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The Scottish Parliament
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28 June 2022

Dear Claire

UK-Australia Free Trade Agreement Ratification and Section 42 Report

We are writing to make you aware that the UK Government has initiated the ratification process for the UK-Australia free trade agreement (FTA) under the Constitutional Reform and Governance (CRAG) Act 2010. It laid the [treaty text](#) and accompanying [Section 42 report](#) in the UK Parliament on 15 June and under the CRAG procedures, the UK Parliament will have 21 sitting days to consider it.

Once ratification has been completed, the FTA will not enter into force until the necessary domestic legislation is in place to implement the FTA. This is being done through the Trade (Australia and New Zealand) Bill, which was introduced in Westminster on 11 May. In a [Legislative Consent Memorandum](#) lodged on 13 June, the Scottish Government recommended that the Scottish Parliament does not consent to this, as it unnecessarily confers powers on UK Ministers to make legislation on devolved matters without seeking further consent of the Scottish Parliament.

UK Government's Section 42 report on the final FTA

The Secretary of State for International Trade is required by Section 42 of the Agriculture Act 2020 to produce a report on a completed FTA and lay it in the UK Parliament, prior to formal ratification procedures under the CRAG Act. The purpose of the report is to explain how the FTA is consistent with the maintenance of UK levels of statutory protection for: (a) human, animal or plant life or health, (b) animal welfare, and (c) the environment. The report was published on 6 June 2022 and has been informed by the recent Trade and Agriculture Commission (TAC) report on the UK-Australia FTA. It also includes advice from the Food Standards Agency and Food Standards Scotland, as the UK's food safety authorities.

This is the first time such a report has been produced by the UK Government and the first completely new FTA it has negotiated since EU exit. While Section 42 makes no provision

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for laying the report in the Scottish Parliament it does require that a copy is provided to Scottish Ministers. Notwithstanding this, we are writing to make you aware of the report as Conveners of the relevant Scottish Parliament committees. A copy of the report will also be laid in the Scottish Parliament Information Centre.

Scottish Government comments on findings of the Section 42 Report

We are pleased that this FTA preserves our right to regulate, and that neither Scotland nor the rest of the UK will have to change our regulations or standards. However, the Scottish Government has wider issues with the UK-Australia FTA, which we believe will have a significant impact on Scotland.

While the report makes clear that the right to regulate has been maintained, it is concerning to see this claimed as a negotiated position and a 'win'. The right to regulate is in place to protect the high standards our producers work to and our consumers currently enjoy. However, under this FTA, products from animals raised using farming methods which would be illegal in the UK, will be allowed to be imported from Australia. Furthermore, plants grown using pesticides which are banned in the UK will also be permitted, although they will have to ensure the residue levels fall below the UK limits. This is not a level playing field for Scottish producers and in our view this deal does not adequately protect standards for our producers or consumers.

The scope of the Section 42 report is limited to considering the extent to which the free trade agreement is consistent with the maintenance of the statutory protections on human, animal or plant health and life, animal welfare and the environment. It does not properly account for wider aspects of the deal that will have a significant adverse impact on the Scottish economy, in particular the impact of increased imports from Australia on farmers and crofters.

Although the report touches on increased market access for Australian imports and relevant safeguards, it does not cover market access in detail and there remain significant concerns over the arrangements agreed in the FTA. It is not just the Scottish Government that has highlighted concerns, our farmers and crofters are also worried about the potential impact.

The **National Farmers Union Scotland** [has said that](#):

"The final deal, as we feared after the announcement of the deal in principle, shows a complete dearth of proper consultation with farming and food sector interests across the UK. While we are not against free trade this deal appears to be very one sided, with little to no advantage for Scottish farmers."

The **National Sheep Association** [has called](#) the sheep sector 'the sacrificial lamb' and said: *"NSA is disappointed that this deal has been pushed through and now signed without any resolution on how Tariff Rate Quotas could be managed in a way to limit potential damage to the UK's own domestic trade."*

Scottish Government involvement in the development of this FTA

The involvement of the Scottish Government in the development of this FTA with Australia was limited. Scottish Government officials were in contact with officials from the UK Government's Department for International Trade (DIT) and Department for Environment, Food and Rural Affairs (DEFRA) throughout the process to represent Scotland's interests

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and hear progress updates, however this level of engagement fell short of what we need. We have made the case for engagement across all areas covered by an FTA, however the UK Government only shared sections of the draft UK negotiating mandate and draft chapter text in areas that they considered relevant to devolved competence. We saw the final treaty text and impact assessment only just before publication, but with no opportunity for us to make any amendment.

We had no role in the negotiations with Australia and no say in the decisions taken by the UK Government throughout the negotiations. Scottish Government officials saw no detail about key parts of the agreement, such as tariffs and tariff rate quotas (TRQs), until after these were agreed, despite the clear implications for Scotland's agricultural sector which is of course a devolved responsibility. Nor were we given the underpinning analysis or rationale behind the decisions. We have consistently called for a full and comprehensive role in the process for the Scottish Government and the Scottish Parliament. Our rationale here was clearly outlined in [Scotland's Role in the Development of Future UK Trade Arrangements](#), published in August 2018.

Scottish Government views on the UK-Australia FTA

[Scotland's Vision for Trade](#), published and presented to Parliament in January 2021, sets out the principles which underpin our trade decisions and relationships: inclusive growth, wellbeing, sustainability, net-zero and good governance. These are the guiding principles that we use as the basis to inform our views on the UK Government's approach to FTA negotiations and, in particular, the final agreement.

Agri-food imports

As you will be aware, we have particular concerns about the implications of this agreement on farming communities in Scotland. As noted above, the significant level of market access that it provides for beef and sheepmeat imports has caused alarm among farming stakeholders. Tariff rate quotas (TRQs) for beef and sheepmeat imports will increase significantly year on year from entry into force, leading to zero-tariff, zero-quota trade after ten years. The increase in TRQs for beef and sheepmeat is particularly significant. For beef the year 1 quota of 35,000 tonnes is a seven-fold increase on the current position. By year 10 the quota is 110,000 tonnes. For sheepmeat, the year 1 quota is 25,000 tonnes, rising to 75,000 tonnes in year 10. High value cuts are where Scottish farmers derive most value, so a potential increase in imports is a concern for Scottish industry.

From years 11 to 15 of the agreement, there will be product specific safeguards which operate in a similar way to TRQs. Product specific safeguards mean that in years 11 to 15 of the agreement (once TRQs and tariffs have been removed) should imports of beef or sheepmeat exceed a certain threshold, then the UK could apply an *ad valorem* tariff of 20%. Beyond year 15, Australian agri-food exporters will enjoy unfettered access to the Scottish agriculture market.

The UK Government's own [impact assessment](#) shows the agriculture and semi-processed foods sectors as losing out as a result of an FTA with Australia. These sectors are expected to experience a reduction in GVA of around 0.7% (£94 million) and 2.65% (£225 million) as a result of the deal, driven by increased import competition for beef and sheepmeat. The analysis reinforces our concerns about the potential impact of this agreement.

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Animal welfare and antimicrobial resistance (AMR)

We have consistently called for imports of Australian agri-food to be produced to the same animal welfare and environmental standards that Scottish producers are required to meet. However, this position has not been accepted by the UK Government.

Whilst the agreement contains a non-regression clause on animal welfare, we are still not reassured that this will protect Scottish and UK farmers because Australian animal welfare standards are already lower than in the UK. This means Scottish farmers, crofters and food producers will not be competing on a level playing field with their Australian competitors from the outset.

The agreement contains provisions on tackling antimicrobial resistance (AMR), however we do not believe they go far enough and represent a missed opportunity to have a meaningful impact on this significant threat to global health.

Goods exports

The agreement removes the vast majority of tariffs on UK exports to Australia, which will benefit Scottish exporters, including the whisky industry. We will want to ensure that Scottish companies can take full advantage of any new opportunities that arise from this agreement. In addition to tariff reduction, the issue of an enforceable definition for Scotch whisky in Australia is important to the whisky industry in Scotland, so it is unfortunate that the FTA does not contain such a commitment.

Services exports

Some gains have been achieved for UK service providers in fields such as architecture, finance and the law and we hope this will lead to opportunities for existing Scottish firms operating in Australia and those that intend to do so. Liberalisation of trade in services is restricted by schedules of reservations, which exclude or set conditions on, market access for services providers. In general, Australia has more reservations across more sectors than the UK. The limited GVA gains for services sectors as a result of this agreement suggests that while beneficial, the overall impact will be minimal.

We are obviously keen for Scottish companies to be able to take advantage of the provisions in the agreement on trade in services and business mobility. While there are likely to be benefits for companies trading with Australia, it remains the case that the size of the Australian market and geographical distance are likely to be limiting factors. These measures will not compensate for the loss of market access that Scottish companies have faced as a result of leaving the EU.

Government Procurement

The agreement provides for increased access to Australian Government contracts over and above the WTO Agreement on Government Procurement (GPA). This includes access to procurement by government bodies at both federal and state level that are covered under the agreement. While this is welcome, as with trade in services, geographical distance might be a limiting factor for Scottish companies taking up these opportunities.

Environment

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As you will be aware the Scottish Government already has an ambitious target to meet net-zero by 2045 and *Scotland's Vision for Trade* makes clear that trade must support this goal. We are therefore concerned that the UK Government's impact assessment points to an estimated increase in the emissions associated with maritime and aviation freight between the UK and Australia of between 31% and 40%, as a result of this deal, compared to a scenario without the agreement. The environment chapter makes a specific reference to the Paris Agreement, which is welcome but we would have preferred the chapter to include binding commitments to comply with the Agreement and to take action to keep global warming to below 1.5 degrees.

Impact Assessment

The UK Government published an [impact assessment](#) on the final agreement, which shows a small increase in UK GDP over the long run (around 15 years) of 0.08%. However, this will not compensate for the 4% decline in UK GDP, which the Office for Budget Responsibility analysis suggests will result from leaving the EU.

The focus on long run impacts means that we have no analysis of the short and medium term impacts of this deal which is important, especially given the current economic context. We have asked what measures of support the UK Government will make available to Scottish sectors and producers adversely impacted by the deal. We have also called on the UK Government to undertake more detailed impact assessments, including more detailed analysis of the impact on the different nations of the UK and on different groups within society, which it has not done.

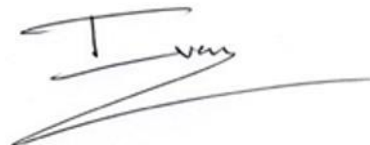
The Scottish Government has consistently made the case for a role for the Scottish Parliament in the development and scrutiny of FTAs. While the making of international treaties is reserved, modern FTAs cover a wide range of matters, both reserved and devolved, and can have a significant impact on our economy. We believe it is important that your committee is given the opportunity to examine this report and our analysis of the FTA, which we hope members will find useful.

We are also writing in similar terms to the Convener of the Rural Affairs, Islands and Natural Environment Committee.

Yours Sincerely,



MAIRI GOUGEON



IVAN McKEE

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