PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

TRADE (AUSTRALIA AND NEW ZEALAND) BILL

Second Sitting

Wednesday 12 October 2022

(Afternoon)

CONTENTS

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Sunday 16 October 2022

The Committee consisted of the following Members:

Chairs: † Mark Pritchard, Derek Twigg

Afolami, Bim *(Hitchin and Harpenden)* (Con)
† Bowie, Andrew *(West Aberdeenshire and Kincardine)* (Con)
† Britcliffe, Sara *(Hyndburn)* (Con)
† Clarkson, Chris *(Heywood and Middleton)* (Con)
† Duddridge, James *(Minister of State, Department for International Trade)*
† Esterson, Bill *(Sefton Central)* (Lab)
† Fell, Simon *(Barrow and Furness)* (Con)
Gibson, Peter *(Darlington)* (Con)
† Greenwood, Lilian *(Nottingham South)* (Lab)
† Griffith, Dame Nia *(Llanelli)* (Lab)
† Hendry, Drew *(Inverness, Nairn, Badenoch and Strathspey)* (SNP)
† Holden, Mr Richard *(North West Durham)* (Con)
† Jenkinson, Mark *(Workington)* (Con)
Lloyd, Tony *(Rochdale)* (Lab)
† Mullan, Dr Kieran *(Crewe and Nantwich)* (Con)
† Qaisar, Ms Anum *(Airdrie and Shotts)* (SNP)
† Russell-Moyle, Lloyd *(Brighton, Kemptown)* (Lab/Co-op)
† Thomas, Gareth *(Harrow West)* (Lab/Co-op)
† Vickers, Martin *(Cleethorpes)* (Con)

Sarah Thatcher, Huw Yardley, *Committee Clerks*

† attended the Committee

Witnesses

Sophie Jones, Director of Public Affairs, British Phonographic Institute

Jonnie Hall, Director of Policy, National Farmers Union Scotland

Donald MacKinnon, Chair, Scottish Crofting Federation

Gareth Parry, Senior Policy and Communications Officer, Farmers Union of Wales

Nick von Westenholz, Director of International Trade, National Farmers Union

Professor Albert Sanchez-Graells, Professor of Economic Law and Co-Director of the Centre for Global Law and Innovation, University of Bristol Law School

Michael Gasiorek, Director, UK Trade Policy Observatory

Rosa Crawford, Policy Officer, TUC

Miles Beale, CEO, Wine and Spirit Trade Association

Public Bill Committee

Wednesday 12 October 2022

(Afternoon)

[Mark Pritchard *in the Chair*]

Trade (Australia and New Zealand) Bill

Examination of Witness

Sophie Jones gave evidence.

2.1 pm

The Chair: We are now sitting in public and the proceedings are being broadcast. We will now hear oral evidence from Sophie Jones, director of public affairs at the British Phonographic Industry, appearing via Zoom. We have until 2.15 pm for this session. Please will the witness introduce herself for the record?

Sophie Jones: Good afternoon. My name is Sophie Jones. I am director of public affairs at the BPI, representing UK record labels.

Q35 Gareth Thomas (Harrow West) (Lab/Co-op): Thank you, Ms Jones, for joining us to give evidence. There was a sense that the Government were in a rush to get the Australia free trade agreement, and to a lesser extent the New Zealand free trade agreement, signed. If they had not been in such a rush, how might they have improved on the deals that they agreed?

Sophie Jones: I do not know how much. It did feel like something of a rush, but while some relatively modest progress was made, we welcome a number of strong improvements. I think you are referring particularly to Australia, but that was to New Zealand as well. Some of the things we were most interested to see, particularly around the Australian system of placing broadcast caps on the royalties that can be paid through to music rights holders, artists and musicians, is a commitment to make progress on those matters through ongoing dialogue, rather than firm commitments within the trade agreement itself. Perhaps that, as a significant focus and priority for us, with more time might have been able to make even more progress than the bilateral discussion approach that is being taken. While very welcome, that is perhaps an area that might have been given a firmer commitment.

The commitment is important because currently, in effect, the music industry provides a cross-subsidy to the broadcast sector, so that when musicians have their music played on broadcast channels in Australia, the amount of royalties paid is significantly capped at 1% of the gross revenue from the broadcaster. It is a significant policy area, and we hope to see progress made on that so that artists both in Australia and the UK can see the benefits of it flowing through.

Q36 Gareth Thomas: One of the issues that we hope to explore in Committee is the extent to which the commitments that have been made under the free trade agreement, in particular those under the procurement chapter of the Bill, can be translated into actual export orders. I am sure you will be aware of the comments of the former Exports Minister, who lamented that his own Department was not doing enough to help British exporters. It was the comments that were made in July. What else could the Department for International Trade do to support exporters in your industry, in particular those exporting to Australia and New Zealand?

Sophie Jones: The trade agreements themselves are significant in opening up markets to exporters, such as ourselves. British music is a phenomenal export success. In recorded music, we have seen our export revenues grow steadily year after year. That is partly due to the strength of the UK music sector and partly to do with the phenomenal talent we have here in this cultural capital, as well as the soft power of our music throughout the world. Outside of free trade agreements, we seek to—it is the example I just gave—bring countries more into line with the UK's gold-standard IP framework and ensure that the value of the music we are creating is fairly recognised.

There are other parallel, accompanying schemes that we think could be more bold and ambitious. For example, we run something called the music export growth scheme with the Department for International Trade and the Department for Digital, Culture, Media and Sport. That provides a really important foothold for British artists—independent artists in particular—when exporting into those territories.

We think there should be bigger, more ambitious support for that scheme, particularly with the rise of streaming, to enable access into markets such as those of Australia and New Zealand, which are really important touring markets but of course very far away, expensive and difficult to get to. The opportunities opened up by the rise of digital streaming mean that British artists have more access into those markets to generate export revenue and engage with fans, but smaller independent companies and artists need extra help to do that.

There is a huge growth opportunity there. We think that recorded music exports are set to double in the next two years, and by the end of this decade they will be at more than £1 billion a year. We need initiatives such as that and investment that helps bridge some of the gap in marketing, so that we can promote into those territories more than we ever have done before.

Q37 Gareth Thomas: I just want to push you on the extra help in particular for small and medium-sized businesses to exploit the opportunities that you were telling us are there in the Australia and New Zealand markets. Just exactly what sort of additional support to a small business would you think is necessary? We are obviously particularly interested in procurement, but I would be interested in your view.

Sophie Jones: If you are an SME or an independent artist, there is a cost of either going to tour in that territory or market yourself in that territory, particularly in a streaming-led environment where competition is so fierce and you are competing against the whole catalogue of music on streaming platforms. The music export growth scheme that we run provides grants that help support that kind of marketing, promotional and touring activity in a way that companies and artists at that scale in the market struggle to be able to meet. It is an investment injection to help bridge that gap.

The scheme is really successful. It generates £13 back for every £1 that is put in through the Government partnership. We see it very much as a valuable, even necessary, scheme to enable that export activity to happen for those who are at the earlier stages of their career development.

The Chair: If there are no further questions from Members, I will thank the witness for her evidence. We will now move on to the next panel. Thank you, Ms Jones.

Examination of Witnesses

Jonnie Hall, Donald MacKinnon, Gareth Parry and Nick von Westenholz gave evidence.

2.7 pm

The Chair: We will now hear oral evidence from Gareth Parry, senior policy and communications officer for the National Farmers Union of Wales, Jonnie Hall, director of policy for the National Farmers Union Scotland, and Donald MacKinnon, chair of the Scottish Crofting Federation. All three will be appearing via Zoom. Welcome also to Nick von Westenholz, director of international trade at the National Farmers Union. We have until 3.5 pm for this session. Please could the witnesses introduce themselves for the record?

Nick von Westenholz: I am Nick von Westenholz, director of trade and business strategy at the National Farmers Union of England and Wales.

The Chair: Thank you, Mr Parry, for joining us at comparatively short notice. I very much appreciate you taking the time today. Will you introduce yourself?

Gareth Parry: Thank you, Chair. I am Gareth Parry, senior policy and communications officer for the Farmers Union of Wales. Thank you for that acknowledgement.

Jonnie Hall: Good afternoon, everyone. I hope you can hear me loud and clear. My name is Jonnie Hall. I am director of policy with NFU Scotland. I am speaking to you from Edinburgh.

Donald MacKinnon: I am Donald MacKinnon, the chair of the Scottish Crofting Federation. I am a crofter from the isle of Lewis.

The Chair: Thank you. Some might ask why we are doing that twice, but it is because we do not know who you are even though I am reading out the names. Now we do, so we are very grateful. We now have questions from colleagues.

Q38 Dame Nia Griffith (Llanelli) (Lab): As I am sure you are all well aware, the Bill is about procurement. Do you feel that it will enable UK farmers and food producers to benefit from procurement by Australian and New Zealand public bodies, as much as it enables Australian and New Zealand farmers and processors to benefit from UK public sector contracts? Will you elaborate a little on the reasons you have your views?

The Chair: For those of you joining us via Zoom, I can see all of you clearly, so if you raise your physical hand, we can go from there. Nick.

Nick von Westenholz: Generally, the position of the NFU on procurement—this will not surprise you—is that we are keen to encourage it, perhaps as in the UK guidelines, which encourage the purchase of locally produced food. That is broadly shared by many MPs, that our schools, hospitals and other things should as much as possible be able to provide British food on the menu. Agreements such as those found in the trade deals, as well as the Government procurement agreement that the UK is a signatory to, put some restrictions on that. The potential quid pro quo, of course, is that we might be able to benefit from greater procurement access to overseas markets.

First, it is not clear to us exactly the extent to which food procurement will be central to the chapters in this sort of agreement; it might be other, much bigger procurements that are more likely to benefit from the arrangements, whether in the trade deals or the GPA, to a large degree because we are very far away from each other. If we are looking at a total service contract, it is not necessarily straightforward for businesses in Australia to provide that to schools or hospitals in the UK, and vice versa. Nevertheless, this potentially captures those kinds of contracts.

I am not sure that I am at the moment aware of UK businesses that are looking and eager to capitalise on this or to provide UK food directly to Australian public procurement markets. It is obviously a long way away to be doing that. I suggest that the opportunities are modest, probably both ways. Nevertheless, there is some concern that these sorts of arrangements do restrict the ability of the UK Government in future to look at ways of increasing the amount of British food subject to UK public procurement guidelines.

The Chair: Would any other witnesses like to respond?

Jonnie Hall: Yes, if I may come in on that, first to echo Nick's points about the need for Governments and public bodies throughout the United Kingdom primarily to source their procurement locally, certainly within the UK or within the devolved Administrations, as it is here in Scotland. One additional slight complication to this issue on Government procurement, which I am sure the Committee is well aware of, is that over the summer the Scottish Parliament passed something called the Good Food Nation (Scotland) Act. This has measures in it here in Scotland on public procurement and so on.

Alongside lots of questions around what is UK legislation on the one hand and devolved legislation on the other would be questions in my head around the intersection between UK Government procurement in the food arena and what the Scottish Government are trying to achieve through legislation here in Scotland. Maybe that is a complication too far at this stage, but I just raise that as an issue, in addition to supporting what Nick has already said.

In terms of overall Government procurement, I do not believe that food issues will be of huge significance. That is not to say that food, trade and agrifood trade issues as a consequence of the free trade agreement with Australia and New Zealand are not of huge significance. I am sure you are well aware of some of our concerns around that.

Gareth Parry: From the FUW's point of view, specifically with regards to procurement, it is worth remembering that New Zealand and Australia are huge net exporters,

particularly of red meat and agricultural goods. It is assumed, at least, that there would be more scope for those countries to make the most of procurement contracts in the UK compared with vice-versa, where for certain products there may be an opportunity to make the most of that procurement benefit in those two countries. From our understanding, there would be scope for them to make use of our markets rather than the other way round.

Q39 Drew Hendry (Inverness, Nairn, Badenoch and Strathspey) (SNP): All your organisations are very active in lobbying MPs on issues that you find of concern to your members. What is your view of the fact that the implementing legislation is being introduced for the New Zealand free trade agreement before Parliament has had an opportunity to debate the agreement under the CRaG process?

Nick von Westenholz: I do not have a concern with that specific issue of the timing of the implementing legislation. Clearly, it is the Government's position that a number of things need to be in place before they go ahead and ratify this deal: the implementing legislation such as the Bill, certain regulations that flow from that and the requirements of the Constitutional Reform and Governance Act 2010 process itself. The chronology, as it were, is not necessarily the most important thing. They all need to be done.

What is a much bigger concern of ours is the fact that the debate on Second Reading, and I suspect some other debates on the Bill, will be used as a proxy for a general debate and discussion about the merits or otherwise of these two trade deals. This is the wrong vehicle for that, frankly. It turns out that it is possibly the only vehicle for that and we will make do with that, but we understood, through the exchange of letters from the Government and the International Agreements Committee in the House of Lords, that the process would be—and should be—a debate tabled during the CRaG process. That is important because that is the only period of time where MPs retain the ability, if they so wish—I suspect with this deal they would not have wished to do so—to delay the ratification. Once that CRaG process is completed, that power for MPs falls. That process with Australia has been completed, so MPs no longer retain the right to delay ratification under the CRaG for the Australian trade agreement.

We are where we are, but I would say that with a number of other FTAs coming down the track, it would be very good to hear a commitment from the Government that they will allow time for debate on a relevant motion—not a neutral motion—prior to the end of the CRaG period. In that case, they can satisfy normal expectations of parliamentary scrutiny and accountability for what are very important trade deals that will have a big impact on all our members.

Jonnie Hall: May I come in here? Again, to echo everything that Nick has just outlined, the whole issue of the scrutiny of free trade agreements, particularly in the context of agrifood, has been a major concern for farming and crofting interests here in Scotland. Throughout this process in the last two years, as we saw first the Australia FTA and then the New Zealand FTA quickly follow suit, a whole host of questions were raised about the role and efficacy of the process. In particular, it rekindled the thoughts around the role of the so-called Trade and Agriculture Commission, and its powers or otherwise to essentially scrutinise FTAs in the agricultural sphere before they have gone through all of the other processes. That was rather than it being a retrospective scrutiny, by which time it was too late—the horse had bolted in many respects. There are still concerns here in Scotland, which I am sure are shared across the United Kingdom, from the agrifood sectors in that regard.

Donald MacKinnon: I agree with the two previous comments, but I reiterate that it is so important that these trade deals are given the scrutiny that they deserve. The really important thing is that we consider all the potential unintended consequences—for our sector, in particular—of what may be well meaning motivations. To pick up on the point that Nick made, the really important thing for us is not just these trade deals that are in front of us just now, but the precedent that they set for the future, and the precedent that the process sets for the negotiation of future trade deals, the scrutiny that is applied to those and the implications of that.

The Chair: Before I call Anum Qaisar, I think Nia Griffith has a supplementary, or another question.

Q40 Dame Nia Griffith: Yes, if I may, I will follow up with a couple of questions. Am I to understand from your answers to my question that you are in agreement with the Government's own impact assessment that we will actually take a hit on GVA on agriculture and processed food products?

Nick von Westenholz: We take the Government's impact assessment at face value. It is not surprising, if you look at the basics of the trade deals, that the deals themselves change very little for UK exporters to Australia or New Zealand. They are open, liberalised economies already, with tariffs generally at zero, although there are some tariffs on some products. Of course, coming the other way, the deals are very liberalising—over a period of years, admittedly, but eventually we will liberalise our markets in a way that they are not for other countries that we do not have trade deals with. It makes sense that there would potentially be a negative impact in those sectors of the economy where Australia and New Zealand are particularly strong, such as agrifood. So, yes, those impact assessments sound right to us.

Jonnie Hall: To complement what Nick has just said, for agriculture and agrifood as a whole, it looks like a potentially damaging impact, but I think we need to be a bit more nuanced about it, and look at it in terms of particular sectors in agriculture. New Zealand is very strong in terms of red meat—beef and lamb—but also dairy and horticultural production. Australia is likewise, and you can add grain to that. There are clear potential impacts for particular sectors that are already really quite vulnerable in large parts of the United Kingdom, not least in Scotland. I am thinking particularly of the red meat sector and how important that is to the rural economy of Scotland and, indeed, the whole economy. Scotch beef and Scotch lamb are iconic products, but we are not in a situation whereby we can stack it high and sell it low, as it were. Anything that comes along and undermines our position in that respect is clearly going to be a considerable threat—I use that word advisedly—to the viability of agricultural businesses here in Scotland.

Donald MacKinnon: I agree with everything that Jonnie said there. I think of the impact, particularly on the red meat sector, which, we cannot forget, operates in some of the most fragile areas of the country and really underpins the rural economy in these areas, particularly in the highlands and islands, where my members are crofters.

I just want to add another point about timescales. Often the argument is put to us that New Zealand is not ready to flood us with lamb on day one—I am sure we will get on to the safeguards that have been put in around the 15-year transition—but that was never something that we were concerned about. This is about changes that can happen over a much longer period of time. Agriculture does not operate on year-to-year, short lifecycles. We operate in generational terms in our businesses, and 15 years is a relatively short period of time in that sense. So it is not that we are concerned that the negative impacts are going to happen straightaway. This is about the long-term future of our industry. That is what my members are concerned about.

Gareth Parry: I would take that a step further, from a Wales perspective at least. Without going into too many details of the figures from the UK Government and the impact assessments of all the different sectors and the different nations across the UK, I think it is worth highlighting how much more Wales relies on agriculture when it comes to rural economies, rural communities, our Welsh language, and a number of other, tertiary businesses that rely on agriculture. We believe that those impacts would be much more significant in Wales.

Q41 Dame Nia Griffith: You have mentioned good food and wanting to buy British. Obviously, the public are now very interested in ethical purchasing, including having high animal welfare standards. Do you think that the Bill will allow a UK public body to insist on procuring products produced to higher animal welfare standards, and thus favour UK produce? Would you suggest any ways in which the Bill could be improved or amended?

Nick von Westenholz: I am not sure it could be done via the Bill, because I guess the Bill is simply legislating domestically for what has been agreed under the Government procurement chapters in the FTAs themselves. My understanding is that if they were to do that, they would have to go back and open up the negotiations, which are obviously completed. I think the Bill either stands or falls. I am not sure an amendment would be possible in that sense.

I would have to examine the text closely, but under the relevant chapters in the agreements and, indeed, in the wider Government procurement agreement, there are provisions that allow Governments to stipulate provisions around environmental protection and so on, and environmental standards for procurement contracts, as long as those are not discriminatory between domestic and overseas potential bidders. I am not sure that that would extend to, for example, animal welfare and those kinds of production standards, but I could not be absolutely sure about that. I would suggest that there is some degree of flexibility for Governments to stipulate certain requirements in the contracts for these public procurement arrangements, but on the question whether that extends to specific animal welfare requirements, I do not believe it would.

The Chair: I remind colleagues that the scope of the Bill is quite narrow, as Nick alluded to. I do not know whether any other witness wants to comment on that question.

Jonnie Hall: The question raised the issue of standards, and how you could build and ensure standards through any procurement contract. We all have standards in mind around all sorts of trading arrangements, and that has been one of the major focal points of the FTAs with New Zealand and Australia, but we have to bear in mind that it is not just about animal health and welfare and environmental standards; it is about the way in which the production systems operate in New Zealand and Australia. Their costs of production are different from those in the UK, often because of the very high standards and compliance costs that go alongside production here.

Ultimately, an awful lot of procurement contracts will be negotiated on price, given that there will be a written understanding, at least, that the standards in them will be of an equitable value, if that is the right expression. It is the competing on price piece that will probably be of more concern to Scottish producers than anything else, because we operate under different agricultural production systems and our cost structures are therefore different. If it comes to Government procurement issues, it may be that New Zealand and Australian produce is more attractive simply in terms of value for money—I will call it that, but the word "value" is not right.

Q42 Ms Anum Qaisar (Airdrie and Shotts) (SNP): Thank you to the panel for joining us this afternoon. There has been an indication that suppliers in other countries may receive the same commitments made to Australia and New Zealand. What impact, if any, will that have on your sector's ability to compete for UK public sector contracts?

Nick von Westenholz: As I said at the beginning, these kinds of arrangements, whether through FTAs or more generally through the Government procurement agreement, obviously put restrictions on the ability of the UK Government to encourage purchasing of UK goods in public procurement contracts. You understand why: these are liberalising arrangements that are intended to encourage trade. But we also know that there is widescale political support for "buy British" provisions in Government procurement, so there is a tension between the sorts of provisions in these chapters and the stated desire from the Government to encourage more Government procurement of British food.

In terms of how much that will come to bear in practice, Australia and New Zealand are obviously on the other side of the world; it is not clear the degree to which they will be pitching for procurement contracts around food, but this would facilitate that if they wanted to. It is part of a wider picture of essentially facilitating more overseas provision of food in public procurement, and that is a concern if your policy objective is to encourage more "buy British" in public procurement.

Jonnie Hall: I agree with what Nick just said. There seems to be some divergence between a policy that is intended to stimulate trade, as opposed to backing local Scottish and British food producers and manufacturers. There will obviously be some sort of trade-off in that situation, and I am not clear where that would leave Scottish producers in the longer term.

Q43 Lloyd Russell-Moyle (Brighton, Kemptown) (Lab/Co-op): Nick, you mentioned some carve-outs around procurement on environmental grounds, but we know from the Government's numbers, which I challenged on the International Trade Committee, that they believe that New Zealand lamb, for example, even with the import carbon, is lower carbon than British lamb. As I say, I challenged them on some of their figures on Welsh lamb, in particular, because I am not convinced of that. However, assuming that is the case, the environmental carve-out would not stand and, on price and environmental grounds, Welsh lamb would effectively be excluded from procurement. We could be in a situation where schools in Wales were not able to serve Welsh lamb to their children, and were instead serving New Zealand lamb.

The deal does not cover schools in New Zealand and Australia, because those public institutions are at the state level, not the federal level. If, for example, we produced a certain crop or fish, such as British cod, cheaper, those products would not have that easy access, so people in Australia having fish and chips would not necessarily have British fish or British potatoes. Do you not think there is an inherent unfairness in this deal? Should there be some procurement conditions in the Bill to ensure that it is about reciprocity and, where reciprocity does not exist, to allow devolved or local authorities to take a divergent approach, as Australian local authorities will be able to do?

Nick von Westenholz: I certainly agree with the principle of what you say: these deals should be reciprocal. There are a number of elements of the Australia deal where there is an asymmetry. In some of the environmental aspects, there are provisions that apply to UK-wide environmental regulations, but only to Australian federal regulations rather than those at state level. Most Australian environmental laws actually exist at state level, so the vast majority of environmental laws are not covered by this trade deal. I would say that that is an imbalance and an asymmetry in the deal.

As I say, as a point of principle, I agree with you. The rather lengthy annexes to the FTA set out which bodies are covered at both national and sub-regional levels. It is not always easy to discern exactly what is and is not covered, so I will bow to your knowledge on the exact differences in the bodies that are covered—I would not be able to confirm that myself—but, where there are differences, we would be concerned about that.

I would temper that a little with the fact that I am not sure we think there will be a major exchange of business through procurement contracts on food as a direct result of this deal. We will need to keep an eye on that. It will probably be other, bigger industrial services contracts that are likely to benefit, so I would not want to over-egg it. However, as a point of principle, I agree with you.

Jonnie Hall: I will add one thing quickly. There was a reference to the carbon content of lamb from New Zealand versus the carbon content of Welsh lamb, or indeed Scottish lamb. I think that would be a real sticking point in many ways, because that carbon is not necessarily calculated using the same process and the metrics may not be directly comparable. We need a level playing field in how we measure the carbon or climate impact, or indeed any other environmental impact, of production in Australia and New Zealand versus production in the UK before we can draw any sort of comparison. If you cannot do that, you have to be very careful about any assumptions you make about importing any product because of its smaller carbon footprint or any other environmental impact before you rush into any deal.

Gareth Parry: I agree with everything that has been said. I have not seen the figures relating to the carbon footprint, but if they are correct, thank you for challenging them. I also agree with the point about carbon calculators, and as a union we have been raising that issue on a national level. The same calculator may be used to compare neighbouring farms, or even on a national scale, but the issues become even more apparent when we look further afield and discuss trade deals: the issues that arise in comparing the carbon footprints of two farm holdings five miles apart also apply when we compare the carbon footprint of a product produced in a UK nation with that of a product produced on the other side of the world.

It is really important to consider the scale of production in countries such as Australia and New Zealand, compared with the UK. I guess that has something to do with the conclusion that the carbon footprint is lower. The scale of production over there—and things are produced to different standards there, as has been said—cannot be compared to that in the UK.

Q44 Lloyd Russell-Moyle: That is a fair point. The figures I quoted were from the Government's Trade and Agriculture Commission, which gave evidence to the International Trade Committee recently. The Bill not only allows the Secretary of State to implement secondary legislation where it is required, but allows them to do so when they think it would be advisable. That is broader. We have signed an asymmetrical deal; we have given away more than we have got, and have opened up our markets more than the Australians have opened theirs to us. We will allow in a lower standard of goods, but the Australians will do likewise. The Government have sold us down the river, because we have accepted a deal written by the Australians. Should we be slightly more restrictive in this Bill? Should we say what things are required by the deal, and not give the Secretary of State any wriggle room to suddenly leverage in other things that they might want to include?

Nick von Westenholz: As a general rule, we are nervous about the overuse of secondary legislation to implement Government policies. That goes back to the earlier point about parliamentary accountability and scrutiny.

Q45 Lloyd Russell-Moyle: Hopefully through the affirmative procedure.

Nick von Westenholz: Yes, indeed. I would not like to comment, because you would need more expert legal commentary on the precise powers available in the Bill. I sit on the Trade and Agriculture Commission to which you referred, and our experience from that supports the points made by Jonnie Hall. We found very varied calculations of the relative carbon emissions from New Zealand and UK red meat production, which is exactly the point made earlier. To give New Zealand farmers due respect, on a global scale, they have comparatively very sustainable and good global emissions—as do we; we should be proud of ourselves as well.

Q46 Bill Esterson (Sefton Central) (Lab): Between the four of you, you have raised a number of concerns, including on standards, scale of production, particularly in Australia, quotas and their implementation, carbon footprints and local exemptions. If those concerns cannot be addressed in the Bill, do you think there is a way of addressing them in the Procurement Bill? If so, what sort of provisions might you want to see introduced in that legislation?

The Chair: Order. The hon. Gentleman, who is a very experienced Member, tempts our witnesses to comment on other Bills. Even though he does so in the context of this Bill, that is slightly out of scope of the Bill. Perhaps he might rephrase his question.

Bill Esterson: I can certainly rephrase it. What sort of provisions would you ideally like to see in this Bill?

Chair: Excellent. You confirm your experience and political agility.

Nick von Westenholz: I touched on it earlier: much as we might want to say, "We can amend the hell out of the primary legislation in order to amend the FTA," that will not happen, and I also do not think that would be right. The FTA has been negotiated by the UK Government's negotiators, and what they have come back with has been agreed with Australia and New Zealand. Trying to change the details of it through primary legislation would simply mean opening up the negotiations again; we would have to go back and renegotiate.

I might think that there are elements of the FTA that need renegotiating, but the way to do that is to have much more transparency and scrutiny throughout the negotiation process. As I said earlier, that was agreed in the exchange of letters between the International Agreements Committee and the Government. The Government committed to sharing their objectives before negotiations opened, to sharing updates throughout the negotiations with Parliament, and to providing for a debate on an amendable motion at the end of the process. If the Government do that, one could be pretty assured that the negotiations would end up with a result that is more palatable to a whole range of UK stakeholders. That did not happen in this case, and that is why there has been serious disquiet, particularly in the farming sector, about the deals.

Gareth Parry: Ever since the trade deals were mooted, we have been calling for a level playing field when our producers are in competition, or even greater competition, with producers in Australia and New Zealand. We could be here for hours discussing differences in production methods and standards between the countries, but my understanding is that there is no provision in the trade deals that would allow us to influence how those countries produce food and vice versa. From my understanding, that is why quotas and tariffs are used in trading across the world. If we are not allowed to influence how food is produced in another country, we use quotas and tariffs to create that level playing field. As Nick said, perhaps they cannot be incorporated to negotiate the current FTAs, but they definitely need to be considered when future trade deals come down the line.

Jonnie Hall: I thought the issues of concern were articulated very well in the first question. If they are the issues of concern, it strikes me as being a bit odd that they would be dealt with in legislation on Government procurement, rather than in the original process governing the trade agreements. I guess I am echoing what has been said by Nick and Gareth.

Q47 Gareth Thomas: The Trade and Agriculture Commission has come up in this conversation a number of times. I hope to explore its role, and possible future role in procurement, in line-by-line scrutiny next week. Could the witnesses describe what they see as the commission's strength, and what could be done to make it stronger still as a force for scrutinising FTAs?

Nick von Westenholz: As I said, I sit on the Trade and Agriculture Commission, but maybe it would be right to say that I am making my comments as a representative of the NFU. Obviously, my role on the commission is as required and set out by the Secretary of State, who asks us to do what she would like us to do and says what she would like us to look at. We do that job as requested, essentially.

From the NFU's perspective, I think the strength, or role, of the Trade and Agriculture Commission is as strong or as weak as the parliamentary scrutiny process around it. We look very closely, in considerable depth, at the standards aspects of trade deals, and we have produced two reports that go into some depth on that. The value of that is in providing parliamentarians with as much information as possible, so that they can assess the strengths and weaknesses of the FTA. Obviously, that goes alongside the broader assessments that Select Committees in both Houses make. We hope that, armed with that information, parliamentarians can then an informed decision as to whether they like an FTA or not. If parliamentarians, as I mentioned earlier, are not given the opportunity to vote on that, or even to debate it during the CRaG process, that clearly seriously undermines the effectiveness of any assessments, whether from the Trade and Agriculture Commission, Select Committees or, indeed, anything else. The scrutiny process and the role of Parliament in this is vital.

We still are using the CRaG process as the main process. As I say, I do not think that it has been used at all well in this situation, but that is what we have. That process was designed while we were a member of the EU, and really it did not envisage that free trade agreements like these would be subject to the process; it was for international treaties covering many other sorts of things. It seems to me pretty obvious that, having left the EU more than six years ago, we should design a parliamentary process, in statute, that actually deals with the fact that we are an independent trading nation doing these very important and often in-depth free trade agreements. The current situation is not designed to do that, and that is being shown up already in the Australian FTA.

Jonnie Hall: I completely endorse what Nick says. The Trade and Agriculture Commission was set up with the best intentions, and gave the agricultural industry and probably the whole agrifood sector a bit of encouragement that proper scrutiny would take place as trade deals were being negotiated. That was enhanced even further in November 2020, when the UK Government said that the commission would be placed on a full strategy footing, to ensure that the voices of farmers, growers, those in the supply chain and environmental, animal health and welfare groups could be heard while the UK Government were securing trade deals.

However, in March 2021, the terms of reference were published by the UK Government, and they stated that TAC would scrutinise free trade agreements once they were signed. That takes the whole point of the commission away from under its feet in many ways. It would work well, was effective and, I think, did perform a useful function—as Nick says, in informing parliamentarians, more than anything else. It has now been somewhat sterilised in some ways. We still need some sort of body to function in that way.

The Chair: The shadow Minister wants to come back.

Q48 Gareth Thomas: My last question is this. The Government have sold the benefits of the two FTAs as partly being about the huge, new, billion pounds-worth of Government procurement options that will be available. Do you think that that is one of the reasons why farming has been thrown under the bus? Was it that the opportunities in other sectors, such as Government procurement, were so good that they could afford to give so much away to the Australians? Or were there other reasons—inexperience, worries about Brexit and so on—why farming came off so badly?

Nick von Westenholz: I would not want to give a long answer; we all have opinions on what happened with the negotiations. I would just say that if you are doing a trade deal with a country such as Australia or New Zealand—countries that are, particularly when it comes to goods, already almost totally liberalised, and are very big and effective agricultural exporters—agriculture in the UK will probably be the main sector to come under pressure as a result. If you wanted to do a deal, and particularly if you wanted to do it quickly, and wanted it to be liberalising, as was the Government's intention, I am not sure that you could do it in any way that did not at least have the potential to have a negative impact on UK agriculture, though none of us knows exactly what the outcome of the deals will be in the next few years.

Jonnie Hall: If you look at modern trade deals—deals in the last 20-plus years—agriculture has often been the sacrificial lamb in those trade negotiations, no pun intended, so the expression, "being thrown under the bus", resonates quite clearly with the agrifood sector. In modern-day economies, it is in digital, tech, manufacturing and finance that great gains are to be made. We are the primary producers of a primary product; when it comes to overall value, agriculture and food products will be relegated to the tail end of a trade agreement between modern economies. If you ask other sectors of the economy, they will probably think that the agreements that have been signed are very much in their interests and create opportunity. We tend to see them in another way.

Gareth Parry: I wanted to answer the question on the Trade and Agricultural Commission. Forgive me, but I am not 100% sure of the full list of TAC members; however, we have long had the policy that representation on the commission needs to reflect the potential impacts on the agriculture and food sectors across the UK. I emphasise the need for good representation of all nations. I fully agree with what Nick and Jonnie said about the effectiveness of the TAC. As was said, it is no secret that the agricultural sectors in both the countries that we are talking about are huge. There will always be winners and losers in these types of liberalised trade deals, and unfortunately, as we can see from the impact assessments, agriculture is predicted to be one of the sectors that is a significant loser from these deals.

Q49 Dr Kieran Mullan (Crewe and Nantwich) (Con): To help me understand better how our arrangements compare to those of others, can you say how much scrutiny you feel MPs had of procurement arrangements when we were in the EU, as compared to now, under our independent approach?

Nick von Westenholz: When we were a member of the EU, all trade agreements by the EU were scrutinised directly by Committees of Parliament. There was, through that process, a good degree of parliamentary scrutiny. At that time, Parliament retained a theoretical ability to either accept or reject all regulations stemming from the EU. A lot of people might argue that the power was exercised rarely, if ever, and that played greatly into the debate on our membership of the EU, but certainly formerly Parliament had a greater ability to oppose trade deals.

Q50 Dr Mullan: In reality, was that ever exercised?

Nick von Westenholz: Not that I am aware of, no.

Dr Mullan: I thought not. Thank you.

Lloyd Russell-Moyle: What about by Belgium?

Dr Mullan: By us. *[Interruption.]*

The Chair: Order. If colleagues have got something to say, they should say it through the Chair for the benefit of *Hansard,* the broadcasters, the public and most of all out of courtesy to our witnesses. Thank you Dr Mullan. If there are no more questions, I thank the witnesses for their time. In particular, if I may, I thank Mr Parry, who came in at late notice; we certainly wanted to hear from Wales.

Examination of Witness

Professor Albert Sanchez-Graells gave evidence.

3 pm

The Chair: Professor Albert Sanchez-Graells is professor of economic law and co-director of the centre for global law and innovation at the University of Bristol law school. He is appearing via Zoom, and this session will end at 3. 25 pm. For the record, could you please introduce yourself, professor? Thank you, sir.

Professor Sanchez-Graells: Good afternoon. Thank you for the opportunity. I am Albert Sanchez-Graells and, as you said, I am a professor of economic law at the University of Bristol.

Q51 Gareth Thomas: Thank you very much for being willing to give evidence to us. In the evidence that you gave to the Select Committee on International Trade and the International Agreements Committee in the Lords, as well as some media commentary, I understand that you suggested that the procurement chapters of the Australia deal in particular deviate from the Government procurement agreement. Potentially, there are some aspects of deviation that will undermine the Government procurement arrangement and create legal uncertainty for businesses, and therefore potentially some regulatory

chill that might discourage businesses from bidding for Government procurement contracts. Is that right? Could you explain your thinking in a bit more detail?

Professor Sanchez-Graells: Yes, that is correct. Thank you for the opportunity to expand on those ideas. Basically, the starting position is that both the UK and Australia, as well as New Zealand, are members of the World Trade Organisation plurilateral Agreement on Government Procurement. That means that free trade restrictions are already bound by a standard of rules with which they comply, and then they have bilateral agreements on market access. You would have expected that if the UK and Australia wanted to deepen that market access, or the UK and New Zealand wanted to do so, they would do it by adding to the annexes of the GPA, basically by keeping the rules as they are, but accepting that this or that market at national or sub-national level is also open to the tenders of the other jurisdiction. By the way, that is the approach that has been followed in the EU-UK trade and co-operation agreement, basically because that is a clean legal approach. We agree on the rules, we just negotiate on market access.

The difficulties with the chapters in the UK-Australia agreement in particular, and to some extent in the UK-New Zealand agreement, is that they have not done that. They have copied the rules of the GPA and then tweaked them. In those tweaks, there are problematic changes. I have identified two main areas of problem: one is the national treatment rules on access to markets, which applies in particular to suppliers in different jurisdictions, and the other is access to remedies. The access to remedies is the one that worries me because under the chapter with Australia, not the one with New Zealand, there is a clause that allows for the exclusion of legal remedies completely on the basis of public interest. That means that, for example, for very high-profile projects, or very high value, the courts might just set aside any claims for a suspension of the procedure or even for the compensation of damages to admit that there has been a loss to be excluded on the grounds that that is not in the national interest. It is a very open-ended clause. I think that this will make tenderers from Australia, in particular, think twice about tendering in the UK now, when they could basically be mistreated or even illegally excluded from tenders and then not have access to legal redress.

I think that that can be problematic. What is also problematic is that of course it plays both ways. If I am a UK small or medium-sized enterprise and I have to decide whether to invest my limited time and resources in bidding for a contract in Australia or bidding for a contract in, for example, the European Union, I know that, in the European Union, my interests are protected to GPA-plus standards, whereas under the FTA, in Australia, my interests are protected to GPA-minus standards, so I would probably refrain from bidding in Australia, which then brings a big question mark to the practical advantages of the enhanced market access that the Government have claimed the chapter will bring.

Q52 Gareth Thomas: That is extremely helpful, professor. I wonder, though, whether you could bring what you have said to life a little more with two examples. Let me give the example of High Speed 2. Obviously it is a big UK national infrastructure project, where clearly we would want competition but we would not want legal problems to delay that investment when it eventually kicked in. Presumably the Melbourne airport link, which the Australian Government authorities are currently tendering for, is also a significant infrastructure project for them and one in which British business might be interested. You have concerns about remedies. Could you describe them in the context of those two big infrastructure projects?

Professor Sanchez-Graells: Thank you; those are good examples to flesh this out. Let us take High Speed 2 as the first example. Let us imagine that for any bit of the construction of the lines or for the supply of the rolling stock, the UK conditions wanted to prioritise UK steel, as is Government policy at the moment. Imagine that an Australian construction company wanted to tender for the contracts, but the steel that it wanted to use for the rails was South Korean steel. In the current conditions, before the FTA enters into effect, the Australians have to be treated equally to a UK company even if they want to use South Korean steel, because South Korea is also a member of the GPA.

What would happen under the FTA is that, because of the specific wording in the provision—I do not want to bore you with the detail—there would be an option for the UK buyer to take a narrow understanding and say, "You are not offering Australian steel and you are not offering British steel, so I no longer have to treat you equally to UK bidders. Therefore I exclude this construction company from the tender." The construction company probably would want to challenge that, especially because it spent money tendering but also because it is potentially a profitable contract, so it goes to the High Court. Let us say that the High Court dismisses the claim, on the basis that HS2 is already so delayed and so over budget that there is no public interest in looking at this issue. Then the Australian company is left with maybe one final resort option, which is to try to bring an investment protection claim on the basis of that denial. But certainly it seems strange that if the FTA had not entered into effect, the Australian company would have had access—maybe not to suspending the project if the interest is high, but certainly to claim the damages for that unfair treatment of its tender.

The same thing would happen the other way. Let us imagine that an innovative British company that wants to sell low emissions rolling stock for that metro link in Melbourne airport goes and tenders in Australia. It is excluded for any number of reasons and it wants to challenge the decision. It could also be barred from access to remedies in Australia, which means that the UK tenderer has lost its time and probably made a loss on the project. That would generate a very big disincentive for anybody to try to tender in future projects. But also, again, there would be a risk of maybe trying to raise this issue as an investment protection issue. That would basically, in simple terms, open up a trade war between the UK and Australia.

To me, it is counterintuitive that when we are trying to deepen our trade liberalisation on a bilateral basis, we are creating problems that do not exist under the current multilateral basis, where these issues are not allowed.

Q53 Gareth Thomas: To pursue this a bit further, as I understand it from what you are saying, the GPA includes every country that is still in the European Union—the

French, the Italians and so on—and if their companies were treated unfairly while bidding for contracts in Australia, they would have better access to remedies than a British company treated in a similarly unfair way. Is that correct?

Professor Sanchez-Graells: Yes, that is absolutely correct. In the tender process that we are imagining for the Melbourne airport rail link, if a French company, a British company and an Australian company was tendering, and the Australian company was preferred, the French would have access to remedies that could not be excluded, at least in terms of claiming for compensation for lost profits, or at the very least for the cost of having bid, but the UK tender could be barred from those remedies. Again, that does not seem like a post-Brexit improvement of the position of UK businesses under these stand-alone free trade agreements.

Q54 Gareth Thomas: As I understand it, these agreements are going to be superseded by, on the one hand, the Procurement Bill coming down the line and, on the other hand, the comprehensive and progressive agreement for trans-Pacific partnership, assuming accession takes place. Will these problems be resolved by the CPTPP, so we do not need particularly to worry about this Bill? Or do they just continue?

Professor Sanchez-Graells: I would make two points on that. First, even if the CPTPP were to resolve these problems, which it will not—I will explain why later—there would always be the problem of how long it takes between these FTAs entering into force and CPTPP basically overturning them. The reason why CPTPP would leave these FTAs without effect is that both Australia and New Zealand are members of CPTPP, and therefore the later international treaty modifies the previous ones. For any tender that started between the entering into force of these FTAs and the entering into force of the UK's membership of the CPTPP, the rules of these FTAs would apply. So this is not an issue that might be on the books and is then fixed by CPTPP; it could run for years even if CPTPP enters into force.

The second and more important point is that CPTPP is very close to the Australian procurement chapter, which is probably where its inspiration was drawn from. So it would keep the same problems under the Australian chapter and make the problems under the New Zealand chapter worse, because on remedies the New Zealand chapter is aligned with the GPA, but once CPTPP entered into force all single relationships with New Zealand would have the problematic clause that would allow the barring of access to remedies. So CPTPP would not make it better, and in any case we would have to live with the consequences of these FTAs for the period between the entering into force of them both.

Q55 Gareth Thomas: What you appear to have just said is that there are significant differences between the procurement chapter under the Australian FTA and the one under the New Zealand FTA. Is your sense that the Government realised they had made a mistake in terms of remedies under the Australian FTA and therefore improved things under the New Zealand FTA? Or was it just down to good luck that we do not have the same problems in the New Zealand FTA as we have in the Australian FTA?

Professor Sanchez-Graells: Of course, I am not privy to the negotiations, but my impression is that these chapters very much started from the position of the trading partner. I do not think the reason why the New Zealand chapter is different from the Australian chapter has to do with the UK Government learning from mistakes; I think it has to do with different starting positions among the New Zealand negotiators and the Australian negotiators. Australia has the same sort of clause in most of its trade deals, and it also pushed for it under the CPTPP. You may call it luck, but I think we may just call it an effect of the rush in which the deals were negotiated. Effectively, they have made the UK a rule taker, because they have accepted the proposals of the counterparty just to progress negotiations. That is my observation.

Q56 Gareth Thomas: Okay. You touched on the issue of investment protection. I am not experienced enough in procurement to be able to reprise exactly the line you took, but you mentioned the potential scope for action in terms of investment protection. That brings into play the whole issue around investor-state dispute settlements, as I understand it. Could you confirm that, and explain how that might be a problem?

Professor Sanchez-Graells: This would be an issue that would depend on the terms of the investment chapters in the FTAs, and, again, the investment chapters are different under the Australian and New Zealand deals. The New Zealand deal excludes procurement from all of those outstanding obligations of the investment chapters. That would not be a problem in that FTA, but in the Australian investment chapter there is an obligation to provide fair treatments, which includes common customary law on access to justice.

The point I am trying to make without being too complicated is that the Australian company that had bid for HS2 and had been thrown out on the basis that it wanted to use South Korean steel goes to the High Court and sees its action thrown out on the basis of public interest. It could then say, "Okay, I was trying to acquire an investment in the UK. The UK has to give me fair treatment in the process of trying to gain this investment. They have denied me access to remedies. Also, they have denied access to remedies on grounds that they cannot play with other companies that are in a very similar position to me, including other companies that come from GPA countries." They could make the case of having been discriminated against in not being given access to remedies and make that an investment dispute.

The difficulty in this context is that under the Australian chapter, to the best of my knowledge, and I am not an investment expert, there is no possibility for the Australian company to sue the UK Government. They have to raise the issue with the Australian Government so that they could raise it as a dispute under the agreement with the UK. That is why I think it opens up the problem of potential trade wars. It is not an issue even of relatively secretive arbitrators determining whether the UK has to compensate the Australian company, but it immediately becomes a potentially very high-profile trade issue between the two countries. It is very difficult in that case to foresee how it will end up being resolved. There will be a panel which will also work relatively similarly to an investment arbitration tribunal. If what the panel decides is not implemented, then we can just go to countervailing

measures and other types of sanctions. The prospects are not looking good, unless the UK Government at some point decides to settle the dispute to avoid those problems.

There is a long story, starting with the Brexit process, of very expensive settlements for procurement mishaps, for example, with the ferry contracts or with the Nuclear Decommissioning Authority. Potentially, these could be very expensive claims to settle and the terms of those settlements are never very clearly controlled, and the process whereby those settlements are achieved is also not necessarily well scrutinised in time. That opens up all sorts of other issues with how, instead of being dealt with in the courts, the misbehaviour of a procuring entity in the UK ends up becoming a political and potentially very expensive issue.

Q57 Gareth Thomas: The last question I wanted to ask was about the impact assessment, where the Government claimed that there would be an extra £10 billion of procurement opportunities for British business. Given what you have said about the legal uncertainties, do you think that £10 billion is a realistic figure or overstated?

Professor Sanchez-Graells: I always said from the beginning that it is difficult to know how realistic the impact assessment is because the details have not been made public, so we would need to take the Government's word at face value. It is difficult to see that some of the touted advantages are going to be exploited, because we are talking about high-profile, high-value projects. We know that usually there is always a risk of protectionism, especially in the current circumstances. If I were advising a big company, I would flag the risk that going to Australia means we are basically putting all of our investment at risk because we may not be able to recoup it. I wonder whether that was taken into account in the impact assessment, but I would think not. That £10 billion probably has to be adjusted downwards for that uncertainty, which will make some companies not take advantage of the opportunities.

The other issue that makes me wonder how accurate the impact assessment was relates to the claims that the Government made in some of the documents that tried to promote the advantages of the FTA. For example, they said that there is now a massive improvement in access to financial services contracts because some authorities in Australia are now covered. But those authorities are already covered under GPA, just at the higher value threshold. There is quite a lot of marginal improvement on market access. I would have wanted to see some evidence that UK companies would have been interested in those contracts but were not bidding because they did not have a legal right to bid, which I have not seen anywhere. I think that the £10 billion is a quite theoretical, best-case scenario. I advise caution in assessing that figure.

Q58 Gareth Thomas: Very lastly, as I understand it the £10 billion figure is an Australian estimate anyway, albeit that the UK Government claim that they have checked it out and, remarkably, think it is accurate. Is that fair?

Professor Sanchez-Graells: That is correct; I think that is what the UK impact assessment claims. When the International Agreements Committee raised this issue in the report, the Government's response did not provide any further details; they simply said that the figure was properly checked. It may be the cynic in me, but when those figures are not put out for public scrutiny, perhaps we naively accepted the benefit suggested by the counterparty.

The Chair: If there are no further questions, I thank the witness for his evidence. We will move on to the next panel.

Professor Sanchez-Graells: Thank you for your time.

Examination of Witness

Michael Gasiorek gave evidence.

3.21 pm

The Chair: We will now hear oral evidence from Michael Gasiorek, director of the UK Trade Policy Observatory, who is joining us via Zoom. This session will end at 3.45 pm. Will the witness please introduce himself?

Michael Gasiorek: Yes. Good afternoon and thank you very much for inviting me to give evidence. My name is Professor Michael Gasiorek. I am a trade economist. I am director of the UK Trade Policy Observatory and co-director of the Centre for Inclusive Trade Policy, and I am based at the University of Sussex.

Q59 Dame Nia Griffith: Good afternoon. I will pick up on some of the issues that have been noted in your written evidence. In the context of the Bill, which, as we know, is about procurement, you say that there are "unclear" technical and legal mechanisms to ensure compatibility of data privacy between the UK and Australia, and that

> "This may endanger…the EU's…adequacy decision to the UK",

and public trust, which would obviously be a very serious issue. Is there any way that we could remedy your concerns through the Bill?

Michael Gasiorek: The short answer is that I do not know. The issue that arises is to do with the agreements in the UK-Australia and UK-New Zealand deals on transmission of data across countries, and whether they accord with the EU's data adequacy decisions. I am not a legal scholar, so I would not be able to tell you with regard to the specific terms of this Bill. My understanding was that I was coming to the Committee to address questions about the economics of the agreement, not the legal technicalities; I am afraid that I am not a lawyer.

Q60 Dame Nia Griffith: Let us turn to the economic side, then. You say that the economic impact of the agreement is very limited. Again, are there any ways in which the Bill could be improved that would give better opportunities and ensure a greater economic impact?

Michael Gasiorek: I think the reason that the economic impact is limited is largely driven by the fact that we trade very little with both Australia and New Zealand. In each case, it is not much more than 1% or 2% of our trade—less with New Zealand than with Australia—and they are both very far away. There is very little that

could be done to increase the aggregate economic impact of the agreement. Logically, these are countries that we do not trade very much with, and that are very far away—that is one of the reasons why we do not trade very much with them; another is that their GDP is smaller than that of larger trading partners. There is little that could be done in the Bill to change that outcome.

Q61 Dame Nia Griffith: On the advantages and disadvantages in procurement processes, does the Bill deliver well for UK companies, or could there be ways of improving it?

Michael Gasiorek: Once again, I will pass on that question. As I informed the Committee's secretary, I am not a specialist on procurement processes; I am a specialist on the economics of the agreement.

The Chair: Okay. If there are no further questions from Members, I thank the witness for his time.

Michael Gasiorek: Thank you very much.

Examination of Witness

Rosa Crawford gave evidence.

3.26 pm

The Chair: We will now hear evidence from our next witness, Rosa Crawford, policy officer at the TUC, who is appearing via Zoom. Rosa, thank you for being available a little early. We have until five minutes past 4 for this session. May I ask you to introduce yourself, for the record?

Rosa Crawford: I am Rosa Crawford, policy officer lead on trade and Brexit at the Trades Union Congress, the national union centre that represents 48 affiliated unions, and over 5.5 million workers.

Q62 Gareth Thomas: Thank you, Ms Crawford, for being willing to give evidence to the Committee. We are focusing on the procurement chapters of the Bill. The Government have told us that they will offer businesses billions of pounds-worth of new opportunities, and that that is one of the many reasons why these are fantastic trade deals. Do you share that assessment, or could the deals have been improved in any way?

Rosa Crawford: We as trade unions believe that public procurement has the potential to create tens of thousands of jobs and many apprenticeships, but they need to be on the right terms; we have to make sure that these are decently paid jobs, on good, secure terms and conditions, that support a just transition and promote equality. What causes us concern about the Trade (Australia and New Zealand) Bill is that it does not provide guarantees that those social objectives will be promoted through our public procurement procedures. In fact, there is potential to undermine them, particularly in the parts of the UK-Australia trade deal about public procurement, which this legislation would allow to be implemented.

Article 16.17 of the UK-Australia agreement says only that environmental, social and labour considerations "may" be taken into account by procuring entities, and only when those considerations are

"based on objectively verifiable criteria".

That could open up scope for Australian companies, via their Government, to challenge social criteria in UK public procurement processes as being potentially unverifiable, because that is an undefined term. Multinational companies are eyeing up our procurement market—this is a big objective in trade deals—and will be looking for any means of challenging any social criteria that they regard as being a burden for business, such as a requirement to pay a living wage or to provide secure conditions. We are very worried about the language in the UK-Australia procurement provisions, which the Bill would allow to be implemented.

Let me connect that to the Procurement Bill going through Parliament. It does not give us the assurances that we need that social criteria will be promoted through its provisions, unlike the EU-derived procurement rules in the Public Contracts Regulations 2015, which allowed the Government to refuse a tender on the grounds of its non-compliance with International Labour Organisation conventions, and required social value criteria to be taken into account in the most advantageous tender criteria. There is no such requirement in the Procurement Bill. That means that now, in UK procurement rules, there are no provisions to prevent public money from being given to suppliers who abuse fundamental workers' rights. For us, that is going in completely the wrong direction.

In the EU-UK trade and co-operation agreement, we made commitments to promote fundamental International Labour Organisation standards, yet in the Procurement Bill and the UK-Australia agreement, we do not see them promoted. I will highlight two more concerns about the Procurement Bill. There is no requirement for high labour standards—

The Chair: Order. Forgive me, but we are not talking about the Procurement Bill. There is clearly some crossover, but if we can try to avoid the temptation to spend too much time on that crossover, I would be very grateful. Thank you.

Q63 Gareth Thomas: Thank you very much, Ms Crawford. You mentioned that the Procurement Bill could supplant the Trade (New Zealand and Australia) Bill. Legislation to implement accession to the CPTPP could do the same, if the Government have their way. Will the problems to which you have alluded be resolved if we join the CPTPP, or will they remain and be similar to those that exist in relation to the two FTAs?

Rosa Crawford: CPTPP could create an even more problematic situation for us. Members will know that the CPTPP contains the investor-state dispute settlement provisions, and unless the UK explicitly opts out of those provisions, we will be bound by them. That obviously means that foreign investors could sue the UK Government for any actions that are interpreted as being a burden on business. That could mean living wages and decent conditions. If we accede to the CPTPP, we could be allowing social criteria that we include in our public procurement provisions to be challenged by foreign investors from across the CPTPP countries, which obviously include some of the largest multinationals in the world.

It is extremely problematic to us that the UK is considering acceding to the CPTPP, and the TUC is opposed to that, as are the majority of trade unions in CPTPP countries. It should be said that the CPTPP

takes a very broad, liberalising approach towards its service commitments, which means that a number of public services that are part-privatised could be locked into that privatisation through the CPTPP. The direction taken by the CPTPP, as well as by the UK-Australia trade agreement, which the Bill will implement, seems to us very problematic. It could undermine the expenditure of public money through public procurement—*[Inaudible.]*—and decent-quality public services.

Q64 Gareth Thomas: Some of our other witnesses, particularly those representing farming organisations, raised concerns about the scrutiny of trade deals. When we start line-by-line scrutiny next week, we certainly hope to explore the potential for greater scrutiny of the regulations that will flow from the Bill. What is the TUC's position on scrutiny of the FTAs, and more generally?

Rosa Crawford: We have specific concerns about the lack of scrutiny provided for through the Bill, because paragraph 2 of schedule 2 states that any regulations made under clause 1 will be subject only to the negative procedure. Obviously, that will deny MPs the opportunity to scrutinise the procurement legislation introduced via the Bill, so it will not be possible for Members to challenge legislation that undermines social standards in procurement. We believe that clauses 1 and 2 should be subject to the affirmative procedure.

We also have more broad concerns about the lack of scrutiny of the UK-Australia trade deal specifically, as well as of all the trade deals that the Government have negotiated to date. For us, it is really important—*[Inaudible.]*—scrutiny, and scrutiny by trade unions. Otherwise, those deals will not deliver the best outcomes for workers, public services and all sectors of the economy. We really regret the process that was followed for the UK-Australia deal; Members were not provided with the opportunity to debate and vote on the agreement when it was brought before Parliament in June. The Bill is the only opportunity we have to debate the provisions of that deal, but the legislation is extremely narrowly drawn, and that is completely inadequate, in terms of the democratic process.

Trades unions have also been completely shut out of negotiations. We released a joint statement with our counterpart in Australia, the Australian Council of Trade Unions, at the start of the negotiations, setting out our positive agenda for what we thought a UK-Australia trade deal should look like. We said that trade unions should be in the room to provide expertise from across different sectors about the kind of protections that workers need, as well as the agricultural safety standards required. That impacts on workers' conditions, and has to do with workers not being exposed to unsafe chemicals and unsafe procedures. We said that unless trade unions were in the room, we would not get the outcomes that workers needed.

The Government made a lot of positive noises about trade unions being included in the negotiations, and last September, the then International Trade Secretary, Liz Truss, said that the trade unions would be included in their trade advisory groups, which are consulted on the text of trade negotiations. We were not given those seats, and we were not consulted on the text of any of the UK-Australia trade deal as it was being negotiated. As a result, we have a trade deal that does not have adequate enforcement mechanisms and has very weak commitments on workers' rights; there is only a reference to the International Labour Organisation declaration, not to the fundamental conventions. The terms of the deal refer to listing for services, which, in common with the CPTPP, will expose part-privatised services to being locked into that privatisation. The deal also has very problematic provisions on data liberalisation, which could mean that workers' data is not properly protected. It could allow for that data protection to be challenged as a barrier to cross-border flows of data.

We have ended up with a deal that is completely inadequate and threatening, from a workers' rights point of view, and from the public point of view, because we did not have engagement with that deal. As I said, that is also the case with the UK-New Zealand deal. In fact, we have not had input to any of the trade deals that the Government have negotiated to date. We really want a change of direction; we want trade unions consulted, as they are in other countries, such as the US; there, they are routinely consulted during trade negotiations. We want Parliament to be given a full say, and to have the ability to debate and vote on any trade deal brought before the House.

The Chair: Thank you. We have a little bit more time than we expected, but we also have quite a few questions to get through, as I am sure colleagues will be pleased to hear.

Q65 The Minister of State, Department for International Trade (James Duddridge): Will the person giving evidence reflect on her comments encouraging more statutory instruments to be brought forward under the affirmative procedure? I feel that she may have inadvertently misled the Committee. Obviously, it would be legitimate bring forward SIs in that way, but there was an assertion that the negative procedure means no debate. My understanding is that any Member of Parliament can pray against regulations introduced through the negative procedure; that would guarantee debate in a Committee like this. I think I am correct; perhaps she could review her comments and clarify whether she has mis-spoken.

Rosa Crawford: I understand that there can be a debate, but that it is much more difficult for the regulations to be voted down, and that a debate is not guaranteed. There must be an active initiative to pray against the regulations to create that debate. That is much less likely to happen. Such a number of SIs come through that it is quite difficult to trigger a debate on each one and vote against them. Full democratic scrutiny is much harder to achieve under that process than through primary legislation.

The Chair: The supplementary point was made, and a supplementary supplementary point is now on the record as well, so I think we will move on.

Q66 Drew Hendry: It was helpful to clarify that there is no guaranteed debate.

I would like to ask Ms Crawford a question that I have asked others, and it is very much on the theme of what you have been talking about. You have said that questions have not been answered on jobs, climate change, workers' rights, environmental considerations, and indeed the correct way to spend public money. What is your view of the fact that implementing legislation

is being introduced on the New Zealand FTA before Parliament has had the opportunity to debate it under the CRaG provisions?

Rosa Crawford: We believe, again, that there is a deficit of democratic scrutiny. Much more parliamentary scrutiny should have been possible throughout those negotiations, as well as the negotiations on the UK-Australia FTA. The International Trade Committee has not been consulted on the text of that agreement as with UK-Australia, and there has not been the possibility to have a proper debate about the agreement before it is implemented, as you say. We are extremely concerned about that process and very worried that the Government will again try to push this through Parliament without having the proper debate required. Obviously, the negative resolution procedure will apply there, and it means that unless there is a resolution against, which can only delay the agreement for 21 days, it will become law. It is going to be very difficult for that process to be triggered by parliamentarians, so we are very concerned about the approach taken with UK-New Zealand as well

Drew Hendry: Thank you.

The Chair: I call Lloyd Russell-Moyle.

Q67 Lloyd Russell-Moyle: Thank you for clarifying the negative and positive procedure. You are right that the use of the negative procedure means it will be very unlikely that, even if one Member prayed against it, it would get a full debate, and almost certainly not a vote. It would have to get the Front Bench and a large number of MPs to secure a debate. We know that on a number of occasions, even when things have been prayed against because of recess and scheduling times, they have still slipped through, so it is no guarantee, whereas a positive procedure is a guarantee.

I have asked people about the scope of the secondary legislation that the Secretary of State can lay down. In regard to the trade deal, the scope is slightly wider than "must"; it is currently phrased as "may". Do you think that the scope is correct at the moment, or should it apply only to things that the Government are legally required to bring forward under the trade deal?

Rosa Crawford: Yes, we are concerned that the scope is very broad. As has been said by you and a number of members of the Committee, the negative resolution procedure makes the process for scrutiny and debate, and for full democratic—*[Inaudible.]* Using "may" terminology, rather than what the Government are legally bound to implement, introduces an element of concern that there might be a whole range of things brought in through this legislation that are not strictly required to be brought in, and that could be problematic because this Government have not suggested they are going to take an approach that is about protecting social standards and ensuring that social criteria are indicated in public procurement. We are therefore worried that there might be additional measures that would allow for further liberalisation of the public procurement processes, and for businesses that do not respect workers' rights to be awarded public money. That would completely undermine the standards, so we are very concerned about the broad drafting of the Bill.

Q68 Lloyd Russell-Moyle: Thank you for that, Rosa—much appreciated. I want to bring you on to the way that the Secretary of State gets to introduce these secondary pieces of legislation, because that is how much of the Bill will be enacted in reality, not through on what is on the face of the Bill. There is no requirement for them to consult with businesses, trade unions or other stakeholders. I am not suggesting that we create a complex mechanism, but what is your view on a line requiring the Secretary of State at least to demonstrate that they have consulted stakeholders and potentially the International Trade Committee, and sought their views before the laying of a negative or positive procedure? What is your view on requiring consultation with the International Trade Committee and stakeholders such as trade unions?

Rosa Crawford: We would strongly support the inclusion of such a provision because, as I say, it is essential to consult trade unions on the provisions in all parts of the trade agreement. On public procurement specifically, we need consultation with the unions to ensure we have the requirements there so that international labour standards and environmental standards are upheld, and that we pursue public objectives such as reducing inequalities through public procurement. That consultation with trade unions and parliamentarians is really important. The International Trade Committee is an important Committee that should be consulted, because there is expertise there on the public procurement provisions; then maybe other Committees that are relevant and have an interest should be consulted. Having that requirement for consultation with MPs would be a welcome addition to the Bill.

Q69 Bill Esterson: Can we go back, Rosa, to what you were saying about the impact on workers' rights, and indeed environmental considerations? Can I confirm that your concern—or one of your concerns—about the Bill and the trade agreement behind it is that organisations have the ability to undercut rights and standards, in spite of what is elsewhere in domestic legislation?

Rosa Crawford: Yes, that is correct. With both the UK-Australia and the UK-New Zealand trade agreements, you have a weak labour chapter that makes reference only to the ILO declaration, rather than a requirement of fundamental international labour organisation standards respected by both parties. That is an issue in Australia and New Zealand because, despite the fact they both have progressive Governments, neither has ratified all the fundamental ILO conventions. New Zealand has not ratified the fundamental conventions on minimum age, health and safety, or freedom of association, and Australia has not ratified the fundamental conventions on minimum age, and health and safety.

Without that base of fundamental rights, there can be potential for a pressure on rights to lower here, as businesses take advantage of the market access they can get through the UK-Australia and UK-New Zealand trade agreements to places where they can potentially respect rights less. That could pressure rights to be lowered here. You do not have a labour chapter that has high standards, requirements and rights, and it has an ineffective enforcement mechanism that requires a proven effect on investment and trade, which we think will be difficult to meet.

There are similar provisions in the CPTPP labour chapter, despite the fact that CPTPP contains countries that are egregiously breaching labour rights—such as

Vietnam, where trade unions are banned, as well as Brunei. We have not seen the CPTPP labour chapter being used at all. To us, those kinds of provisions are ineffective when they are included in a trade agreement, so it is concerning that the trade agreements we have with Australia and New Zealand do not have those effective provisions in place for labour standards. It sets a concerning standard for trade agreements we might sign with future partners, particularly as the Government are considering signing trade deals with places where labour rights are much worse, such as Gulf states, India and Israel.

The direction of travel is concerning in Australia and New Zealand. The inadequate protections around environmental standards also have an impact on workers' rights; allowing produce with lower environmental safety standards to be imported into the UK potentially exposes workers here to more dangerous chemicals and other production methods that impact on workers' safety and protection. We are concerned about the approach taken in both agreements.

Q70 Gareth Thomas: You said in your earlier evidence that the previous Secretary of State had promised to include the TUC in private discussions about free trade agreements, presumably including the Australia and New Zealand deals, but that that had not happened. Has the general secretary of the Trades Union Congress ever had an apology from the Department for International Trade for not including you and adhering to that promise?

Rosa Crawford: No. We have just had several pledges from successive Secretaries of State for International Trade. Liz Truss, when she was Secretary of State, had a meeting with our general secretary, Frances O'Grady, in which she assured her that unions would be included on these trade advisory groups. As I say, that was in September 2021.

Then our general secretary had a series of meetings with Liz Truss's successor, Anne-Marie Trevelyan, including a meeting that also included the US trade ambassador Katherine Tai. She also made the pledge that trade unions would be included on these trade advisory groups. After that meeting, she appeared before the International Trade Committee in April this year, where she said that she hoped that trade unions would be included on the trade advisory groups as soon as possible, but we still have not seen any sign of that.

We hope that the new Secretary of State for International Trade will make good on that promise. We have written to Secretary Badenoch to request that the Government fulfil their pledge to include trade unions on the trade advisory groups, but we still have not seen anything. We are surprised and concerned that we have not seen progress in over a year since the Government pledged to include unions in the group. As I say, the outcomes are that we are getting trade agreements that are undermining workers' rights, and new trade talks are being launched with really serious implications for workers' rights with countries such as Israel, India and the Gulf states.

Gareth Thomas: I do not know whether it is in order, Chair, but to save time for the Committee next week, I wonder whether the Minister might want to reassure the TUC representative that the Secretary of State will grant access to the TUC in the future. It would save a bit of time next week if he were willing to give that pledge.

The Chair: I am very grateful for that very kind offer from the shadow Minister, but it is not for the Chair to adjudicate on what the Minister may or may not say in the future. I am sure that if the shadow Minister raises it next week, he can hear it directly from the Minister.

If there are no further questions, I thank Rosa Crawford for her time, and for spending a little more time with us than advertised. We very much appreciate it. Thank you very much indeed.

Rosa Crawford: Thank you.

The Chair: We will now suspend the sitting until the next witness is ready.

3.51 pm

Sitting suspended.

Examination of Witness

Miles Beale gave evidence.

3.57 pm

The Chair: We will now hear oral evidence from Miles Beale, chief executive officer of the Wine and Spirit Trade Association, who is joining us via Zoom. This session will last until 4.30 pm. May I ask the witness to introduce himself for the record? Thank you for being prepared to join us slightly earlier than advertised; we are very grateful. Over to you, sir—*[Interruption.]* I think you are on mute. *[Interruption.]* We still cannot hear you. I think we will suspend the sitting while we iron out some of the technical difficulties.

3.58 pm

Sitting suspended.

4.1 pm

On resuming—

Miles Beale: Good afternoon, Mr Chairman. I hope that you are able to hear me now. Are you?

The Chair: Yes, we can hear you loud and clear.

Miles Beale: Fantastic. Thank you to my team, and apologies for that technical issue. We ought to have got used to it by now, but I am afraid that every now and then it defeats us.

Good afternoon, my name is Miles Beale. I am chief executive of the Wine and Spirit Trade Association. We have approximately 350 all-UK members. All our members are involved in buying and selling, importing and exporting, or advising on the sale of wines and spirits in the UK market.

The Chair: Thank you very much indeed. I call shadow Minister Gareth Thomas.

Q71 Gareth Thomas: Ministers have told us that this is a brilliant pair of deals, and the procurement chapters particularly so. Is there any way in which the deals could have been improved?

Miles Beale: I think there is a small difference between the two deals, in any event. From a wines and spirits point of view, there was—still is—a low tariff that the deals are getting rid of in both cases: a 5% tariff for exports and imports in either direction. Obviously, it is of benefit to consumers and businesses in both countries when those fall away. That is pretty straightforward—fairly simple.

I think we see an improvement on the Australian trade deal in the New Zealand one, because the New Zealand deal includes an annex and has a bit more of a dynamic element to it. The wine and spirits annex will allow us to have conversations over time, and improve on the deal that is already there. That was not available as an annex in the Australia free trade agreement.

There are a couple of things that we were expecting to be able to get out of the New Zealand deal that we are not yet able to get out of the Australian one, particularly around the wider variety of wines and spirits being available on both markets, and better traceability and brand protection, particularly for spirits. There is a distinction you can draw between the two deals, and you can see some progress being made; the New Zealand deal is slightly better than the Australian one.

Q72 Gareth Thomas: Do you think those differences are there because the Australia deal was a bit rushed, or because of inexperienced negotiators? Explain why you think the difference is there.

Miles Beale: Yes, in general terms that is true. There was an effort to get the Australia deal done quickly. You could say rushed; one person's rushed is another person's achievement in a shorter period of time. We were keen to support a deal that got over the line. There has been a bit more time for the New Zealand deal and it is probably slightly simpler to do, but the New Zealand deal also benefits from being the second one after a 42-year gap. I think that, certainly on the UK side, officials were in a slightly better position and knew a little bit more.

Q73 Gareth Thomas: The former Exports Minister said that there was not enough support for British exporters from the Department in which he had worked. That was back in July. Do you share the assessment that SMEs need more help to get goods to market in Australia and New Zealand?

Miles Beale: Yes, I think we would share that view, particularly for our exports. Let us take British gin as an example: we think it has significant cachet, and we particularly see smaller gin brands doing very well in the Australia and New Zealand markets. At the Wine and Spirit Trade Association we have organised our own trade missions for some of our small businesses. We normally take a group of them to markets that we think are likely to prove fruitful for them. We have not been able to do Australia and New Zealand, partly because they are geographically very far way and are smaller markets than some of the others we have chosen to go to, such as parts of the US and Japan.

We would like to see significantly more support for British SMEs that have export potential. It is one of the things we have talked to the Department for International Trade about quite a few times. Anything we can do to bring down the costs of entry into markets where we think the products would be successful would be a good idea. We know that other countries do that to a greater or lesser extent. One of the opportunities we see in the next few years is speeding up some of our SMEs getting into exporting wines.

Q74 Gareth Thomas: What response have you had from the Department for International Trade? Is it rushing to respond to help, or just pointing you to a website—or are there some promises that the Minister will come and have a chat and things will get better shortly?

Miles Beale: It is not quite as simple as that. The Department has certainly listened to what we have had to say. In practical terms, we get some support for our SMEs going into market from the posts—the embassies and high commissions in the markets that are out there, usually in capital or larger cities. What we have not had is any financial support. To be honest, that is the thing that would make the greatest difference for small businesses in particular.

Occasionally, there are large food and drink festivals that the DIT—or, in some cases, other Departments such as the Department for Environment, Food and Rural Affairs—encouraged us to point our members towards. In truth, it is rather hard to appear as a small British gin brand or a new sparkling wine brand next to different types of British food and drink where there is probably a more established market, so that tends not to work so well for our members. We would need something more tailored to get the results we need.

Gareth Thomas: Why do you think the financial support has not been provided? Is the Treasury just not interested, or does it prefer to concentrate on other areas of support?

The Chair: Order. Forgive me; we need to keep within the scope of the Bill. I am sure that the shadow Minister will have ample other opportunities to raise such issues, but today is not the occasion. Mr Beale, you do not have to respond to that.

If there are no other questions, I thank our witness for taking the time today, and I reassure him and his office that Zoom issues happen to us all. It is no problem at all. We are glad that we were able to hear your responses and evidence today. Thank you for your time; it is much appreciated.

Miles Beale: Thank you very much.

Ordered, That further consideration be now adjourned. *—(Mark Jenkinson.)*

4.10 pm

Adjourned till Tuesday 18 October at twenty-five minutes past Nine o'clock.

Written evidence to be reported to the House

TANB01 Public Law Project
TANB02 The Rt Hon Lord Lansley CBE PC DL