

# AUSTRALIA – UK FREE TRADE AGREEMENT

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The Australia-UK agreement is of potentially significant commercial benefit to both countries. However, the real value of the Australia-UK FTA goes much further than mere commercial benefit. It extends to geo-strategic considerations related to the shared security concerns that both countries (and indeed many others) have with China's increasingly assertive, muscular role in the world on a number of fronts. Use of trading arrangements such as big platform FTAs such as CPTPP contribute to constraining China's market distorting practices.

In this context, the Australia-UK FTA should also be one of the critical pillars of the UK's CPTPP accession.

The UK leaving the EU is a significant global event. The Australia-UK trade negotiation is therefore not a normal trade negotiation, and the ordinary tools of the trade negotiators' toolbox must be deployed differently to accommodate this reality. Other trading partners of the UK, including Australia and others committed to building more liberal international markets, need to take that into account. The UK had hitherto been constrained in the exercise of its external trade policy, its domestic settings and also its domestic regulatory choices by EU rules and the EU's common commercial policy. This is now changing.

However, this does not mean the UK will automatically embrace a more liberalising trade policy or a more pro-competitive and investor friendly position across the board with other trading partners. Moving in this direction would depend on the benefits it and other trading partners perceive as a result of FTA negotiations; as well as participating in joint opportunities for economic growth as a result of greater investment flows and creating a bigger market (especially in the areas of trade in services and impacts on opportunities for digital trade).

If those benefits appear not to be real, there is a possibility that Australia may lose the opportunity to expand trade with the UK as an FTA partner with serious commitments to trade liberalisation in agriculture. It may also lose the opportunity that the UK will embrace SPS rules that are compliant with the WTO and do not present obstacles to Australian trade. There is at least the possibility, if no benefits appear to be on the table, the UK may fall back into an EU regulatory approach, especially with regard to agricultural trade (in terms both of liberalisation and approaches to SPS which could have a material negative impact on Australian agricultural exporters). The FTA is an opportunity to move the UK away from the EU's regulatory and trade approaches about which Australia has previously complained.

In light of the above, we recommend that Australian trade negotiators take into account this strategic dimension of the trade negotiation. The practical implications would be to not push difficult issues into the final stages of the negotiation which would be normal negotiating practice, but to actually scope out the contours of the final deal early in the process, including capturing an early harvest or down payment on the deal itself.

## Contours of the Deal

We have some ideas about the contours of the deal on the basis set out above. Australian asks would obviously include agricultural trade liberalisation. In this regard it is worth noting that the UK's Trade and

Agriculture Commission (“TAC”), an independent body which just reported to the UK Secretary of State for International Trade advocated for zero tariffs and zero quotas, provided there were mechanisms to deal with potential anti-competitive market distortions (ACMDs) where trading partners were derogating from agreed standards in FTAs or internationally agreed standards. Given this group consisted of six farmers, including four members of the NFU out of a total commission of fifteen means that there should be widespread support for this suggestion in the UK. It is something that Australian negotiators should highlight in their negotiations. The TAC report also said that the UK should anchor itself in the WTO SPS agreement which is another recommendation which if taken forward by the UK government would be very welcome to Australian agricultural export interests.

UK asks will include high level commitments from Australia in the areas of digital, services and investment. The UK encourages Australian negotiators to put their cards on the table. Australia would deliver on these areas without any difficulty. Ironically in these areas it is only a mercantilist approach to negotiations that would cause the Australian negotiators not to show their hand in these areas. These rules-based negotiations should not be held hostage to the market access negotiations, as there are clearly huge wins for both sides here.

### Key Issues List

#### **Agriculture and Market Access**

Zero tariffs and zero quotas across all agricultural goods, provided both sides agree the mechanism to deal with the ACMD proposed in the Trade and Agriculture Commission (“TAC”) report (at pp 41-43).<sup>[1]</sup> As noted, this is a key development in that the TAC report is a unanimous commitment to liberal trade in agriculture and was made by an independent body that was established by the Secretary of State for International Trade to advise the Department on agricultural trade policy. It is hugely significant that the body contains all four members of the National Farmers Union in the UK, including its policy lead, and all signed off on this recommendation. This arguably changes the game for agricultural negotiations and certainly is a marked departure from the EU’s approach.

#### **Agriculture SPS Issues**

Both sides commit to full compliance with the WTO SPS agreement. Both sides to agree sound science-based approaches to any residue regulation, and the application of the necessity test for SPS regulations. Both sides agree maximum possible equivalence arrangements including underlying product market regulatory equivalence such as the NZ-EU veterinary agreement. The TAC report recommends such equivalence as well as the UK rooting itself in the SPS agreement. Once again, this is a marked departure from the EU’s approach.

#### **TBT Issues**

Both sides to agree full compliance with WTO TBT agreement. This was also a commitment in the TAC report in the UK. This could certainly have an impact on any import bans which the UK might adopt which might be discriminatory in nature and could lead to damage to the Australian export sector.

#### **Digital**

Both sides agree no localisation of data requirement. Both sides agree adequacy arrangements to maximise data flow.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/969045/Trade-and-Agriculture-Commission-final-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/969045/Trade-and-Agriculture-Commission-final-report.pdf)

## **Services**

Both sides to agree advanced and liberal arrangements for services, especially for financial services. There is a real possibility for a group of liberal nations, such as the UK, US, Australia, Singapore, and others to agree highly open financial services environments along the lines proposed in the attached paper which could stimulate a bigger financial services market benefiting their export interests.

Both sides agree to include Mode 4 services commitments and to ensure temporary business visas are made as available as possible.

## **Intellectual Property**

Just as in other rules-based areas, strong intellectual property protection will be required in the interests of both sides and should be a win-win.

The above areas represent areas where the parties should be broadly agreed. If the Australian negotiators were to signal to the UK advanced commitments in these areas, then it is more likely that the UK will be able to give more liberalisation in agriculture and there is an indication the UK is moving in this direction as a result of the TAC Report.

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