTO Appellate Body Report, *EC – Seal Products*, WT/DS400AB/R, adopted 18 June 2014, para 5.58.

legitimate policy objective.[17] This is precisely the same rule that already exists under WTO law. Another example, in the SPS Chapter, is the obligation to distinguish between regions in the other contracting state which present a risk and those that do not (because, for example, they are pest-free).[18] This provision essentially incorporates the equivalent obligation in the WTO SPS Agreement, together with decisions and guidance that has been developed within the WTO, and outside the WTO, over the last two decades since that original rule was developed. In short, the SPS and TBT Chapters of the FTA cannot be taken in isolation from their WTO context.

This said, there are several provisions in which the SPS Chapter differs – or could be interpreted as differing – from the position under WTO law. One concerns the role of science in the adoption of SPS measures, while two others concern the way in which the contracting states are to treat each other's regulatory systems as 'equivalent' to their own, even when they differ in certain respects. Before turning to these provisions in more detail, it should be recalled that none of these provisions is subject to dispute settlement, and in any event they are all still subject to the exceptions to be discussed in the following section.

The first point of potential difference with WTO law is contained in Article 6.5 ('Science and Risk Assessment'). Paragraph 2 of this provision states that:

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

This provision reflects – and refers to the obligation in Article 5.1 of the WTO SPS Agreement – to base SPS measures on scientifically valid risk assessments. However, Article 5.1 of the SPS Agreement does not apply where there is insufficient scientific evidence to perform such a risk assessment. In such situations, Article 5.7 of the SPS Agreement permits the parties to adopt provisional measures 'on the basis of available pertinent information' while seeking to obtain additional information that would permit a scientific risk assessment to be undertaken.

It is not entirely clear from Article 6.5 of the FTA whether the UK's right to adopt provisional measures along these lines has been maintained in the FTA. To be sure, Article 6.4 of the FTA ('Affirmation of the SPS Agreement') states that the parties' rights (and obligations) under the WTO SPS Agreement remain intact. But that does not say anything about their rights and obligations under the FTA. The outstanding question is therefore whether the 'other relevant provisions of the SPS Agreement' in accordance with which SPS measures are to be based on risk assessments can be read to include, as a limit on when this is possible, Article 5.7 of the WTO SPS Agreement. All of this said, it is unlikely that the parties would have wished to abandon their Article 5.7 rights under the WTO SPS Agreement; the ambiguity is probably best explained in terms of unclear drafting. And, in any event, as noted above, the obligation in Article 6.5 is not subject to dispute settlement, and is also subject to the exceptions to the FTA discussed below.

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[17] Article 7.6 ('International Standards, Guides, and Recommendations'), referring in para 2 to Articles 2.4 and 5.4 of the WTO TBT Agreement.

[18] Article 6.6 ('Adaption to Regional Conditions').

The FTA also establishes mechanisms whereby the UK may treat Australian technical regulations and conformity assessment procedures as 'equivalent' to its own, even when they differ in certain respects. The TBT chapter repeats the WTO rule on this, which goes no further than encouraging the contracting states to act in this way, though it also adds that, if a contracting state decides not to do so, it must, on request, explain the reasons for its decision.[19] The FTA's SPS chapter is similar to WTO law in relation to the equivalence of SPS measures,[20] though there is some ambiguity.

Article 4.1 of the WTO SPS Agreement states that:

> Members shall accept the sanitary or phytosanitary measures of other Members as equivalent, even if these measures differ from their own or from those used by other Members trading in the same product, if the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member's appropriate level of sanitary or phytosanitary protection. For this purpose, reasonable access shall be given, upon request, to the importing Member for inspection, testing and other relevant procedures.

Article 6.7.2 of the FTA is slightly different. It states that:

> The importing Party shall recognise the equivalence of SPS measures, even if the measures differ from its own, if the exporting Party objectively demonstrates to the importing Party that the exporting Party's measures achieve the importing Party's appropriate level of protection. The final determination of equivalence rests with the importing Party.

This differs from Article 4.1 of the WTO SPS Agreement in two respects. First, although this is still an unsettled point, Article 4.1 gives some indication that the importing WTO Member has an obligation to treat the exporting WTO Member's measures as equivalent, provided that that the exporting WTO Member can 'objectively demonstrate' that these measures achieve the importing WTO Member's appropriate level of protection. In support of such a reading is the obligation on the part of the exporting WTO Member to give reasonable access to the importing WTO Member for inspection, testing and other relevant procedures. This can be explained as ensuring that the importing WTO Member is not under an obligation to accept a request for an equivalence determination without being in a position to determine fully whether equivalence has been 'objectively demonstrated'. In practice, so far, however, importing WTO Members have operated on the basis that they have the right to reject equivalence requests.

In contrast to this ambiguity in Article 4.1 of the WTO SPS Agreement, the final sentence of Article 6.7.2 of the FTA states firmly that the importing contracting state has a right to decide on equivalence. What this means, however, is not clear. It could mean that the importing contracting state has an unfettered right to reject an equivalence request. However, the Australian High Commission thought that, given that the final sentence of Article 6.7.2 must be interpreted in 'good faith', if a contracting state that 'objectively demonstrates' that its measures achieve the importing contracting state's appropriate level of protection, the importing contracting state would recognise that the measure was indeed equivalent. In its view, the additional

[19] Articles 7.5 ('Technical Regulations') and Article 7.7 ('Conformity Assessment Procedures').

[20] Article 6.7 ('Equivalence'), para 1 incorporates aspects of a decision on equivalence adopted by the WTO SPS Committee: see WTO Doc G/SPS/19/Rev.2.

sentence merely restates the obvious fact that, in procedural terms, it is the importing party that makes the decision on equivalence. These different readings cannot be resolved here, but they also do not need to be resolved here. For present purposes, it is sufficient to say 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 FTA also goes beyond WTO law in relation to SPS import controls, by encouraging the contracting states to engage in the practice of 'pre-listing' of agricultural facilities and establishments. The ability to perform in-facility SPS checks is a significant trade facilitation. Article 6.8.5 of the FTA states that:

> The importing Party shall approve an establishment or facility situated in the territory of the exporting Party without prior inspection where it has determined that the establishment or facility meets its relevant SPS requirements.

To this end, Article 6.9 grants the importing contracting state the right to conduct audits and verifications of all or part of the control system of the competent authority of the exporting contracting state for the purpose of 'attaining and maintaining confidence in [the] exporting [contracting state's] ability to provide required assurances and to comply with [its] SPS import requirements and related control measures'.[21] Article 6.9 elaborates on how this is to be done, and specifies that control measures adopted as a result of an audit or verification must be based on objective evidence and no more trade restrictive than necessary to achieve the importing contracting state's appropriate level of protection. Again, this obligation is not subject to dispute settlement, and is also still subject to the exceptions discussed below.

C. The UK's right to regulate under the FTA

1. Outline

Importantly, all of these trade liberalisation obligations are fully covered by general exceptions, taken from WTO law, ensuring that the UK can regulate to protect animal or plant life or health, to protect public morals (including animal welfare), and to conserve exhaustible living and non-living resources, provided that certain conditions are met.

In addition, the FTA contains several rules in its environment and animal welfare chapters that expand on these rights to regulate, which gives the UK more leeway to override its trade liberalisation obligations than it would have under WTO law. In short, even to the extent that the FTA imposes greater trade liberalisation obligations on the UK, as it does, for example, by reducing customs duties, the UK not only has the same rights as it would under WTO law to maintain and adopt protections in the areas

[21] 'Pre-listing' is an EU's practice, and provisions like Article 6.8 ('Trade Conditions'), para 5 and Article 6.9 ('Audit and Verification') are found in many EU FTAs. 'Pre-listing' is described in WTO Committee on Sanitary and Phytosanitary Measures, *The European Union's Approach to SPS Audits and Inspections in Third Countries – Communication from the European Union*, WTO Doc G/SPS/GEN/1095, 23 June 2011. For an understanding of how this might work in practice, one might compare the more detailed system set out in Article 5.7 and Annex 5-F of the EU-Canada FTA (CETA).

covered by this advice, but in relation to animal welfare and certain environmental issues it has even greater rights than under WTO law.

2. The general exceptions

a) Animal or plant life or health

Article 31.1 of the FTA ('General Exceptions') permits the UK to adopt measures that are necessary to protect the life or health of humans, animals and plants located within the UK. It does this by incorporating the relevant exception in the Article XX(b) of the WTO GATT 1994, specifying in addition that such measures include 'environmental measures'.[22] For a UK measure to fall within the terms of this exception, it needs to meet three conditions.[23]

First, the measure be causally connected with the achievement of the objective. The test for this is whether the measure is apt to make a contribution to the protection of the relevant interest (for present purposes, the life or health of animals or plants).[24] This means that the measure must be likely to be minimally effective in achieving that objective.

Second, the measure must be 'necessary' to achieve that objective. That requires a comparison between the measure adopted and a hypothetical alternative measure (typically suggested by a complaining party). The measure will be 'necessary' when there is no alternative measure that is (a) reasonably available to the regulating party, that (b) achieves the same level of protection as the actual measure, (c) is less trade restrictive than the measure that was adopted. Thus, for example, it might be that the objectives of an import ban could equally be achieved by a less trade restrictive measure, such as a labelling scheme.

In the WTO, the WTO SPS Agreement elaborates on this 'necessity' test in several ways, and a measure that conforms to the WTO SPS Agreement is presumed to conform to Article XX(b) of GATT.[25] It is highly likely that, in the same way, a measure that complies with the FTA's SPS Chapter would be presumed to comply with its general exceptions. In addition, however, and unlike the situation in WTO law, the SPS Chapter in the FTA is *itself* subject to Article XX(b) (as incorporated by Article 31.1.1). This means that a measure that violates the SPS Chapter might still be justified under the FTA general exceptions. It is difficult to envisage when this might be the case, but the possibility that this does become important cannot be excluded.[26]

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[22] Article 31.1 ('General Exceptions'), paras 1 and 2. It is not clear what is added by including a reference to 'environmental measures'. There is no reason why Article XX(b) GATT 1994 would not include such measures anyway.

[23] The analysis here and below is based on WTO caselaw. Article 30.11 ('Functions of a Panel'), para 11, second sentence, adds that '[t]he panel shall also consider relevant interpretations in reports of WTO panels and the Appellate Body adopted by the WTO Dispute Settlement Body.'

[24] WTO Appellate Body Report, *Brazil – Retreaded Tyres*, WT/DS322/AB/R, adopted 17 December 2007, paras 150-51.

[25] Article 2.4 of the WTO SPS Agreement.

[26] If, for example, Article 6.5 ('Science and Risk Assessment'), para 2, discussed above, excludes reference to the right of the parties to adopt precautionary measures in accordance with Article 5.7 of the WTO SPS Agreement, it might be possible to justify such a precautionary measure as 'necessary' under Article 31.1 ('General Exceptions'). This is, however, somewhat academic, as there is no dispute settlement for the SPS chapter.

The third condition is a cross-cutting condition, discussed below, taken from the so-called 'Chapeau' of Article XX of GATT 1994. This is also incorporated by reference into the FTA.

In summary, what can be said is that, by incorporating WTO the right to regulate for animal or plant life or health, the FTA does not restrict the UK's rights to regulate for these reasons. In this respect, the FTA preserves the legality of any UK statutory protection of animal or plant life or health that can be justified under WTO law.

b) Public morals (animal welfare)

Article 31.1 of the FTA also permits the UK to adopt measures necessary for the protection of its public morals. Again, this is done by incorporating a WTO exception to this effect, in this case Article XX(a) of the GATT 1994. For a measure to be justified on these grounds, it needs to be plausibly for the protection of the 'public morals' of the regulating party, and it also needs to be 'necessary' for that purpose.

In principle, a concern for animal welfare can constitute the public morals of a regulating party. In *EC – Seal Products*,[27] a WTO dispute brought by Canada and Norway against the EU, the WTO Appellate Body determined that the EU was permitted to prohibit imports and sales of seal products on the grounds that this was necessary to protect EU public morals concerning 'animal welfare', and in particular the manner in which seals are hunted. It did not matter that the animals being protected were outside of the EU's territorial jurisdiction. This ruling would need to be taken into account in any interpretation of 'public morals' in the FTA.[28] It follows that the 'public morals' exception in the Australia-UK FTA permits the UK to prohibit the sale and importation of products that are produced in a manner that violate UK public morals on animal welfare regardless of where the animals at issue are located.

But while a concern for animal welfare, *per se*, can be part of the UK's public morals, this has to be shown in relation to the particular concern at stake. Not every concern about animals will rise to the level of the UK's 'public morals'.

There are two main ways to determine what constitutes 'public morals' for any given treaty party. One is based on evidence of what the public thinks. In *EC – Seal Products* such relevant evidence included the fact that numerous members of the public had written to the European Commission asking for a prohibition on seal products. Public petitions would therefore serve as good evidence. The second type of evidence, which is more commonly used in WTO disputes on 'public morals', is a pattern of legislation and other policies adopted by the country seeking to rely on the public morals exception. In this respect, legislation that existed at the time that the FTA was concluded would be protected. For subsequent laws that might be adopted in future, there would presumably need to be a mix of evidence to demonstrate that these laws are in fact based on UK public morals.

In practice, it has proved to be comparatively easy to demonstrate that a concern constitutes 'public morals'. However, this would be more difficult if there is an inconsistent application of UK laws on the same issue, for example, between different

[27] See above at n 16.

[28] See above at n 23.

devolved jurisdictions, in particular if products from one of these jurisdictions can be exported to the other jurisdictions. In addition, not every difference in treatment of animals can be objected to on the grounds of public morals. If the UK allows a particular procedure to be performed on an animal up to 3 years of age, and another country allows that procedure to be undertaken up to 4 years of age, this regulatory difference may not necessarily offend the UK's public morals. The situation is not comparable to *EC – Seal Products*, where the choice was binary, as between clubbing seals and not clubbing seals.

Even if a measure can be justified on the basis that it is adopted for the protection of public morals, several other conditions must be satisfied. First, the measure must have some causal effect on the protection of public morals. This is a very light test, and all that is required is that it not be incapable of protecting public morals.[29]

Second, the measure must be 'necessary' to the protection of public morals. As noted already, this 'necessity' condition requires a comparison between the measure adopted and a hypothetical alternative measure, and there must be no alternative measure that is (a) reasonably available to the regulating party, that (b) achieves the same level of protection as the actual measure, (c) is less trade restrictive than the measure that was adopted. In *EC – Seal Products*, the EU was able to demonstrate that its measure was the only reasonably available measure that would achieve its desired level of protection. Canada suggested an alternative, allowing imports of seal products certified as animal welfare-safe, but this would not have achieved the EU's animal welfare objectives to the same degree.

Third, a measure that is necessary to protect the UK's public morals must also meet the cross-cutting conditions set out in the chapeau to Article XX of GATT 1994, which are incorporated into the FTA. These are discussed below.

c) Conservation of living and non-living exhaustible natural resources (environmental protection)

Article 31.1 also permits the UK to adopt measures relating to the conservation of exhaustible natural resources, including non-living resources (such as hydrocarbons, minerals, and clean air) and 'living natural resources' (such as plants and animals). It does this by incorporating Article XX(g) of the WTO GATT 1994, but adds the clarification concerning 'living natural resources'.[30]

Again, several conditions must be met for a measure to be justified on this basis. First, the measure must 'relate' to the protection of the natural resource at issue.[31] Second, the measure must be adopted in conjunction with restrictions on domestic production

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[29] WTO Appellate Body Report, *Colombia – Textiles*, WT/DS461/AB/R, adopted 22 June 2016, para 5.77; cf also WTO Appellate Body Report, *EC – Seal Products*, WT/DS400/AB/R, above at n 16, para 5.213. The Appellate Body softened an earlier test, in *China – Publications and Audiovisual Products*, WT/DS363/AB/R, adopted 19 January 2010, para 366, which, as with Article XX(b) of GATT 1994, was whether the measure was 'apt to make a material contribution' to the achievement of public morals.

[30] Article 31.1, para 2. This clarification reflects the interpretation of 'exhaustible natural resources' by the WTO Appellate Body in *US – Shrimp*, WT/DS58/AB/R, adopted 6 November 1998, para 131.

[31] In WTO Appellate Body Report, *China – Rare Earths*, WT/DS431/AB/R, adopted 29 August 2014, para 5.117, the Appellate Body said that 'relating to' did not require (nor preclude) a demonstration of a causal effect between the measure and an objective; it was sufficient for a panel to consider the 'general design and structure' of the measure. Perhaps the Appellate Body meant that there was no need to find an *actual* effect, but that a potential effect would suffice.

or consumption. This ensures that the regulating party is genuine about conserving natural resources, and requires that some domestic restrictions be imposed, even though the burden of conservation does not need to be evenly distributed between foreign and domestic producers (or consumers).[32] Notably, however, in contrast to the first two exceptions discussed, concerning animal or plant life or health and public morals, this exception has no 'necessity' test. Hence, in WTO dispute settlement practice, environmental measures are typically justified under this exception rather than the exception for animal or plant life or health. This gives governments more policy discretion in how to protect environmental resources, as there is no need for the measure to be the least trade restrictive measure that could have been adopted to achieve its objective.

That said, as with the other two exceptions, this exception is also subject to conditions, under the 'Chapeau' to Article XX of the WTO GATT 1994, which operates as an important constraint on measures adopted to conserve exhaustible natural resources.

d) 'Chapeau' conditions

As noted, all three of the exceptions discussed above are subject to the additional conditions set out in the 'chapeau' (or 'hat', ie the opening paragraph) of Article XX ('General Exceptions') of GATT 1994.[33] There are two such conditions.

(1) Arbitrary or unjustifiable discrimination

First, a measure cannot constitute 'arbitrary or unjustifiable discrimination between countries where the same conditions prevail'. In this phrase, the 'conditions prevailing' in different countries are to be understood in terms of the purpose of the measure adopted. For example, an import restriction on dolphin-unsafe tuna does not need to be extended to tuna from a country in which there are no dolphins, because the 'conditions prevailing' between the different countries will not be the 'same'. However, if that country has dolphins, and they are at some risk from tuna fishing, even if this risk is lower, the 'conditions prevailing' in the different countries will be the 'same'. Likewise, in assessing a prohibition on imports of apples carrying a particular disease, the 'conditions prevailing' depend on whether the disease exists in the exporting country, but not its overall prevalence where it does exist. In short, 'conditions prevailing' are the 'same' when there is any relevant risk in the relevant countries, without quantifying that risk.[34]

The next question is whether the measure at issue discriminates between these countries, in which the 'conditions prevailing' are the same. This will often be the case, as almost all obligations in trade agreements involve discrimination, either between imports or between imports and domestic products, and it is only when a measure

[32] See WTO Appellate Body Report, *China – Rare Earths*, WT/DS431/AB/R, para 5.136.

[33] This is a complicated area of law. See Lorand Bartels, 'The Chapeau of the General Exceptions in the WTO GATT and GATS Agreements: A Reconstruction' (2015) 109 American Journal of International Law 95.

[34] WTO Appellate Body Report, *US – Tuna II (Mexico – Art 21.5)*, WT/DS381/AB/RW, adopted 3 December 2015, para 7.308; WTO Appellate Body Report, *EC – Seal Products*, above at n 16, para 5.300. It is unsettled whether the 'conditions prevailing' in a given 'country' are to be understood in the presence or absence of that country's regulatory interventions. Most likely, the answer is not, as this question (like that of risk prevalence) can be addressed in a more nuanced manner while questioning, later, whether any discrimination is 'arbitrary or unjustifiable'.

violates one of these obligations that it becomes necessary to determine whether the measure needs justification under an exception. An import ban on dolphin-safe tuna will necessarily discriminate against imports on countries where there are fewer (or no) at-risk dolphins than a country in which there are more at-risk dolphins. An import ban on diseased apples will necessarily discriminate against apple exporting countries where the disease exists, and in favour of those where the disease does not exist.

In practice, the most important question under this 'chapeau' condition is whether that discrimination is 'arbitrary or unjustifiable'. What this means, in practice, is whether there is a legitimate reason for the discrimination, and whether that discrimination is necessary. This is where it is important to calibrate the measure to the degree of risk at issue. An import ban on dolphin-unsafe tuna will not be 'justifiable' if it does not take into account the degree of risk to which dolphins are exposed in a given country, thereby permitting a less discriminatory measure to be adopted; and an import ban on diseased apples will not be 'justifiable' if a lower risk of disease in a given country can be addressed in a less discriminatory manner.[35]

(2) Disguised restriction on international trade

The second 'chapeau' condition is that the measure adopted cannot be a 'disguised restriction on international trade'. This essentially means that the measures cannot be a 'disguise' for protectionism, but in 25 years of WTO practice this has never been a burden for any government seeking to justify its measures.[36]

3. Right to regulate under other FTA chapters

a) Animal welfare chapter

Chapter 25 may provide an additional basis for adopting animal welfare measures. In Article 25.1.2, 'the Parties affirm the right of each Party to establish its own policies and priorities for the protection of animal welfare and to adopt or modify its laws, regulations and policies in this area.[37] Moreover, Article 25.1.4 states that '[e]ach Party shall endeavour to ensure that its laws, regulations and policies provide for and encourage high levels of animal welfare protection and shall endeavour to continue to improve their [sic] respective levels of animal welfare protection, including through their [sic] laws, regulations and policies.'

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[35] A further complication arises when the policy reason for the discrimination is different from the policy underlying the measure. In WTO Appellate Body Report, *EC – Seal Products*, above at n 16, for example, the EU's prohibition on seal products discriminated against Canada and in favour of Greenland because of an exception in the measure for seal products deriving from Inuit hunts, and there were proportionately fewer Inuit hunted seal products from Canada than from Greenland. In principle, the EU's basis for this form of discrimination was justifiable, although the EU's measure was still held to be overly discriminatory (and hence unjustifiable) vis-à-vis Canadian Inuit seal products. See Bartels, above at n 33, and Gracia Marín Durán, 'Measures with Multiple Competing Purposes after *EC – Seal Products*: Avoiding a Conflict between GATT Article XX-Chapeau and Article 2.1 TBT Agreement' (2016) 19 Journal of International Economic Law 467.

[36] An open question, and in important one, is whether a mixed measure for both environmental and protectionist purposes may would fail this test.

[37] This also implies that the parties can reduce their animal welfare protections. However, Article 25.1 ('Animal Welfare'), para 3 limits the extent to which they can do this.

It is not entirely clear that Article 25.1.2 establishes a self-standing right to adopt animal welfare measures; it merely 'affirms' such a right. In the context of obligations, it is well established that merely 'affirming' an obligation to act under another legal instrument does not incorporate that obligation into the instrument at hand. On the other hand, in that other context, the obligations that are 'affirmed' are defined by reference to another instrument. In this case, the right is described in its own terms. This supports the idea that Article 25.1.2 might operate as a self-standing right. Even if Article 25.1.2 does not establish a self-standing right, however, Article 25.1.4, in establishing an obligation to adopt animal welfare laws, also necessarily implies a right to adopt such laws. Either way, then, the UK is able under the FTA to adopt measures to protect animal welfare.[38]

Importantly, these 'rights' do not require that an animal welfare law be 'necessary', nor that it be no more discriminatory than necessary, nor that it not be a disguised restriction on international trade. As such, if Article 25.1.2 and Article 25.1.4 do operate as a 'right' to adopt animal welfare measures, they would expand the UK's rights to do so beyond those that it has under the exception for measures necessary to protect public morals. In addition, these provisions would operate as relevant context for the interpretation of the public morals exception in Article XX(a) of GATT 1994 as incorporated by Article 31.1.1 of the FTA,[39] and the softer conditions in Article 25.1.2 would carry over to an interpretation of Article XX(a) as incorporated. This might mean, for example, that an animal welfare measure would be considered 'necessary' even if there were another measure reasonably available to the UK that would achieve its desired levels of protection in a less trade restrictive or discriminatory manner.

There is an outstanding question as to whether the animal welfare chapter is limited in its scope to UK laws concerning UK animal welfare practices, or whether it extends also to UK laws concerning *Australian* animal welfare practices. On balance, it is more likely is that the animal welfare chapter does extend to those practices. Animal welfare is recognised by the parties as being a moral issue in Article 25.1.1, where '[t]he Parties recognise that animals are sentient beings.' As noted above, there is no territorial limitation to the objects of a public morals concern under WTO law. Moreover, while existing legislation does not ordinarily have a bearing on treaty interpretation, the obligation not to reduce existing protections implies a baseline level of protection dated from when the FTA is concluded (ie ratified), and continuing after then. Given that UK animal welfare laws at that time of conclusion will already apply to Australian practices,[40] this might signal Australia's acceptance of the principle that

[38] Moreover, for specific dispute settlement reasons, insofar as these provisions establish or imply a *right* to regulate, they would also almost certainly operate as a defence to a breach of a trade liberalisation obligation in any dispute settlement proceedings, notwithstanding the fact that the parties are unable to enforce any of the obligations in Chapter 25 *as obligations*. The reason is that the jurisdiction of a panel is determined by its terms of reference, which only refer to obligations alleged to have been breached, not to exceptions to those obligations (Article 30.11 ('Functions of a Panel'), paras 2 and 3, referring to Article 30.8 ('Request for Establishment of a Panel')). But this only applies to exceptions in the FTA itself. A panel would be unable to disapply FTA obligations for reasons not stated in the FTA itself because of Article 30.11 ('Functions of a Panel'), para 9, which states that '[t]he findings of the panel cannot add to or diminish the rights and obligations provided in this Agreement.'

[39] Article 31(2) of the Vienna Convention on the Law of Treaties.

[40] Article 12 of Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing, which has the status of retained EU law in Great Britain and operates under the Northern Ireland Protocol to the EU-UK Withdrawal Agreement in Northern Ireland.

UK animal welfare laws include import restrictions concerning animal welfare practices in Australia (and of course *vice versa*).

b) Environment chapter

Chapter 22 also expands the UK's rights to adopt measures to protect the environment. In Article 22.3.2, '[t]he Parties recognise the sovereign right of each Party to establish its own levels of domestic environmental protection and its own priorities relating to the environment, including climate change, and to establish, adopt or modify its environmental laws and policies accordingly.' Chapter 22 also sets out certain obligations with respect to such laws, so by implication the UK must have the right to do what it is required to do by these obligations.[41]

For present purposes, two points are important. First, the UK's right to adopt environmental protection measures applies to all 'environmental laws' adopted at all levels of government, including its devolved jurisdictions,[42] but limited to those that have the primary purpose of protecting the UK's environment through (a) the prevention or control of pollutants or environmental contaminants, including greenhouse gases, (b) the control of environmentally hazardous or toxic chemicals and wastes, and (c) the protection or conservation of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas.[43]

Chapter 22 expands the UK's rights to protect its environment beyond its rights under Article XX(g) of GATT 1994, as incorporated by Article 31.1.1 of the FTA, although it does so to a lesser extent than Chapter 25, on animal welfare. Article 22.2.3 states that '[t]he Parties … recognise that it is inappropriate to establish or use their environmental laws or other environmental measures in a manner which would constitute a disguised restriction on trade or investment between the Parties.' This reiterates one of the 'chapeau' conditions, which does not apply to Chapter 25. However, compared to Article XX(g) (and the chapeau to Article XX), it is not necessary to show that the measures at issue are no more discriminatory than necessary to achieve their objectives. This is a minor increment, but it may turn out to be important.

4. Conclusion

The FTA incorporates a number of WTO trade liberalisation obligations, and also adds some additional trade liberalisation obligations, in particular the obligation not to charge customs duties on most imports (subject to time limited quotas and safeguards). All of these trade liberalisation obligations are however subject to exceptions which are at least as extensive as under WTO law, and in some cases even more extensive than under WTO law. Therefore, on the basis that the FTA does not constrain the UK's right to regulate compared to its rights under WTO law, and even enhances these rights in certain respects, **it can be 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.**

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[41] These obligations are discussed below.

[42] Article 22.1 ('Definitions'). There is no definition of this scope, but this follows from the ordinary rules of international law, according to which a state is responsible for the acts of all of its organs.

[43] Article 22.1 ('Definitions').

Handling a hypothetical SPS issue under the FTA

New scientific evidence suggests that contaminant X, sometimes found in seeds used to produce animal feed, is a potential high risk toxin at any level. In response, the UK enacts a measure to protect animal health and life. This measure comprises a zero tolerance of any residue detectable for any seeds containing X, even if, in a final feed product, these seeds could be blended with seeds that do not contain X - and a measure which requires any consignment containing X to be isolated and used for any other purpose than entering the food chain on animal (and human) health and welfare grounds .

Australia seeks to exports animal feed Y to the UK. Under Australian law, this feed can be this feed can be a mixture of seeds containing X above the UK minimum detectable level, even though the final blended product does not exceed the new UK minimum detectable level. Australia faces an import ban for Y.

Australia raises the matter for discussion in the FTA SPS Committee, but that does not produce a satisfactory result. Australia has no other obvious options under the FTA, as the SPS chapter is not subject to dispute settlement.

Australia, therefore, brings a WTO dispute under the WTO SPS Agreement. The UK is successful, because it demonstrates that its SPS measure is based on a UK scientific risk assessment, and the measure is no more trade restrictive or discriminatory than necessary to protect animal life and health. The existence of the FTA, with its own SPS Chapter, does not change this analysis.

Australia then considers a second option, which is to propose that Australian laboratories can test seeds for animal feed purposes for X to the UK minimum detectable level standards. This is done in the framework of the FTA. The UK and Australia agree a ‘mutual recognition agreement’ to this effect.

At the same time, Australia argues that what matters is the overall level of X in any given blended animal feed product, lies below the minimum detectable level for X in any components of batches particular of seeds that go into an animal feed product blend Y. The UK objects on the basis that this a zero tolerance measure. Australia demonstrates that its own regulations have changed, and now specify precisely how the blended mix of animal feed Y, is such that animals have a very small chance of consuming a significant quantity of seeds with the concentration of X at an aggregate level below the minimum detectable limit which is that required under UK law. The UK is persuaded by this, but does not wish to change its own zero tolerance rules.

As a result, the UK and Australia agree, within the FTA framework, and following lengthy discussions between the two countries’ regulators, that Australia’s regulations are equivalent to the UK’s. Australian producers are now able to export animal feed Y to the UK.

III. Does the FTA reinforce the UK's levels of statutory protection?

The environment and animal welfare chapters contain obligations binding on both the UK and Australia to maintain their levels of statutory protection in two of the areas under consideration: environmental protection and animal welfare.

These obligations reinforce the UK's levels of statutory protection in two ways. First, directly, these obligations not only imply that the UK has a right to maintain statutory protections in these areas (discussed above), but in certain cases they also require the UK to maintain these protections. Second, indirectly, insofar as these obligations are binding on Australia, they ensure that Australia will maintain its own levels of statutory protection, which reduces the possibility that Australia will lower its standards so that its producers gain a competitive advantage over UK producers.

A. Scope and enforceability of the environment and animal welfare chapters

The structure of the additional obligations in the environment and animal welfare chapters is similar. However, there are three significant distinctions between the two chapters.

First, in relation to the environment chapter, several obligations are described in terms of 'environmental laws' of the parties. In one respect, this definition is much more limited for Australia than for the UK. As noted, the UK's 'environmental laws' apply to all levels of government in the UK, including the devolved jurisdictions. In contrast, Australia's 'environmental laws' are defined as meaning only Commonwealth laws.[44] This is significant, because under Australia's federal system most environmental legislation is at state and territory level.[45] The animal welfare chapter, on the other hand, applies to all Australian and UK animal welfare laws at all levels of government.

Second, as already noted, the concept of domestic 'environmental laws' is limited to laws adopted for three reasons: (a) the prevention or control of pollutants or environmental contaminants, including greenhouse gases, (b) the control of environmentally hazardous or toxic chemicals and wastes, and (c) the protection or conservation of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas.[46] The animal welfare chapter, by contrast, applies to all laws that can be described as 'animal welfare' laws.

Third, the obligations in the environment chapter are enforceable by means of dispute settlement,[47] while those in the animal welfare chapter are not. Should there be a concern about Australia's compliance with its animal welfare obligations, the UK would seek to find a solution by means of political dialogue, in the first instance in the Animal Welfare Working Group.[48]

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[44] Article 22.1 ('Definitions').

[45] Article 22.1. However, Article 22.3 ('General Commitments'), para 7 permits the UK to request a dialogue in the event that a state or territory environmental law is not being effectively enforced through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties.

[46] Article 22.1 (Definitions').

[47] Article 22.26 ('Dispute Resolution').

[48] Article 25.1 ('Animal Welfare'), para 8.

B. Types of obligation in the environment and animal welfare chapters

The environment and animal welfare chapters have three types of obligation: first, obligations to maintain and improve domestic protections, second, obligations not to gain a trade or investment advantage by not implementing domestic laws, and third, obligations to ensure minimum standards of protection. In addition, some of these obligations are soft, requiring the parties merely to *endeavour* to act in a certain manner, while others are hard, requiring the parties to *ensure* that they act in a certain manner.

1. Obligations to maintain and improve domestic protections

Both the UK and Australia are subject to obligations to maintain and raise their levels of protection under their domestic laws. Article 22.3.3 in the environment chapter states:

> Each Party shall strive to ensure that its environmental laws and policies provide for, and encourage, high levels of environmental protection and continue to improve its respective levels of environmental protection.

Once again, it is to be noted that for Australia this obligation applies only to Commonwealth laws, not sub-federal laws, but for the UK it applies to laws at all levels of government. Moreover, this obligation is enforceable by means of dispute settlement.

Article 25.1.4 in the animal welfare chapter is in similar terms:

> Each Party shall endeavour to ensure that its laws, regulations and policies provide for and encourage high levels of animal welfare protection and shall endeavour to continue to improve their [sic] respective levels of animal welfare protection, including through their [sic] laws, regulations and policies.

As noted, this obligation is not enforceable by means of dispute settlement.

Structurally, these are soft 'endeavours' obligations which only require the parties to 'endeavour' to ensure that their laws provide for high levels of environmental or animal welfare protection, or to continue to improve these levels of protection. It is difficult to determine what such an obligation might mean in practice. It does not require the parties to ensure high and improved levels of protection without qualification. But it might require the parties not to reduce their levels of protection without good reason;[49] it might also amount to a procedural obligation to consider ensuring high and improved levels of protection.

2. Obligations not to gain a trade or investment advantage by not implementing domestic laws

The environment and animal welfare chapters also contain obligations preventing the parties from not properly implementing their existing laws in order to obtain a competitive advantage over the other. The rationale of these obligations is to prevent a contracting state from relieving a specific domestic industry from certain regulatory

[49] What is reasonable in this respect may also depend on Australia's constitutional arrangements, by analogy with Article XXIV:12 of the GATT 1994.

costs, thereby giving it a competitive advantage vis-à-vis foreign products in each other's markets.[50] Conceptually, these obligations have a similar function to WTO obligations prohibiting financial subsidies, which have the same anticompetitive effects vis-à-vis foreign products. They can be conceptualised as rules targeting *regulatory* subsidies.

The environment chapter has two obligations of this type. Article 22.3.4, which is about *non-enforcement* of environmental laws, states that:

> Neither Party shall fail to effectively enforce its environmental laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties after the date of entry into force of this Agreement.

The other, Article 22.3.6, is about *partial application* of environmental laws, and states:

> [A] Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental laws in a manner that weakens or reduces the protection afforded in those laws in order to encourage trade or investment between the Parties.

As noted, the definition of 'environmental laws' has a defined scope, which differs between the UK and Australia. Also, as noted, both obligations are enforceable in dispute settlement.

One difference between these obligations is that, under the first, non-enforcement of an environmental law (if through a sustained or recurring course of action) must have the *effect* of changing conditions of competition between domestic and foreign products,[51] while, under the second, a waiver or derogation (or offer) of an environmental law must have the *intention* of changing conditions of competition between domestic and foreign products. It is usually easier to demonstrate effect than intention, although in some cases the opposite might be true, for example if a government promises not to apply environmental laws to a specific geographical region in order to encourage an investment project.

The animal welfare chapter contains an obligation requiring the parties to 'endeavour to ensure' that they do not *partially apply* their animal welfare laws. Article 25.1.3 states:

> [E]ach 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 weaker language notwithstanding, a waiver or derogation of a law requires a positive legal act, and it is difficult to see how that would be consistent with endeavouring to ensure that such a waiver or derogation does not take place. The apparent softening of the language may not mean much in practice. Still, it will be necessary to show that any such waiver or derogation (or offer to this effect) was

[50] These obligations do not cover competition in third country markets. In contrast, the WTO SCM Agreement, which disciplines financial subsidies, does cover competition in third country markets.

[51] An equivalent obligation was interpreted in Panel Report, *US v Guatemala* (*Labor Standards)* (2014), https://tinyurl.com/2s37kctu.

intended to encourage trade or investment. Once again, this obligation is not subject to dispute settlement.

3. Obligations to ensure minimum standards of protection

The environment chapter, but not the animal welfare chapter, also contains a set of minimum standards obligations, including obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer[52] and the International Convention for the Prevention of Pollution by Ships (MARPOL),[53] as well as in relation to marine wild capture fisheries,[54] and illegal logging and related trade in timber products.[55]

C. Conclusions

These various obligations reinforce the UK's ability to maintain its levels of statutory environmental and animal welfare protection in in two main ways.

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 animal welfare and 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 to seek to do so in relation to its animal welfare laws, 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. This is not possible for Australia's commitments in the animal welfare chapter, but for such matters the UK is able to raise issues with Australia in the Animal Welfare Working Group.

[52] Article 22.8 ('Ozone Depleting Substances and Hydrofluorocarbons') and Annex 22A.

[53] Article 22.10 ('Protection of the Marine Environment from Ship Pollution') and Annex 22B.

[54] Article 22.12 ('Marine Wild Capture Fisheries').

[55] Article 22.13 ('Sustainable Forest Management and Trade').

IV. Does the FTA otherwise affect the ability of the UK to adopt statutory protections?

In this section we consider three issues relevant to the evolution of the FTA in practice. First, we consider the practical operation of the FTA, in particular via its mechanisms for UK-Australia cooperation, and its decision-making procedures. Second, we consider the resource implications of controlling increased imports into the UK. Third, we consider the extent to which the FTA affects the UK's ability to respond to concerns that have been raised in consultations about practices that are stated to occur in Australia affecting products likely to be imported into the UK.

A. The practical operation of the FTA

As has been described above, the FTA comprises a set of rights and obligations which are designed, on the one hand, to liberalise trade between the parties, and, on the other, to ensure that they are still able to regulate to protect legitimate policy interests. In several cases, these rules are left to be operationalised by future joint action of the parties.

To this end, the FTA establishes several organs with bilateral representation. The primary organ is the Joint Committee, which meets at ministerial or senior official level,[56] and has the power to adopt interpretations of the agreement,[57] amend certain trade liberalisation commitments,[58] and in several other ways consider the implementation and operation of the agreement.[59] The Joint Committee also supervises the work of subsidiary organs established under the FTA, which, relevantly, include the SPS Committee,[60] the TBT Committee,[61] the Environment Working Group,[62] and the Joint Working Group on Animal Welfare.[63] These subsidiary organs are mostly forums for raising implementation issues, although in some cases these organs are responsible for making or recommending certain decisions.

This can have significant effects. For example, the parties might adopt an interpretation that would settle the questions raised above, namely whether Article 6.5.2 includes the right to adopt precautionary SPS measures along the lines of Article 5.7 of the WTO SPS Agreement, or what precisely Article 6.7.2 means when it says that '[t]he final determination of equivalence rests with the importing Party'. On this latter point, the FTA also foresees that the parties might adopt a decision setting out a procedure governing the recognition by one party of the equivalence of the other party's SPS measures. Article 6.7.3 of the FTA states:

> In order to strengthen cooperation on equivalence the Parties may, pursuant to paragraph 3(a) of Article 6.16 (Committee on SPS Measures), consider

[56] Article 29.1 ('Establishment of the Joint Committee').

[57] Article 29.2 ('Functions of the Joint Committee'), para 2(e).

[58] Article 29.2, para 2(g) and para 3.

[59] Article 29.2.

[60] Article 6.16 ('Committee on SPS Measures').

[61] Article 7.12 ('Committee on Technical Barriers to Trade').

[62] Article 22.21 ('Environment Working Group').

[63] Article 25.1 ('Animal Welfare'), para 8.

> establishing a procedure for recognition of equivalence based on relevant international standards, guidelines and recommendations, and guidance of the WTO SPS Committee. Such a procedure may include, inter alia, the consultation process, information requirements, appropriate timeframes, and the respective responsibilities of the importing and exporting parties. The Parties shall determine the most appropriate form of any such procedure.

In practice, a decision to adopt such an equivalence procedure might have the effect of narrowing down the situations in which the UK is able to reject a request from Australia to have an Australian law treated as equivalent to a UK law under Article 6.7.2.[64]

Of course, neither of these results is necessary. Any decision to adopt an interpretation or decide on an equivalence procedure is entirely voluntary. However, from a transparency perspective, it is worth noting that these decisions can be taken without the type of parliamentary scrutiny that would be required for a formal amendment of the agreement.[65] Of course, in all cases, as a matter of UK law, to the extent that such decisions require implementation in the UK legal system, Parliament will be involved in the ordinary way.

B. Border controls and resources

We note that any increase in absolute trade flows as a result of this agreement could place pressure on those agencies tasked with ensuring that imports comply with domestic standards. Having said this, an increase in products from Australia will not necessarily lead to an increase in overall imports, as these could simply displace imports from other sources. But should there also be an overall increase in imports, it will be important to ensure that those agencies are properly resourced. Where these controls take place in Australia, it will be Australia and/or Australian firms that bears their cost, although the UK bears the costs of audits and inspections.[66]

C. The ability of the UK to respond to concerns raised in consultations

In our consultation, we were made aware of several concerns about certain Australian production, environmental and animal welfare practices, and about the cost advantages that products made according to these practices might enjoy when compared to UK products. We considered the following issues:

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[64] Article 6.16.3(a) does not elaborate on how the SPS Committee might formulate such a procedure. It merely states that '[t]he SPS Committee may, among other things: (a) identify opportunities for greater cooperation activities relevant to this Chapter, including trade facilitation initiatives and further work on eliminating unnecessary SPS barriers to trade between the Parties'. It is likely that the SPS Committee would make a recommendation for a decision by the Joint Committee.

[65] Article 32.2 ('Amendments'). In the UK, this would entail the procedure set out in Part 2 of the Constitutional Reform and Governance Act 2010.

[66] Article 6.9 ('Audit and Verification'), para 9.

Animal or plant life or health issues

- Hormonal growth promotants (HGPs)
- Pesticides
- Antimicrobials in agriculture
- GMOs

Animal welfare issues

- Mulesing without pain relief
- Transport conditions for cattle and sheep
- Hot branding of cattle
- Stunning and CCTV in abattoirs
- Feedlots
- Pain relief during permitted procedures

Environmental issues

- Deforestation
- Climate change

We addressed these concerns by asking the following four questions.

1. whether the practices at issue exist in Australia in a manner that would not be permitted in the UK
2. whether these practices involve products likely to be imported at an increased rate into the UK under the FTA
3. whether these practices imply any cost savings for Australian producers compared to UK producers
4. whether the FTA restricts the UK's WTO law rights to regulate imports of any products produced by these practices

The following sets out our conclusions on each of these issues. Our analysis of these questions is contained in an Annex attached to this advice.

We would like to introduce our conclusions with some general remarks. In some cases, different production practices between countries are a function of different climatic, geographical, agronomic, environmental, economic and cultural conditions. Australian cattle and sheep live their lives outdoors, mainly on very large stations, which is different in the UK. It can never be assumed that what is normal in one country needs to be normal in another. Nor, as a rule, does international law, or trade agreements, entitle one country to determine production practices in another country. The assumption is that States are sovereign, and when they cede sovereignty, they do so voluntarily.[67]

Moreover, the international trading system, of which free trade agreements form a part, is predicated upon the understanding that countries should be able to benefit from advantages which they enjoy over their trading partners. Trade law, in principle, prohibits countries from restricting imports of products simply based on how they are made, whether this is by using their more abundant sunshine, land, educational skills or lower labour costs. The way to protect against this form of competition is to exclude

[67] In other areas of international law, states have agreed, by various means, that their own compliance with core human rights norms, for example, is also an interest of other states.

certain products from trade liberalisation when negotiating a trade agreement. This is common for agriculture, for example, in the WTO, though it is more difficult in free trade agreements, which are voluntary, but are subject to a WTO condition that they be almost completely trade liberalising. The UK-Australia FTA is trade liberalising, in both directions, but it also has limits: it liberalises trade in some products over time, and in some other products not at all.

On the other hand, trade liberalisation does not necessarily trump other policy considerations, and States retain the right in trade agreements to protect their own legitimate interests, regardless of any trade liberalisation obligations contained in those agreements.[68] As described above, those interests include the protection of domestic animal or plant life and health, the protection of the environment, and the protection of public morals – but also the protection of human life and health, competition law, consumer protection law, intellectual property law, and national and international security, among others. But this right to regulate for legitimate reasons is limited: it does not, as a rule, allow a country to undermine the other country's legitimate productive advantages. Moreover, this right to regulate is subject to a set of conditions, which are designed to prevent the exceptions from being used arbitrarily, or in bad faith, or unnecessarily.

Moreover, international agreements are the result of negotiations, and countries can – and do – agree, in some cases, that they have a common interest in practices taking place in the territory of the other party. They can also agree that some domestic practices do not constitute fair competition, but are rather an example of unfair competition. So, for example, the UK and Australia have agreed, in this FTA, that they should endeavour to maintain high standards in their environmental and animal welfare laws, and that they should not fail to implement their environmental and animal welfare laws if this gives them an unfair competitive advantage over the other; moreover, in the case of their environmental laws they can also be held to these obligations by means of dispute settlement.

These introductory remarks are intended to give a context to our conclusions about concerns presented to us about various effects of the Australia-UK FTA. In some cases, we conclude that the UK has reserved the right to regulate imports from Australia because of a legitimate interest, for example, the health of its plants, animals and environment, or its public morals. In others, we conclude that the UK is able to prohibit imports of products because it has an agreed interest in certain practices in Australia, either because they are agreed to be a common interest, or because they are agreed to result in an unfair trade advantage. But in some cases, we conclude that the UK will be unable to restrict imports from Australia (though the FTA does not make this more difficult than WTO law), even though this might be of interest, economic or otherwise, to certain constituencies in the UK. That is the inevitable result of the UK's decision to liberalise trade with Australia under the FTA. But it is relevant to point out, nonetheless, that countries are different, and sovereign, and that some matters are for them to regulate as they see fit.

[68] There are some exceptions, most notably in the WTO Agreement on Subsidies and Countervailing Measures.

1. Animal or plant life or health issues

a) Hormonal growth promotants (HGPs)

It is currently illegal for beef from cattle treated with hormonal growth promotants (HGPs) to be imported into the UK. The FTA does not change the WTO legal position on such a prohibition. We note in this respect that the issue has been litigated in the WTO, with inconclusive results. In any event, should this be necessary, it is highly unlikely that under WTO law the UK could not adopt a labelling regime to distinguish between HGP and non-HGP products for consumers. Indeed, such schemes exist in Australia. Nor does the FTA change the UK's ability to adopt such schemes.

b) 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.

c) Antimicrobials in agriculture

The FTA will not lead to increase imports of products commonly produced using antimicrobials (pork and chicken) because it does not reduce tariffs for these products. In any event, the FTA does not restrict the UK's WTO rights to regulate imports to protect against any harmful effects in the UK of antimicrobial use in Australia.

d) 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.

2. Animal welfare issues

a) Mulesing without pain relief

The likelihood of Australian mutton from mulesed sheep being imported into the UK under the FTA is negligible, but there is a much higher chance of imports of wool from mulesed sheep (with or without pain relief). That said, the FTA does not restrict the UK's WTO rights to prohibit imports of products from Australia produced using the practice of 'mulesing' without pain relief and may even enhance these rights. The UK is also able to raise the matter in the FTA's Animal Welfare Working Group. The FTA does not change the WTO legal position on labelling of 'mulesed' products.

b) Transport conditions for cattle and sheep

There is a low risk that meat from stock that has travelled much longer times than would be permitted in the UK will be imported into the UK in increased quantities under the FTA. Mostly, this is because the breeds of cattle that are likely to be imported into the UK in increased quantities (*bos taurus*) are reared in the southern parts of Australia, where actual travel times are broadly similar to actual travel times in the UK. The same applies to sheep. Should the issue arise in practice, the UK could seek to justify an import ban on the grounds that this is necessary to protect its public morals, although this is not a straightforward case. In addition, the UK could raise the issue in dialogue with Australia. The FTA does not change the WTO legal position concerning labelling.

c) Hot branding of cattle

There is virtually no risk that beef from the hot branded cattle will be imported into the UK. In any event, the FTA does not constrain the UK's rights under WTO law to prohibit imports of beef from branded cattle if it could be shown that this is necessary to protect UK public morals, which might be difficult, given that branding of horses is legal in parts of the UK. Nor does the FTA change the WTO legal position concerning labelling. The UK is however able to raise the matter in the FTA's Animal Welfare Working Group.[69]

d) Stunning and CCTV in abattoirs[70]

Imports from abattoirs not using CCTV could be imported in increased quantities under the FTA; there is however no risk that meat from animals that have not been stunned will enter the UK, as such meat cannot legally be exported from Australia. The UK can, in principle, prohibit imports of products on public morals grounds, but it will be very difficult to show that the UK's public morals require the use of CCTV in abattoirs, given that this is not a UK-wide requirement. The UK would be able to raise concerns with Australia in the Joint Working Group on Animal Welfare established under the FTA.[71] The FTA does not change the WTO legal position concerning labelling. This would be comparatively easy to implement, given Australia's tracing requirements.[72]

e) Feedlots

It is inevitable that more feedlot beef will enter the UK under the FTA. The FTA does not change the UK's legal position in relation to imports of feedlot beef, but both under WTO law and the FTA it would be difficult to see how the UK could restrict imports of beef on 'public morals' grounds if it is produced under conditions that are more generous than in the UK itself. If so, however, the UK will be able to raise concerns with Australia about feedlots in the Joint Working Group on Animal Welfare established

[69] Article 25.1 ('Animal Welfare), para 8.

[70] There were also some concerns about live animal exports, but we did not consider these, as there are no live exports for slaughter from Australia to the UK.

[71] Article 25.1 ('Animal Welfare'), para 8.

[72] National Livestock Identification System (NLIS), *Welcome to NLIS Australia's National Livestock Identification System* (2020), at https://www.nlis.com.au/.

under the FTA.[73] The FTA does not change the WTO legal position concerning labelling which, given Australia's tracing system, would be straightforward to implement.

f) Pain relief during permitted procedures

Australian pain relief rules allow producers to carry out a greater range of procedures without pain relief for a longer period of time, this is particularly true when compared to the UK assurance schemes, which account for the majority of UK Livestock. Meat produced in this way would be highly likely to be imported into the UK. However, because legally similar procedures are allowed without pain relief on younger animals in the UK, it would be very difficult to prohibit the import of Australian product on public moral grounds. The UK will be able to raise concerns with Australia about pain relief in the Joint Working Group on Animal Welfare established under the FTA.[74] The FTA does not change the WTO legal position concerning labelling.

3. Environmental issues

a) Deforestation[75]

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.

In the event of any deforestation with an impact on agricultural exports to the UK, the UK has a limited set of legal options. As under WTO law, the FTA does not give the UK a right to protect Australian resources, including its forests. The situation is, however, different in the event of any net deforestation, if this contributes to climate change, a question which itself involves complicated factual and legal issues. While this is still untested, it is likely that the UK is entitled under WTO law, and the FTA, to restrict trade in order to combat climate change, to the extent that this can be seen as conserving an 'exhaustible natural resource' which is either a UK natural resource or

[73] Article 25.1 ('Animal Welfare'), para 8.

[74] ibid.

[75] Deforestation generally means the 'conversion of forest to other land uses' and Australia follows this international definition in its reporting under the United Nations Framework Convention on Climate Change. Australia defines a 'forest' as 'all lands with a vegetation height of at least 2 metres and crown canopy cover of 20 per cent or more, and lands with systems with a woody biomass vegetation structure that currently fall below but which, in situ, could potentially reach the threshold values of the definition of forest land.' Australian Department of Industry, Science, Energy and Resources, *National Inventory Report 2019 – Volume 2* (April 2021), p 23, at https://www.industry.gov.au/data-and-publications/national-greenhouse-accounts-2019/national-inventory-report-2019.

part of the global commons. In any event, the UK would be able to raise the issue of deforestation with Australia in the FTA's Environment Working Group.

b) 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. What can be said is that the FTA does not change the position of the UK under WTO law, which itself involves unsettled legal questions, to adopt measures to combat climate change.

V. Conclusions

In this advice, in accordance with our mandate, we addressed three questions.

Question 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?

While the FTA incorporates a number of WTO trade liberalisation obligations, and adds additional trade liberalisation obligations, in particular an obligation not to charge customs duties on most imports, all of these trade liberalisation obligations are subject to exceptions which are at least as extensive as under WTO law, and in some cases even more extensive than under WTO law.

Answer: 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.

Question 2

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

The FTA contains a number of obligations, which go beyond WTO obligations, requiring the UK and Australia to aim for high standards of protection in their environmental and animal welfare laws, and to implement these laws, at least when not to do so would confer upon its producers an unfair trade advantage. These obligations do not cover all environmental laws, or – at least for Australia – all levels of government, and insofar as animal welfare laws are concerned, they are not enforceable in dispute settlement proceedings. There are also additional obligations to maintain minimum standards of protection on certain environmental matters, including marine wild capture fisheries and ozone depleting substances. These obligations are significant, even if they are not fully comprehensive, and in relation to animal welfare, they are even ground-breaking among free trade agreements.

Answer: 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.

Question 3

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

In this context, we considered several issues. First, we examined the process of decision-making under the FTA, and how that might affect the UK's statutory protections. In this respect, we noted that the FTA foresees that the contracting parties may agree on several types of decisions, including on interpretations of the agreement. Such decision may affect the scope of the agreement in future. These decision-making powers do not, as such, affect the ability of the UK to adopt statutory protections in the areas at issue, but they could be used to reach decisions that do have such an effect. We note in this respect that these decisions are not necessarily

subject to parliamentary scrutiny in the same way as amendments to the agreement, although any implementation of these decisions in domestic law would follow ordinary parliamentary procedures.

Second, we considered the impact on border controls of increased imports under the agreement. In this respect, we noted the importance of proper resourcing for UK import control systems. We also noted, however, that the FTA provides for the possibility of agreements to pre-list Australian facilities and establishments, which would relieve the burden of UK import controls. Mutual recognition agreements on conformity assessment procedures would also serve to relieve this burden. We explained how this might come about by means of a worked example.

Third, we considered the extent to which the FTA might affect the ability of the UK to regulate in response to concerns, raised during our consultations, about the potential effects of the FTA on statutory animal or plant life or health, animal welfare and environmental protections. We asked four questions in relation to each concern: (a) whether there is an Australian practice that would not be permitted in the UK; (b) whether this practice, if any, might affect agricultural products that are likely to be imported into the UK at an increased rate under the FTA (for example, because of tariff reductions), (c) whether this practice, if any, results in a cost saving for Australian producers compared to UK producers, and (d) whether the FTA would prevent the UK from regulating imports of products affected by this practice.

On the first question, we determined that, in some cases, the practice at issue was not, in reality, materially different from UK practices, for example in terms of travel times for cattle and sheep, and in some cases, standards were higher (for example, concerning stunning of animals in abattoirs). In others, the practice at issue was materially different, for example in relation to ‘mulesing’ of merino sheep.

On the second question, we determined that, in some cases, even though practices were different, they did not affect products likely to be imported to the UK in increased quantities under the agreement. This was true, for example, of mulesing, which is only performed on merino sheep, for which the meat is unlikely to enter the UK for market reasons, and the wool will not enter the UK at increased rates under the FTA because it already benefits from duty free entry. It was also true of beef produced using human growth promotants (HGPs). In other cases, 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.

On the third question, we determined that, in some cases, a practice would not have any cost advantage for Australian producers. This was true, for example, for hot branding of cattle. In other cases, however, the practice at issue could have cost savings for Australian producers, for example, in the use of pesticides not permitted in the UK.

The fourth question always generated the same answer. Because the FTA incorporates all WTO exceptions, and therefore guarantees the UK at least the same right to regulate as it has under WTO law, the FTA does not restrict the UK’s ability to regulate in relation to the concerns mentioned. That is not to say that the UK’s right to regulate is not limited at all; but any such limitation is a result of pre-existing WTO law, not new obligations with more limited exceptions in the FTA. Furthermore, we concluded that, because of the rights enshrined in its environment and animal welfare

chapters, in certain respects the FTA enhanced the WTO rights of the UK to regulate to protect the environment and animal welfare.

Answer: 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 important to ensure that the UK's import control systems are properly resourced to be able to manage increased imports under the FTA.

VI. Annexes

A. Sanitary and Phytosanitary Measures

a) Hormonal growth promotants (HGPs)

(1) Are hormonal growth promotants that are prohibited in the UK used in Australia?

Hormonal growth promotants (HGPs) are used on about 40 per cent of Australian cattle to accelerate weight gain.[76] In Australia HGPs are approved, registered and regulated by the Australian Pesticides and Veterinary Medicines Authority (APVMA).

Since 1981, the EU has prohibited use of HGPs in farm animals, as well as imports of products, including beef, produced using HGPs.[77] This prohibition has been maintained by the UK, and products from cattle reared using HGPs cannot currently be imported or sold in the UK.[78]

The EU's HGP import prohibition was for human health reasons. Statutory protections of this type are outside of the TAC's remit, but we address this issue on the basis that concerns have also been raised about the animal welfare implications of treating livestock with HGPs.[79]

(2) Does the use of hormonal growth promotants (HGPs) involve products likely to be imported into the UK in increased quantities under the FTA?

No. The Australian beef industry has set up a cattle herd segregation and processing system for producing hormone-free beef for European markets, the European Union Cattle Accreditation Scheme (EUCAS), which traces hormone-free cattle from birth and is jointly audited by Australian and EU government inspectors.[80] It is not clear whether UK inspectors have audited the scheme since the UK left the EU, but we have no reason to believe the scheme is not reliable and robust. Under the system, hormone-treated and hormone-free herds are completely segregated to ensure that Australian beef exported to the UK is free from HGPs. 10% of Australian cattle properties are accredited to supply beef and cattle products to the EU market.[81]

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[76] Submission 001 (RSPCA).

[77] The prohibition is currently set out in Article 11(2) of Council Directive 96/22/EC of 29 April 1996 concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of beta-agonists.

[78] Eg *Animals and Animal Products (Examination for Residues and Maximum Residue Limits (England and Scotland) Regulations 2015* (equivalent rules in Wales and Northern Ireland).

[79] RSPCA Australia, '*What are the animal welfare impacts of using hormone growth promotants in beef cattle?'* (2019), at https://kb.rspca.org.au/knowledge-base/what-are-the-animal-welfare-impacts-of-using-hormone-growth-promotants-in-beef-cattle/.

[80] Australian Department of Agriculture, Water and the Environment, European Union Cattle Accreditation Scheme (EUCAS), at https://www.awe.gov.au/biosecurity-trade/export/controlled-goods/meat/elmer-3/eucas.

[81] Meat & Livestock Australia, *Hormones*, https://www.mla.eu/food-safety/hormones/.

(3) Does the use of hormonal growth promotants (HGPs) imply cost savings for Australian producers *vis-à-vis UK producers?*

The question does not arise, as HGP produced products do not enter the UK.[82]

(4) Does the FTA restrict the UK's WTO rights to regulate imports produced using hormonal growth promotants (HGPs)?

No. The FTA does not change the legal position under WTO law. The EU ban on HGPs was found by the WTO to be illegal in 1996, on the basis that it was not based on a scientific risk assessment.[83] An EU challenge to this ruling in 2008, in part on a different basis, was inconclusive, with the result that the original findings remain operative.[84] The UK's own import prohibition has not been challenged.

(5) Conclusion

It is currently illegal for beef from cattle treated with hormonal growth promotants (HGPs) to be imported into the UK. The FTA does not change the WTO legal position on such a prohibition. We note in this respect that the issue has been litigated in the WTO, with inconclusive results. In any event, should this be necessary, it is highly unlikely that under WTO law the UK could not adopt a labelling regime to distinguish between HGP and non-HGP products for consumers. Indeed, such schemes exist in Australia. Nor does the FTA change the UK's ability to adopt such schemes.

b) Pesticides

(1) Are pesticides prohibited in the UK used in Australia?

The UK and Australia operate independent pesticide approval regimes which licence pesticides for use in agriculture (including fungicides, insecticides and herbicides as well as other plant protection products). Both the active substance contained in any pesticide and the fully formulated product itself require approval. Pesticides are assessed for their 'safety' (impact on workers, consumers, residents and bystanders, the environment, water bodies and wildlife) as well as their efficacy. Approvals are granted on a crop-by-crop basis, taking into account local climatic and environmental conditions, while also setting parameters on issues such as application rates, dilution and timing. It should be noted that because of its size, topography and other geographical factors, these differences can be very significant in Australia.

It is therefore inevitable that different pesticides will be authorised for use in different parts of the world for different crops and that certain pesticides not authorised for use

[82] An analysis of any potential cross-subsidisation effects for producers that both use HGPs and export non-HGP beef (if there are any) is outside the scope of the Commission's work.

[83] WTO Appellate Body Report, *EC – Hormones*, WT/DS26/AB/R, adopted 13 February 1998.

[84] WTO Appellate Body Report, *US – Continued Suspension of Obligations in the EC – Hormones Dispute*, WT/DS320/AB/R, adopted 14 November 2008, para 737. The Appellate Body overruled several Panel findings against the EU, but did not itself complete the legal analysis, due to flaws in the Panel's analysis and the contested nature of the facts: ibid, para 735. For a discussion, see Renée Johnson, *The US-EU Beef Hormone Dispute*, Congressional Research Service Report R40449, 2015, at https://sgp.fas.org/crs/row/R40449.pdf.

in one country may be authorised for use in another without this automatically indicating a higher or lower level of safety or protection.

However, it is also true that the fundamental approach to how pesticides are registered differs across countries. The UK continues to operate a regime based on the EU's authorisation system, a 'hazard-based' system that imposes a higher threshold for demonstrating that pesticides present an acceptable level of safety for the intended application. Australia deploys a 'risk-based' approach that takes into account additional risk mitigation factors for a pesticide to be authorised for use. In the UK, cut-off criteria mean that such risk management factors cannot be considered in cases where a hazard threshold has been exceeded.

There are a number of pesticides authorised for use in Australia that are not authorised for use in the UK. The Commission has not conducted a detailed analysis as to whether such differences are a result of Australia's risk-based approach to approvals or are related to agronomic differences. Specific examples that have been raised with the Commission include the use of certain neonicotinoid insecticides in growing canola (oilseed rape) in Australia, which were banned (save for use under special exemptions) for environmental reasons for the same use in the UK in 2018, and the use of the herbicide paraquat, which is toxic to humans and animals, and which is banned in the UK but used in Australia (though under review).[85] Furthermore, a number of important fungicides used in Australian cereals production, such as epoxiconazole,[86] toxic to certain animals, are being withdrawn from use in the UK. Another fungicide, chlorothalonil, is approved for use on horticultural products in Australia, but is no longer authorised for use in the UK.

It should be noted that regulatory cooperation under the FTA may facilitate the UK's exposure and understanding of the Australian pesticides approvals regime as it continues to consider the best future model for its own independent regime.

(2) Does the use of pesticides involve products likely to be imported into the UK in increased quantities under the FTA?

Yes. Pesticides are widely used on all arable crops so, for example, wheat, canola (oilseed rape) or sugar exported from Australia to the UK is likely to have been grown using pesticides. Some of these will not be authorised for use in the UK, such as certain neonicotinoids in canola and triazole fungicides, such as epoxiconazole, in wheat and barley. Canola seed will not be imported in increased quantities under the FTA, as the UK's WTO (most favoured nation) tariff for canola seed is already zero per cent, but canola oil will be imported in increased quantities. However, preferential access under the FTA for cereals and sugarcane could mean additional imports of these products into the UK.

Pesticides are also widely used on horticultural products where customers have a low tolerance for cosmetic damage. For example, chickpeas (but not lentils) will benefit

[85] Australian Pesticides and Veterinary Medicines Authority, *Paraquat Chemical Review*, at https:// apvma.gov. au/node/12666.

[86] Australian Pesticides and Veterinary Medicines Authority, *Trade Advice Notice on Azoxystrobin and Epoxiconazole in the Product Nurfarm Tazer Xpert Fungicide* (2015) at https://apvma.gov.au/sites/ default/files/publication/13061-13061-tan-azoxystrobin-epoxiconazole.docx.

from tariff liberalisation under the FTA and may be imported in higher volumes. In the absence of UK controls, discussed below, such imports could have been treated with fungicides, such as chlorothalonil.

(3) Does the use of these pesticides imply cost savings for Australian producers vis-à-vis UK producers?

Pesticides are used by farmers primarily to protect yields and, therefore, profits. While it is difficult to quantify cost savings, the availability of a wide range of tools to suppress pest and disease pressures in growing crops is an important element of profitable farming and any restriction thereof may reduce profit. A UK industry-sponsored study by agricultural consultants Andersons in 2014 found that the loss of 40 commonly used pesticides considered under various threats of withdrawal from use would see UK agriculture's Gross Value Added (GVA) fall by c £1.6bn per annum, a drop of 20% on the 5-year average (2009-2013).[87]

Diversity of cropping options in arable rotations is an important aspect of profitable arable farming. For example, the restriction on neonicotinoid pesticides in the UK has contributed to a significant reduction in production of canola (oilseed rape) in the UK[88] which was previously an important and profitable break crop that facilitated wheat-based arable rotations. Restrictions on the availability of pesticides can therefore have financial implications across a farming enterprise beyond the specific impact on the profitability of a single crop.

(4) Does the FTA restrict the UK's WTO rights to regulate imports produced using these pesticides?

No. The legal position remains the same as under WTO law. In this respect, a distinction must be drawn between import restrictions to protect UK plants, animals, and the environment, and import restrictions focusing on the Australian environment.

Import restrictions to protect UK plants, animals and the environment, are permitted subject to certain conditions, under the same exceptions in WTO law and under the FTA. This permits the UK to monitor maximum residue levels (MRL) of pesticides which are the maximum concentration of a pesticide residue in, or on, food or feed that is legally tolerated when the substance is applied correctly. In addition, the UK has import tolerances, which are specific MRLs set for imported food or feed. These usually exist where there is no UK MRL because the substance is not approved for use in the UK. This means that small residues of substances banned in the UK may be permissible on imports, but at levels that are deemed safe. The FTA has no effect on the UK's existing WTO rights to apply these protections, which exist.

However, both WTO law and the FTA prohibit import restrictions that do not have any connection with UK animals, plants or the environment, but are solely focused on animals, plants or the environment in Australia (with the exception of animal welfare issues). In principle, if that means that Australian producers are able to lower their

[87]The Andersons Centre, *Crop Production Technology: The Effect of the Loss of Plant Protection Products on UK Agriculture and Horticulture and the Wider Economy* (2014) at https://www.nfuonline.com/andersons-final-report/.

[88] Rothamsted Research, *EU Policies Led to Collapse of Major Biofuel Crop in UK and Europe* (January 2022), at https://www.rothamsted.ac.uk/news/eu-policies-led-collapse-major-biofuel-crop-uk-and-europe-says-report.

costs compared to UK producers, this is functionally and legally equivalent to Australian producers benefitting from more sunshine.

That said, the FTA also contains enforceable obligations, which go beyond WTO law, requiring Australia to 'strive to ensure that its environmental laws and policies provide for, and encourage, high levels of environmental protection and continue to improve its respective levels of environmental protection' and requiring Australia to implement its environmental laws when not to do so would give its producers a competitive advantage over UK producers. These obligations apply to Australian Commonwealth (not state or territory) laws directed at the control of environmentally hazardous or toxic chemicals and wastes, and the protection or conservation of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas. These obligations might be relevant to pesticide use, depending on the nature of their effects.

(5) Conclusion

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.

c) Antimicrobials in agriculture

(1) Are antimicrobials not used in the UK used in Australia?

Concerns over antimicrobial use in farm animals primarily relates to the risk posed to increasing antimicrobial resistance (AMR), and both UK and Australian farmers have sought to reduce their antibiotic use in recent years.[89] Article 25.2 ('Antimicrobial Resistance') of the FTA, states that '[t]he Parties recognise that antimicrobial resistance (AMR) is a serious global threat to human and animal health' and they further agree to cooperate in several ways to reduce antimicrobial use.

Antimicrobial use in agriculture, both in the UK and Australia, varies depending on the type of livestock concerned, due to different disease and environmental pressures, within and between the two countries. Antimicrobials can be used to tackle disease, both prophylactically and reactively, and to promote growth. Antimicrobials can also be sprayed onto crops and fruit trees to prevent and treat infection.[90]

[89] It has been illegal to use any antimicrobial as a growth promoter in the UK or the EU since 2006. In Australia, no antimicrobials currently used in human medicine are licensed as growth promoters. Furthermore, the Australian Pesticides and Veterinary Medicines Authority (APVMA) has withdrawn approval for the use for macrolide antimicrobials for growth promotion in animal production and most antimicrobials in Australia can only be purchased with a veterinary prescription.

[90] Fera, *Review of Antibiotic Use in Crops, Associated Risk of Antimicrobial Resistance and Research Gaps* (2020) at https://www.food.gov.uk/sites/default/files/media/document/review-of-antibiotic-use-in-crops-associated-risk -of-antimicrobial-resistance-and-research-gaps-final.pdf.

As with pesticide residues, agri-food products imported into the UK must comply with import requirements, including controls on limits of veterinary medicine residues in meat and other animal products.[91]

(2) Does the use of antimicrobials involve products likely to be imported into the UK in increased quantities under the FTA?

This is unlikely. The highest antimicrobial use in agriculture in Australia relates to pork and poultry, which are entirely excluded from tariff liberalisation under the FTA, and which are in any event not major export sectors for Australia. Antibiotic use in cattle and sheep is comparatively low in Australia, largely as a result of climatic conditions and Australia's extensive, outdoor systems for rearing red meat. The risk of meat entering the UK that has been reared in systems that are major users of antimicrobials therefore appears low. The position for antimicrobial use in crop and fruit growing is unclear. It is true that, in Australia, hormone implants used to promote growth in cattle (HGPs) can include antibiotic use to prevent infection at the implant site, but, as discussed above, beef reared using HGPs cannot be exported to the UK under UK law. There is therefore only a negligible risk that antimicrobials associated with hormone implants will enter the UK food chain.

(3) Does the use of antimicrobials imply cost savings for Australian producers compared to UK producers?

Antimicrobials use in agriculture, both in terms of managing disease and growth promotion, contributes to profitable livestock farming. They can help maintain healthy herds and flocks, avoiding stock losses due to disease, and growth promotion increases the productivity of farming enterprises. However, given the low use of antimicrobials in Australia's main relevant exports – beef and sheepmeat – there is unlikely to be a cost advantage in this instance. Antimicrobials are not free, so a lower usage is a cost saving relative to UK producers who use higher amounts of antimicrobials in their production. They can also enhance yields in crop and fruit production but where the position for their use in Australia is unclear.

(4) Does the FTA restrict the UK's WTO rights to regulate imports produced using antimicrobials?

No. The position remains the same as under WTO law.

(5) Conclusion

The FTA will not lead to increase imports of products commonly produced using antimicrobials (pork and chicken) because it does not reduce tariffs for these products. In any event, the FTA does not restrict the UK's WTO rights regulate imports to protect against any harmful effects in the UK of antimicrobial use in Australia.

[91] There are concerns that the transfer of antimicrobial resistance to humans through food may occur as a result of antibiotic-resistant bacteria on or in food, but food safety is beyond the scope of our mandate.

d) GMOs

(1) Are genetically modified crops grown in Australia?

Yes. Three GM crops are currently grown by farmers in Australia: canola (or oilseed rape), cotton and safflower (a minor crop grown for the edible and industrial oil markets). There are recent and current experimental field plantings of a number of other crops in Australia, most notably barley, sugarcane and wheat. Some state governments have further restrictions on growing GM crops, for instance on canola which is not allowed to be grown in ACT, parts of South Australia or Tasmania.

In the UK, there is a distinction between authorisation for cultivation of GMOs and authorisation to market feed (or food) containing or derived from GMOs. The regulation of genetically modified organisms in the UK is based on EU law, which continues as UK law. Securing approval to grow GMOs under the EU regime is more complex and precautionary than other regimes around the world, and in practice approvals are extremely rare. In 2006, the EU was found to have breached its WTO obligations for extensive delays in approving applications.[92] In the UK, there are currently no GM crops being commercially cultivated, although there are a number of public and private small-scale trials being conducted.

The UK government is currently reviewing the regulatory framework for approving crops that have been bred using gene editing. It is argued that this technology differs from genetic modification in that it does not introduce foreign genetic material into an organism and, therefore, can be regulated differently.[93]

In terms of marketing, UK regulations require the labelling of all GM feed (and food) which contains or is produced from GMOs, regardless of the presence of GM material in the final product. There is a threshold of 0.9% for the presence of GMOs below which labelling is not required. The UK permits the import of some GMOs, and GM canola grown in Australia is authorised for import and use in feed (and food) in Great Britain.

(2) Does the use of genetically modified crops involve products likely to be imported into the UK under the FTA at an increased rate than presently?

In part. The UK's WTO (most favoured nation) tariff rate for imports of canola seed imports and cotton is already duty free, so the FTA will not lead to increased imports. The FTA does, however, reduce existing import tariffs on canola oil, which may lead to an increase in imports (although both the UK and Australia are net exporters of canola oil). Only about 20 per cent of Australia's national canola crop is genetically modified. Canola oil destined for the food market derived from GM canola must be labelled as such.

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[92] WTO Panel Report, *EC – Biotech*, WT/DS291/R, adopted 21 November 2006.

[93] Parliamentary Office of Science and Technology, *Genome Edited Food Crops*, Postnote No 663, (January 2022) at https://researchbriefings.files.parliament.uk/documents/POST-PN-0663/POST-PN-0663.pdf.

(3) Does the use of genetically modified crops imply cost savings for Australian producers?

Yes. Genetic modification and gene editing are technologies used in plant breeding to introduce desirable traits into new plant varieties. Existing techniques include the use of irradiation or chemical intervention to induce beneficial genetic changes. All of these approaches can provide cost benefits to farmers, for instance through disease resistant plant varieties that require less pesticides, or drought resistant varieties that allow crops to be grown in conditions that would otherwise not be conducive to profitable cultivation. GMO canola in Australia is resistant to the herbicide glyphosate, which allows farmers to more effectively manage weeds in their crops and potentially improve yields.[94]

(4) Does the FTA restrict the UK's WTO rights to regulate imports of genetically modified crops?

No. The FTA does not change the legal position under WTO law.

(5) Conclusion

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.

[94] Australian Government, Department for Health, Office of the Gene Technology Regulator, *Genetically Modified (GM) Canola in Australia* (2021), at https://www.ogtr.gov.au/sites/default/files/files/2021-06/12_-_genetically_modified_gm_canola_in_australia.pdf.

B. Animal Welfare Concerns

a) Mulesing without pain relief

Several consultees were concerned about the practice of 'mulesing' sheep.[95]

(1) Does mulesing without pain relief, a practice prohibited in the UK, occur in Australia?

Yes. This is a practice (with or without pain relief) that is prohibited in the UK but permitted in Australia.[96] Mulesing without pain relief is painful for at least a short time.[97] The practice prevents flystrike and involves the removal of folded skin, which is susceptible to maggot infestation, from the breech area of merino sheep. Merino sheep are specially bred for wool, and their folded skin increases yields, although newer breeds are being developed which minimise the problem of folded skin in the breech area. Flystrike is a serious problem in Australia, and mulesing is performed for reasons of animal health and welfare, as well as to protect the sheep's ability to produce wool. Merino sheep are reared for wool production, although their meat can be consumed as mutton at the end of the sheep's life, typically no earlier than six years of age. Only a small minority of Australian sheep were mulesed without pain relief in 2018.[98] There are national legal standards in Australia, agreed and implemented at state and territory level, on who can mules and how the practice has to be carried out.[99]

(2) Does mulesing without pain relief involve products likely to be imported into the UK in increased quantities under the FTA?

Lambs reared for meat are not mulesed. Only merino sheep intended for wool, and kept to adulthood on sheep stations where flystrike is endemic, are mulesed.

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[95] Submission 001 (RSPCA); Submission 004 (Quality Meat Scotland); Submissions 005 and 006 (National Sheep Association); Submission 011 (The Andersons Centre); Submission 012 (Trade and Animal Welfare Coalition UK); Submission 013 (UK Centre for Animal Law); Submission 014 (The Humane League UK); Submission 018 (Compassion in World Farming); Submission 024 (Four Paws UK); Submission 026 (Convention on Animal Protection); Submission 028 from (British Veterinary Association).

[96] For an outline and an evaluation of the practice see Report by Senate Select Committee on Animal Welfare, Parliament of Australia, *Sheep Husbandry* (AGPS, 1989), Ch 4 ('The Sheep Blowfly and its Control'). The Committee concluded that '[i]n the absence of effective alternatives to mulesing, … the practice should continue' but recommended that 'continued research into all means of preventing blowfly strike, so that the need for mulesing is removed', ibid at para 4.66.

[97] Ibid, para 4.62.

[98] A Colvin et al, 'Australian surveys on incidence and control of blowfly strike in sheep between 2003 and 2019 reveal increased use of breeding for resistance, treatment with preventative chemicals and pain relief around mulesing' (2022) *Veterinary Parasitology: Regional Studies and Reports* (preprint, 25 March 2022), https://doi.org/10.1016/j.vprsr.2022.100725. The figures can differ between the four breeds of merino sheep.

[99] Animal Health Australia, *Australian Animal Welfare Standards and Guidelines for Sheep* (January 2016), https://www.animalwelfarestandards.net.au/files/2011/01/Sheep-Standards-and-Guidelines-for-Endorsed-Jan-2016-061017.pdf. These are agreed by Australian State and Territory Governments. Their legal status differs by jurisdiction. For an overview, see https://www.animalwelfarestandards.net.au/sheep/.

Mutton

In 2020-21, 30% of the 9,017 tonnes of sheep meat exported to the UK was in the form of frozen mutton.[100] Although it cannot be excluded that, at the end of their lives, mulesed merino sheepmeat could be sold as mutton, quantities would be negligible, as other breeds that do not require mulesing are used for meat in both the UK and Australia. In its evidence, Meat & Livestock Australia said meat from cull-age ewes can contribute to sheep meat exports, but the priority for exports is lamb cuts from meat specific breeds.[101] The Australian High Commission stated that any imports of mutton from mulesed sheep would be negligible.[102]

Wool

In the period 2017-2021, an average of 1,165 tonnes of wool a year was imported into the UK from Australia, making up 3.2% of total UK wool imports by volume.[103] This may include wool from mulesed sheep, without distinction as to whether pain relief was used. On the other hand, as wool already has a zero duty, it is unlikely that wool from mulesed sheep (with or without pain relief) will be imported in increased quantities, and, if it is, it is unlikely that it will be because of the FTA.

(3) Does mulesing imply cost savings for Australian producers compared to UK producers?

No. First, there is no valid comparator. Conditions in Australia and the UK are different – in the UK flystrike is not so extreme and merino sheep are not reared in significant numbers.

Second, mulesing is expensive, as it is carried out by hand and labour costs are comparable or higher in Australia than the UK, so it is an additional cost which is borne by Australian farmers. As noted, almost 90% of mulesing is done with pain relief, the cost of which is low (at less than £1 per animal).[104]

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[100] Meat & Livestock Australia, *Market Snapshot – Beef and Sheepmeat* (November 2021), https://www.mla.com.au/globalassets/mla-corporate/prices--markets/documents/os-markets/export-statistics/november-2021 /2021-uk-market-snapshot-red-meat_161121_distribution.pdf.

[101] Meat & Livestock Australia evidence to the Trade and Agriculture Commission.

[102] Australian High Commission evidence to the Trade and Agriculture Commission.

[103] International Trade Centre, *Trade Map - List of supplying markets for a product imported by United Kingdom*, https://www.trademap.org/Country_SelProductCountry_TS.aspx?nvpm=1%7c826%7c%7c%7c%7c5101%7c%7c%7c4%7c1%7c1%7c1%7c2%7c1%7c2%7c2%7c1%7c1. International Trade Centre, *Trade Map - List of supplying markets for a product imported by United Kingdom*, https://www.trademap.org/Country_SelProductCountry_TS.aspx?nvpm=1%7c826%7c%7c%7c%7c5101%7c%7c%7c4%7c1%7c1%7c1%7c2%7c1%7c2%7c2%7c1%7c1.

[104] Meat & Livestock Australia, *Pain Mitigation in Sheep*, (October 2020), https://www.mla.com.au/globalassets/mla-corporate/research-and-development/program-areas/animal-health-welfare-and-biosecurity/20mla-pain-mitigation-factsheet_sheep_v4.pdf.

(4) Does the FTA affect the UK's WTO rights to regulate imports of mulesed products?

No. The FTA incorporates the UK's WTO rights to prohibit imports of products on 'public morals' grounds under the FTA,[105] and may even enhance these rights, as described above. In addition, the UK would be able to raise concerns with Australia about mulesing without pain relief in the FTA's Joint Working Group on Animal Welfare.[106] The FTA also does not change the UK's ability under WTO law to adopt a 'non-mulesed' labelling scheme. Such schemes have already been adopted by some UK retailers.[107] We also note the existence of the Australian National Wool Declaration (NWD) scheme, according to which Australian wool producers can declare the mulesed status of their wool.[108]

(5) Conclusion

The likelihood of Australian mutton from mulesed sheep being imported into the UK under the FTA is negligible, but there is a much higher chance of imports of wool from mulesed sheep (with or without pain relief). That said, the FTA does not restrict the UK's WTO rights to prohibit imports of products from Australia produced using the practice of 'mulesing' without pain relief and may even enhance these rights. The UK is also able to raise the matter in the FTA's Animal Welfare Working Group.[109] The FTA does not change the WTO legal position on labelling of 'mulesed' products.

b) Transport conditions for cattle and sheep

Several consultees were concerned about transport conditions for cattle and sheep.[110]

(1) Do Australian cattle and sheep spend longer in transport and have less space than in the UK?

Although the legal maximum transport times in Australia are longer than the UK's maximum transport time, in both countries the vast majority of transport journeys are much shorter.

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[105] Article 31.1 ('General Exceptions') of the FTA. It is not necessary for the UK to prohibit all products derived from mulesing for a measure to be necessary to protect public morals. We note that the UK does not prohibit imports of merino wool textiles from other countries, eg Italy, which can derive from mulesed merino sheep.

[106] Article 25.1 ('Animal Welfare), para 8.

[107] M&S, *Responsible Wool Sourcing Policy* (April 2021), https://corporate.marksandspencer.com/documents/m-and-s-responsible-wool-sourcing-policy.pdf.

[108] AWEX, *National Wool Declaration (NWD) Scheme* (July 2022), https://www.awex.com.au/standards/national-wool-declaration-nwd/.

[109] Article 25.1 ('Animal Welfare), para 8.

[110] Submission 004 (Quality Meat Scotland); Submissions 005 and 006 (National Sheep Association); Submission 010 (Trade and Animal Welfare Coalition UK); Submission 014 (The Humane League UK); Submission 019 (Trade Justice Movement); Submission 021 (Quality Meat Scotland); Submission 022 (National Farmers' Union and National Farmers' Union Cymru).

Transport times

A 2016 Australian Competition and Consumer Commission report found that approximately 80% of cattle acquired for processing travelled less than 400 km to be slaughtered, suggesting journey times of under six hours in most instances.[111] Sheep are generally not moved more than 200 km.[112]

In Australia transportation of animals is extensively regulated, both generally and for each animal species.[113] A person in charge of transporting animals must exercise a duty of care to ensure the welfare of livestock under their control and compliance with the livestock transport standards. They are responsible for mustering and assembling of livestock; handling; and preparation, including inspection and selection as 'fit for the intended journey'; feed and water provision; and holding periods before loading. While the transporter is responsible for: the loading including final inspection during loading as 'fit for the intended journey'; the loading density; additional inspections of livestock; spelling periods during the journey; and unloading.

In Australia, the maximum time limit that non-pregnant cattle over six months and non-pregnant sheep over four months can be off-water for up to 48 hours and cannot be moved again for 36 hours.[114] However, if a person in charge reasonably expects the journey time to exceed 24 hours, the legal standard requires that the transporter must possess a record which is accessible at the road side and that specifies: (a) the date and time that the livestock last had access to water; and (b) the date and time of livestock inspections and any livestock welfare concerns and actions taken; and (c) emergency contacts. A person in charge who is transferring responsibility for livestock to be further transported for a total journey time of longer than 24 hours must provide a record with this information to the next person in charge.[115]

Non-pregnant UK cattle and sheep can be transported for a maximum of 14 hours with a one hour rest before another journey of 14 hours. Space allowances are specified with on-vehicle feed and water available for journeys of more than eight hours.[116] The *Animal Welfare (Kept Animals) Bill* currently progressing through the UK Parliament proposes limiting journey times to between four and 24 hours depending on species plus giving animals more headroom during transport and limiting transport during extreme hot or cold weather.[117]

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[111] Australian Competition and Consumer Commission, *Cattle and Beef Market Study – Final Report*, (2017), pp 7-8, at https://www.accc.gov.au/system/files/ACCC%20Cattle%20and%20beef%20market%20studyFinal%20 report.pdf.

[112] Hassall and Associates, for Australian Department of Agriculture, Fisheries and Forestry, *Structure and Dynamics of the Australian Sheep Industry*, June 2006, p 62, at https://www.awe.gov.au/sites/default/files/sitecollectiondocuments/animal-plant/animal-health/livestock-movement/sheep-movement-ead.pdf.

[113] Australian Government, *Australian Animal Welfare Standards and Guidelines - Land Transport of Livestock*, (September 2012).

[114] Ibid, Standard B4.

[115] Ibid.

[116] Department for Environment, Food and Rural Affairs, *Welfare of Animals During Transport - Advice for Transporters of Sheep,* at http://adlib.everysite.co.uk/resources/000/263/132/PB12544a.pdf; *Advice for Transporters of Cattle*, at http://adlib.everysite.co.uk/resources/000/263/163/PB12544f.pdf.

[117] UK Parliament, *Animal Welfare (Kept Animals) Bill,* (March 2022), https://bills.parliament.uk/bills/2880.

Space allowances

In Australia, space allowances are not mandatory, but there is detailed guidance based on size and species of animal.[118] Space allowances are comparable in the UK and Australia. The guidance for transport space allowance for shorn sheep of 50 kg liveweight in Australia is 0.25m^2 and 0.29m^2 for a 60kg animal. The UK rule for shorn sheep under 55kg is 0.20 to 0.30m^2 and 0.30m^2 for sheep above 55kg. The Australian space allowance guidance is 1.63m^2 for a 650kg bovine, while in the UK the rule is 1.6m^2 for a 700kg bovine.

(2) Does this practice involve products likely to be imported into the UK in increased quantities under the FTA?

It is unlikely, though possible, that beef from stock that has travelled more than the UK limit of 28 hours will be imported into the UK in increased quantities under the FTA. Long distance transportation is mainly confined to the movement of *bos indicus* cattle reared on large farms in the north of Australia. Little of this meat is likely to be exported to the UK, as most Australian beef imported into the UK will be produced from *bos taurus* breeds of cattle reared further south (mainly south of the Tropic of Capricorn).[119]

It is unlikely that stock that has been transported using less space than UK stock would be imported into the UK.

(3) Does this practice imply cost savings for Australian producers?

Long transport distances are unlikely to imply a cost saving for Australian producers. On the contrary, the longer the distance the higher the cost, with producers keeping distances to a minimum to reduce costs. A CSIRO study of *bos indicus* transportation calculated that transport accounted for 35% of total costs.[120] The absence of any Australian requirement to carry feed and water could mean lower transport costs. In addition, we note that keeping transport times to a minimum and ensuring good conditions reduces the risk of injury, maintaining the quality of beef and sheep meat produced from the transported animals.

(4) Does the FTA affect the UK's WTO rights to regulate imports of beef or sheepmeat transported under conditions that would not be permitted in the UK?

No. The FTA incorporates the UK's WTO rights to prohibit imports of beef and sheepmeat if this is necessary to protect the UK's 'public morals', although given the incremental differences in UK and Australian practices, this would be very difficult to show. The UK would also be able to raise concerns with Australia about transport

[118] Animal Health Australia, *Australian Animal Welfare Standards and Guidelines for Cattle* (January, 2016), https://www.animalwelfarestandards.net.au/files/2011/01/Cattle-Standards-and-Guidelines-Endorsed-Jan-20 16-061017_.pdf.

[119] Meat & Livestock Australia, *Fast Facts, Australia's Beef Industry* (November 2020), https://www.mla.com.au/ globalassets/mla-corporate/prices--markets/documents/trends--analysis/fast-facts--maps/2020/mla-beef-fast-facts-2020.pdf.

[120] Commonwealth Scientific Industrial Research Organisation (CSIRO), *Livestock Logistics*, https:// www. csiro.au/en/research/animals/livestock/livestock-logistics.

conditions within the FTA's Joint Working Group on Animal Welfare.[121] The FTA does not change the WTO legal position concerning labelling.

(5) Conclusion

There is a low risk that meat from stock that has travelled much longer times than would be permitted in the UK will be imported into the UK in increased quantities under the FTA. Mostly, this is because the breeds of cattle that are likely to be imported into the UK in increased quantities (*bos taurus*) are reared in the southern parts of Australia, where actual travel times are broadly similar to actual travel times in the UK. The same applies to sheep. Should the issue arise in practice, the UK could seek to justify an import ban on the grounds that this is necessary to protect its public morals, although this is not a straightforward case. In addition, the UK could raise the issue in dialogue with Australia. The FTA does not change the WTO legal position concerning labelling.

c) Hot branding of cattle

Several consultees raised concerns about hot branding of cattle.[122]

(1) Are Australian cattle hot branded in a manner that is not permitted in the UK?

Hot branding of cattle is the practice of using a hot iron to make a permanent identification mark on the skin of an animal. It is likely to cause short-term pain to cattle who undergo the practice. It is largely used on extensive *bos indicus* herds where applying identification ear tags are inappropriate. Most European breed cattle (*bos taurus*) are identified using National Livestock Identification System[123] ear tags in Australia, ear tags are also used in the UK. There are animal welfare guidelines governing the application of hot brands in Australia.[124]

[121] Article 25.1 ('Animal Welfare'), para 8.

[122] Submission 001 (RSPCA); Submission 011 (The Andersons Centre); Submission 012 (Trade and Animal Welfare Coalition UK); Submission 013 (UK Centre for Animal Law); Submission 014 (The Humane League UK); Submission 018 (Compassion in World Farming); Submission 024 (Four Paws UK); Submission 026 (Convention on Animal Protection).

[123] Integrity Systems, *National Livestock Identification System (NLS)*, at https://www.integritysystems.com.au/identification--traceability/national-livestock-identification-system/.

[124] Animal Health Australia, *Australian Animal Welfare Standards and Guidelines for Cattle* (January 2016), https://www.animalwelfarestandards.net.au/files/2011/01/Cattle-Standards-and-Guidelines-Endorsed-Jan-2016-061017_.pdf, p 19.

Hot branding farm animals is banned in the UK, although freeze branding and tattooing can be used. However, the practice has not been banned for horses,[125] apart from in Scotland[126] and Northern Ireland.[127]

(2) Does this practice involve products likely to be imported into the UK at increased rates under the FTA?

No. The British beef market will almost certainly be supplied by farms that are part of the European Union Cattle Accreditation Scheme (EUCAS) or UK equivalent. The scheme requires the electronic identification of cattle for export to the EU, rendering hot branding unnecessary.[128] In any event, it is highly unlikely that products from hot branded Australian cattle would be imported into the UK. The practice is largely confined to *bos indicus* cattle, and there is an insignificant UK market for this type of meat.

(3) Does this practice imply cost savings for Australian producers vis-à-vis UK producers?

Branding essentially involves a labour cost and there is little difference between ear tagging and branding.

(4) Would the FTA prevent the UK from regulating imports of beef from these cattle?

As under WTO law, the UK would, in principle, be able to prohibit imports on 'public morals' grounds, provided that it can establish that it is contrary to UK public morals for cattle to be hot branded. So long as hot branding is still permitted for horses in parts of the UK, this could be difficult. The UK would also be able to raise concerns with Australia about hot branding in the Joint Working Group on Animal Welfare established under the FTA;[129] but again, the UK would need to consider its own situation. However, the FTA does not change the WTO legal position concerning labelling.

(5) Conclusion

There is virtually no risk that beef from the hot branded cattle will be imported into the UK. In any event, the FTA does not constrain the UK's rights under WTO law to prohibit imports of beef from branded cattle if it could be shown that this is necessary to protect UK public morals, which might be difficult, given that branding of horses is legal in parts of the UK. Nor does the FTA change the WTO legal position concerning labelling.

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[125] *The Mutilations (Permitted Procedures) (England) Regulations 2007*, https://www.legislation.gov.uk/uksi/ 2007/1100; *The Mutilations (Permitted Procedures) (Wales) Regulations 2007*, https://www.legislation.gov.uk/ wsi/2007/1029.

[126] *The Prohibited Procedures on Protected Animals (Exemptions) (Scotland) Regulations 2010*, https:/ /www. legislation.gov.uk/ssi/2010/387.

[127] *The Welfare of Animals (Permitted Procedures by Lay Persons) Regulations (Northern Ireland) 2012*, https://www.legislation.gov.uk/nisr/2012/153/contents/made.

[128] Australian Department of Agriculture, Water and the Environment, *European Union Cattle Accreditation Scheme (EUCAS)* (October 2021), https://www.awe.gov.au/sites/default/files/ sitecollectiondocuments/biosecurity/export/meat/elmer-3/eucas/farm-rules.pdf.

[129] Article 25.1 ('Animal Welfare'), para 8.

The UK is however able to raise the matter in the FTA's Animal Welfare Working Group.[130]

D) Stunning and CCTV in abattoirs[131]

Several consultees raised concerns about stunning or lack of CCTV in abattoirs.[132]

(1) Do Australian abattoirs permit stunning or lack CCTV, unlike the UK, raising animal welfare concerns?

It is illegal in Australia to export meat from non-stunned animals.[133] In the UK, stunning is required except for meat produced according to religious rites.[134]

There is no national requirement for CCTV in Australian abattoirs, but certain Australian States are considering their adoption, with legislation in Queensland expected soon.[135] A 2018 report found 74% of Australians favour the mandatory requirement of CCTVs in abattoirs.[136] Some of Australia's largest meat processors have installed CCTVs on a voluntary basis.[137] [138]

It became a legal requirement for CCTVs to be installed in English abattoirs in 2018 and in Scotland from 1 July 2021. [139] Wales stated they will become statutory in a five-year Animal Welfare plan announced in 2021 and no date has been announced for a CCTV requirement in Northern Ireland abattoirs. [140] However, it should be noted that

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[130] Article 25.1 ('Animal Welfare), para 8.

[131] There were also some concerns about live animal exports, but we did not consider these, as there are no live exports for slaughter from Australia to the UK.

[132] Submissions 005 and 006 (National Sheep Association); Submission 021 (Quality Meat Scotland); Submission 022 (National Farmers' Union and National Farmers' Union Cymru); Submission 026 (Convention on Animal Protection); Submission 027 (Provision Trade Federation); Submission 028 (British Veterinary Association).

[133] Section 4-3 of the *Export Control (Meat and Meat Products) Rules 2021* made under section 432 of the *Export Control Act 2020 Cth*, making it a requirement for export to comply with the Australian Meat Standard (AS 4696:2007). For discussion of the export regime, see Jessica Loyer et al, 'A Review of Legal Regulation of Religious Slaughter in Australia: Failure to Regulate or a Regulatory Fail?' (2020) 10 *Animals* 1530, at 10, doi:10.3390/ani10091530.

[134] Article 4(4) of Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing, which has the status of retained EU law in Great Britain and operates under the Northern Ireland Protocol to the EU-UK Withdrawal Agreement in Northern Ireland.

[135] Brisbane Times, *CCTV to be Mandatory in all Queensland Slaughterhouses* (February 2010), https://www.brisbanetimes.com.au/politics/queensland/cctv-to-be-mandatory-in-all-queensland-slaughterho uses-20200210-p53zfa.html.

[136] Futureye, A*ustralia's Shifting Mindset on Farm Animal Welfare* (2018), https://web.archive.org/web/20220111222419/https://www.outbreak.gov.au/sites/default/files/documents/farm-animal-welfare.pdf.

[137] The Beef Site, *Teys Installs CCTV in Abattoirs* (February 2012), https://www.thebeefsite.com/processing/news/16971/teys-installs-cctv-in-abattoirs/

[138] Australian Abattoirs, *Longford* (November 2013), https://australianabattoirs.com/tag/jbs-ownership/

[139] *The Mandatory Use of Closed Circuit Television in Slaughterhouses (England) Regulations 2018*, https://www.legislation.gov.uk/uksi/2018/556/; *The Mandatory Use of Closed Circuit Television in Slaughterhouses (Scotland) Regulations 2020*, https://www.legislation.gov.uk/sdsi/2020/9780111046654/.

[140] Welsh Government, *Our Animal Welfare Plan for Wales 2021-26* (2021), https://gov.wales/sites/default/files/publications/2021-11/animal-welfare-plan-wales-2021-26.pdf, p 15.

CCTV has been a Red Tractor requirement since 2017 and, as the scheme underpins the buying specification of every major UK retailer and caterer, livestock volumes covered by the scheme will be high.

(2) Do these practices involve products likely to be imported into the UK at increased rates under the FTA?

There is no risk of imports of non-stunned meat into the UK. As there is no national or state requirement for CCTVs in abattoirs it is inevitable that some imported meat or meat products will have been slaughtered without their use.

(3) Does the absence of CCTV imply cost savings for Australian producers?

There is a direct cost of installing and operating CCTVs that English, Scottish and all Red Tractor abattoirs have to bear which those in Wales, Northern Ireland and Australia do not, implying some small advantage for Welsh, Northern Irish and Australian operators. The absence of CCTVs could also hide illegal practices.

(4) Does the FTA restrict the UK's WTO rights to regulate imports of meat produced according to these practices?

No. The FTA does not restrict the UK's WTO rights to prohibit imports of meat from Australia if this is necessary to protect UK 'public morals'. This will be very difficult to prove in the case of CCTV, given that the UK has not required CCTV in all of its own abattoirs, other than in the case of Red Tractor. The UK would however be able to raise concerns with Australia about abattoir CCTVs in the Joint Working Group on Animal Welfare established under the FTA.[141] The FTA does not change the WTO legal position concerning labelling.

(5) Conclusion

Imports from abattoirs not using CCTV could be imported in increased quantities under the FTA; there is however no risk that meat from animals that have not been stunned will enter the UK, as such meat cannot legally be exported from Australia. The UK can, in principle, prohibit imports of products on public morals grounds, but it will be very difficult to show that the UK's public morals require the use of CCTV in abattoirs, given that this is not a UK-wide requirement. The UK would be able to raise concerns with Australia in the Joint Working Group on Animal Welfare established under the FTA.[142] The FTA does not change the WTO legal position concerning labelling. This would be comparatively easy to implement, given Australia's tracing requirements.[143]

[141] Article 25.1 ('Animal Welfare'), para 8.

[142] ibid.

[143] National Livestock Identification System (NLIS), *Welcome to NLIS Australia's National Livestock Identification System* (2020), at https://www.nlis.com.au/.

d) Feedlots

Several consultees raised concerns about standards in feedlots.[144]

(1) Are feedlots used in Australia in a manner that would be prohibited in the UK?

No. Feedlots are used to finish cattle and are mainly used to produce grain-fed beef. Australian feedlots are outside, whereas in the UK finishing systems use both outside and inside areas for cattle depending on the season. Legal standards for Australian feedlots are extensive and include a minimum area of 9m² per Standard Cattle Unit (450kg),[145] adequate provision of feed and water, daily inspection of all cattle, cleaning protocols and monitoring of heat with a requirement for an excessive heat load action plan.[146] There are enhanced identification requirements for Australian feedlot cattle produced under the EUCAS system.[147] There are no defined space allowances for housed UK cattle, but the Red Tractor guidelines include a suggestion of 6.8m^2 for cattle up to 699kg.[148] There is a Scottish recommendation of a minimum area of 7.75m^2 for cattle over 700kg for indoor housing.[149]

(2) Does this involve products likely to be imported into the UK under the FTA?

It is very likely that some products imported under the FTA will be from cattle finished in feedlot.

(3) Does use of feedlots imply cost savings for Australian producers vis-à-vis UK producers?

There are no significant differences in terms of space allocation.

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[144] Submission 001 (RSPCA); Submission 012 (Trade and Animal Welfare Coalition UK); Submission 014 (The Humane League UK); Submission 018 (Compassion in World Farming); Submission 019 (Trade Justice Movement); Submission 024 (Four Paws UK).

[145] Australian Department of Primary Industries and Regional Development, *Livestock comparisons for estimating stocking rates and grazing pressure in the rangelands of Western Australia*, https://www.agric.wa.gov.au/rangelands/livestock-comparisons-estimating-stocking-rates-and-grazing-pressure-rangelands-western?page= 0%2C0#smartpaging_toc_p0_s4_h3.

[146] Animal Health Australia, *Australian Animal Welfare Standards and Guidelines for Cattle*, p 19.

[147] Australian Department of Agriculture, *European Union Cattle Accreditation Scheme - Information for Feedlots* (September 2014), at https://www.awe.gov.au/sites/default/files/documents/feedlot.pdf.

[148] Red Tractor, *Assurance for Farms, Beef and Lamb Standards* (2020), at https://redtractorassurance.org.uk/wp-content/uploads/2018/05/HF.f-BEEF_LAMB_Housing-Space-allowance.pdf.

[149] Farm Advisory Service, *Beef Cattle Housing,* (May 2018), at https://www.fas.scot/downloads/beef-cattle-housing/.

(4) Does the FTA restrict the UK's WTO rights to regulate imports of meat from feedlots?

No. However, it is not easy to see how the UK could prohibit beef from feedlots on 'public morals' grounds if its own space allowance standards are lower than in Australia.

(5) Conclusion

It is inevitable that more feedlot beef will enter the UK under the FTA. The FTA does not change the UK's legal position in relation to imports of feedlot beef, but both under WTO law and the FTA it would be difficult to see how the UK could restrict imports of beef on 'public morals' grounds if it is produced under conditions that are more generous than in the UK itself. If so, however, the UK will be able to raise concerns with Australia about pain relief in the Joint Working Group on Animal Welfare established under the FTA.[150] The FTA does not change the WTO legal position concerning labelling which, given Australia's tracing system, would be straightforward to implement.

e) Pain relief during permitted procedures

Several consultees raised concerns about pain relief usage in Australia.[151]

(1) Does Australia permit pain relief to a lower standard than the UK?

Both the UK and Australia have clear rules on the use of pain relief for cattle and sheep (eg tail docking, castration and dehorning). Both countries permit some procedures on younger animals to take place without pain relief. Although Australia has a longer maximum time limit for procedures without pain relief, it recommends that animals are treated as soon as possible and before they are 12 weeks old,[152] which is the same as in the UK.[153] It should be noted that the UK assurance schemes have higher requirements than UK legal standards for pain relief (anaesthetic and analgesics) and

[150] Article 25.1 ('Animal Welfare'), para 8.

[151] Submission 001 (RSPCA); Submission 004 (Quality Meat Scotland); Submissions 005 and 006 (National Sheep Association); Submission 018 (Compassion in World Farming); Submission 021 (Quality Meat Scotland); Submission 028 (British Veterinary Association).

[152] Animal Health Australia, *Australian Animal Welfare Standards and Guidelines for Cattle* (January, 2016) - https://www.animalwelfarestandards.net.au/files/2011/01/Cattle-Standards-and-Guidelines-Endorsed-Jan-2016-061017_.pdf, p19.

[153] *The Mutilations (Permitted Procedures) (England) Regulations 2007*, https://www.legislation.gov.uk/uksi/2007/1100/pdfs/uksi_20071100_en.pdf; Department for Environment, Food and Rural Affairs, *Caring for Beef Cattle and Dairy Cows* (March, 2003), https://www.gov.uk/government/publications/code-of-recommendations-for-the-welfare-of-livestock-cattle/beef-cattle-and-dairy-cows-welfare-recommendations#housing-cattle; *Caring for Sheep and Goats,* (April 2013), at https://www.gov.uk/government/publications/code-of-recommendations-for-the-welfare-of-livestock-sheep/sheep-and-goats-welf are-recommendations#mutilating-livestock.

the age limits are lower.[154] As the schemes underpin the buying specification of every major UK retailer and caterer, livestock volumes covered by the schemes will be high.

(2) Does this involve products likely to be imported into the UK under increased rates under the FTA?

Yes.

(3) Do different pain relief standards imply cost savings for Australian producers compared to UK producers?

Longer periods when the use of no pain relief is allowed could result in some cost savings for Australian producers, but these advantages are unlikely to be substantial when compared UK legal standards, although they are likely to be greater when compared to the higher standards of the UK assurance scheme. Labour costs might be higher when procedures are carried out on older stock because those animals are more difficult to handle.

(4) Does the FTA restrict the UK's WTO rights to regulate imports of meat using different standards of pain relief?

As under WTO law, the UK could prohibit imports of meat produced using different standards of pain relief under the FTA if it could demonstrate that this is necessary to protect UK 'public morals'. This might not be easy, given that the UK permits procedures on younger animals without pain relief to take place. It would also be necessary for the UK to apply the same rules to imports from other countries.

(5) Conclusion

Australian pain relief rules allow producers to carry out a greater range of procedures without pain relief for a longer period of time, this is particularly true when compared to the UK assurance schemes, which account for the majority of UK Livestock. Meat produced in this way would be highly likely to be imported into the UK. However, because legally similar procedures are allowed without pain relief on younger animals in the UK, it would be very difficult to prohibit the import of Australian product on public moral grounds. The UK will be able to raise concerns with Australia about pain relief in the Joint Working Group on Animal Welfare established under the FTA.[155] The FTA does not change the WTO legal position concerning labelling.

[154] See eg 'Husbandry procedures, analgesic & anasthetic' in BVCA, Red Tractor Farm Assurance: Summary of November 2021 Changes, at https://www.bcva.org.uk/content/schemes

[155] Article 25.1 ('Animal Welfare'), para 8.

C. Environmental Concerns

a) Deforestation[156]

Several consultees raised concerns over deforestation in Australia, and in particular that trade liberalisation under the FTA may lead to an increase of imports of agricultural products from deforested land.[157]

(1) Does deforestation occur in Australia in a manner that would not be permitted in the UK?

In the UK, deforestation is regulated by licensing according to a common UK forestry standard.[158] The Forestry Commission, which governs deforestation in England, states that '[w]e will not normally agree to woodland clearance for conversion to agricultural use. If we do agree to the conversion to agriculture, you will be required to create an equivalent area of replacement woodland.'[159]

Deforestation is also regulated in Australia. Evidence submitted by the Australian High Commission confirms that 'there are no nationally set limits or levels for deforestation, and as such no processes for altering them. Permits for conversion of all forests to grasslands for agriculture are required in the Northern Territory, Western Australia, Victoria, South Australia and Tasmania, with minor exceptions. In Queensland the administrative processes are more complex. Legal consequences derive from a combination of regional ecosystem plans issued under regulation, individual property agreements and land clearing permits. A similar mix of instruments is applied in New South Wales.'[160]

Australian official sources confirm that deforestation does occur in Australia, some of which can be attributed to agricultural production (although not to specific agricultural products), as opposed to other activities (eg, logging, mining or infrastructure).[161]

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[156] Deforestation generally means the 'conversion of forest to other land uses' and Australia follows this international definition in its reporting under the United Nations Framework Convention on Climate Change. Australia defines a 'forest' as 'all lands with a vegetation height of at least 2 metres and crown canopy cover of 20 per cent or more, and lands with systems with a woody biomass vegetation structure that currently fall below but which, in situ, could potentially reach the threshold values of the definition of forest land.' Australian Department of Industry, Science, Energy and Resources, *National Inventory Report 2019 – Volume 2* (April 2021), p 23, at https://www.industry.gov.au/data-and-publications/national-greenhouse-accounts-2019/national-inventory-report-2019.

[157] Submission 012 (Trade and Animal Welfare UK); Submission 019 (Trade Justice Movement); Submission 021 (Quality Meat Scotland); Submission 022 (National Farmers' Union and National Farmers' Union Cymru); Submission 025 (Greener UK).

[158] Forestry Commission, *The UK Forestry Standard 2017* (updated 2021), at https://www.gov.uk/government/publications/the-uk-forestry-standard.

[159] Forestry Commission, *Tree Felling: Getting Permission* (2020), at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876641/Tree_Felling_-_Getting_Permission__off ice_print_version.pdf.

[160] Australian Department of Industry, Science, Energy and Resources, *National Inventory Report 2019 - Volume 3* (April 2021), p 16, at https://www.industry.gov.au/data-and-publications/national-greenhouse-accounts-2019/national-inventory-report-2019.

[161] This information is partly Commonwealth and partly State-level. For examples of the latter, see NSW Government, *2019 SLATS Report*, at https://www.environment.nsw.gov.au/topics/animals-and-plants/

However, there is significant variation between states, and between years. For example, between 2010-2019 there was net reforestation across Australia of 136,200 ha. But this figure includes net deforestation in New South Wales of 105,300 ha in the same period, a figure which itself includes periods of net deforestation (2011-13; 2017-19) and net reforestation (2010, 2014-16). There were also periods of net reforestation (2010-12; 2014-15) and net deforestation (2016-19) in Queensland.[162] It is possible therefore to find evidence of both deforestation and reforestation in Australia at different places and times.

As a result, we have not sought to make a full comparison between Australia and the UK in relation to deforestation. We proceed on the basis that deforestation might occur in Australia in connection with agricultural production in any given period, without reaching a definitive conclusion on this point.

(2) Does deforestation (if any) involve products likely to be imported into the UK under the FTA?

This cannot be excluded.

(3) Does deforestation imply cost savings for Australian producers vis a vis UK producers?

No. Clearing a forest or woody vegetation is costly.

(4) Does the FTA restrict the UK's ability under WTO law to regulate imports of products produced on deforested land (if this occurs)?

No. However, the UK does not have an unquestionable right to prohibit imports of deforested products. Under Article 31.1, which incorporates Article XX(g) of GATT 1994, the UK is entitled to adopt measures relating to the conservation of exhaustible natural resources. Ordinarily, under WTO law, that would not permit the UK to adopt measures to conserve *Australia's* natural resources. In principle, that is a matter for Australia. This said, in Article 22.13.2 of the FTA the parties 'recognise the importance of … halting deforestation and forest degradation, including with respect to trade in commodities related to those activities'. While this is not an enforceable obligation not to engage in deforestation, it may support an argument that Article XX(g), as incorporated in the FTA, could be read more broadly to permit the UK to adopt restrictive trade measures to conserve Australia's forests. This is an unsettled legal question. At a minimum, Article 22.13.2 is sufficient for the UK to raise deforestation as a concern with Australia in the Environment Working Group.

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native-vegetation/landcover-monitoring-and-reporting/2019-landcover-change-reporting; and Queensland Government, *2018-2019 SLATS Report*, at https://www.qld.gov.au/environment/land/management/mapping/ statewide-monitoring/slats/slats-reports/2018-19-report#section-queensland. For national figures, see Australian Department of Industry, Science, Energy and Resources, *National Inventory Report 2019 – Volume 2* (April 2021), p 10-11, https://www.industry.gov.au/data-and-publications/national-greenhouse-accounts2019/national-inventory-report-2019.

[162] Table provided by Australian High Commission to TAC on 11 March 2022. 'Net reforestation' refers to a positive net change in forest area (i.e., difference between total forest-clearing and total forest-regrowth) in the specified period. 'Net deforestation' refers instead to a negative net change in forest area in the specified period.

In addition, however, the UK is entitled to adopt measures under Article 31.1 relating to the conservation of its own natural resources, and – perhaps – resources which form part of the global commons, and for both reasons it might be possible for the UK to adopt measures targeted at deforestation both in the UK and in Australia. Even so, the FTA would permit the UK to regulate imports of agricultural products from deforested land in Australia only insofar as the UK can establish that any such deforestation has a negative impact on climate change. However, this will possibly require an examination of the *net* effect between deforestation and reforestation activities in Australia.

Finally, the FTA does not prevent Australia from continuing (or increasing) forest-clearing practices in agriculture, even where this would be done by derogating from, waiving or not enforcing Australian law through a sustained or recurring course of action to secure a trade advantage. Forest and land management matters are primarily regulated at state and territory level in Australia and hence do not count as 'environmental laws' for the purposes of these obligations.[163] At most, the UK would be able to request a dialogue with Australia in the event of non-enforcement of a state or territory environmental law through a sustained or recurring course of action to secure a trade advantage.

(5) Conclusion

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.

In the event of any deforestation with an impact on agricultural exports to the UK, the UK has a limited set of legal options. As under WTO law, the FTA does not give the UK a right to protect Australian resources, including its forests. The situation is, however, different in the event of any net deforestation, if this contributes to climate change, a question which itself involves complicated factual and legal issues. While this is still untested, it is likely that the UK is entitled under WTO law, and the FTA, to restrict trade in order to combat climate change, to the extent that this can be seen as conserving an 'exhaustible natural resource' which is either a UK natural resource or part of the global commons. In any event, the UK would be able to raise the issue of deforestation with Australia in the FTA's Environment Working Group.

[163] Article 22.1 of the FTA.

b) Climate change

Several consultees raised concerns about the impact of the FTA on the UK's carbon footprint, and in particular that trade liberalisation under the FTA may lead to increased imports of emission-intensive products from Australia.[164]

(1) Is Australian agricultural production more emission-intensive than UK agricultural production?

These concerns are mainly motivated by the differences between Australia and the UK in terms of climate change mitigation commitments under the Paris Agreement and domestic climate mitigation policies.[165] This does not however necessarily mean that Australian agricultural production is more emission-intensive when compared to the UK. In particular, emission reduction commitments under the Paris Agreement are *economy-wide* for both countries: they cover all sectors, including agriculture, but there is no specific reduction target for each sector. In addition, while the UK has a national system in place to cap carbon emissions (i.e., Emissions Trading System),[166] this system does not cover the agricultural sector – in this respect the UK and Australia are therefore the same.

We were not presented with any reliable evidence comparing emission-intensity of agricultural products in Australia and UK. The DIT Impact Assessment suggests that data on emissions intensity in cattle meat production tend to vary according to the source and on whether only emissions from within the boundaries of the farm are considered (such as methane from cattle and electric usage) or if additional emissions from factors such as land use change are also included.[167] We also note that Australia's economies of scale, and systems of production, render it unlikely that meat production in Australia is more emission intensive than in the UK. We also note that Meat & Livestock Australia has set a target of carbon net neutrality by 2030.[168]

The DIT Impact Assessment also estimates that the increase in annual transport-related emissions associated with increased trade flows, the UK's exports as well as imports, under the FTA is small (around 0.1 and 0.3 $MtCO_2e$ each year; a 31-40% increase), when compared to UK production emissions.[169] This figure is for all trade

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[164] Submission 006 (National Sheep Association); Submission 007 (Game and Wildlife Conservation Trust); Submission 008 (UK Environmental Law Association); Submission 010 (Fairtrade Foundation); Submission 024 (Four Paws UK); Submission 025 (Greener UK); Submission 027 (Provision Trade Federation).

[165] In its current Nationally Determined Contribution (NDC), the UK commits to reduce economy-wide greenhouse gas emissions by at least 68% compared to 1990 levels by 2030. In its current NDC, Australia commits to reduce economy-wide greenhouse emissions by 26-28% below 2005 levels by 2030. See https://www4.unfccc.int/sites/NDCStaging/pages/Party.aspx?party=GBR and https://www4.unfccc.int/sites/NDCStagi ng/pages/Party.aspx?party=AUS.

[166] UK Department for Business, Energy and Industrial Strategy, *Guidance on Participating in UK ETS*, (February 2022), at https://www.gov.uk/government/publications/participating-in-the-uk-ets/participating-in-the-uk-ets.

[167] Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, at p 47.

[168] Meat & Livestock Australia, *CN30 Overview*, at https://www.mla.com.au/research-and-development/Environment-sustainability/carbon-neutral-2030-rd/cn30/.

[169] Department for International Trade, *Impact assessment of the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia*, December 2021, at p 46.

under the FTA, and no separate figure for agriculture was given. But it will naturally be even smaller. A study by Meat & Livestock Australia finds that meat processing and shipping from Australia to the European Union account for a very small proportion of total greenhouse gas emissions in the cattle production cycle (less than 3% for beef and less than 4% for lamb).[170]

(2) Does emission-intensive production (if any) involve products likely to be imported into the UK under the FTA?

For the reasons mentioned, this is difficult to ascertain.

(3) Does emission intensity (if any) imply cost savings for Australian producers vis-à-vis UK producers?

For the reasons mentioned, this is difficult to ascertain. In any event, we note that UK agricultural producers are excluded from the UK's emissions trading system.

(4) Would the FTA prevent the UK from regulating imports produced in a more emission-intensive manner if this occurred?

As noted above, the UK is able, both under WTO law and the FTA, to adopt measures that relate to the conservation of exhaustible natural resources, and this right may apply to climate change measures. This is a difficult legal question, and depends on numerous issues, including the role of Paris Agreement commitments, which cannot be solved in this advice. Suffice to say that the FTA does not reduce the UK's WTO rights to regulate to protect climate change. In addition, the UK can raise emission-intensive production as a concern with Australia in the Environment Working Group.

(5) Conclusion

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. What can be said is that the FTA does not change the position of the UK under WTO law, which itself involves unsettled legal questions, to adopt measures to combat climate change.

[170] Meat & Livestock Australia - *Environmental Impact of Food Miles on Australian Beef and Lamb Exports to the EU* (August 2019), at https://www.mla.eu/articles/environmental-sustainability/study-on-the-environmen tal-impact-of-food-miles-on-australian-beef-and-lamb-exported-to-the-european-union/.

D. List of consultees

1. Professor Charles Milne, Former Chief Veterinary Officer of Scotland and Victoria, Australia
2. Jonathan Fried, Former Canadian Ambassador to the WTO
3. John Weekes, Former Canadian Ambassador to the WTO, and Chief Negotiator for the North American Free Trade Agreement (NAFTA)
4. Dr Bidda Jones, former Chief Scientist for RSPCA Australia
5. Dr Jed Goodfellow, former Senior Policy Officer for RSPCA Australia
6. Mary Johnson, Market Access Manager (Europe) for Meat & Livestock Australia
7. Professor Fiona Smith, University of Leeds
8. Professor Michael Radford, University of Aberdeen
9. Jonathan Statham, Chair of Animal Health and Welfare Board (in a personal capacity)
10. Professor Cameron Holley, University of New South Wales
11. Professor Julie Fitzpatrick, Chief Scientific Advisor, Scottish Government and Scientific Director, Moredun Research Institute
12. UK Government officials
13. Australian Government officials
14. David Bowles, RSPCA UK
15. Peter F Dawson, Dairy UK
16. Sue Davies, Which?
17. Stuart Ashworth, Quality Meat Scotland
18. Sean Riches, National Sheep Association
19. Henrietta Appleton, Games and Wildlife Conservation Trust
20. Professor Eloise Scotford, University College London
21. Josie Cohen, Pesticide Action Network UK
22. Tim Aldred, The Fairtrade Foundation
23. Michael Haverty, The Andersons Centre
24. Marisa Heath, Trade & Animal Welfare Coalition
25. Paula Sparks, UK Centre for Animal Law (A-Law)
26. Amro Hussain, The Humane League UK
27. Cóilín Nunan, Save Our Antibiotics
28. Stacey McIntosh, Australian Department of Agriculture, Water and the Environment
29. James West, Compassion in World Farming
30. Leo Verity, Trade Justice Movement
31. Laura McAnea, Crustacean Compassion
32. Lucy Ozanne, Quality Meat Scotland
33. Gail Soutar, National Farmers Union England and Wales
34. Grace O'Gorman, National Office of Animal Health
35. Rebecca Dharmpaul, Four Paws UK
36. Sarah Williams, Green Alliance
37. Rebecca Zard and Nigel Blackaby QC, Convention on Animal Protection
38. Andrew Kuyk CBE, Provision Trade Federation
39. Michael McGilligan, British Veterinary Association
40. Derrick Wilkinson
41. Katherine Wotherspoon, Fera Science
42. Dr Felicity Deane, Queensland University of Technology

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